

Arizona Supreme Court
Administrative Office of the Courts



Fiduciary Licensing

Compliance Audit

JAMES CLARK

May 2012

May 16, 2012

James Clark
P.O. Box 2606
Mesa, AZ 85214

RE: Fiduciary Compliance Audit

Dear Mr. Clark:

Enclosed is your final compliance audit report.

Thank you for your cooperation and assistance during the compliance audit process. To the extent the fiduciary audit process will assist the court to ensure the safety, health and welfare of individuals and estates entrusted by the court to your management, we have benefited from our audit of your court appointments. I hope you and your clients will equally benefit.

If you have any questions, please contact Anne Hunter (602) 452-3415.

Sincerely,

Nancy Swetnam, Director
Certification and Licensing Division

Enclosures

cc. Honorable Rose Mroz, Probate Presiding Judge, Superior Court in Maricopa County
Michael K. Jeanes, Clerk of the Court, Superior Court in Maricopa County
Honorable Charles V. Harrington, Presiding Probate Judge, Superior Court in Pima County
Patricia A. Noland, Clerk of the Court, Superior Court in Pima County

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Disclaimer

This final report represents the information and conditions encountered at the point in time of the audit and does not purport to represent conditions prior to or subsequent to the performed audit. The information presented does not represent an endorsement or denunciation of the audited fiduciary or business.

After this report is distributed to the audited fiduciary, presiding judge of the county and, if a public fiduciary, the county supervisors, it becomes public record.

EXECUTIVE SUMMARY

Executive Summary

James Clark

Compliance Audit Report

The Arizona Supreme Court, Fiduciary Certification Program conducted a compliance audit of James Clark, license #20592 pursuant to Arizona Revised Statutes § 14-5651 and Arizona Supreme Court Administrative Order 2003-31. During the period of December 5, 2011 through January 12 2012 the Compliance Unit audited the fiduciary activities of James Clark, #20592 and his licensed and unlicensed employees.¹ The following is a summary of the audit findings.

Finding # 1 – License Number

Mr. Clark filed documents with the Superior Court that did not include both the fiduciary and the business' license number.

Mr. Clark agrees with the finding.

Finding # 2 – Late Filings

Mr. Clark did not file an Inventory and Appraisal or a motion for an extension with the Superior Court timely.

Mr. Clark agrees with the finding with respect to Clients #3 and 5.

Mr. Clark disagrees with the finding in respect to Client #1.

Finding stands for Client #1.

Finding # 3 – Documentation

Mr. Clark did not appear to keep suitable records of his administration and exhibit them upon request.

Mr. Clark agrees with the finding with respect to Clients #1, 3, and 4 (agree only with no evidence of care plan for Client #4).

¹ Pursuant to ACJA § 7-201 and § 7-202, licensed fiduciaries are required to provide active and direct supervision of other licensed fiduciaries, trainees and support staff who are employed by the fiduciary.

Executive Summary

Mr. Clark disagrees with the finding with respect to Client #4, no evidence of medical records.

Finding stands for Client #4, no evidence of medical records.

Finding # 4 – Inventory

Mr. Clark did not list inventory in detail or record values as of the date of appointment or death. Personal property was not pictorially represented as required.

Mr. Clark disagrees with the findings for Clients #1, 2, 3, 4, and 5.

Finding stands for Clients #1, 2, 4, and 5. Finding dismissed for Client #3.

Finding # 5 – Accuracy

Mr. Clark's required court documents are not accurate.

Mr. Clark agrees with the findings for Clients #1, 2, 3, and 4 with the exception of accountings that appear to have missing elements for Client #2, and the missing 1st quarter interest payment posting for Client #4.

Finding stands for Client #2 and Client #4.

Finding # 6 – Licensing/Certification

Mr. Clark filed for and was appointed as a fiduciary under his fiduciary business prior to having his business licensed.

Mr. Clark agrees with the finding.

Finding # 7 – Compliance with Court Orders

Mr. Clark did not comply with court orders.

Mr. Clark agrees with the finding.

Executive Summary

Finding # 8 – Annual Guardian Report

Mr. Clark did not include all of the statutorily required information in the annual guardianship reports.

Mr. Clark agrees with the finding.

Finding # 9 – Ward Visitation

Mr. Clark did not meet with his ward as required by Arizona Code of Judicial Administration.

Mr. Clark agrees with the finding.

Finding # 10 – Notifications

Mr. Clark did not respond to heirs as required by Arizona Revised Statute.

Mr. Clark disagrees with the finding.

Finding stands.

FINAL REPORT

JAMES CLARK # 20592
Compliance Audit Report

Objective

The compliance audit of James Clark, principal of East Valley Fiduciary Services, Inc. (“EVFS”) was conducted pursuant to the Fiduciary Program's responsibilities as set forth in A.R.S. § 14-5651, Arizona Supreme Court Administrative Order No. 2003-31 the Arizona Code of Judicial Administration (“ACJA”) § 7-201: General Requirements and § 7-202: Fiduciaries, and the Arizona Rules of Probate Procedure (“ARPP”).

The objective of the compliance audit was to determine compliance with applicable statutes, Arizona Supreme Court orders and rules and ACJA § 7-201 and § 7-202.

Methodology

In preparation for the compliance audit, preliminary survey questions were provided to James Clark (“Clark”). The responses were reviewed and compiled to assist in the development of case file samples. In addition, information was requested from the Superior Court in Maricopa County and the Superior Court in Pima County to verify court appointment information.

In order to test for compliance, the program uses a set of fiduciary compliance attributes consisting of Arizona statutes, Arizona Supreme Court Rules of Probate Procedure and ACJA § 7-201 and § 7-202. Compliance with these requirements was tested by staff interviews, observation and reviewing samples of client case files.

A stratified sampling approach was used. The selected samples of court appointed client case files were designed to provide conclusions about the accuracy, validity and timeliness of transactions, internal controls and compliance with the fiduciary attributes utilizing a cross-section of samples of court appointment types. Client case files were selected by type of appointment, length of appointment, type of required client protection and initiation or termination of appointment during the review time frame.

On December 23, 2011 and prior to beginning the onsite fieldwork, the auditors reviewed the selected client court files from the Superior Court in Maricopa County and the Superior Court in Pima County and on January 5, 2012 auditors conducted an internal controls interview with Clark.

JAMES CLARK # 20592
Compliance Audit Report

	<p>During the period of January 5, 2012 through January 12, 2012 audit staff conducted the onsite compliance portion of the audit of Clark and EVFS. The onsite compliance portion of the audit consisted primarily of fiduciary client case file review. The audit also included a review of fiduciary activities of the principal fiduciary and un-licensed staff.¹ An exit interview was conducted on January 12, 2012.</p> <p>Clark and EVFS was the court appointed fiduciary on 2 guardian, 16 conservator, 24 combination guardian/conservator, and 11 personal representative cases as of December 23, 2011. Also as of December 30, 2011 Clark and EVFS had approximately \$18.7 million in court-appointed client assets under management.</p> <p><i>Scope</i></p> <p>The compliance audit team reviewed a selected stratified sample of five (5) client case files of court appointments and terminations, focusing on the internal controls, processes, timeliness, accuracy, statutory and ACJA requirements of client case administration.</p> <p><i>Summary</i></p> <p>Clark and his staff extended professional courtesies and cooperation to the audit team during the course of the audit.</p> <p>The compliance audit found non-compliance in ten (10) areas. The non-compliance was found in the areas of license number, late filings, documentation, inventory, accuracy, licensing/certification, compliance, annual Guardian Report, ward visitation and notifications. These findings are discussed as follows:</p>
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¹ Pursuant to the Arizona Code of Judicial Administration §7-201 and §7 -202, licensed fiduciaries are required to provide active and direct supervision of other licensed fiduciaries, trainees and support staff who are employed by the fiduciary.

**JAMES CLARK # 20592
Compliance Audit Report**

<p><i>Finding # 1</i></p> <p><u>License Number</u></p> <p><i>Arizona Code of Judicial Administration § 7-202 (F)(3)</i></p> <p><i>Requirement</i></p>	<p>Mr. Clark filed documents with the Superior Court that did not include both the fiduciary and the business' license number.</p> <ul style="list-style-type: none"> • An Application for Appointment is missing both the fiduciary and fiduciary business license numbers. – Client #5 <p>Documents filed with the Superior Court must include both the fiduciary and the business' license number.</p>
<p><i>Auditee's Response</i></p>	<p><i>“Mr. Clark and EVFS agree with the finding with respect to ACJA § 7-202(F)(3) in filing of all documents with the Superior Court shall include the individual fiduciary license number where applicable.”</i></p>
<p><i>Corrective Action</i></p>	<p><i>“EVFS has retained a quality control specialist to ensure compliance to all statutes, court orders, regulations, and administrative code sections of fiduciary conduct, specifically, ACJA § 7-202(F)(3). In addition EVFS has reviewed all form or document templates filed with the Superior Court to include the business and/or individual fiduciary license number, where appropriate.”</i></p>
<p><i>Finding # 2</i></p> <p><u>Late Filings</u></p> <p><i>ARS § 14-5418 (A), ARS § 14-5419 (A); Arizona Code of Judicial Administration § 7-202 (J)(2)(e)</i></p> <p><i>Requirement</i></p>	<p>Mr. Clark did not file an Inventory and Appraisal or a motion for an extension with the superior court timely.</p> <ul style="list-style-type: none"> • Inventory and Appraisal documents were filed late. – Clients #1, 5 • A motion for an extension of time to file the 2nd accounting was filed late. – Client #3 <p>Fiduciaries must submit required Inventory and Appraisements, Annual Accountings, and request for extensions on or before the statutorily required due date or court ordered due date for their clients.</p>

JAMES CLARK # 20592
Compliance Audit Report

Auditee's Response

Mr. Clark and EVFS agree with the finding with respect to Clients #3, and #5 and ARS § 14-5418(A), § 14-5419(A), and ACJA § 7-202(J)(2)(e) ensuring the timely filing of documents with the Superior Court including inventories or motions to request an extension to file an account pursuant to statute and ACJA § 7-202(J)(2)(e)."

"Mr. Clark and EVFS disagree with respect to Client #1. According to the order and addendum signed 02/24/2011 there was not a compliance requirement for the Inventory and Appraisal because the prior fiduciary was ordered to complete a final accounting within 90 days of the signed order. EVFS was waiting for and relying on the final accounting to compare the Inventory and Appraisal marshaled by EVFS and the ending balance schedule of the previous fiduciary. This comparison was necessary to determine all assets were properly accounted. Attached are the signed orders and the Minute Entry regarding the resignation of the former fiduciary and the appointment of EVFS."

AUDITOR'S NOTE: Finding stands for Client #1.

Corrective Action

"EVFS has implemented a 30/60/90 day milestone meeting to ensure timely filing of inventories & appraisements and/or requests for extensions for filing. EVFS is now including these milestone meetings in policy and procedure training with staff to ensure compliance with ARS § 14-5315(A), § 14-5418(A), and ACJA § 7-202(J)(2)(e). In addition, EVFS has devised a tickler system to remind and guide EVFS staff with the 30/60/90 day milestone meetings."

JAMES CLARK # 20592
Compliance Audit Report

<p><i>Finding # 3</i></p> <p><u>Documentation</u></p> <p><i>ARS § 14-5418 (B)</i></p> <p><i>Requirement</i></p>	<p>Mr. Clark did not appear to keep suitable records of his administration and exhibit them upon request.</p> <ul style="list-style-type: none">• Documentation indicating family’s responsibility for safekeeping of assets was not in file. – Client #1• No evidence was found in the file indicating that Mortgage Equities XII asset was marshaled. – Client #1• There was no evidence of a care plan found in the file. – Clients #1, 3, 4• There was no evidence that a refund from an overpayment to a prior fiduciary was marshaled. – Client #1• No medical records were found in the file. – Client #4 <p>By Arizona statute fiduciaries must keep suitable records of their administration and exhibit them upon request.</p>
<p><i>Auditee's Response</i></p>	<p><i>“Mr. Clark and EVFS agree with the following with respect to ARS § 14-5418(B):</i></p> <p><i>Client #1 Documentation for the safekeeping of assets by family. NOTE: the safekeeping of assets by the family was settled prior to the appointment of EVFS but no documentation was given as proof of settlement.</i></p> <p><i>Client #1 Evidence of marshaling of Mortgage Equities XII</i></p> <p><i>Client #1 Evidence of refund from an overpayment to a prior fiduciary was marshaled.</i></p> <p><i>Clients #1,3,4 No evidence of a care plan found in the file.</i></p> <p><i>Mr. Clark and EVFS disagree with the following with respect to ARS § 14-5418(B):</i></p> <p><i>Client #4 No medical records were found in the file. ARS § 14-5418(B) does not address the responsibilities of the Guardian and should not include association with the medical records of Client #4.”</i></p> <p>AUDITOR’S NOTE: Finding stands for Client #4 - no medical records in file.</p>

JAMES CLARK # 20592
Compliance Audit Report

<p><i>Corrective Action</i></p>	<p><i>“EVFS has retained a quality control specialist to ensure compliance to all statutes, court orders, regulations, and administrative code sections of fiduciary conduct, specifically, ARS § 14-5418(B). EVFS understands the AOC is seeking to ensure the elder and vulnerable populations are served appropriately by licensed fiduciaries. While the concept of a written care plan is worthwhile, the current statutes and code sections do not impose any specific duty on a licensed fiduciary to have such a document. EVFS will implement in its policies and procedures documentation for the process of due diligence to establish and maintain a care plan. This care plan may be created by EVFS staff or an outside vendor and prudence will be used to determine the source of the care plan. The fiduciary standard of reasonable and necessary will be applied to the development of care plans.”</i></p> <p><i>“EVFS, concurrently with the AOC audit in process, received documentation confirming the marshaled assets for Client #1. Attached to the response is the evidence for Mortgage Equities XII and refund from BDO Seidman.”</i></p>
<p><i>Finding # 4</i></p> <p><u>Inventory</u></p> <p><i>ARS § 14-3706 (A), ARS § 14-5418 (A), Arizona Code of Judicial Administration § 7-202 (J)(4)(b), § 7-202 (J)(5)(b)</i></p> <p><i>Requirement</i></p>	<p>Mr. Clark did not list inventory in detail or record values as of the date of appointment or death. Personal property was not pictorially represented as required.</p> <ul style="list-style-type: none">• An Inventory was not valued as of the date of appointment. – Client #1• Appraisals for investments and real/personal property were not valued as of the date of appointment. – Client #1• Ward’s personal property was not listed, valued or pictorially represented within the fiduciaries’ files. – Clients #1, 2, 3, 4• Assets were not valued as of the date of death. – Client #5• Ward’s assets in Colorado were not marshaled. – Client #5 <p>By Arizona statute a fiduciary must list with reasonable detail and indicate the fair market value of the estate as of the date of appointment or date of death for each item listed. Fiduciaries must list all tangible belongings of client(s) on a detailed</p>

JAMES CLARK # 20592
Compliance Audit Report

	<p>inventory even if it is of nominal value. All belongings are defined as; any tangible possession be it personal property, liquid or non-liquid asset, land, monies, etc. The purpose is to avoid giving erroneous or misleading information to the court and/or interested parties as well as protection for the client, client's family and the fiduciary. ACJA also requires a pictorial record of all real and personal property.</p>
<p><i>Auditee's Response</i></p>	<p><i>“Mr. Clark and EVFS disagree with the finding for Clients #1,2,3,4, and 5 with clarification as follow:</i></p> <p><i>Client #1 EVFS used the pictures and appraisals received from the previous appointed fiduciary. EVFS was ordered to use the ending balance from the previous fiduciary's final accounting as the beginning balance value of the assets marshaled by EVFS.</i></p> <p>AUDITOR'S NOTE: Finding stands for Client #1.</p> <p><i>Client #2 The ward was a protected person living with the parents/guardians. The personal property of the ward was limited and it was not economically feasible to complete a pictorial inventory.</i></p> <p>AUDITOR'S NOTE: Finding stands for Client #2.</p> <p><i>Client #3 A video inventory was completed rather than still photos and this video was offered to the AOC auditors for review.</i></p> <p>AUDITOR'S NOTE: Finding dismissed for Client #3.</p> <p><i>Client #4 Ward was not willing to allow a pictorial inventory of personal property.</i></p> <p>AUDITOR'S NOTE: Finding stands for Client #4.</p> <p><i>Client #5 Legal counsel for Mr. Clark and prior Personal Representative determined the disposition of the personal property in Colorado and determined the cost benefit analysis of the task to marshal the assets was not in the best interest of the estate.”</i></p> <p>AUDITOR'S NOTE: Finding stands for Client #5.</p>

**JAMES CLARK # 20592
Compliance Audit Report**

<p><i>Corrective Action</i></p>	<p><i>“Mr. Clark and EVFS recognize its fiduciary duty to adhere to ARS § 14-3706 (A), § 14-5418(A), ACJA § 7-202(J)(5)(b), and § 7-202(J)(4)(b). EVFS also recognizes a due diligence process must be applied to each and every case to ensure the actions done in its capacity are reasonable and necessary. EVFS has determined it will seek court instructions or clarification in an order to eliminate any questions regarding deviations from statute or code sections as a matter of best practice.”</i></p>
<p><i>Finding # 5</i></p> <p><u>Accuracy</u></p> <p><i>Arizona Code of Judicial Administration § 7-202 (J)(4)(j)</i></p> <p><i>Requirement</i></p>	<p>Mr. Clark’s required court documents are not accurate.</p> <ul style="list-style-type: none"> • An Inventory and Appraisement containing math errors was submitted to the court. – Client #1 • The 1st, 4th and 7th accountings contained mathematical errors, and the 5th accounting appears to have missing elements (e.g. only 4 months of grocery disbursements and only 8 months of checking account fees). – Client #2 • Vehicles not valued for each accounting period and value differences not reflected in gains/losses. – Client #2 • 1st accounting contained mathematical errors. – Client #3 • Petition indicates dates differing from submitted accounting (1st accounting). – Client #4 • Vehicle description listed on Inventory and Appraisement is different from vehicle description on Bill of Sale. – Client #4 • Balance from inventory differs from beginning balance of 1st accounting. – Client #4 • Asset listed on 1st accounting did not appear on the inventory. – Client #4 • 1st accounting start date was prior to date of appointment. – Client #4 • 2nd accounting missing 1st quarter interest posting for Great Western Bank. – Client #4 • Inventory listing appointment date inaccurately was submitted. – Client #4 <p>Fiduciaries must ensure every document filed with the Superior Court is complete, accurate and understandable.</p>

**JAMES CLARK # 20592
Compliance Audit Report**

Requirement	Fiduciaries must license their businesses through the Arizona Supreme Court’s Certification and Licensing Division.
Auditee's Response	<i>“Mr. Clark and EVFS agree with finding. EVFS was granted its business fiduciary license #20592 on November 2007. Both Clients #2 and #3 were appointed under his personal fiduciary license #20060 prior to November 2007.”</i>
Corrective Action	<i>“EVFS has retained a quality control specialist to ensure compliance to all statutes, court orders, regulations, and administrative code sections of fiduciary conduct, specifically, ACJA § 7-202(F)(3). In addition EVFS has reviewed all form or document templates filed with the Superior Court to include the business and/or individual fiduciary license number, where appropriate.”</i>
<p data-bbox="212 1073 370 1104">Finding # 7</p> <p data-bbox="212 1184 516 1251"><u>Compliance with court orders</u></p> <p data-bbox="212 1329 532 1386"><i>Arizona Code of Judicial Administration § 7-202 (J)(8)</i></p> <p data-bbox="212 1549 386 1581">Requirement</p>	<p data-bbox="574 1073 1133 1104">Mr. Clark did not comply with court orders.</p> <ul data-bbox="623 1184 1430 1329" style="list-style-type: none"> • All proof of restrictions were to have been completed within 45 days of appointment per court order, yet fiduciary waited until 1st accounting to explain to the court why this was not accomplished. – Client #3 <p data-bbox="574 1549 1430 1656">Fiduciaries must perform all duties and discharge all obligations in accordance with current Arizona law, administrative rules, court orders and the applicable administrative code.</p>
Auditee's Response	<i>“Mr. Clark and EVFS agree with this finding.”</i>

**JAMES CLARK # 20592
Compliance Audit Report**

<p><i>Corrective Action</i></p>	<p><i>“EVFS has retained a quality control specialist to ensure compliance to all statutes, court orders, regulations, and administrative code sections of fiduciary conduct, specifically, ACJA § 7-202(J)(8).”</i></p>
<p><i>Finding # 8</i></p> <p><u>Annual Guardian Report</u></p> <p><i>ARS § 14-5315 (C)</i></p> <p><i>Requirement</i></p>	<p>Mr. Clark did not include all of the statutorily required information in the annual guardianship reports.</p> <ul style="list-style-type: none"> • The annual guardianship report failed to specifically list the number of times the fiduciary visited the ward. – Client #3 <p>By Arizona statute a fiduciary must include all nine required pieces of information – which includes the number of time the fiduciary has seen the ward in the last twelve months – for a complete Annual Guardian Report.</p>
<p><i>Auditee's Response</i></p>	<p><i>“Mr. Clark and EVFS agree with this finding.”</i></p>
<p><i>Corrective Action</i></p>	<p><i>“EVFS has retained a quality control specialist to ensure compliance to all statutes, court orders, regulations, and administrative code sections of fiduciary conduct, specifically, ARS § 14-5315(C). This will ensure future compliance with this requirement. In addition, EVFS is reviewing its current policies and procedures and has initiated a timeline spreadsheet to assist with ensuring the number of times the fiduciary actually meets with the client, providing a mechanism to comply with the applicable statutes.”</i></p>
<p><i>Finding # 9</i></p> <p><u>Ward Visitation</u></p> <p><i>Arizona Code of Judicial Administration § 7-202 (J)(3)</i></p>	<p>Mr. Clark did not meet with his ward as required by Arizona Code of Judicial Administration.</p> <ul style="list-style-type: none"> • The ward was not visited the minimum number of times by the fiduciary as required. – Client #4

JAMES CLARK # 20592
Compliance Audit Report

<p><i>Requirement</i></p>	<p>Fiduciaries must meet with their court appointed wards no less than quarterly and as often as is necessary to ensure the ward's well-being as required by the Arizona Code of Judicial Administration.</p>
<p><i>Auditee's Response</i></p>	<p><i>“Mr. Clark and EVFS agree with this finding. A process of due diligence was followed to determine the prudence of meeting the requirement of minimum number of times the fiduciary visited Client #4. Based on the cost benefit analysis of each visit, the ward was visited less than the minimum number of times required by the fiduciary.”</i></p>
<p><i>Corrective Action</i></p>	<p><i>“EVFS has retained a quality control specialist to ensure compliance to all statutes, court orders, regulations, and administrative code sections of fiduciary conduct, specifically, ACJA § 7-202(J)(3). In addition EVFS will seek instructions from the court to request approval to deviate from the required minimum number of times the fiduciary must visit the ward in an effort to preserve the assets of the estate. If the court directs EVFS to visit Client #4 the minimum number of times, EVFS will comply.”</i></p>
<p><i>Finding #10</i></p> <p><u>Notifications</u></p> <p>ARS § 14-10813, ARS § 14-3705</p> <p><i>Requirement</i></p>	<p>Mr. Clark did not respond to heirs as required by Arizona Revised Statute.</p> <ul style="list-style-type: none"> • Fiduciary did not respond to heirs' requests for information. <ul style="list-style-type: none"> – Client 5 <p>Fiduciaries must respond to all heirs as required by Arizona Revised Statute.</p>
<p><i>Auditee's Response</i></p>	<p><i>“Mr. Clark and EVFS disagree with this finding. EVFS disputes the finding associated with ARS § 14-10813 because Client #5 was not a trust and this statute applies to trusts. Counsel for Mr. Clark and EVFS drafted a letter on April 29th 2010 addressing the specific issue of responding to heirs' requests for information. Attached to this report is the letter drafted by counsel for EVFS.</i></p>

JAMES CLARK # 20592
Compliance Audit Report

	<p><i>Mr. Clark and EVFS complied with all the requirements of ARS § 14-3705 for Client #5.</i></p> <p>AUDITOR’S NOTE: Finding stands.</p>
<p><i>Corrective Action</i></p>	<p><i>“It is a best business practice of Mr. Clark and EVFS to communicate openly with interested parties, especially heirs. EVFS recognizes the responsibility to comply with ARS § 14-3705 and staff is trained to understand the importance of this concept.”</i></p>

APPENDIX

RESPONSE TO FINAL REPORT

[FINDING # 2]

Stamped to Bond 2/25/11

Start checklist

FILED
2/24/11 9:24 am
MICHAEL K. JEANES, Clerk
By L. Owens
L. Owens, Deputy

1 Alisa J. Gray – 014419
James A. Fassold – 016479
2 GRAY & FASSOLD, P.C.
1440 East Missouri Avenue, Suite 285
3 Phoenix, Arizona 85014-2493
(602) 294-9242
4 mail@gray-fassold.com
Attorneys for The Sun Valley Group, Inc.
5 Fiduciary License No. 20078

COPY FOR CERTIFICATION

SUPERIOR COURT OF ARIZONA, COUNTY OF MARICOPA

7 In the Matter of the:
8 [REDACTED] Revocable Living Trust
9 u/a/d July 1, 2003, as Amended.

Case No. [REDACTED]

ORDER RE: EXPEDITED
PETITION TO APPROVE
RESIGNATION OF TRUSTEE AND
APPOINT SUCCESSOR TRUSTEE

(Assigned to Honorable
Rosa Mroz)

GRAY & FASSOLD, P.C.
ATTORNEYS
1440 East Missouri Avenue, SUITE 285
PHOENIX, ARIZONA 85014-2493
(602) 294-9242

14 The Court, having received an Expedited Petition to Approve Resignation of Trustee
15 and to Appoint Successor Trustee (the "Petition"), and good cause appearing, finds as
16 follows:

- 17 1. This Court has jurisdiction over this matter pursuant to A.R.S. § 14-1302.
- 18 2. Venue is proper in this Court pursuant to A.R.S. § 14-10204.
- 19 3. For the purposes of this Petition only, the Trust continues to be in need of
20 administration and all previous orders regarding the Trust's administration, if any, are
21 affirmed.
- 22 4. EAST VALLEY FIDUCIARY SERVICES, Licensed Fiduciary No. 20060, has
23 priority to serve as Successor Trustee of the Trust.
- 24 5. It is in the best interests of the Trust to approve The Sun Valley Group, Inc.'s
25 ("SVG") resignation as Successor Trustee and appoint EAST VALLEY FIDUCIARY
26 SERVICES as Successor Trustee.

GRAY & FASSOLD, P.C.
ATTORNEYS
1440 East Missouri Avenue, SUITE 285
PHOENIX, ARIZONA 85014-2493
(602) 294-9242

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6. Bond is required in an amount to be determined.

THEREFORE, THE COURT ORDERS AS FOLLOWS:

A. Pursuant to A.R.S. § 14-1401(B), notice requirements are satisfied by the Proof of Notice filed and personally serving protected person on February 19, 2011.

B. SVG's resignation as Successor Trustee is accepted.

C. EAST VALLEY FIDUCIARY SERVICES, Licensed Fiduciary No. 20060 is appointed and confirmed as Successor Trustee of the Trust.

D. EAST VALLEY FIDUCIARY SERVICES shall post bond in the amount of \$120,000. The Clerk of Court shall issue to said appointee letters of Successor Trustee with the following restriction:

Northern Funds Investment Account No. [REDACTED] shall be restricted.

East Valley Fiduciary Services' appointment as the Successor Trustee for the Trust is not effective until such letters have been issued.

E. By no later than 4/8/11, East Valley Fiduciary Services shall file proofs of restricted account(s) for all bank and brokerage accounts herein ordered to be restricted, if any. Prior to restricting any account(s) subject to this order, all financial institutions shall re-title such account(s) in the name of "East Valley Fiduciary Services, Successor Trustee for the [REDACTED] Revocable Living Trust u/a/d July 1, 2003, as Amended" and shall send all future statements and correspondence to said Successor Trustee at the address directed by the Successor Trustee.

F. EAST VALLEY FIDUCIARY SERVICES shall account to the Court for the administration of the Trust at least annually on the anniversary date of its qualification as the Successor Trustee.

G. The Successor Trustee shall immediately notify the Court of any change in said party's address during the term of said party's appointment as the Successor Trustee

GRAY & FASSOLD, P.C.
ATTORNEYS
1440 East Missouri Avenue, SUITE 285
PHOENIX, ARIZONA 85014-2493
(602) 294-9242

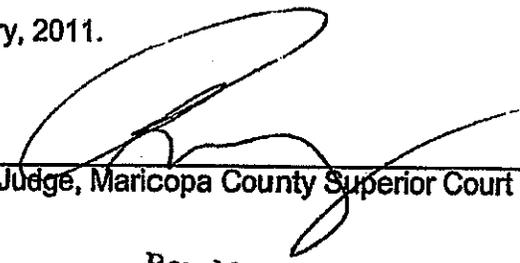
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of the Trust and shall be responsible for all costs resulting from failure to do so.

H. SVG will provide a final accounting within ninety (90) days from the signed Order.

I. _____

DATED this 24 day of February, 2011.



Judge, Maricopa County Superior Court
Rosa Mroz

ADDENDUM TO COURT ORDER – COMPLIANCE Case #: PB [REDACTED]

To maintain public trust and confidence, the Court has a duty to ensure that court-appointed Guardians, Conservators and Personal Representatives comply with all Court Orders, Court Rules and Arizona Probate Laws. Therefore,

IT IS ORDERED that the following tasks be completed in this case:

<input checked="" type="checkbox"/> Post a Bond within 10 days	<input type="checkbox"/> File Inventory & Appraisalment within 90 days
<input checked="" type="checkbox"/> Issue Letters of Appointment within 10 days	<input type="checkbox"/> File Proof of Receipt of Funds within 30 days
<input checked="" type="checkbox"/> File Proof of Restricted Account within 30 days	<input type="checkbox"/> File Proof of Use of Funds within 30 days
<input type="checkbox"/> File Proof of Recorded Restriction on Real Property within 30 days	<input type="checkbox"/> File Proof of Repayment of Funds within 30 days
	<input type="checkbox"/> File Proof of Annuity Contract within 30 days

IT IS FURTHER ORDERED that the following person(s) are responsible for the completion of these tasks:

RESPONSIBLE FIDUCIARY: <input checked="" type="checkbox"/> Guardian <input type="checkbox"/> Conservator <input type="checkbox"/> Guardian/Conservator <input type="checkbox"/> Personal Representative <input type="checkbox"/> Former Minor <input checked="" type="checkbox"/> Trustee	RESPONSIBLE ATTORNEY: [Proof of Restricted Account or Property or Proof of Annuity Contract] <input type="checkbox"/> Attorney for the Fiduciary <input type="checkbox"/> Attorney for the Insurance Company <input type="checkbox"/> Attorney for the Ward or Protected Person
--	--

A REVIEW HEARING WILL BE SET TO DETERMINE COMPLIANCE

- Compliance Hearing Date: 2/25/11 Time: 9:00 a.m.
Hearing Location: 125 W. Washington St., Courtroom 104, Hon. Diana L. Clarke
Compliance with Bond and Letters of Appointment
- Compliance Hearing Date: 4/8/11 Time: 9:00 a.m.
Hearing Location: 125 W. Washington St., Courtroom 104, Hon. Diana L. Clarke
Compliance with Restricted Account, Restricted Real Property or Use of Funds
- Compliance Hearing Date: _____ Time: 9:00 a.m.
Hearing Location: 125 W. Washington St., Courtroom 104, Hon. Diana L. Clarke
Compliance with Inventory and Appraisalment

WARNING

YOU MUST ATTEND THIS HEARING IF YOU FAIL TO DO WHAT THE COURT HAS ORDERED. Failure to timely file the required documents and failure to appear at the Compliance Hearing may result in the issuance of a Fiduciary Arrest Warrant or other sanctions.

DATED: 2/24/11 JUDICIAL OFFICER: [Signature]
Rosa Mroz

If you have any questions regarding the Compliance Hearing, please contact Judicial Assistant Adis Bosnic at 602-372-0384. All other questions should be directed to the court where your case is assigned.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

PB [REDACTED]

02/24/2011

HON. ROSA MROZ

CLERK OF THE COURT
L. Owens
Deputy

IN THE MATTER OF THE GUARDIANSHIP
OF AND CONSERVATORSHIP FOR:

[REDACTED]
AN ADULT.

[REDACTED]
ALISA J GRAY
JAMES W HOWARD

[REDACTED]
14227 N. 69TH PL
SCOTTSDALE AZ 85254-3480
BRIAN CRAIG TAYLOR

COLLECTIONS - COC
COMM. NOTHWEHR

MINUTE ENTRY

Courtroom OCH-104. A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

9:17 a.m. This is the time set for a status conference regarding the Expedited Petition to Approve Resignation of Guardian and Appoint Successor Guardian and the Expedited Petition to Approve Resignation of Trustee and Appoint Successor Trustee. Alisa Gray is present as counsel for The Sun Valley Group, Inc. ("SVG"). Peter Frenette, of SVG, is present. James Howard is present as counsel for Rona Jacobowitz. [REDACTED] is present on his own behalf. Emily Burns is present as court appointed counsel. Brian Taylor is present as counsel for East Valley Fiduciary Services (EVFS), the nominated fiduciary. James Clark, of EVFS, is present.

SVG provides the Court with its Omnibus Report to Court filed on February 18, 2011. The Report indicates that SVG's insurance coverage terminates on February 28, 2011, and that it lacks the staffing required to support the business due to death threats received by its employees.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

PB [REDACTED]

02/24/2011

THE COURT FINDS that given the circumstances as described by SVG, the Court has no choice but to allow SVG to resign as the fiduciary.

IT IS THEREFORE ORDERED granting SVG's Expedited Petition to Approve Resignation.

Discussion is held.

IT IS ORDERED appointing EVFS as successor trustee, to serve with bond in the amount of \$120,000, all in accordance with the formal written Order signed by the court on February 24, 2011 and filed (entered) by the clerk on February 24, 2011.

IT IS FURTHER ORDERED the Northern Funds Investment account shall be restricted.

IT IS FURTHER ORDERED proof of bond and letters shall be filed within 10 days.

A Review Hearing will be set to determine compliance on March 25, 2011 at 9:00 a.m.

Hearing location will be 125 W. Washington St., Old Court House, Courtroom 104.

You must attend this hearing if you fail to do what the Court has ordered. Failure to timely file the required documents and failure to appear at the Review Hearing may result in the issuance of a Fiduciary Arrest Warrant or other sanctions.

If you have complied with the Order of this Court, the Review Hearing set on March 25, 2011 will be vacated. You will not receive further notification of this hearing being vacated.

IT IS FURTHER ORDERED proof of restricted account shall be filed by April 8, 2011.

A Review Hearing will be set to determine compliance on April 8, 2011 at 9:00 a.m.

Hearing location will be 125 W. Washington St., Old Court House, Courtroom 104.

You must attend this hearing if you fail to do what the Court has ordered. Failure to timely file the required documents and failure to appear at the Review Hearing may result in the issuance of a Fiduciary Arrest Warrant or other sanctions.

If you have complied with the Order of this Court, the Review Hearing set on March 25, 2011 will be vacated. You will not receive further notification of this hearing being vacated.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

PB [REDACTED]

02/24/2011

IT IS FURTHER ORDERED that SVG shall file the final accounting within 90 days from today's date.

IT IS FURTHER ORDERED that SVG shall comply with any statutory requirements for withdrawal, including the filing of final reports pursuant to Rule 10(C)(3), Arizona Rules of Probate Procedure.

IT IS FURTHER ORDERED that SVG's attorney shall include with his or her motion to withdraw a final status report "that advises the court and parties of any issues pending in the probate case and informs the court and parties whether, to the best of the attorney's knowledge, all required guardian reports, inventories, accountings and other similar required reports have been filed."

IT IS FURTHER ORDERED that on or before February 24, 2012 the trustee shall file with the Probate Registrar an Annual Accounting for the period from February 24, 2011 through November 30, 2011. At the time of filing the annual report, a copy of the Annual Accounting will also be submitted to the Probate Court Administration, Old Court House, 125 West Washington, Phoenix, Arizona 85003.

IT IS FURTHER ORDERED setting this matter for internal review by Probate Court Administration on March 9, 2012 to determine compliance.

IT IS FURTHER ORDERED appointing EVFS as successor guardian, all in accordance with the formal written order signed by the court on February 24, 2011 and filed (entered) by the clerk on February 24, 2011.

IT IS FURTHER ORDERED letters shall be obtained within 10 days.

IT IS FURTHER ORDERED that you must comply with this Order by March 7, 2011.

A Review Hearing will be set to determine compliance on March 25, 2011 at 9:00 a.m.

Hearing location will be 125 W. Washington St., Old Court House, Courtroom 104.

You must attend this hearing if you fail to do what the Court has ordered. Failure to timely file the required documents and failure to appear at the Review Hearing may result in the issuance of a Fiduciary Arrest Warrant or other sanctions.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

PB [REDACTED]

02/24/2011

If you have complied with the Order of this Court, the Review Hearing set on March 25, 2011 will be vacated. You will not receive further notification of this hearing being vacated.

IT IS FURTHER ORDERED that on or before February 24, 2012 the guardian shall file with the Probate Registrar the required Annual Guardian Report for the period from February 24, 2011 through November 30, 2011. At the time of filing the annual report, a copy of the Annual Guardian Report will also be submitted to the Probate Court Administration, Old Court House, 125 West Washington, Phoenix, Arizona 85003.

IT IS FURTHER ORDERED setting this matter for internal review by Probate Court Administration on March 9, 2012 to determine compliance.

IT IS FURTHER ORDERED waiving the appearance/filing fee of the successor guardian and trustee.

THE COURT NOTIFIES THE SUCCESSOR FIDUCIARY THAT THE COURT EXPECTS THE SUCCESSOR FIDUCIARY TO REMAIN ON THE CASE, AND NOT SEEK A WITHDRAWAL FROM THE CASE, WHEN THE ESTATE NO LONGER HAS ASSETS TO PAY THE SUCCESSOR FIDUCIARY. IF THE SUCCESSOR IS UNABLE TO COMPLY WITH THIS CONDITION, THE SUCCESSOR FIDUCIARY SHALL NOTIFY THE COURT IMMEDIATELY SO THAT ANOTHER SUCCESSOR OR THE MARICOPA COUNTY PUBLIC FIDUCIARY CAN BE APPOINTED.

9:30 a.m. Hearing concludes.

FILED: Order to Guardian
Affidavit of East Valley Fiduciary Services, Inc., Proposed Appointee Pursuant
to ARS § 14-5106
Probate Information Sheet

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.

Used
checked

Front # 3

BDO USA, LLP
 1000001 SE
 Grand Rapids, MI 49546

TWO THOUSAND SIXTY FIVE AND 00/100 DOLLARS

Check Number [REDACTED]
 Date 07/22/2012
 Pay Amount \$2,065.00**

[Signature]
 07/22/2012

Security features included. Details on back.

Checking/MMDA Deposit

Northern Trust Date _____

Print Name [REDACTED]

Sign Here for Cash Received [REDACTED]

DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL

Account Number [REDACTED]

CASH

(OR TOTAL FROM OTHER SIDE)

TOTAL NUMBER OF CHECKS [REDACTED]

SUB TOTAL 2065.00

LESS CASH RECEIVED

\$ 2065.00

IFS# 4622 F10001



January 9, 2012

East Valley Fiduciary
7165 E. University Drive #171
Mesa, AZ. 85207

By Email: jelark@evfsinc.com

RE: Account of [REDACTED]

Dear Jim;

At your request we are providing you a letter of our opinion of value of an investment in a limited liability company, held by Mrs. [REDACTED]

Mortgage Equities XII, LLC – [REDACTED] On June 13, 2006 the client purchased a 3.0303% interest in MEXII, for \$100,000. The company held a promissory note and deed of trust in the amount of \$3,300,000. The note was secured by a parcel of land that has been pre-platted for thirty nine (39) residential lots. The property is located in Maricopa County, in the City of Glendale.

On January 1, 2008, the borrower defaulted. Due to the severe decline in the economy, a forbearance agreement was negotiated wherein the borrower was given a period of twelve months to develop a plan to sell or otherwise liquidate the property.

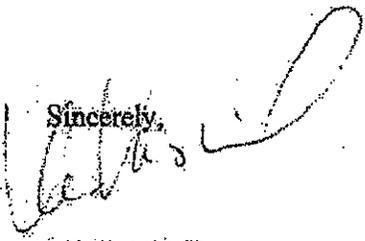
On or about February 1, 2009, members of Mortgage Equities Company XII, LLC approved additional twelve months forbearance, expiring February 2010. During that time, unimproved land values in Arizona declined between 50 and 80%.

When it was apparent that the borrowers could not liquidate the property, the company foreclosed and took possession on June 25, 2010. Since that time, we have listed the property for sale with Coldwell Banker. We have had four (4) purchase offers; three of which were canceled and one is pending in the amount of \$500,000.

During our period of ownership it has been necessary to have a capital call as there were unpaid real estate taxes and other costs relating to the security of the property.

Given current real estate conditions in Arizona, it is our opinion that the market value of the property is \$500,000 before sales expenses. Consequently, it is our opinion that the value of the shares owned by the client as of December 31, 2011 is \$15,151.

Please feel free to call me at 602-230-9393 if you have any questions.

Sincerely,


Mitchel Medigovich
President
Mortgage Management Inc.
Operations Manager
Mortgage Equities XII, LLC.

Amorb # 10

JACKSONWHITE
ATTORNEYS AT LAW
A Professional Corporation

KELLY G. BLACK
SUSAN B. COURT
JARED E. EVERTON
CHRISTINE FARNSWORTH
ROGER R. FOOTE
JEREMY S. GEIGLE
CLINT G. GOODMAN
ERIC M. JACKSON†
ERIC K. MACDONALD
WILLIAM J. MONAHAN*

MICHAEL R. PRUITT
MELODY K. SEAL
OTTO S. SHILL, III*
JAMES L. TANNER
J. GRANT WALKER
BRADLEY D. WEECH
DAVID L. WEED
RICHARD A. WHITE
JEFFREY G. WILLIAMS

◆ Certified Specialist
Injury and Wrongful Death Litigation

*Also Licensed in Texas
†Also Licensed in Utah

April 29, 2010

FILE COPY

Supreme Court of Arizona
Certification & Licensing Division
Program and Investigations Unit
1501 W. Washington, Suite #104
Phoenix, Arizona 85007-3231

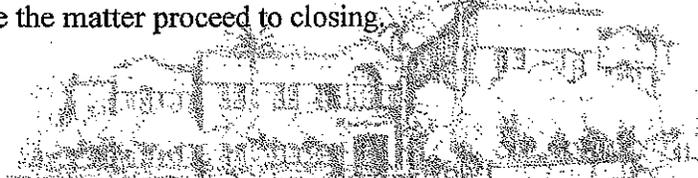
Re: *Estate of* [REDACTED]
Complaint No. [REDACTED]

Gentlemen:

Our firm represents East Valley Fiduciary Services, Inc. and Mr. James C. Clark as the Personal Representative of the Estate of [REDACTED]. Various attorneys in our office have worked on this file over the years that it has been in court. I have been made aware of a Complaint (referenced above) filed with your Division concerning Mr. Clark's administration of the Estate. I believe that Mr. Clark has outlined the facts of this matter for you in his letter of April 26, 2010. Attached to the April 26, 2010 letter is a letter from Attorney Robert W. Brandes, Jr. in Colorado explaining the background of this probate matter.

Mr. Clark also attached a copy of the Inventory and Appraisalment in this case showing that the total assets of the Estate as of the date of the filing on July 14, 2009 consisted of \$7,233.00 in cash. We were and are informed, as shown by the Inventory, that there was no other personal property in Arizona. As you can see from the letters attached to Mr. Clark's letter, the concerns of the Complainants in this matter dealt primarily with property outside of the Arizona Probate and particularly with matters relating to the prior probate in Colorado. The Complainants' brother, [REDACTED] lives in Colorado.

During this entire probate, except for their initial appearance at the first hearing, the Complainants have failed to file any appropriate documents with the Court in this matter. Initially, Complainants' brother, [REDACTED], tried to act as Personal Representative but withdrew his application due to the constant complaints of his siblings. Appointment of a Private Fiduciary was necessary to have the matter proceed to closing.



480.464.1111
Toll Free 800.243.1160
Fax 480.464.5692

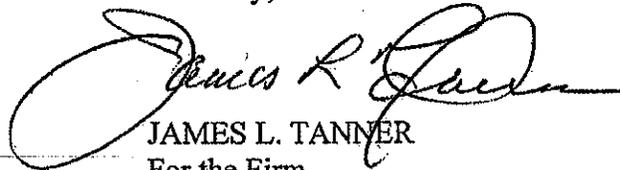
40 North Center Street, Suite 200 • Mesa, Arizona 85201
Offices in Mesa, Payson, Casa Grande & Sun City

E-Mail: firm@jacksonwhitelaw.com
www.jacksonwhitelaw.com
www.arizonaseniorlaw.com

April 29, 2010
Page 2

The Complainants have received notice of every action taken in this probate and have had ample time to make their claims through the proper channels in the Court. There is no basis for their present complaint to the Certification & Licensing Division.

Sincerely,



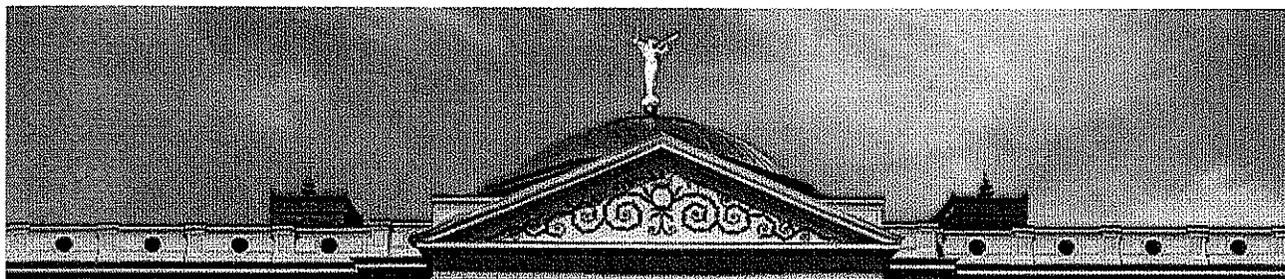
JAMES L. TANNER
For the Firm

JLT/cml

FAABC\Chesler\Corres\Supreme Court.042910.wpd



Arizona State Legislature

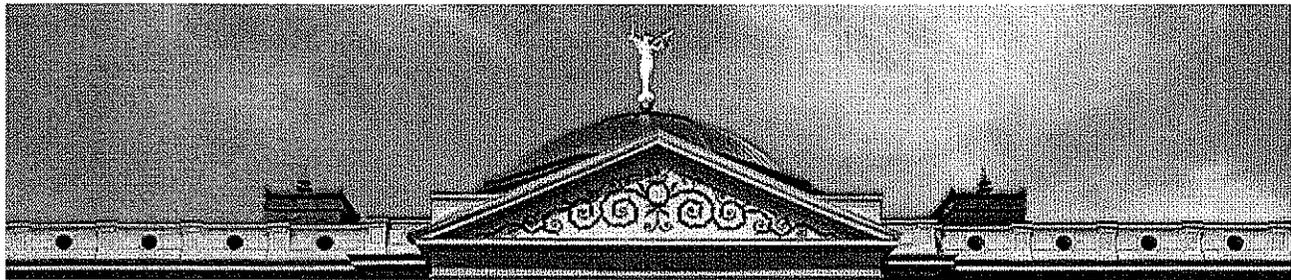
Bill Number Search: 

Forty-ninth Legislature - Second Regular Session

[change session](#) | [printer friendly version](#)[Email a Member](#) | [Email Webmaster](#)[Senate](#)[House](#)[Legislative Council](#)[JLBC](#)[More Agencies](#)[Bills](#)[Committees](#)[Calendars/News](#)[ARS TITLE PAGE](#) [NEXT DOCUMENT](#) [PREVIOUS DOCUMENT](#)**14-3705. Duty of personal representative; information to heirs and devisees**

Not later than thirty days after appointment every personal representative, except any special administrator, shall give information of the appointment to the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative. The information shall be delivered or sent by first class mail to each of the heirs and devisees whose address is reasonably available to the personal representative. If appointment is made in a formal proceeding, information under this section need not be given to persons given notice of the formal proceeding. The duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate. The information shall include the name and address of the personal representative, indicate that it is being sent to persons who have or may have some interest in the estate being administered, indicate whether a bond has been filed and describe the court where papers relating to the estate are on file. The personal representative's failure to give this information is a breach of the personal representative's duty to the persons concerned but does not affect the validity of the appointment or the personal representative's powers or other duties. A personal representative may inform other persons of the appointment by delivery or first class mail. The personal representative shall comply with the provisions of title 43, chapter 13.

Arizona State Legislature

Bill Number Search: 

Forty-ninth Legislature - Second Regular Session

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ARS TITLE PAGE	NEXT DOCUMENT	PREVIOUS DOCUMENT
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14-10813. Duty to inform and report

A. Unless the trust instrument provides otherwise, a trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless the trustee determines that it is unreasonable under the circumstances to do so, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust.

B. A trustee:

1. On request of a beneficiary, shall promptly furnish to the beneficiary a copy of the portions of the trust instrument that are necessary to describe the beneficiary's interest.

2. Within sixty days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address and telephone number.

3. Within sixty days after the date the trustee acquires knowledge of the creation of an irrevocable trust or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the trustee's name, address and telephone number, of the right to request a copy of the relevant portions of the trust instrument and of the right to a trustee's report as provided in subsection C.

4. Shall notify the qualified beneficiaries at least thirty days in advance of any change in the method or rate of the trustee's compensation.

C. A trustee shall send to the distributees or permissible distributees of trust income or principal and to other beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values. On a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee. A personal representative, conservator or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.

D. A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

E. Subsection B, paragraphs 2 and 3 apply only to a trustee who accepts a trusteeship on or after January 1, 2009, to an irrevocable trust created on or after January 1, 2009 and to a revocable trust that becomes irrevocable on or after January 1, 2009.