ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 7: Administrative Office of the Courts
Chapter 2: Certification and Licensing Programs
Section 7- 202: Fiduciaries

A. Definitions. In addition to the Arizona Code of Judicial Administration (ACJA) § 7-201(A), the following definitions apply:

"Active and direct supervision" means "supervision by a certified fiduciary or designated principal who provides or exercises routine and regular control over the services of and assumes personal professional oversight and responsibility for the services of other certified fiduciaries and professionals, trainees and support staff to whom the certified fiduciary delegates non-informed consent and non-contract entering authority. Active and direct supervision does not require a principal's constant physical presence if the supervising principal is or can be easily in contact with the fiduciary, trainee or staff by radio, telephone or electronic communication."

"Conservator" means "a person who is appointed by a court to manage the estate of a protected person" as provided in A.R.S. § 14-1201(8).

"Department director" means the individual appointed by the governor of Arizona as provided in A.R.S. § 41-604, to administer the Arizona Department of Veterans' Services.

"Devise" means "when used as a noun, … a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will" as provided in A.R.S. § 14-1201(12).

"Devisee" means "a person designated in a will to receive a devise" as provided in A.R.S. § 14-1201(13).

"Fiduciary" as provided in A.R.S. § 14-5651(J)(1) means:
…
(a) A person who for a fee serves as a court appointed guardian or conservator for one or more persons who are unrelated to the fiduciary.

(b) A person who for a fee serves as a court appointed personal representative and who is not related to the decedent, is not nominated in a will or by a power conferred in a will and is not a devisee in the will.

(c) A public fiduciary appointed pursuant to section 14-5601.

(d) The department of veterans' services.

"Financial institution" means, as provided in A.R.S. § 14-5651(J)(2):

> [A] bank that is insured by the federal deposit insurance corporation and chartered under the laws of the United States or any state, a trust company owned by a bank holding company that is regulated by the federal reserve board or a trust company chartered under the laws of the United States or this state.

"Foreign personal representative" means "a personal representative appointed by another jurisdiction" as provided in A.R.S. § 14-1201(19).

"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" as provided in A.R.S. § 14-1201(22).

"Guardian ad litem" means "a person appointed by the court to protect the interest of a minor or an incompetent in a particular case before the court" as provided in A.R.S. § 8-531(7).

"Personal representative" means a "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" as provided in A.R.S. § 14-1201(38).

"Program coordinator" means "… the lawful agent for the purpose of accepting service of process in any action, suit or proceeding that relates to the duties of a fiduciary" as provided in A.R.S. § 14-5651(C)(6) and has the same meaning as "division staff" as provided in ACJA § 7-201(A).

"Public fiduciary" means the individual appointed by the board of supervisors in each county pursuant to A.R.S. § 14-5601 to conduct the affairs of the office of the public fiduciary in the county.

"Protected person" means "a minor or any other person for whom a conservator has been appointed or any other protective order has been made" as provided in A.R.S. § 14-5101(4).

"Related" means a spouse or a person associated by blood or marriage within the fifth degree of consanguinity and affinity.

"The fifth degree" means any person by blood, adoption, or marriage as follows: a spouse, or a surviving spouse, child, grandchild, great-grandchild, parent, grandparent, great-grandparent, great-great grandparent, sibling, nephew or niece, grand nephew or grand niece, great-grand nephew or great-grand niece, uncle or aunt, great uncle or great aunt, great-grand uncle or great-grand aunt, first cousin, or first cousin once removed.

"Trainee" means a person who would qualify for certification as a fiduciary but for the lack of required experience and who is seeking to gain the required experience to qualify as a

certified fiduciary by working under the active and direct supervision of a designated principal or certified fiduciary to perform authorized services, pursuant to this section.

"Ward" means "a person for whom a guardian has been appointed. 'Minor ward' means a minor for whom a guardian has been appointed solely because of minority" as provided in A.R.S. § 14-5101(8).

B. Applicability. This section applies to the appointment and certification of fiduciaries pursuant to A.R.S. § 14-5651(A) which provides: "Except as provided by subsection G of this section, the superior court shall not appoint a fiduciary unless that person is certified by the supreme court." A.R.S § 14-5651(G) provides: "The requirements of this section do not apply to a financial institution …." For eligibility for court appointment as a guardian, conservator or personal representative, all persons, public and business entities shall hold valid certification and comply with the requirements of this section, unless exempt pursuant to this section. This section is read in conjunction with ACJA § 7-201: General Requirements. In the event of a conflict between this section and ACJA § 7-201, the provisions of this section shall govern.

C. Purpose. This section is intended to result in the effective administration of the fiduciary program and in certification of fiduciaries and fiduciary entities for performance of responsibilities in a professional and competent manner, for the protection of the public in accordance with all applicable statutes and sections.

D. Administration.

1. Role and Responsibilities of the Supreme Court. These requirements are contained in ACJA § 7-201(D). In addition, A.R.S. § 14-5651(A) provides:

> The supreme court shall administer the certification program and shall adopt rules and establish and collect fees necessary for its implementation. . . . At a minimum the rules adopted pursuant to this subsection shall include the following:
>
> 1. A code of conduct.
> 2. A requirement that fiduciaries post a cash deposit or surety bond with the supreme court.
> 3. Minimum qualifications.
> 4. Biennial renewal of certification.

2. Role and Responsibilities of the Director. These responsibilities are contained in ACJA § 7-201(D).

3. Role and Responsibilities of the Deputy Director. These responsibilities are contained in ACJA § 7-201(D).

4. Responsibilities of Division Staff. In addition to the requirements of ACJA § 7-201(D) division staff shall:

    a. Provide a training session on the role and responsibilities of the certified professional fiduciary pursuant to subsection (E)(1)(d).

    b. Administer the examination required pursuant to this section and ACJA § 7-201(E)(1)(c), by offering the examination a minimum of four times per calendar year, no less than once every three months.

    c. Lawful Agent. Pursuant to A.R.S. § 14-5651(C)(6), the program coordinator shall serve "… as the lawful agent for the purpose of accepting service in any action, suit or proceeding that relates to the duties of a fiduciary."

5. Role and Responsibilities of the Fiduciary Board. The Fiduciary Board is established pursuant to ACJA § 7-201(D)(5) and comprised of the following eleven members:

    a. Three certified fiduciaries who have worked as a certified fiduciary in private practice for at least five years;

    b. Two certified fiduciaries who have worked as a certified fiduciary in a public office for at least five years;

    c. One judge of the superior court;

    d. One court administrator or clerk of the superior court;

    e. One attorney whose major emphasis is in the area of probate, trust, elder, mental health, or disability law;

    f. Two public members; and

    g. An additional member appointed by the chief justice.

6. Fund. A.R.S. § 8-135(A) establishes the confidential intermediary and fiduciary fund and specifies one of the purposes of the fund is "… to perform the duties related to fiduciaries pursuant to § 14-5651. The supreme court shall administer the fund subject to legislative appropriation." Further, A.R.S. § 14-5651(A) provides: "… The supreme court shall deposit, pursuant to §§ 35-146 and 35-147, the monies collected pursuant to this subsection in the confidential intermediary and fiduciary fund established by § 8-135." A.R.S. § 14-5651(I) provides: "The supreme court may receive and expend monies from the confidential intermediary and fiduciary fund established pursuant to § 8-135 for the purposes of performing the duties related to fiduciaries pursuant to this section."

E. Initial Certification. In addition to the requirements of ACJA § 7-201(E), the applicant shall meet the following requirements:

1. Eligibility for Certification as an Individual.

a. A.R.S. § 14-5651 provides:

> C. An applicant for certification shall:
>
> 1. Be at least twenty-one years of age.
> 2. Be a citizen of this country.
> 3. Not have been convicted of a felony.
> 4. Attest that the applicant has not been found civilly liable in an action that involved fraud, misrepresentation, material omission, misappropriation, theft or conversion.
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> …
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> 6. Consent in the application form to the jurisdiction of the courts of this state for all actions arising under this article or article 6 of this chapter and appoint the fiduciary program coordinator as the lawful agent for the purpose of accepting service of process in any action, suit or proceeding that relates to duties of a fiduciary . . . .

b. In addition, the applicant shall possess one of the following:

(1) A high school diploma or a general equivalency diploma evidencing the passing of the general education development test. In addition, the applicant shall have a minimum of three years of full-time equivalent work experience within the previous ten years specifically related to one or a combination of the fiduciary relationships of guardianship, conservatorship or personal representative, as defined in subsection (A), or trusts, where the applicant, in a non-familial relationship, worked and performed services in the administration of a trust, decedent's estate, guardianship or conservatorship in one or a combination of the following circumstances:
   (a) Under the supervision of a certified fiduciary;
   (b) Under the supervision of a bank trust or trust company officer; or
   (c) Under the supervision of a licensed attorney whose major emphasis is in the area of probate, trust, elder, mental health, or disability law;

(2) A four year bachelor of arts or bachelor of science degree from an accredited college or university. In addition, the applicant shall have a minimum of one year of full-time equivalent work experience within the previous five years specifically related to one or a combination of the fiduciary relationships of guardianship, conservatorship or personal representatives, as defined in subsection (A), or trusts, where the applicant, in a non-familial relationship, worked and performed services in the administration of a trust, decedent's estate, guardianship or conservatorship in one or a combination of the following circumstances:
   (a) Under the supervision of a certified fiduciary;

(b) Under the supervision of a bank trust or trust company officer; or
(c) Under the supervision of a licensed attorney whose major emphasis is in the area of probate, trust, elder, mental health, or disability law;

(3) A high school diploma or a general equivalency diploma evidencing the passing of the general education development test and a certificate of completion from a paralegal or legal assistant program that is institutionally accredited but not approved by the American Bar Association, that requires successful completion of a minimum of 24 semester units, or the equivalent, in fiduciary specialization courses. In addition, the applicant shall have a minimum of two years of work experience within the previous ten years specifically related to one or a combination of the fiduciary relationships of guardianship, conservatorship, or personal representative, as defined in subsection (A), or trusts, where the applicant, in a non-familial relationship, worked or performed services in the administration of a trust, decedent's estate, guardianship or conservatorship in one or a combination of the following circumstances:
(a) Under the supervision of a certified fiduciary;
(b) Under the supervision of a bank trust or trust company officer; or
(c) Under the supervision of a licensed attorney whose major emphasis is in the area of probate, trust, elder, mental health, or disability law;

(4) A high school diploma or a general equivalency diploma evidencing the passing of the general education development test and a certificate of completion from an accredited educational program designed specifically to qualify a person for certification as a fiduciary under this section. In addition, the applicant shall have a minimum of two years of work experience within the previous ten years specifically related to one or a combination of the fiduciary relationships of guardianship, conservatorship, or personal representative, as defined in subsection (A), or trusts, where the applicant, in a non-familial relationship, worked and performed services in the administration of a trust, decedent's estate, guardianship or conservatorship in one or a combination of the following circumstances:
(a) Under the supervision of a certified fiduciary;
(b) Under the supervision of a bank trust or trust company officer; or
(c) Under the supervision of a licensed attorney whose major emphasis is in the area of probate, trust, elder, mental health or disability law;

(5) A high school diploma or a general equivalency diploma evidencing the passing of the general education development test and a certificate of completion from a paralegal or fiduciary program approved by the American Bar Association. In addition, the applicant shall have a minimum of two years of work experience within the previous ten years specifically related to one or a combination of the fiduciary relationships of guardianship, conservatorship, or personal representative, as defined in subsection (A), or trusts, where the applicant, in a non-familial relationship, worked and performed services in the administration of a trust, decedent's estate, guardianship or conservatorship in one or a combination of the following circumstances:
(a) Under the supervision of a certified fiduciary;
(b) Under the supervision of a bank trust or trust company officer; or
(c) Under the supervision of a licensed attorney whose major emphasis is in the

area of probate, trust, elder, mental health or disability law;

(6) A juris doctorate degree from a law school approved by the American Bar Association and currently admitted to the practice of law, active and in good standing in the state where the applicant was admitted;

(7) A high school diploma or a general equivalency diploma evidencing the passing of the general education development test and appointment as a foreign fiduciary where the fiduciary served pursuant to a court order. In addition, the applicant shall have a minimum of three years of work experience specifically related to one or a combination of the fiduciary relationships of guardianship, conservatorship, or personal representative, as defined in subsection (A), or trusts, where the applicant, in a non-familial relationship, worked and performed services in the administration of a trust, decedent's estate, guardianship, or conservatorship; or

(8) A high school diploma or a general equivalency diploma evidencing the passing of the general education development test and a registered master guardian certification in good standing with the National Guardianship Association.

(9) Upon review, and for good cause, the board may waive the requirement that an applicant's experience has been completed within the ten year period prior to the application, pursuant to subsection E(1)(b)(1) or within the five year period prior to the application, pursuant to subsection E(1)(b)(2); however, the board may not waive nor reduce the required number of years of experience required to become certified.

c. The applicant shall take and pass a written examination testing the applicant's knowledge and minimum competencies to serve as a fiduciary.

d. On successfully passing the examination, the applicant shall attend and complete a session on the role and responsibilities of the certified professional fiduciary as provided by division staff.

e. The applicant shall have 90 days from the date of passing the examination or reexamination to complete the certification process. Division staff shall treat an applicant who does not complete the process within 90 days as a new applicant and require the applicant to submit a new application and pay all initial certification, examination and training fees.

2. Eligibility for Trainee. An individual working under the supervision of a certified fiduciary or designated principal in order to gain the required experience to become certified as a fiduciary may:

a. Register as a trainee by completing and submitting a form provided by division staff.

b. Pay a registration fee pursuant to subsection (K). This fee shall cover the cost of trainee registration and one administration of the examination but does not include the fingerprint fee required pursuant to subsection (K).

c. Comply with the fingerprint provisions pursuant to A.R.S. § 14-5651(B) and subsection (E)(4)(a).

d. Comply with the continuing education provisions pursuant to subsections (G)(2) and (L).

e. Upon meeting the eligibility requirements for certification, a trainee shall submit an application for individual certification.

3. Certification as a Business Entity, Arizona Department of Veterans' Services or Office of the Public Fiduciary.

a. Business Entity. For qualification for business entity certification, the corporation, limited liability company or partnership shall designate a principal who meets the requirements of subsection (E)(3)(e).

b. Arizona Department of Veterans' Services. For qualification for certification the department director shall designate a principal who meets the requirements of subsection (E)(3)(e).

c. Office of the Public Fiduciary. For qualification for certification the office shall designate a principal who meets the requirements of subsection (E)(3)(e) and who is the named public fiduciary for the county.

d. Designation and Replacement of Principal.

(1) The initial application for certification shall name the designated principal.
(2) If the designated principal is no longer willing or able to serve as the principal:
(a) The certified business entity shall supply division staff with the name of the new designated principal within fourteen days. The certified business entity shall file the executed principal form with division staff naming the new principal within 30 days after the designated principal provided notice to the certified business entity the designated principal is no longer willing or able to serve. The certified business entity shall ensure the new designated principal meets the requirements of subsection (E)(3)(e).
(b) The Department of Veterans' Services shall supply division staff with the name of the new designated principal within fourteen days. The department shall file the executed principal form with division staff naming the new principal within 30 days after the designated principal provided notice to the department the principal is no longer willing or able to serve. The department shall ensure the new designated principal meets the requirements of subsection (E)(3)(e).
(c) The Office of the Public Fiduciary shall supply division staff with the name of the new designated principal within fourteen days. The office shall file the executed principal form with division staff naming the new principal within 30 days after the designated principal provided notice to the county board of supervisors the principal is no longer willing or able to serve. The office shall ensure the new

designated principal meets the requirements of subsection (E)(3)(e).

(d) Short term vacations or illnesses are not examples of inability to serve.

e. Eligibility of Principal. To qualify as the designated principal of a certified fiduciary business entity, the Department of Veterans' Services or the Office of the Public Fiduciary, a certified fiduciary shall meet the following requirements:

(1) Hold valid, active certification as a fiduciary whose certification has not been previously suspended or revoked;
(2) Comply with the renewal requirements for certification.

f. Responsibilities of Principal.

(1) The principal shall:
  (a) Provide active and direct supervision of all other certified fiduciaries, trainees and support staff who work with wards, protected persons or decedent estates and who work for the corporation, limited liability company, or partnership, Department of Veterans' Services or Office of the Public Fiduciary;
  (b) Adopt policies and procedures giving reasonable assurance all certified fiduciaries and trainees conform to the applicable rules, statutes and sections of the ACJA and non-certified staff conduct themselves in accordance with the applicable rules, statutes and sections of the ACJA;
  (c) In compliance with subsections F and J, properly delegate and assume personal professional responsibility for ensuring the tasks performed by the certified fiduciaries, professionals, support staff, and others who provide services for wards or decedent estates are within the scope of their training and experience and have been properly delegated by the principal;
  (d) File a list of all certified fiduciaries and trainees acting for or on behalf of the business entity, department or office with the initial application;
  (e) File articles of incorporation and letters of good standing from the Arizona Corporation Commission or the Secretary of State with an initial application for certification of a business entity;
  (f) Agree no less than one certified fiduciary shall assume the primary responsibility for each court appointment as a guardian, conservator or personal representative; and
  (g) File with the division staff, by June 30 each year, a list of all certified fiduciaries and trainees acting for or on behalf of the business entity, department or office.
(2) The designated principal may represent the business entity or public fiduciary office in any proceeding under this section or ACJA § 7-201. The director of the Department of Veterans' Services or designated principal may represent the department in any proceeding under this section or ACJA § 7-201.

4. Procedures for Initial Certification. In addition to the requirements of ACJA § 7-201(E), applicants shall meet the following requirements:

   a. Fingerprints. A.R.S. § 14-5651(B) provides:

      > As a condition of appointment, the supreme court shall require each applicant for the position of fiduciary to submit a full set of fingerprints to the supreme court for the purpose of obtaining a state and federal criminal records check to determine the suitability of the applicant pursuant to § 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

   b. Bond. A.R.S. § 14-5651(A) provides: "At a minimum the rules adopted pursuant to this subsection shall include the following: . . . 2. A requirement that fiduciaries post a cash deposit or surety bond with the supreme court." A bond is required of each applicant, business entity and each employee of a business entity assigned primary responsibility for court appointments seeking certification.

   c. A.R.S. § 14-5651(D) specifies the purpose of the bond:

      > The superior court shall, and any person may, notify the supreme court if it appears that a fiduciary has violated a rule adopted under this section. The supreme court shall then conduct an investigation and hearing pursuant to its rules. If the supreme court determines that the fiduciary committed the violation it may revoke the fiduciary's certification or impose other sanctions, including civil penalties, and shall notify the superior court in each county of this action. The supreme court may then also require the fiduciary to forfeit a cash deposit or surety bond to the extent necessary to compensate the court for the expenses it incurred to conduct the investigation and hearing.

   d. This bond is separate from the requirements of A.R.S. §§ 14-5411(A) and -3603(A). A.R.S. § 14-5411(A) provides: "Except as otherwise provided in subsection B, the court shall require a conservator to furnish a bond conditioned upon faithful discharge of all duties according to law, with sureties as it shall specify . . . ." A.R.S § 14-3603(A) provides:

      > A bond is required of a personal representative unless either:
      >
      > 1. The will expressly waives the bond.
      >
      > 2. All of the heirs if no will has been probated, or all of the devisees under a will which does not provide for waiver of the bond, file with the court a written waiver of the bond requirement. A duly appointed guardian or conservator may waive on behalf of his ward

or protected person unless the guardian or conservator is the personal representative.

3. The personal representative is a national banking association, a holder of a banking permit under the laws of this state, a savings and loan association authorized to conduct trust business in this state, a title insurance company which is qualified to do business under the laws of this state, a trust company holding a certificate to engage in trust business from the superintendent of financial institutions or the public fiduciary.

4. The petition for formal or informal appointment alleges that the probable value of the entire estate will permit summary procedures under § 14-3973 and the surviving spouse, or the nominee of the surviving spouse, is applying for appointment as personal representative.

e. For initial certification the applicant shall file with the application a cash or surety bond for the purposes described in A.R.S. § 14-5651(D) and subsection (E)(4)(b). Upon certification the certificate holder shall maintain the cash or surety bond as long as the certification is in place. Upon expiration or surrender of the certification, the certificate holder may apply in writing to division staff for return of any cash bond not forfeited. Division staff shall return any cash bond not forfeited within 120 days.

f. A bond may be either a surety or cash bond as follows:

(1) A surety bond in favor of the state of Arizona and the supreme court. The applicant shall have the bond executed on an approved bond form and issued by an insurer authorized to do business in Arizona and holding a certificate of authority issued by the director of the Arizona Department of Insurance. The bond shall have a total aggregate liability of $10,000 and shall contain a provision the insurer shall not cancel the bond without at least 30 days prior written notice to the supreme court by the insurer.
(2) A cash bond in the amount of $10,000 for deposit with the state treasurer in a special non-interest bearing account.
(3) If the applicant is found by the board to have violated any section adopted pursuant to A.R.S. § 14-5651, the board may cause the forfeiture of the cash or surety bond, as applicable, to the supreme court. If the bond is forfeited, division staff shall deposit the funds in the confidential intermediary and fiduciary fund established pursuant to A.R.S. § 8-135.

g. Bond Exemption. State and local governmental agencies and agency staff, including the office of the public fiduciary and the Arizona Department of Veterans' Services, are not required to post the surety or cash bond.

5. Exemptions from Certification.

   a. Certification is not required of:

      (1) Any person or business entity who shall serve, if court appointed, as a guardian, conservator or personal representative for one or more persons for no fees or compensation monetary or otherwise;
      (2) Any person who shall serve, if court appointed, as a personal representative, guardian or conservator if they are related to the decedent or incapacitated or protected person;
      (3) Any person who shall serve, if court appointed, as a personal representative who is nominated in a will or nominated by a power conferred in a will;
      (4) Any person who shall serve, if court appointed, as a personal representative who is a devisee in the will;
      (5) Any person appointed to serve as a guardian ad litem;
      (6) Any person serving as a foreign personal representative in an ancillary probate administration pursuant to A.R.S. § 14-4205;
      (7) Any person serving as a foreign conservator pursuant to A.R.S. §§ 14-5431 and -5432; or
      (8) Pursuant to A.R.S. § 14-5651(G) that provides: "The requirements of this section do not apply to a financial institution. This exemption does not prevent the superior court from appointing a financial institution as a fiduciary . . . ."

   b. In addition, A.R.S. § 14-5651(G) provides: ". . . The supreme court may exempt a fiduciary from the requirements of this section for good cause."

   c. Emergency Exemption. Any person or business entity seeking court appointment as a conservator or guardian or personal representative may apply on the form prescribed by the supreme court for an emergency exemption from certification based on the criteria set forth in this section and comply with this section by filing an application for exemption, on the approved form, with the clerk of the superior court in the county where the appointment is requested. The presiding judge of the superior court or designated judicial officer may grant or deny the exemption under the following conditions:

      (1) The presiding judge or designated judicial officer finds the applicant possesses the experience, education and skills necessary to meet the needs of the ward, protected person or decedent's estate. In making this determination, the presiding judge or designated judicial officer may consider the following:
         (a) The nature of the relationship with the ward, protected person, or deceased person;
         (b) The type of decisions the fiduciary may make;
         (c) The amount of assets the fiduciary shall manage;
         (d) Any limitations or conditions on the appointment;
         (e) The fees the fiduciary shall charge;
         (f) The applicant is not acting as a fiduciary in any other case unless related to the

ward or protected person by blood or marriage;

(g) The applicant has known the ward, protected person or deceased person for at least two years;

(h) No prejudice or harm is likely to occur if the exemption is granted;

(i) There is an emergency need for the temporary appointment;

(j) No relative is willing and able to serve; and

(k) No certified fiduciary is willing and able to serve.

(2) The presiding judge or designated judicial officer may hold a hearing or request additional information in order to make any required finding.

(3) If the presiding judge or designated judicial officer enters an order granting an exemption the following restrictions shall apply:

(a) Temporary appointment is effective for a period of up to 90 days. The presiding judge may grant one extension for a period of up to 90 days. The purpose of the temporary appointment is to allow the individual to seek and obtain certification during this temporary appointment;

(b) The appointee shall apply for fiduciary certification with the supreme court; and

(c) The appointee shall not receive any compensation in any form while the appointee is serving in the capacity of an emergency exempted fiduciary, except for reimbursement for reasonable expenses, subject to court approval.

(4) Within fifteen days of granting the exemption from certification, the presiding judge or designated judicial officer shall forward to division staff a copy of the application for exemption, the petition and order granting the emergency appointment of guardian or conservator and the minute entry.

6. Decision Regarding Certification. In addition to the reasons specified in ACJA § 7-201 (E), the board may refuse to certify an applicant if the applicant or an officer, director, partner, member, trustee or manager of the applicant was removed as a court appointed guardian, conservator, or personal representative for cause and shall refuse to certify the applicant if the applicant or an officer, director, partner, member, trustee, or manager of the applicant has a record of conviction by final judgment of a felony.

F. Role and Responsibilities of Fiduciaries. In addition to the requirements of ACJA § 7-201(F), the following requirements apply:

1. Code of Conduct. Each certified fiduciary shall adhere to the code of conduct in subsection (J), adopted pursuant to A.R.S. § 14-5651(A)(1).

2. Status of the Fiduciary. The certificate issued by the board to the fiduciary shall designate the status of the fiduciary as associated with a public fiduciary, the Arizona Department of Veterans' Services, a business, or as acting independently.

a. The principal of a business entity, the office of the public fiduciary, or the Arizona Department of Veterans' Services shall annually file with the division staff, by June 30 of each year, a list of all certified fiduciaries acting for or on behalf of the business entity, public fiduciary or the Arizona Department of Veterans' Services.

b. If the status of fiduciary changes from being associated with a business entity, a public fiduciary office or the Arizona Department of Veterans' Services, the fiduciary shall, within 30 days of the change, notify division staff and if appropriate, meet all requirements for certification as an individual, including posting of the bond.

c. A business entity, public fiduciary office or the Arizona Department of Veterans' Services, as applicable, shall notify division staff, within 30 days, when an employee who is a certified fiduciary leaves the employment of the business entity, public fiduciary office or the Arizona Department of Veterans' Services.

3. Certificate Number. A fiduciary, when filing a document with the superior court, shall include the fiduciary's personal certificate number on the document and when appropriate, the business entity's number.

4. A fiduciary shall report any bankruptcies, tax liens, final foreclosure, civil judgments, court removals or sanctions, or felony convictions to division staff, in writing within 30 days and provide a copy of all pertinent documents.

5. Trainees. A trainee shall:

a. Be under the active and direct supervision of a certified fiduciary or designated principal.

b. Comply with the continuing education requirements outlined in subsections (G)(2) and (L).

c. Adhere to the code of conduct in subsection (J).

d. A trainee shall not provide informed verbal or written consent or enter into contractual agreements on behalf of the ward, certified fiduciary or designated principal.

6. Eligibility for Certification. A trainee may apply for fiduciary certification after serving one year of full time equivalent service as a trainee if the trainee otherwise qualifies for certification.

7. Supervision of Trainees. A certified fiduciary or designated principal may supervise a trainee under the following conditions:

a. The supervising fiduciary shall maintain the primary responsibility for the client or estate and shall not delegate this duty to any trainee.

b. The supervising fiduciary shall:

(1) Assume personal professional responsibility for the trainee's guidance in any work undertaken and for providing active and direct supervision, as necessary, for the quality of the trainee's work;
(2) Assist the trainee in activities to the extent the fiduciary considers it necessary;
(3) Ensure the trainee is familiar with and adheres to the provisions of this section and ACJA § 7-201; and
(4) Provide the supervising fiduciary's name and certificate number on any documents filed in a court or tribunal prepared by the trainee under the fiduciary's supervision.

c. The trainee may perform authorized services, as set forth in statute, court orders, this section and ACJA § 7-201, only under the supervision of the certified fiduciary or designated principal. Neither the trainee nor the supervising fiduciary may represent the trainee is a certified fiduciary.

8. Support Staff and Professionals. A certified fiduciary or designated principal may, under the certified fiduciary or designated principal's active and direct supervision, utilize support staff and other professionals to perform office functions and client services. Support staff and professionals may be used to gather and provide necessary information to the certified fiduciary regarding a client and to make recommendations based on their knowledge and expertise to the certified fiduciary. The certified fiduciary or designated principal may not delegate informed consent or contractual agreement decision making authority to trainees, non-certified staff or professionals.

a. Support staff are individuals:

(1) Employed by the certified fiduciary or designated principal who perform clerical, bookkeeping, and other administrative and support duties;
(2) Who do not engage in any other acts requiring certification pursuant to ACJA §§ 7-201, -202, A.R.S. Title 14, Chapter 5, Article 7; and
(3) Not employed as a condition of or designed to perform duties otherwise requiring certification.

b. Professionals are licensed individuals the certified fiduciary or designated principal employs or contracts with on behalf of the ward or decedent's estate, where the professional performs those services and acts authorized pursuant to their certification or licensing status. Professionals include but are not limited to, registered nurses, certified nurse practitioners, certified public accountants, certified paralegals, licensed attorneys and certified legal document preparers.

9. Reporting of Possible Violations. A fiduciary shall notify division staff if the fiduciary has knowledge another certified fiduciary has committed misconduct raising a substantial question as to the fiduciary's honesty, trustworthiness or qualifications as a certified fiduciary. This fiduciary shall make this notification in compliance with ACJA § 7-201(H).

G. Renewal of Certification. In addition to the requirements of ACJA § 7-201(G), the following requirements apply:

1. Expiration Date. All certifications expire at midnight, on May 31st each even numbered year.

2. Continuing Education. During each renewal cycle all certified fiduciaries and trainees shall attend twenty hours of continuing education as required by the continuing education policies in subsection (L).

3. All business applicants shall include a letter of good standing from the Arizona Corporation Commission or Arizona Secretary of State with the application for renewal of certification.

4. Decision Regarding Renewal. In addition to the reasons specified in ACJA § 7-201(G), the board may refuse to renew the certification of an applicant if the applicant or an officer, director, partner, member, trustee or manager of the applicant was removed as a court appointed guardian, conservator, or personal representative for cause or sanctioned by the court regarding the administration of a guardianship, conservatorship, or personal representative. The board shall refuse to renew the certification of the applicant if the applicant or an officer, director, partner, member, trustee, or manager of the applicant has a record of conviction by final judgment of a felony.

H. Complaints, Investigation, Disciplinary Proceedings and Certification and Disciplinary Hearings. In addition to the requirements in ACJA § 7-201(H) the following requirements apply to certificate holders and trainees:

1. Reporting of Complaints. A.R.S. § 14-5651 provides:

> E. A person who in good faith provides information or testimony regarding a fiduciary's misconduct or lack of professionalism is not subject to civil liability.
>
> F. Persons appointed by the chief justice to serve in an advisory capacity to the fiduciary program, staff of the fiduciary program, hearing officers and employees of the administrative office of the courts who participate in the fiduciary program are immune from civil liability for conduct in good faith that relates to their official duties.

2. Possible Actions. Upon completion of an investigation concerning alleged acts of misconduct or violations by a certificate holder, which may or may not involve a hearing, the board may, in addition to any other actions specified in ACJA § 7-201(H):

   a. Require the certificate holder forfeit the surety or cash bond; or forfeit the surety or cash bond to the extent necessary to compensate the court for the investigation and hearing process if applicable.

b. Determine and impose a civil penalty, pursuant to A.R.S. § 14-5651(D). The civil penalty may not exceed $500 for each failure or violation and may not exceed an aggregate civil penalty of $15,000. The certified fiduciary shall pay the civil penalty to the supreme court for remission to the state treasurer for deposit in the general fund.

3. Judicial Review. In addition to the requirements in ACJA § 7-201(H), the following requirements apply: A.R.S. § 14-5651(H) provides: "This section does not grant any fiduciary or any applicant for a certificate as a fiduciary the right to a direct appeal to the supreme court."

I. Policies and Procedures for Board Members. These requirements are contained in ACJA § 7-201(I).

J. Code of Conduct. This code of conduct is adopted by the supreme court to apply to all certified fiduciaries pursuant to A.R.S. § 14-5651(A)(1) in the state of Arizona. The purpose of this section is to establish minimum standards of performance for certified fiduciaries.

1. Decision Making**.** The fiduciary shall exercise extreme care and diligence when making decisions on behalf of a ward or protected person. The fiduciary shall make all decisions in a manner that promotes the civil rights and liberties of the ward or protected person and maximizes independence and self-reliance.

a. The fiduciary shall make all reasonable efforts to determine the preferences of the ward or protected person, both past and current, regarding all decisions the fiduciary is empowered to make.

b. The fiduciary shall make decisions in accordance with the determined preferences of the ward or protected person, past or current, in all instances except when the fiduciary is reasonably certain the decision will result in substantial harm.

c. When it is not possible to determine the preferences of the ward or protected person, the fiduciary shall make decisions in the best interest of the ward or protected person.

d. The fiduciary shall maintain an awareness of their limitations, shall carefully consider the views and opinions of those involved in the treatment, care and management of the ward, protected person, or estate and shall also seek independent opinions when necessary.

e. The fiduciary shall recognize their decisions are open to the scrutiny of other interested parties and, consequently, to criticism and challenge. Regardless, the fiduciary alone is ultimately responsible for decisions made on behalf of the ward, protected person, or estate.

f. The fiduciary shall refrain from decision making in areas outside the scope of the guardianship, or conservatorship, or personal representative order. When necessary

and in the best interests of the ward or protected person, the fiduciary shall assist the ward or protected person by ensuring decisions are made in an autonomous fashion.

2. Ethics. The fiduciary shall exhibit the highest degree of trust, loyalty and fidelity in relation to the ward, protected person, or estate.

    a. The fiduciary shall manage and protect the personal and monetary interests of the ward or protected person and foster growth, independence and self reliance to the maximum degree.

    b. The fiduciary shall avoid self-dealing or the appearance of a conflict of interest. Self-dealing or a conflict of interest arises where the fiduciary has some personal or agency interest other individuals may perceive as self-serving or adverse to the position or best interest of the ward, protected person, or decedent. In situations where no other services are available, the fiduciary shall disclose the potential conflict in a petition to the superior court, seeking approval prior to the provision of services.

    c. The fiduciary shall vigorously protect the rights of the ward or protected person against infringement by third parties.

    d. The fiduciary shall, whenever possible, provide all pertinent information to the ward or protected person unless the fiduciary is reasonably certain substantial harm will result from providing this information.

    e. The fiduciary shall ensure any document filed with the superior court is timely.

    f. The fiduciary shall not knowingly file any document with the superior court or present testimony to the superior court which is misleading, inaccurate, false, or contains misstatements, misrepresentations or omissions of material facts. The fiduciary shall inform the superior court within ten days of the change in location or death of a client or ward.

    g. The fiduciary shall only prepare powers of attorney or other legal documents, if also certified as a legal document preparer pursuant to ACJA § 7-208, except as ordered by the court. This provision does not apply to the Arizona Department of Veterans Services pursuant to A.R.S. § 41-603(A).

    h. The fiduciary shall, if serving in the capacity of any type of a power of attorney, trustee, or legal custodian for the federal veterans' services division, disclose to the public, ward or client their supreme court certification does not pertain to these functions.

i. The fiduciary shall not permit or authorize trainees, support staff or other contracted professionals to provide informed consents and shall not allow trainees, support staff or other contracted professionals to enter into any contractual agreements regarding the ward or protected persons.

3. Guardianship. The fiduciary acting as guardian shall assume legal custody of the ward and shall ensure the ward resides in the least restrictive environment available. The fiduciary or the fiduciary's qualified representative, if the ward is located outside the county or state, shall visit the ward no less than quarterly and as often as is necessary to ensure the client's well-being. The fiduciary shall assume responsibility to provide informed consent on behalf of the ward for the provision of care, treatment and services and shall ensure this care, treatment and services represent the least restrictive form of intervention available.

   a. On appointment, the fiduciary shall take steps to become informed of the statutory requirements for a guardian.

   b. The fiduciary shall keep informed and aware of the options and alternatives available for establishing the ward's place of residence.

   c. The fiduciary shall make decisions in conformity with the preferences of the ward in establishing the residence of the ward unless the fiduciary is reasonably certain this decision will result in substantial harm.

   d. The fiduciary shall, when it is not possible to determine the preferences of the ward or where they will result in substantial harm, make decisions with respect to the place of abode of the ward that are in conformity with the best interests of the ward.

   e. The fiduciary shall not remove the ward from the home of the ward or separate the ward from family and friends unless this removal is necessary to prevent substantial harm. The fiduciary shall make every reasonable effort to ensure the ward resides at home or in a community setting.

   f. The fiduciary shall seek professional evaluations and assessments whenever necessary to determine if the current or proposed placement of the ward represents the least restrictive environment to the ward. The fiduciary shall work cooperatively with available community based organizations to assist in ensuring the ward resides in a non-institutional environment.

   g. The fiduciary shall monitor the placement of the ward on an on-going basis to ensure the continued appropriateness of the placement and shall consent to changes as they become necessary or advantageous for the ward.

h. The fiduciary shall, if the only available placement is not the most appropriate and least restrictive, advocate for the rights of the ward, negotiate a more desirable placement with a minimum of delay and retain legal counsel for assistance if necessary.

i. The fiduciary shall make decisions in conformity with the preferences of the ward when providing consent for the provision of care, treatment and services, unless the fiduciary is reasonably certain these decisions will result in substantial harm to the ward.

j. The fiduciary, when it is not possible to determine the preferences of the ward or they will result in substantial harm, shall make decisions with respect to care, treatment and services, in conformity with the best interests of the ward.

k. The fiduciary, in the event the only available treatment, care or services are not the most appropriate and least restrictive, shall advocate for the right of the ward to a more desirable form of treatment, care or services, retaining legal counsel to assist if necessary.

l. The fiduciary shall seek professional evaluations and assessments whenever necessary to determine whether the current or proposed care, treatment and services represent the least restrictive form of intervention available.

m. The fiduciary shall work cooperatively with available individuals and organizations to assist in ensuring the ward receives care, treatment and services representing the least restrictive form of intervention available and are consistent with the wishes or best interests of the ward.

n. The fiduciary shall not consent to extraordinary medical procedures without prior authorization from the superior court. The procedures the fiduciary shall not consent to without prior court approval include abortion, sterilization, organ transplants, psycho surgery, electro-convulsive therapy, medical treatment for clients whose religious beliefs prohibit these treatments and any other treatments or interventions the court shall approve pursuant to state law.

o. The fiduciary shall keep abreast of the laws of the state regarding the withholding or withdrawal of life-sustaining treatment.

p. The fiduciary shall monitor the care, treatment and services the ward is receiving to ensure their continued appropriateness and shall consent to changes as they become necessary or advantageous to the ward.

q. The fiduciary shall ensure the ward is receiving all medical and financial benefits to which the ward may be entitled.

r. The fiduciary shall protect and manage the monetary interests of the ward when acting in a *de facto* conservatorship, including no co-mingling of funds and assets.

4. Conservatorship. The fiduciary acting as conservator for the estate shall provide competent management of the property and income of the estate. The fiduciary shall exercise intelligence, prudence and diligence in the discharge of all duties. A fiduciary shall avoid any self-interest in the discharge of this duty.

   a. On appointment, the fiduciary shall take steps to become informed of the statutory requirements for managing a protected person's estate.

   b. On appointment, the fiduciary shall take reasonable steps to marshal and secure the property and income of the protected person's estate as soon as possible. The fiduciary shall provide stewardship of the property for safekeeping and, at a minimum, record pictorially and establish and maintain accurate records of all real and personal property.

   c. The fiduciary shall not co-mingle any property or assets of the protected person's estate with property or assets of other clients' estates the fiduciary may hold as conservator or in another capacity, nor co-mingle with the fiduciary's own property or assets.

   d. The fiduciary shall manage the income of the estate with the primary goal of providing for the needs of the protected person, and in certain cases, the needs of the dependents of the protected person for support and maintenance.

   e. The fiduciary shall exercise prudence in the investment of surplus funds of the estate.

   f. The fiduciary shall petition for and receive authority from the superior court, prior to expending estate funds for gifting.

   g. The fiduciary shall have no self-interest in the management of the estate and shall exercise caution to avoid even the appearance of self-interest.

   h. The fiduciary shall ensure the protected person is receiving all medical and financial benefits to which the protected person may be entitled.

   i. The fiduciary shall ensure all fees and expenses incurred for the protected person by the fiduciary, including compensation for the services of the fiduciary are reasonable in amount and necessarily incurred for the welfare of the protected person.

   j. The fiduciary shall prepare complete, accurate and understandable accountings and inventories.

   k. The fiduciary shall protect the rights and make decisions in the best interest of the protected person when acting in a *de facto* guardianship.

5. Personal Representative. A fiduciary acting as personal representative shall settle and distribute the estate of the decedent efficiently, timely and in the best interests of the estate and, if appropriate, in accordance with the terms of any probated and effective will.

    a. On appointment, the fiduciary shall take steps to become informed of the statutory requirements for managing a decedent's estate.

    b. On appointment, the fiduciary shall take reasonable steps to marshal and secure the property and income of the decedent's estate as soon as possible. The fiduciary shall provide stewardship of the property for safekeeping and, at a minimum, record pictorially and establish and maintain accurate records of all real and personal property.

    c. The fiduciary shall not co-mingle any property or assets of the decedent's estate with property or assets of other estates the fiduciary may hold as personal representative, nor co-mingle with the fiduciary's own property or assets.

    d. A fiduciary shall exercise intelligence, prudence and diligence in providing competent management of the property and income of the estate. A fiduciary acting as a personal representative shall observe the standards of care and duties of accounting applicable to trustees.

    e. A fiduciary shall resolve questions in good faith and make decisions that are most beneficial to the estate.

    f. A fiduciary shall have no self-interest in the management of the decedent's estate and shall exercise caution to avoid even the appearance of self-interest.

    g. A fiduciary shall ensure all fees and expenses for the estate, including compensation for the fiduciary, are reasonable in amount and necessarily incurred in the administration of the decedent's estate.

    h. A fiduciary acting as personal representative shall prepare complete, accurate and understandable court documents, including, but not limited to, petitions for determination of heirs, inventories, accountings and closing statements.

6. Termination. The fiduciary has an affirmative obligation to seek termination or limitation of the guardianship or conservatorship wherever indicated.

    a. The fiduciary shall diligently seek out information to provide a basis for termination or limitation of the guardianship or conservatorship.

    b. The fiduciary, upon indication of termination or limitation of the guardianship or conservatorship order is warranted, shall promptly request court action, retaining legal counsel if necessary.

c. The fiduciary shall assist the ward or protected person in termination or limiting the guardianship or conservatorship and arrange for independent representation for the ward whenever necessary.

4. Compliance. The fiduciary shall perform all duties and discharge all obligations in accordance with current Arizona law and the administrative rules, court orders, administrative orders, ACJA § 7-201 and this section adopted by the supreme court governing the certification of fiduciaries.

K. Fee Schedule.

1. Initial Certification Fees.

a. Individual Certification:

All initial individual (public or private) certification:

(1) Certification expiring **more** than one year after application date	$ 250.00
(2) Certification expiring **less** than one year after application date	$ 125.00
(3) Fingerprint application processing fee (Rate set by Arizona law and subject to change)	
(4) Trainee Registration Fee	$ 70.00

b. Business Certification:

Business (public or private) entity certification:

(1) Certification expiring **more** than one year after application date	$ 250.00
(2) Certification expiring **less** than one year after application date	$ 125.00

2. Examination Fees.

a. Applicants for initial certification	$ 50.00
b. Reexaminations	$ 50.00

(For any applicant who did not pass the examination on the first attempt, the $ 50.00 fee applies to each reexamination.)

c. Reregistration for Examination	$ 50.00

(For any applicant who registers for an examination date and fails to appear at the designated site on the scheduled date and time.)

3. Renewal Certification Fees.

a. Biennial Individual Renewal (Public or Private)	$150.00
b. Biennial Business Renewal (Public or Private)	$150.00
c. Inactive Status	$150.00
d. Late Renewal	$ 50.00
e. Delinquent Continuing Education	$ 50.00

4. Miscellaneous Fees.

a. Replacement of Certificate or Name Change	$ 25.00
b. Public Record Request per Page Copy	$ 00.50
c. Certificate of Correctness of Copy of Record	$ 18.00
d. Reinstatement Application	$100.00

(Application for reinstatement to certification after suspension or revocation of certification.)

L. Continuing Education Policies.

1. Purpose.

   a. Court appointed fiduciaries have important responsibilities in serving vulnerable and elderly clients. Fiduciaries are required to demonstrate a basic level of competency to become certified and practice in Arizona. Ongoing continuing education is one means to ensure a certified fiduciary maintains continuing competence in the fiduciary field after certification is obtained. It also provides opportunities for fiduciaries to keep abreast of changes in the fiduciary and legal professions and the Arizona judicial system.

   b. These policies are intended to provide direction to certified fiduciaries, to ensure compliance with statutes, this section and ACJA § 7-201 regarding continuing education credits; and to provide for equitable application and enforcement of the continuing education requirements.

2. Applicability. Pursuant to A.R.S § 14-5651 and subsection (G)(2):

   a. All certified fiduciaries shall complete a minimum of twenty hours of continuing education every two years. The continuing education requirements do not apply to

fiduciary businesses. Fiduciaries may not bank or roll over continuing education hours from one renewal period to the next. Pursuant to subsection (G)(1), all certificates expire on May 31st each even numbered year.

b. All certified fiduciaries shall comply with these adopted policies regarding continuing education.

3. Responsibilities of Fiduciaries.

a. It is the responsibility of each fiduciary to ensure compliance with the continuing education requirements. These responsibilities include maintaining documentation of completion of continuing education and submitting this documentation with the renewal application by the deadline date established by the board for renewal of certification if requested to do so.

b. Upon request, each fiduciary shall provide any additional information required by the board or division staff when reviewing the application for renewal of certification and continuing education applications and documentation.

c. Continuing education not recognized for credit upon board review does not in any way relieve the fiduciary of the responsibility to complete the required hours of continuing education.

4. Authorized Continuing Education Activities.

a. Continuing education activity shall address the areas of proficiency, competency and performance of a fiduciary and impart knowledge and understanding of the fiduciary profession, the Arizona judiciary, or the legal process. Continuing education shall increase the participant's understanding of the responsibilities of a fiduciary and the fiduciary's impact on the judicial process and the public.

b. Continuing education activity shall include one or more of the following subjects:

(1) Guardianships;
(2) Conservatorships;
(3) Personal representatives;
(4) Trust administration;
(5) Power of attorney;
(6) Mental health;
(7) The Arizona court system including the state and federal constitution, branches of government, Arizona court jurisdiction and responsibilities and the Arizona tribal court system;
(8) The Arizona Revised Statutes, Arizona Rules of Court, this section, ACJA § 7-201, case law, administrative orders and current issues in the Arizona court system relevant to the fiduciary profession;
(9) The role and responsibilities of the fiduciary including, but not limited to, this

section, ACJA § 7-201 and the code of conduct;

(10) Management issues including office practices, public relations and customer service, accounting, time management, human resources, financial planning and stress management; and

(11) Ethics for fiduciaries, including cooperation with lawyers, judges and fellow fiduciaries, professional attire, courtesy and impartiality to all litigants, information vs. legal advice and public relations. A fiduciary shall complete a minimum of three hours of ethics continuing education during each renewal cycle as part of the total required hours. The three hours of ethics must stand alone and may only be credited as ethics and not as a portion of the other seventeen hours of required continuing education.

c. Accredited Activities. Subject to the conditions specified in this policy, programs, seminars and courses of study offered or approved by the following entities are considered accredited continuing education activities:

(1) Fiduciary Certification Program (FCP);
(2) The National Guardianship Association (NGA);
(3) Arizona Fiduciaries Association (AFA);
(4) National Association of Court Management (NACM);
(5) State Bar of Arizona, Probate Law and Trust Section;
(6) State Bar of Arizona, Mental Health and Elder Law Section;
(7) National Academy of Elder Law Attorneys (NAELA);
(8) National Association of Geriatric Care Managers (NAGCM);
(9) National College of Probate Judges; and
(10) National Association of Social Workers (NASW).

d. Conferences. A fiduciary may receive continuing education credit for attendance at a conference relevant to the fiduciary profession. Conference attendance may satisfy 100 per cent of the continuing education credits required during the renewal cycle, if the conference is sponsored by organizations or entities listed in subsection (L)(4)(c). Introductory remarks, breaks, meals, business meetings and general sessions of a conference do not qualify as continuing education hours. The fiduciary shall obtain documentation of the specific sessions of the conference attended.

e. University, College and Other Educational Institution Courses**.** A fiduciary may receive continuing education credit for completing a course provided by a university, college or other accredited educational institution with a grade of "C" or better or a "pass" on a pass/fail system. Credit is awarded by multiplying the number of credit hours awarded by the educational institution by two. However, the maximum total of continuing education credits for completion of courses awarded pursuant to this subsection shall not exceed 50 percent of the total number of continuing education hours required for the renewal period, or ten hours.

f. Authoring or Coauthoring Articles. A fiduciary may receive continuing education credit for authoring or coauthoring an article directly related to the fiduciary

profession and published in a state or nationally recognized professional journal relevant to the fiduciary profession or law, if the article is a minimum of 1,000 words in length. A fiduciary may earn a maximum of one hour of continuing education credit for authoring an article or articles in any one renewal period. A fiduciary shall not receive credit for the same article published in more than one publication or republished in the same publication in later editions.

g. Self Study. A fiduciary may receive continuing education credit for self study, including correspondence courses, procedure manuals, video and audio tapes, on-line computer seminars and other methods of independent learning. The self study shall have accompanying written materials. A fiduciary shall not receive credit for simply reading books, or seminar materials or other printed materials. A fiduciary may receive a maximum of five continuing education credits for self study in any one renewal period. A fiduciary shall not use self study as the qualifying method for the three hours of ethics credit during the renewal cycle. A fiduciary shall document the continuing education credit for self study on a form approved and provided by the board.

h. Serving as Faculty. A fiduciary may receive continuing education credit for serving as an instructor, speaker, faculty or panel member of a continuing education seminar directly related to the fiduciary profession. The fiduciary may receive credit for the actual presentation time, plus actual preparation time up to two hours for each hour of presentation time. A fiduciary may receive a maximum of ten hours of continuing education credit for serving as faculty in any renewal period; however, a fiduciary may not receive credit for presenting a program repeatedly throughout the renewal period. A fiduciary may receive continuing education credit for actual presentation time for duplicate programs presented in subsequent renewal periods; however, shall not receive continuing education credit for preparation time for those programs.

i. Mentoring Activities. A fiduciary shall not receive credit for mentoring activities.

5. Minimum Time. Each continuing education activity shall consist of at least 30 minutes of "actual clock time" spent by a registrant in actual attendance at and completion of an approved continuing education activity. "Actual clock time" is the total hours attended, minus the time spent for introductory remarks, breaks, meals and business meetings. After completion of the initial 30 minutes of continuing education activity, a fiduciary may receive credit in fifteen minute increments. A fiduciary shall not use additional earned continuing education credits for subsequent renewal periods.

6. Non-Qualifying Activities.

a. The following activities shall not qualify for continuing education credit:

(1) Programs completed for qualification for initial certification;
(2) Programs with a primary focus on teaching nonverbal skills not directly related to the fiduciary profession;
(3) Attendance or participation at professional or association business meetings,

general sessions, elections, policymaking sessions or program orientation;
(4) Serving on committees or councils or as an officer in a professional organization;
(5) Activities completed as required by the board as part of disciplinary action;
(6) Any activity completed as ordered by a judicial officer; and
(7) Mentoring activities where the fiduciary serves as a mentor.

b. Repeat of an Activity. Generally, a fiduciary may not receive credit for repeating an activity within the same renewal period. Exceptions are permissible if the activity is directly related to the fiduciary profession and duplication of the continuing education activity will enhance the fiduciary's knowledge, skill and competency.

c. Attendance. A fiduciary shall not request and shall not receive credit if the fiduciary attends part, but not all of the provided activity.

7. Documentation of Attendance or Completion. When attending or completing a continuing education activity, a fiduciary shall obtain documentation of attendance or completion from the sponsoring entity. At a minimum, this documentation shall include the:

a. Name of the sponsor;

b. Name of the participant;

c. Topic of the subject matter;

d. Number of hours actually attended or the number of credit hours awarded by the sponsoring entity;

e. Date and place of the program;

f. Signature of the sponsor, or documentation representing an official document of the sponsoring entity; for example, a college grade report, etc.; and

g. Signature of the fiduciary, either in the space specifically provided on the form for this purpose, or the fiduciary may sign across the documentation (for example, the college grade report) to indicate attendance and completion of the activity.

8. Compliance and Non-Compliance.

a. Affidavit of Compliance. A fiduciary shall submit an affidavit of continuing education compliance with the application for renewal of certification, demonstrating full compliance with the continuing education requirements. The fiduciary shall submit the affidavit on a form provided by division staff and shall list the continuing education attended, hours of credit for each session and total hours of credit. The board shall review continuing education credits at the time of submission of the renewal application and shall:

(1) Accept the continuing education credit as submitted;
(2) Accept part, but not all of the continuing education credit;
(3) Require additional information from the fiduciary before making a decision; or
(4) Deny the continuing education credit.

b. Proration of Continuing Education. A fiduciary initially certified between June 1st of the second year and December 31st of the second year of the renewal cycle shall complete a total of ten hours of continuing education credit for that first certification period, including at least two hours of ethics. A fiduciary initially certified between December 31st and March 31st of the second year of the renewal cycle shall complete five hours of continuing education credit for that first certification period, including at least one hour of ethics. In subsequent certification periods, the fiduciary shall meet the twenty hour requirement. This proration of continuing education credits does not apply to a fiduciary who previously held certification, allowed the certification to lapse and subsequently applied for and was granted certification partway through the renewal period. In that case, the fiduciary is subject to the full twenty hour continuing education requirement.

c. Extension or Waiver of Continuing Education Requirements. A fiduciary seeking renewal of certification who has not fully complied with the continuing education requirements may request an extension or waiver of the continuing education requirements under the following conditions:
(1) The fiduciary submits a notarized statement to the board, explaining the facts regarding non-compliance and requesting an extension or waiver of the requirements.
(2) The board shall determine whether extenuating circumstances exist. In reviewing the request, the board shall consider if the fiduciary has been unable to devote sufficient hours to fulfill the continuing education requirements because of:
(a) Full-time service in the armed forces of the United States during a substantial part of the renewal period;
(b) An incapacitating illness documented by a statement from a currently licensed physician;
(c) A physical inability, documented by a statement from a currently licensed physician for the fiduciary to travel to the sites of continuing education programs;
(d) Being retired from the fiduciary profession and not performing any fiduciary services; or
(e) Any other special circumstances the board determines appropriate.
(3) A fiduciary whose certificate has been restricted, suspended or revoked by the board is not eligible to request a waiver or extension.

d. Random Audits of Continuing Education Compliance. During each renewal review period the board shall request division staff to randomly specify a number of fiduciaries to demonstrate continuing education requirement compliance through submission of proof of continuing education participation. Refusal or failure to respond to the request for continuing education compliance audit documentation may

result in denial of renewal of certification or disciplinary action pursuant to ACJA § 7-201(H) and this section.

e. A fiduciary who fails to meet the continuing education requirement pursuant to subsection (G)(2), falsifies continuing education documents, or willfully misrepresents continuing education activities and attendance at continuing education activities is subject to any or all of the following actions:
   (1) Payment of a delinquent continuing education fee;
   (2) Denial of renewal of certification; and
   (3) Disciplinary action pursuant to ACJA § 7-201(H) and this section.

9. Board Decision Regarding Continuing Education Compliance.

   a. Upon a review of continuing education documentation and any applicable additional information requested, the board may:

      (1) Recognize fiduciary compliance with the continuing education requirement;
      (2) Require additional information from the fiduciary seeking renewal before making a decision;
      (3) Recognize partial compliance with the requirement and order remedial measures; or
      (4) Enter a finding of non-compliance.

   b. Division staff shall notify the fiduciary, in writing, within ten days of the board's decision. A fiduciary may appeal the decision of the board by submitting a written request for review to division staff within fifteen days of the date of the notice of the board's decision. The fiduciary may request to appear before the board at the next available regularly scheduled board meeting.

   c. The certification of a fiduciary who timely appeals a decision by the board regarding continuing education shall remain in effect until a final decision is made by the board.

   d. The board shall make the decision on the appeal in writing. The decision is final and binding.

10. In addition to the provisions of this subsection, the board may require a fiduciary who allows their certification to lapse, or who has been in an inactive status to provide documentation of completion of the required number of continuing education credits for the prior certification period.

Adopted by Administrative Order 2001-112, effective November 14, 2001. Amended by Administrative Order 2002-102, effective November 14, 2002. Amended by Administrative Order 2003-123, effective December 17, 2003. Amended by Administrative Order 2004-95, effective November 24, 2004. Amended by Administrative Order 2006-71, effective September 6, 2006. The amended section took effect January 1, 2007, unless otherwise delineated in

Administrative Order 2006-71. Amended by Administrative Order 2009-34 effective May 1, 2009.