

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 licensed 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 licensed fiduciaries and certified and licensed professionals, trainees, and support staff to whom the licensed 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(9).

“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(13).

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

“Fiduciary” as provided in A.R.S. § 14-5651(K)(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(K)(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 that is 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(20).

“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(23).

“Guardian ad litem” means “a person who is appointed pursuant to § 14-1408 as provided in A.R.S. § 14-1201(24).

“Personal representative” means “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(40).

“Program coordinator” means “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 licensure as a fiduciary but for the lack of required experience and who is seeking to gain the required experience to qualify as a licensed fiduciary by working under the active and direct supervision of a designated principal or licensed 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

1. 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.
2. This section applies to the appointment and licensure 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 licensed 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 licensure and comply with the requirements of this section, unless exempt pursuant to this section.
3. Pursuant to A.R.S. § 14-5651(J), “This section applies to any supreme court licensed fiduciary who is acting as a guardian, conservator, personal representative, trustee or agent under a power of attorney, whether or not that person is acting pursuant to court appointment.”
4. Pursuant to A.R.S. §§ 14-5501(F), 14-10820, 36-3221(E), and 36-3223(D), a person whose license as a fiduciary has been suspended or revoked pursuant to § 14-5651 may not serve:
 - a. As an agent under a power of attorney in any capacity unless the person is related to the principal by blood, adoption or marriage; and
 - b. As a trustee in any capacity unless the person is related to the beneficiary by blood, adoption or marriage.

The prohibition against serving as an agent under a power of attorney or as a trustee does not apply if the person’s license has been reinstated and is in good standing.

C. Purpose. This section is intended to result in the effective administration of the fiduciary program and in licensure 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, ACJA sections, and court rules.

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 licensure 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. A requirement that on appointment a fiduciary who is serving as a guardian or conservator must provide written information to the ward or protected person and all persons entitled to notice pursuant to section 14-5309 or 14-5405 that the fiduciary is licensed by the supreme court and subject to regulation by the supreme court. The language of the written information provided by the fiduciary shall be prescribed by the supreme court and shall include reference to the code of conduct that all licensed fiduciaries must follow.
 4. Minimum qualifications.
 5. Biennial renewal of licensure.
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 licensed 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 licensed fiduciaries who have worked as a licensed fiduciary in private practice for at least five years;
 - b. Two licensed fiduciaries who have worked as a licensed 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 Licensure. In addition to the requirements of ACJA § 7-201(E), the applicant shall meet the following requirements:

1. Eligibility for Licensure as an Individual.
 - a. A.R.S. § 14-5651 provides:
 - C. An applicant for licensure must:
 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.

....

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 licensed 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 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 licensed 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 not approved by the American Bar Association, but is institutionally accredited and 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 licensed 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 licensure 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 licensed 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 licensed 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 accredited by the American Bar Association and currently admitted to the practice of law, active and in good standing in the state in which 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 or reduce the required number of years of experience required to become licensed.
- 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 licensed 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 licensure 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 licensure, examination and training fees.
2. Eligibility for Trainee. An individual working under the supervision of a licensed fiduciary or designated principal in order to gain the required experience to become licensed 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 licensure, a trainee shall submit an application for individual licensure.
3. Licensure as a Business Entity, Arizona Department of Veterans' Services or Office of the Public Fiduciary.

- a. Business Entity. For qualification for business entity licensure, 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 licensure 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 licensure 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 licensure shall name the designated principal.
 - (2) If the designated principal is no longer willing or able to serve as the principal:
 - (a) The licensed business entity shall supply division staff with the name of the new designated principal within fourteen days. The licensed 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 licensed business entity the designated principal is no longer willing or able to serve. The licensed 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 licensed fiduciary business entity, the Department of Veterans' Services or the Office of the Public Fiduciary, a licensed fiduciary shall meet the following requirements:
 - (1) Hold a valid, active license as a fiduciary whose license has not been previously suspended or revoked;
 - (2) Comply with the renewal requirements for licensure.

f. Responsibilities of Principal.

(1) The principal shall:

- (a) Provide active and direct supervision of all other licensed 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 that all licensed fiduciaries and trainees conform to the applicable rules, statutes and sections of the ACJA and that non-licensed staff conduct themselves in accordance with the applicable rules, statutes, and sections of the ACJA.
- (c) In compliance with subsections F and J, delegate and assume personal professional responsibility for ensuring the tasks performed by the licensed fiduciaries, professionals, support staff, and others who provide services for wards, protected persons, or decedent estates are within the scope of their training and experience and have been delegated by the principal.
- (d) File a list of all licensed 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 licensure of a business entity.
- (f) Agree that at least one licensed fiduciary shall assume the primary responsibility for each court appointment as a guardian, conservator or personal representative.
- (g) File with the division staff, by June 30 each year, a list of all licensed 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 Licensure. 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, each business entity, and each employee of a business entity assigned primary responsibility for court appointments seeking licensure.
- 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 licensure 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 14-3603(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 licensure 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 licensure the licensee shall maintain the cash or surety bond as long as the licensure is in place. Upon expiration or surrender of the licensure, the licensee 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 Licensure.

- a. Licensure 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, guardian, or personal representative may apply on the form prescribed by the supreme court for an emergency exemption from licensure 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. For good cause shown, 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 estimated cost of the fiduciary and associated professional 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 licensed 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 licensure during this temporary appointment;

- (b) The appointee shall apply for fiduciary licensure 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 licensure, 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 Licensure.** In addition to the reasons specified in ACJA § 7-201(E), an applicant:

a. May be denied licensure:

- (1) 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;
- (2) If an officer, director, partner, member, trustee, or manager of the applicant has a record of conviction by final judgment of a felony.

b. Shall be denied licensure if the applicant has a record of conviction by final judgment of a felony pursuant to A.R.S. § 14-5651(C)(3).

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 licensed 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 license 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 licensed 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 licensure 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 licensed fiduciary leaves the employment of the business entity, public fiduciary office, or the Arizona Department of Veterans' Services.
3. License Number. A fiduciary, when filing a document with the superior court, shall include the fiduciary's personal license number on the document and when appropriate, the business entity's number.
4. Notice. Pursuant to A.R.S. § 14-5651(A)(3), "on appointment a fiduciary who is serving as a guardian or conservator must provide [the following] written information to the ward or protected person and all persons entitled to notice pursuant to § 14-5309 or 14-5405 that the fiduciary is licensed by the supreme court and subject to regulation by the supreme court":

(Name of Fiduciary and/or Fiduciary Entity) holds an active fiduciary license No. XXXX, issued by the Arizona Supreme Court, and is subject to regulation by the Arizona Supreme Court, Administrative Office of the Courts. The regulations governing licensed fiduciaries and fiduciary entities are specified in the Arizona Code of Judicial Administration § 7-201: General Requirements and § 7-202: Fiduciaries. These administrative rules adopted by the Arizona Supreme Court include a Code of Conduct that all licensed fiduciaries are required to follow. Additional information regarding these requirements and licensed fiduciaries may be obtained from the Administrative Office of the Courts at:

<http://www.azcourts.gov>
Email to PFP@courts.az.gov
Phone: 602- 452-3378

5. A fiduciary shall report the following to division staff within 30 days and provide a copy of all pertinent documents:
 - a. Any bankruptcies, tax liens, final foreclosure, or civil judgments;
 - b. Court removals for cause; however, a fiduciary is not required to report those cases where a party petitions the court to substitute the fiduciary pursuant to A.R.S. § 14-5307 or § 14-5415 and the court does not find that the fiduciary acted inappropriately;
 - c. Court orders or sanctions issued against the fiduciary, on a finding of contempt or finding of breach of fiduciary duty including civil arrest warrants, involuntary termination of appointment, fiduciary arrest warrants, and any other court orders or sanctions issued pursuant to court rules or A.R.S. Title 14 as a remedy for non-compliance by the fiduciary;

- d. A court order that the fiduciary engaged in vexatious conduct pursuant to Rule 10(G), *Arizona Rules of Probate Procedure*;
 - e. Court orders issued pursuant to A.R.S. § 14-1105, ordering the fiduciary to reimburse a decedent's estate or trust or a ward or protected person for professional fees or expenses incurred as a result of unreasonable conduct; and
 - f. Felony convictions.
6. Trainees. A trainee shall:
- a. Be under the active and direct supervision of a licensed 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, licensed fiduciary, or designated principal.
7. Eligibility for Licensure. A trainee may apply for fiduciary licensure after serving one year of full time equivalent service as a trainee if the trainee otherwise qualifies for licensure.
8. Supervision of Trainees. A licensed 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 that 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 license 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 licensed fiduciary or designated principal. Neither the trainee nor the supervising fiduciary may represent that the trainee is a licensed fiduciary. The trainee may prepare a document for filing with the court, as authorized by subsection (J)(1)(d), under the supervision of the licensed fiduciary or designated principal. The trainee is not authorized and shall not file any document with the court.
9. Support Staff and Professionals. A licensed fiduciary or designated principal may, under the licensed 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 licensed fiduciary regarding a client and to make recommendations based on their knowledge and expertise to the licensed fiduciary. The licensed fiduciary or designated principal may not delegate informed consent or contractual agreement decision making authority to trainees, non-licensed staff or professionals.
 - a. Support staff are individuals:
 - (1) Employed by the licensed fiduciary or designated principal who perform clerical, bookkeeping, and other administrative and support duties;
 - (2) Who do not engage in any other acts requiring licensure 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 licensure.
 - b. Professionals are licensed individuals the licensed 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 licensure or licensing status. Professionals include but are not limited to, registered nurses, licensed nurse practitioners, certified public accountants, certified paralegals, licensed attorneys and certified legal document preparers.
10. Reporting of Possible Violations. A fiduciary shall notify division staff if the fiduciary has knowledge that another licensed fiduciary has committed misconduct raising a substantial question as to the fiduciary's honesty, trustworthiness, or qualifications as a licensed fiduciary. This fiduciary shall make this notification in compliance with ACJA § 7-201(H).

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

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

2. Continuing Education. During each renewal cycle, all licensed 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 licensure.
4. Decision Regarding Renewal. In addition to the reasons specified in ACJA § 7-201(G), an applicant:
 - a. May be denied renewal of licensure:
 - (1) 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;
 - (2) The court issued an order or sanction against the fiduciary on a finding of contempt or breach of fiduciary duty regarding the administration of a guardianship conservatorship, or personal representative, including civil arrests warrants. Fiduciary arrest warrants, or a court finding that the fiduciary engaged in vexatious conduct.
 - (3) If an officer, director, partner, member, trustee, or manager of the applicant has a record of conviction by final judgment of a felony.
 - b. Shall be denied renewal of licensure if the applicant has a record of conviction by final judgment of a felony pursuant to A.R.S. § 14-5651(C)(3).

H. Complaints, Investigation, Disciplinary Proceedings, and Licensure and Disciplinary Hearings. In addition to the requirements in ACJA § 7-201(H) the following requirements apply to licensees 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 licensee, 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 licensee to 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 licensed 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 license 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 licensed 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 licensed fiduciaries.

1. Duty to the Court.

- a. The fiduciary shall perform all duties and discharge all obligations in accordance with current Arizona law, federal law, administrative rules, court orders, court rules, administrative orders, and the Arizona Code of Judicial Administration.
- b. The fiduciary shall not act outside of the authority granted by the court and shall seek direction from the court as necessary and court authorization for actions that are subject to court approval. The fiduciary shall clarify with the court any questions about the meaning of a court order or directions from the court before taking action based on the order or directions. If the fiduciary is aware of a court order that may conflict with this ACJA section, the fiduciary shall bring the possible conflict to the attention of the court and seek the court’s direction.
- c. The fiduciary shall:
 - (1) Inform the court, pursuant to the *Arizona Rules of Probate Procedure*, of a permanent change in the location, or upon the death, of a ward or protected person.
 - (2) Provide or ensure that reports, notices, financial accounts, and other documents are timely, complete, accurate, understandable, in a form acceptable to the court, consistent with the requirements specified in Arizona law, court rule, and the applicable sections of the Arizona Code of Judicial Administration;

- (3) Not knowingly file any document with the court or present testimony to the court that is misleading, inaccurate, or false, or that contains misstatements, misrepresentations, or omissions of material facts; and
 - (4) Not knowingly interfere with the transmission of a request to the court:
 - (a) From the ward for an order that the ward is no longer incapacitated;
 - (b) From the protected person for an order that the protected person is no longer in need of protection;
 - (c) From the ward or protected person for substitution of the fiduciary.
- d. Authorized Services. Pursuant to Rule 31(d)(30), *Arizona Rules of the Supreme Court*, unless otherwise ordered by the court, a licensed fiduciary or a licensed fiduciary on behalf of a licensed fiduciary entity:
- (1) Is authorized to prepare and file with the court the following documents, without the supervision of an attorney:
 - (a) Court investigation reports, if the fiduciary has been appointed as a court investigator pursuant to A.R.S. §§ 14-5303, 14-5407 or 36-540;
 - (b) Probate information forms pursuant to Rule 10, *Arizona Rules of Probate Procedure*;
 - (c) Amendments to probate information forms, pursuant to Rule 10(C) *Arizona Rules of Probate Procedure*, including notices of change of address and notice of death or the ward or protected person;
 - (d) Notice of the basis of compensation pursuant to A.R.S. § 14-5109 and Rule 33, *Arizona Rules of Probate Procedure*;
 - (e) Guardian reports pursuant to A.R.S. § 14-5315; Rule 30, *Arizona Rules of Probate Procedure* and ACJA § 3-302;
 - (f) Inventory of conservatorship pursuant to A.R.S. § 14-5418; Rules 30 and 31, *Arizona Rules Probate Procedure*; and ACJA § 3-302;
 - (g) The protected person's consumer credit report that is filed with the inventory, pursuant to A.R.S. § 14-5418;
 - (h) Conservatorship estate budget pursuant to Rule 30.3, *Arizona Rules of Probate Procedure* and ACJA § 3-302;
 - (i) Petition for Approval of Conservator Account and the required notices and the conservator account; pursuant to A.R.S. § 14-5419, Rule 30.3, *Arizona Rules of Probate Procedure*; and ACJA § 3-302. This authority does not include the preparation and filing of documents in contested probate proceedings pursuant to Rule 27, *Arizona Rules of Probate Proceeding*, when an objection is made to the Petition for Approval of Conservator Account;
 - (j) Proof of restricted account, pursuant to Rule 22(C)(3), *Arizona Rules of Probate Procedure*;
 - (k) Notices to creditors;
 - (l) Status reports;
 - (m) Reports to the court of abuse, neglect, or exploitation of a vulnerable adult pursuant to A.R.S. § 46-454 et seq;
 - (n) A copy of the recorded letters the conservator is required to file with the court pursuant to Rule 26(E), *Arizona Rules of Probate Procedure*;

- (o) Proofs of publication, notice, or mailings associated with the above filings;
and
- (p) Fiduciary bond.
- (2) May provide general legal information to the ward, protected person and persons entitled to notice, pertaining to legal rights, procedures, or options available to the ward or protected person in a legal matter.
- (3) Shall not provide any legal advice, opinion, or recommendation about possible legal rights, remedies, defenses, options, or strategies.
- (4) May attend court hearings, including the initial appointment hearing for appointment of guardian, or any appearance hearing at which the fiduciary may be requested to provide testimony or the appearance of the fiduciary is necessary to further the client's best interests.
- (5) Shall not represent that the fiduciary is authorized to practice law in this state, nor shall the fiduciary provide legal services to another by representing another in a judicial, quasi-judicial or administrative proceeding, or other formal dispute resolution process, except as authorized by Rule 31, Rules of the Supreme Court. Notwithstanding these provisions, a fiduciary may attend court with a ward or protected person and may provide general legal information pursuant to subsection J(1)(d)(2).
- (6) Shall abide by any order entered pursuant to Rule 31, *Arizona Rules of the Supreme Court* and Rule 10(G), *Arizona Rules of Probate Procedure*, where the court orders that a licensed fiduciary shall obtain the court's permission to file future pleadings and other papers in a case or other cases if the court enters an order the fiduciary engaged in vexatious conduct in connection with a probate case.
- (7) May not perform functions listed in J(1)(d) if the court has suspended the fiduciary's authority to act pursuant to Rule 31(d)(3) which provides: "A person licensed as a fiduciary pursuant to A.R.S. § 14-5651 may perform services in compliance with Arizona Code of Judicial Administration, Part 7, Chapter 2, Section 7-202. Notwithstanding the foregoing provision, the court may suspend the fiduciary's authority to act without an attorney whenever it determines that lay representation is interfering with the orderly progress of the proceedings or imposing undue burdens on other parties."
- (8) Shall inform the ward, protected person, and persons entitled to receive notice that the fiduciary is not a lawyer, is not employed by a lawyer, and cannot give legal advice, and that communications with a fiduciary are not privileged. A fiduciary shall not use the designations "lawyer," "attorney at law," "counselor at law," "law office," "JD," "Esq.," or other equivalent words, the use of which is reasonably likely to induce others to believe the fiduciary is authorized to engage in the practice of law in the State of Arizona, unless the fiduciary has been admitted to the practice of law in Arizona and is an active member of the State Bar of Arizona.

- (9) May only prepare powers of attorney or other legal documents if also certified as a legal document preparer pursuant to ACJA § 7-208, except as provided in subsection J(d)(1) or as otherwise ordered by the court. This provision does not apply to the Arizona Department of Veteran's Services pursuant to A.R.S. § 41-603(A).
2. Relationship with the Ward or Protected Person. 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:
- (1) Avoid self-dealing, conflict of interest impropriety, or the appearance of a conflict of interest or impropriety. Self-dealing, a conflict of interest, or impropriety 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. A conflict of interest may also arise if the fiduciary has dual or multiple relationships with a ward that conflict with each other or has a conflict between or among the best interests of two or more wards.
 - (2) Maintain independence from all service providers to enable the fiduciary to coordinate services, challenge inappropriate or poorly delivered services, and act in the best interests of the ward or protected person.
 - (3) Unless otherwise authorized by the court, the fiduciary shall not:
 - (a) Provide non-fiduciary services to the ward or protected person if the fiduciary or a person or entity closely related to the fiduciary has a personal or financial interest. For the purposes of this subsection, "closely related" includes a spouse, child, parent, sibling, grandparent, aunt, uncle, or cousin of the fiduciary, and any business, partnership, corporation, limited liability company, trust, or other entity that the fiduciary or a closely related person has a financial interest in, is employed by, or receives compensation or financial benefit from.
 - (b) Solicit or accept incentives or gifts from service providers other than ordinary social hospitality; or
 - (c) Solicit or accept a gift from a ward or protected person or the estate of a ward or protected person, other than ordinary social hospitality.
 - (4) Upon becoming aware of a conflict of interest, immediately disclose to the court the existence and nature of the conflict.
 - (5) In those exceptional situations when no other services are available, seek court approval before providing direct services. When requesting court approval, the fiduciary shall demonstrate in writing and with prior notice to parties entitled to notice that all alternatives have been identified and considered and that no alternative is available that is reasonable or practical. This does not apply in an emergency situation where it is necessary for the fiduciary to provide services, to

protect the best interests of the ward or protected person. The fiduciary shall document the emergency and the need for the fiduciary to provide the services.

- (6) The fiduciary shall maintain a professional relationship with the ward or protected person and shall avoid personal relationships with the ward and protected person or the family or friends of the ward or protected person, unless the fiduciary is a family member, or unless such a relationship existed before the appointment of the fiduciary.
- 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. Pursuant to A.R.S. § 14-5651, the fiduciary shall, upon appointment as a guardian or conservator, provide “written information to the ward or protected person and all persons entitled to notice pursuant to § 14-5309 or 14-5405 that the fiduciary is licensed by the supreme court and subject to regulation by the supreme court.” This notice shall be in the form as prescribed by the supreme court, as specified in subsection F(4).
 - e. The fiduciary shall not permit or authorize trainees, support staff, or other contracted professionals to provide informed consents or enter into any contractual agreements regarding the ward or protected persons.
3. 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 the limitations of the fiduciary’s expertise, 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 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. Subject to orders of the court, the fiduciary alone is ultimately responsible for decisions made on behalf of the ward, protected person, or estate. The fiduciary shall maintain accurate and complete records to support the decisions made in the administration of a case, in compliance with court rules and the applicable sections of the Arizona Code of Judicial Administration.
 - f. The fiduciary shall refrain from decision making in areas outside the scope of the guardianship, conservatorship, or personal representative order.
4. 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 review and keep informed of the statutory requirements for a guardian.
 - b. The fiduciary shall stay informed and be 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 or because of financial constraints. 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. When it is not possible to determine the preferences of the ward or the ward's preferences will result in substantial harm, the fiduciary shall make decisions with respect to care, treatment and services, in conformity with the best interests of the ward.
- k. In the event the only available treatment, care or services are not the most appropriate and least restrictive, the fiduciary 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 ensure that 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 must approve pursuant to state law.
- o. The fiduciary shall know and follow the laws of the state regarding the withholding or withdrawal of life-sustaining treatment.
- p. The fiduciary shall regularly 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. The fiduciary or appropriate

designee shall be available to respond to an urgent need for medical decisions. The fiduciary shall provide instructions regarding treatment or non-treatment by medical staff in emergencies.

- q. The fiduciary shall ensure that the ward receives 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 not co-mingling funds and assets.
5. 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 the highest level of fiduciary responsibility, 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 review and be informed of the requirements specified in court rules and Arizona Statutes for managing a protected person's estate.
 - b. Pursuant to A.R.S. § 14-1104:
 - 1. The fiduciary must prudently manage costs, preserve the assets of the ward or protected person for the benefit of the ward or protected person and protect against incurring any costs that exceed probable benefits to the ward, protected person, decedent's estate or trust, except as otherwise directed by a governing instrument or court order.
 - 2. A guardian ad litem, fiduciary, fiduciary's attorney for the ward or protected person have a duty to:
 - (a) Act in the best interest of the ward or protected person.
 - (b) Avoid engaging in excessive or unproductive activities.
 - (c) Affirmatively assess the financial costs of pursuing any action compared to the reasonably expected benefit to the ward or protected person. . . .
 - 3. Market rates for goods and services are a proper, ongoing consideration for the fiduciary and the court during the initial court appointment of a fiduciary or attorney and relating to a request to substitute a court-appointed fiduciary or attorney.
 - c. 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.

- d. 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.
 - e. 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.
 - f. The fiduciary shall exercise prudence in the investment of surplus funds of the estate.
 - g. The fiduciary shall petition for and receive authority from the superior court before expending estate funds for gifting.
 - h. 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.
 - i. The fiduciary shall ensure the protected person receives all medical and financial benefits to which the protected person may be entitled.
 - j. The fiduciary shall ensure that all fees and expenses incurred for the protected person by the fiduciary, including compensation for the services of the fiduciary, are reasonable in amount, necessarily incurred for the welfare of the protected person, and in compliance with ACJA § 3-303.
 - k. The fiduciary shall prepare complete, accurate and understandable accounts and inventories.
 - l. The fiduciary shall protect the rights and make decisions in the best interest of the protected person when acting in a *de facto* guardianship.
 - m. Unless otherwise ordered by the court, the fiduciary shall provide timely access to and copies of documents associated with the conservator's annual account, as specified in A.R.S. § 14-5418(C).
6. 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 review and be 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, or 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 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 that 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, accounts, and closing statements.
7. **Trustee and Power of Attorney.** A licensed fiduciary who is acting as a trustee or agent under a power of attorney shall abide by this code of conduct, regardless of whether that person is acting pursuant to court appointment.
8. **Changes of Circumstances, Limitation, and Termination.** The fiduciary has an affirmative obligation to be alert to changes in the ward's or protected person's condition or circumstances, report to the court when an increase or reduction in the authority of the fiduciary should be considered, and seek termination or limitation of the guardianship or conservatorship when 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.

K. Fee Schedule.

1. Initial Licensure Fees.

a. Individual Licensure:

All initial individual (public or private) licensure:

(1) Licensure expiring more than one year after application date	\$400.00
(2) Licensure expiring less than one year after application date	\$200.00
(3) Fingerprint application processing fee (Rate set by Arizona law and subject to change)	
(4) Trainee Registration Fee:	\$ 70.00

b. Business Licensure:

Business (public or private) entity licensure:

(1) Licensure expiring more than one year after application date	\$400.00
(2) Licensure expiring less than one year after application date	\$200.00

2. Examination Fees.

a. Applicants for initial licensure \$ 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 Licensure Fees.

a. Biennial Individual Renewal (Public or Private) \$400.00

b. Biennial Business Renewal (Public or Private) \$400.00

c. Inactive Status \$150.00

d. Late Renewal \$ 50.00

e. Delinquent Continuing Education \$ 50.00

4. Miscellaneous Fees.

- | | |
|---|----------|
| a. Replacement of License 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 licensure after suspension or revocation of licensure.)

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 licensed and practice in Arizona. Ongoing continuing education is one means to ensure a licensed fiduciary maintains continuing competence in the fiduciary field after licensure 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 licensed 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 licensed 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 licenses expire on May 31st each even numbered year.
- b. All licensed 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 for renewal of licensure 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 licensure and continuing education applications and documentation.
- c. Continuing education not recognized for credit upon board review does not 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 continuing education credits for completion of such courses shall not exceed 50 percent of the total number of continuing education hours required for the renewal period.
- 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, 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, a fiduciary shall not receive continuing education credit for preparation time for those duplicated 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 licensure;
 - (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 licensure, 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. Division staff or 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 licensed 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 licensure period, including at least two hours of ethics. A fiduciary initially licensed 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 licensure period, including at least one hour of ethics. In subsequent licensure periods, the fiduciary shall meet the twenty hour requirement. This proration of continuing education credits does not apply to a fiduciary who previously held licensure, allowed the licensure to lapse and subsequently applied for and was granted licensure 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 licensure 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 license 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 licensure 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 licensure; 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 license 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 his or her license 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 licensure 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. Amended by Administrative Order 2009-105, effective September 30, 2009. Amended by Administrative Order 2012-64, effective September 1, 2012. Amended by Administrative Order 2020-56, effective April 1, 2020.