

IT IS FURTHER ORDERED that all individuals who hold a valid certificate and all individuals who have completed the initial training and are pending certification on the effective date of this order will be subject to the new continuing education requirements contained in Code Section 7-202 beginning with the certification renewal period of June 1, 2002 to May 31, 2004.

Dated this 14th day of November, 2001.

FOR THE COURT:

A handwritten signature in cursive script, appearing to read "Thomas A. Zlaket", written over a horizontal line.

THOMAS A. ZLAKET
Chief Justice

ARIZONA CODE OF JUDICIAL ADMINISTRATION

Part 7: Administrative Office of the Courts

Chapter 2: Certification and Licensing Programs

Section 7- 202: Private Fiduciaries

A. Definitions.

“Bond” means a cash or surety instrument required pursuant to A.R.S. §§14-5411(A) and -3603(A) to ensure protection of the estate of a protected person or decedent and A.R.S. §14-5651(A) and (D) to compensate the supreme court for costs incurred in conducting an investigation and hearing regarding misconduct by a private fiduciary.

“Certification” means a certificate issued by the program coordinator to a person or entity when the person or entity meets the requirements of this code section.

“Code section” means the referenced provision of the Arizona Code of Judicial Administration.

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

“Department director” means the individual appointed by the governor of Arizona, pursuant to A.R.S. §41-604, to administer the Arizona Department of Veterans’ Services.

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

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

“Director” means the director of the administrative office of the courts (AOC), Arizona Supreme Court, or the director’s designee.

“Financial institution” means “a bank insured by the federal deposit insurance corporation and chartered under the laws of the United States or any state, a trust company owned by a bank holding company that is regulated by the federal reserve board or a trust company chartered under the laws of the United States or this state” as provided in A.R.S. §14-5651(J)(1).

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

“Guardian” means “a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment but excludes a person who is merely a guardian ad litem” as provided in A.R.S. §14-1201(22).

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

“Personal representative” means “a personal representative includes executor, administrator, successor personal representative, special administrator and persons who perform substantially the same function under the law governing their status. A general personal representative excludes a special administrator” as provided in A.R.S. §14-1201(38).

“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.

“Private fiduciary” or “fiduciary” 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.

A.R.S. §14-5651(J)(2)

“Program coordinator” means the staff appointed by the administrative director to administer the program.

“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).

“Registration” means, for the purpose of this code section, the same as “certification.”

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

“Section” means the referenced provisions of the Arizona Revised Statutes.

“Supreme Court” means the Arizona Supreme Court.

“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.

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

B. Applicability. This code section applies to the appointment and certification of private 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 private fiduciary unless that person is registered with the supreme court.” A.R.S. §14-5651(G) provides: “The requirements of this section do not apply to a financial institution” In order to be eligible for court appointment as a guardian, conservator or personal representative, all persons, public and business entities shall hold valid certification and comply with the requirements of this code section, unless exempt pursuant to this code section. This code section is read in conjunction with the Arizona Code of Judicial Administration §7-201: General Requirements.

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

D. Administration.

1. Role and Responsibilities of the Supreme Court. A.R.S. §14-5651(A) provides:

. . . The supreme court shall administer the registration 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 private fiduciaries post a cash deposit or surety bond with the supreme court.
3. Minimum qualifications.
4. Biennial registration.

2. Role and Responsibilities of the Administrative Director. Reference the Arizona Code of Judicial Administration §7-201: General Requirements.

3. Role and Responsibilities of the Program Coordinator. The director shall designate a program coordinator. In addition to the role and responsibilities specified in the Arizona Code of Judicial Administration §7-201: General Requirements, the program coordinator shall:

- a. Administer the Private Fiduciary Program in compliance with Arizona law, Arizona rules of court, the Arizona Code of Judicial Administration and administrative orders adopted by the supreme court. The program coordinator may delegate any duties and responsibilities to staff.
- b. Maintain a list of certified private fiduciaries and distribute the list to the superior court and make it available to the public. The program coordinator may charge for the costs of providing copies of the certification list or any other public records of the program, except the program coordinator shall not charge a certified private fiduciary, certified business entity, certified public fiduciary office or the Arizona Department of Veterans' Services for a copy of the list.
- c. Provide the following initial training:
 - (1) The program coordinator shall hold an initial training session for private fiduciary applicants at least two times per year and shall ensure the training is a minimum of eighteen hours. This training shall consist of fifteen hours of instruction and three hours of examination.
 - (2) The program coordinator shall hold a session for certified private fiduciaries seeking renewal of their certification. The program coordinator shall hold the training at least once every two years, in conjunction with the biennial cycle for renewal of certification.
 - (3) The program coordinator shall provide the initial and renewal training to persons not seeking certification or renewal of certification upon application and payment of training fees, depending upon class availability.
- d. Administer the examination required pursuant to this code section.
 - (1) In administering the examination the program coordinator shall:
 - (a) Offer the examination at least two times per year in conjunction with the initial training for certification;
 - (b) Establish a passing grade on the examination and announce this prior to administering the test;
 - (c) Use multiple versions of the test and ensure no copies of the test are released to applicants or the public;

- (d) Inform each applicant of the grade of the completed examination and if the grade is passing or failing, requiring a reexamination; and
 - (e) Make and keep an accurate record of each examination.
- (2) The program coordinator may update tests as required to maintain the currency of the test content. The program coordinator may ask representatives from the court community, private and public fiduciary community, public, and any other knowledgeable resource to assist in the development and validation of tests created for use by this program.
- (3) The program coordinator shall allow an applicant who fails an examination for certification to retake the examination one time under the following conditions:
- (a) The applicant is entitled to retake the examination; and
 - (b) The applicant shall take the reexamination within 90 days of the date of the failed examination.
- (4) The program coordinator shall allow an applicant, upon written request, to review the examination papers and grades of the applicant under the following conditions:
- (a) The applicant shall not copy materials provided for the review; and
 - (b) The applicant shall conduct the review during business hours in the presence of the program coordinator.
4. Fund. A.R.S. §8-135(A) establishes the Confidential Intermediary and Private Fiduciary Fund and specifies one of the purposes of the fund is for “. . . performing the duties related to private fiduciaries pursuant to section 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 sections 35-146 and 35-147, the monies collected pursuant to this subsection in the confidential intermediary and private fiduciary fund established by section 8-135.” A.R.S. §14-5651(I) provides: “The supreme court may receive and expend monies from the confidential intermediary and private fiduciary fund established pursuant to section 8-135 for the purposes of performing the duties related to private fiduciaries pursuant to this section.”

E. Initial Certification.

1. Eligibility for Application. Any individual person, any business entity, the Arizona Department of Veterans' Services or the office of the public fiduciary, if eligible, pursuant to this code section, may apply for certification.

a. Eligibility for Certification as an Individual.

(1) A.R.S. §14-5651(C) provides:

An applicant for registration shall:

- “1. Be an adult citizen of this country.
2. Not have been convicted of a felony.
3. Attest that the applicant has not been found civilly liable in an action that involved fraud, misrepresentation, material omission, misappropriation, theft or conversion.”

(2) In addition, the applicant shall possess one of the following:

- (a) A high school diploma or a general equivalency diploma evidencing the passing of the general education development test; and three years of work experience specifically related to guardianship, conservatorship or decedent estates, where the applicant supervised or made substantial decisions about the administration of a decedent’s estate, guardianship, or conservatorship; or
 - (b) A four year bachelor of arts or bachelor of science degree from an accredited college or university and one year of work experience specifically related to guardianship, conservatorship or decedent estates, where the applicant supervised or made substantial decisions about the administration of a decedent’s estate, guardianship, or conservatorship.
- (3) The applicant shall successfully complete the initial training session for admission to the examination. The applicant shall personally take and pass to the director’s satisfaction, a written examination given by the program coordinator, reasonably testing the applicant’s knowledge as a private fiduciary.
 - (4) The applicant shall have one year from the date of passing the examination or reexamination to complete the certification process. The program coordinator shall treat an applicant who does not complete the process within one year as a new applicant and require the applicant to retake the training, examination and pay all initial certification and training fees.
 - (5) The program coordinator may conduct a credit review and review of public records of any applicant for initial certification.

b. Eligibility for Certification as a Business Entity. For qualification or eligibility for business entity certification, the corporation, limited liability company or partnership shall meet the following conditions prior to certification:

- (1) Each business entity shall designate one or more principals who are certified as an individual private fiduciary. The principal shall actively and directly supervise all other certified private fiduciaries and staff working for the corporation, limited liability company, or partnership who work with wards, protected persons or decedent estates. In the event the designated principal is no longer able or willing to serve as the principal, the certified business entity shall supply the program coordinator with the name of the new designated principal and within twenty days file an executed principal form. The certified business entity shall ensure the new designated principal is certified as an individual private fiduciary. The designated principal may represent the business entity in any proceeding under this code section.
- (2) The principal shall file with the initial application, a list of all certified private fiduciaries acting for or on behalf of the business entity. The principal shall file this list with the program coordinator.
- (3) The principal shall file articles of incorporation and letters of good standing from the Arizona Corporation Commission or the Secretary of State with the application.
- (4) The principal shall agree that not fewer than one certified person must be assigned primary responsibility for each court appointment as a guardian, conservator or personal representative.
- (5) The principal shall file with the program coordinator, by June 30 each year, a list of all certified private fiduciaries acting for or on behalf of the business entity.

c. Eligibility for Certification of the Arizona Department of Veterans' Services. For qualification for certification for eligibility for appointment as a private fiduciary the department shall meet the following conditions prior to certification:

- (1) The department director shall obtain certification as an individual private fiduciary and shall either act as the principal or designate a department employee who is certified as a private fiduciary as the principal. The principal shall actively and directly supervise all other certified fiduciaries and staff working for the department in furtherance of its duties pursuant to A.R.S. §§41-603(A) and -605. The department director may represent the department in any proceeding under this code section.
- (2) The department director shall file with the initial application, a list of all certified fiduciaries acting for or on behalf of the business entity. The principal shall file this list with the program coordinator.

- (3) The department director shall agree that not fewer than one certified person shall have the primary responsibility for each court appointment as a guardian, conservator or personal representative.
 - (4) The department director shall file with the program coordinator, by June 30 each year, a list of all certified fiduciaries acting for or on behalf of the department.
- d. Eligibility for Certification of the Office of the Public Fiduciary. For qualification for certification for eligibility for appointment as a private fiduciary the officer shall meet the following conditions prior to certification:
- (1) The public fiduciary shall obtain certification as an individual private fiduciary and be designated as the principal. The principal shall actively and directly supervise all other certified fiduciaries and staff working for the public fiduciary in furtherance of its duties pursuant to A.R.S. §§14-5602, -5603, -5604, -5605 and -5606. The public fiduciary may represent the public fiduciary office in any proceeding under this code section.
 - (2) The public fiduciary shall file with the initial application, a list of all certified fiduciaries acting for or on behalf of the public fiduciary. The principal shall file this list with the program coordinator.
 - (3) The public fiduciary shall agree that not fewer than one certified person shall have the assigned primary responsibility for each court appointment as a guardian, conservator or personal representative.
 - (4) The public fiduciary shall file with the program coordinator, by June 30 each year, a list of all certified fiduciaries acting for or on behalf of the office of the public fiduciary.

2. Application for Initial Certification.

- a. Reference Arizona Code of Judicial Administration §7-201: General Requirements. The applicant shall apply on an approved form and have the application duly verified under oath. An applicant for individual certification shall provide one color passport-size photograph, two inches by two inches. The program coordinator may conduct a credit review of an applicant.
- b. In addition, A.R.S. §14-5651(A) provides: “. . . The supreme court shall administer the registration program and shall adopt rules and establish and collect fees necessary for its implementation.” An applicant shall pay the fees established in the fee schedule adopted by the supreme court. The program coordinator shall collect these fees in advance. The fees are not refundable. The program coordinator shall forward the fees to the state treasurer for deposit in the Confidential Intermediary and Private Fiduciary Fund, pursuant to A.R.S. §8-135.

- c. A.R.S. §14-5651(B) provides: “As a condition of appointment, the supreme court shall require each applicant for the position of private 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 section 41-1750 and public law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.” Also reference the Arizona Code of Judicial Administration §7-201: General Requirements.
- d. 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 private fiduciaries post a cash deposit or surety bond with the supreme court.”
- (1) A bond is required of each applicant, business entity and each employee of business entities assigned primary responsibility for court appointments seeking certification.
 - (2) 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 The supreme court may 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.” This bond is separate from the requirements of A.R.S. §§14-5411(A) and -3603(A). A.R.S. §14-5411(A) provides: “Except as otherwise provided in subsection B, the court shall require a conservator to furnish a bond conditioned upon faithful discharge of all duties according to law, with sureties as it shall specify” A.R.S. §14-3603(A) provides:

A bond is required of a personal representative unless either:

1. The will expressly waives the bond.
2. All of the heirs if no will has been probated, or all of the devisees under a will which does not provide for waiver of the bond, file with the court a written waiver of the bond requirement. A duly appointed guardian or conservator may waive on behalf of his ward or protected person unless the guardian or conservator is the personal representative.
3. The personal representative is a national banking association, a holder of a banking permit under the laws of this state, a savings and loan association authorized to conduct trust business in this state, a title insurance company which is qualified to do business under the laws of this state, a trust company holding a certificate to

engage in trust business from the state superintendent of banks 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 nominees of the surviving spouse, is applying for appointment as personal representative.

- (3) For initial certification the applicant shall file with the application a cash or surety bond for the purposes described in A.R.S. §14-5651(D) and subsection E(2)(d)(4) of this code section. Upon certification the certificate holder shall maintain the cash or surety bond as long as the certification is in place. Upon expiration or surrender of the certification, the certificate holder may apply in writing to the program coordinator for return of any cash bond not forfeited. The program coordinator shall return any cash bond not forfeited within 120 days.
- (4) A bond may be either a surety or cash bond as follows:
 - (a) A surety bond in favor of the state of Arizona and the supreme court. The bond shall be executed on a bond form approved by the program coordinator 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 dollars 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.
 - (b) A cash bond in the amount of 10,000 dollars for deposit with the state treasurer in a special non-interest bearing account.
 - (c) If the applicant is found by the director to have violated any code section adopted pursuant to A.R.S. §14-5651, the director may cause the forfeiture of the cash or surety bond, as applicable, to the supreme court. If the bond is forfeited, the director shall deposit the funds in the Confidential Intermediary and Private Fiduciary Fund established pursuant to A.R.S. §8-135.
- (5) 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.

3. Exemptions from Certification.

- a. The program coordinator shall not require certification of:

- (1) Any person or business entity who will 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 will serve, if court appointed, as a personal representative if they are related to the decedent.
 - (3) Any person who will 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 will 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.
 - (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 private fiduciary.”
- b. In addition, A.R.S. §14-5651(G) provides: “. . . the supreme court may exempt a private fiduciary from the requirements of this section for good cause.”
- c. Emergency Exemption. Any person or business entity seeking court appointment as a conservator or guardian or personal representative may apply on the form prescribed by the supreme court for an emergency exemption from certification based on the criteria set forth in this code section and comply with this code section by filing an application for exemption, on the approved form, with the clerk of superior court in the county where the appointment is requested. The presiding judge of the superior court or designated judicial officer may grant or deny the exemption under the following conditions:
- (1) The presiding judge or designated judicial officer finds the applicant possesses the experience, education and skills necessary to meet the needs of the ward, protected person or decedent’s estate. In making this determination, the presiding judge or designated judicial officer may consider the following:
 - (a) The nature of the relationship with the ward, protected person, or deceased persons;

- (b) The type of decisions the fiduciary will make;
 - (c) The amount of assets the fiduciary shall manage;
 - (d) Any limitations or conditions to be placed on the appointment;
 - (e) The fees the fiduciary shall charge;
 - (f) The applicant is not acting as a fiduciary in any other case unless the wards or protected persons are related by blood or marriage;
 - (g) The applicant has known the ward, protected person or deceased person for at least two years;
 - (h) No prejudice or harm is likely to occur if the exemption is granted;
 - (i) There is an emergency need for the temporary appointment;
 - (j) No relative is willing and able to serve; and
 - (k) No certified fiduciary is willing and able to serve.
- (2) The 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 enters an order granting an exemption the following restrictions shall apply:
- (a) Temporary appointment is effective for a period of up to 90 days. One extension for a period of up to 90 days may be granted. The purpose of the temporary appointment is to allow the individual to seek and obtain certification during this temporary appointment;
 - (b) The appointee shall apply for private fiduciary certification with the supreme court; and
 - (c) The appointee shall not receive any compensation in any form while the appointee is serving in the capacity of an emergency exempted fiduciary, except for reimbursement for reasonable expenses, subject to court approval.

- (4) Within fifteen business days of granting the exemption from certification, the presiding judicial officer shall forward to the program coordinator a copy of the application for exemption, the petition and order granting the emergency appointment of guardian or conservator and the minute entry.
4. **Decision Regarding Certification.** Reference the Arizona Code of Judicial Administration §7-201: General Requirements. In addition to the reasons specified in the Arizona Code of Judicial Administration §7-201: General Requirements, the program coordinator may refuse to certify an applicant if the applicant or an officer, director, partner, member, trustee or manager of the applicant was removed as a court appointed guardian, conservator, or personal representative for cause and shall refuse to certify the applicant if the applicant or an officer, director, partner, member, trustee, or manager of the applicant has a record of conviction by final judgment of a felony.

F. Role and Responsibilities of Certificate Holders.

1. **Standards of Conduct.** Each certified private fiduciary shall adhere to the standards of conduct incorporated in this code section and adopted by the supreme court, pursuant to this code section and A.R.S. §14-5651(A)(1). Violations of the code of conduct may serve as evidence of a violation of the Arizona Code of Judicial Administration §7-201: General Requirements and this code section.
2. **Assumed Business Name.** Reference the Arizona Code of Judicial Administration §7-201: General Requirements.
3. **Change of Address.** Reference Arizona Code of Judicial Administration §7-201: General Requirements.
4. The certificate issued by the program staff 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.
5. The principal of a business entity, the office of the public fiduciary, or the department director shall annually file with the program coordinator, by June 30 of each year, a list of all certified private fiduciaries acting for or on behalf of the business entity, public fiduciary or the Arizona Department of Veterans' Services.
6. If the status of a private fiduciary changes from that of being associated with a business entity, a public fiduciary office or the Arizona Department of Veterans' Services, the private fiduciary shall, within 30 days of the change, notify the program coordinator and if appropriate, meet all requirements for certification as an individual, including posting of the bond.

7. A business entity, public fiduciary office or the Arizona Department of Veterans' Services, as applicable, shall notify the program coordinator, within 30 days, when an employee who is a certified private fiduciary leaves the employment of the business entity, public fiduciary office or the Arizona Department of Veterans' Services.
8. A certified fiduciary, when filing a document with the superior court, shall include the fiduciary's certificate number on the document.
9. A certified fiduciary shall report any bankruptcies, tax liens, foreclosures, civil judgments or felony convictions to the program coordinator.

G. Renewal of Certification. Reference the Arizona Code of Judicial Administration §7-201: General Requirements.

1. Expiration date. All certifications expire at midnight, on the last business day of May on each even numbered year.
2. Renewal Training. All certified private fiduciaries shall attend twenty hours of continuing training at least once every two years. Of the twenty hours, ten shall consist of training provided by the program coordinator. The remaining ten hours shall consist of training specifically relevant to guardianships, conservatorships or personal representatives. The certified private fiduciary shall provide documentation, on an approved form, of completion of the twenty hours of training.
3. All applicants shall pay the applicable training and renewal fees described in the fee schedule adopted by the supreme court.
4. The program coordinator may conduct a personal credit review and review public records regarding an applicant for renewal of certification.
5. All business applicants shall include a letter of good standing from the Arizona Corporation Commission or Arizona Secretary of State with the application for renewal of certification.
6. Decision Regarding Renewal. Reference the Arizona Code of Judicial Administration §7-201: General Requirements. In addition to the reasons specified in the Arizona Code of Judicial Administration §7-201: General Requirements, the program coordinator may refuse to renew the certification of an applicant if the applicant or an officer, director, partner, member, trustee or manager of the applicant was removed as a court appointed guardian, conservator, or personal representative for cause and shall refuse to renew the certification of the applicant if the applicant or an officer, director, partner, member, trustee, or manager of the applicant has a record of conviction by final judgment of a felony.

7. Notification of Decisions Regarding Renewal. Reference the Arizona Code of Judicial Administration §7-201: General Requirements.

H. Complaints, Investigation, Hearings and Disciplinary Action. Reference the Arizona Code of Judicial Administration §7-201: General Requirements.

1. A.R.S. §14-5651 provides:

E. A person who in good faith provides information or testimony regarding a private fiduciary's misconduct or lack of professionalism is not subject to civil liability. Communications regarding a private fiduciary's conduct are confidential.

F. Members of the private fiduciary advisory board, the program coordinator and all investigators, auditors, staff and hearing officers 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 misconduct by a certificate holder, which may or may not involve a hearing, the director may, in addition to any other actions specified in the Arizona Code of Judicial Administration §7-201: General Requirements:

a. Require the certificate holder to forfeit the surety or cash bond;

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

3. Appeal. Reference the Arizona Code of Judicial Administration §7-201: General Requirements. In addition, A.R.S. §14-5651(H) provides: "This section does not grant any private fiduciary or any applicant for a private fiduciary the right to a direct appeal to the supreme court."

Section 7-202: Private Fiduciaries
Appendix A
Code of Conduct

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

Standard 1. Decision Making. A private fiduciary shall exercise extreme care and diligence when making decisions on behalf of a ward or protected person. The private 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 private 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 private 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 private fiduciary is reasonably certain the decision will result in substantial harm.
- c. When the preferences of the ward or protected person cannot be determined, the private fiduciary shall make decisions in the best interest of the ward or protected person.
- d. Private fiduciaries shall maintain an awareness of their limitations, shall carefully consider the views and opinions of those involved in the treatment and care of the ward or protected person, and shall also seek independent opinions when necessary.
- e. Private fiduciaries shall recognize their decisions are open to the scrutiny of other interested parties and, consequently, to criticism and challenge. Regardless, the private fiduciary alone is ultimately responsible for decisions made on behalf of the ward or protected person.
- f. The private fiduciary shall refrain from decision making in areas outside the scope of the guardianship or conservatorship order and, when necessary, assist the ward or protected person by ensuring decisions are made in an autonomous fashion.

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

- a. The private 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 private fiduciary shall avoid self-dealing and the appearance of a conflict of interest. Self-dealing or conflict of interest arises where the private fiduciary has some personal or agency interest other individuals may perceive as self-serving or adverse to the position or best interest of the ward, protected person, or decedent. In situations where no other services are available, the private fiduciary shall disclose the potential conflict in a petition to the superior court, seeking approval prior to the provision of services.
- c. The private fiduciary shall vigorously protect the rights of the ward or protected person against infringement by third parties.
- d. The private fiduciary shall, whenever possible, provide all pertinent information to the ward or protected person unless the private fiduciary is reasonably certain substantial harm will result from providing this information.
- e. The private fiduciary shall ensure any document filed with the superior court is complete and accurate and is filed timely.

Standard 3. Guardianship. The private fiduciary acting as guardian shall assume legal custody of the ward and shall ensure the ward resides in the least restrictive environment available. The private 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 represents the least restrictive form of intervention available.

- a. The private fiduciary shall keep informed and aware of the options and alternatives available for establishing the ward's place of residence.
- b. The private fiduciary shall make decisions in conformity with the preferences of the ward in establishing the residence of the ward unless the private fiduciary is reasonably certain this decision will result in substantial harm.
- c. When the preferences of the ward cannot be determined or where they will result in substantial harm, the private fiduciary shall make decisions with respect to the place of abode of the ward that are in conformity with the best interests of the ward.

- d. The private fiduciary shall not remove the ward from the home of the ward or separate the ward from family and friends unless this removal is necessary to prevent substantial harm. The private fiduciary shall make every reasonable effort to ensure the ward resides at home or in a community setting.
- e. The private fiduciary shall seek professional evaluations and assessments wherever necessary to determine if the current or proposed placement of the ward represents the least restrictive environment available to the ward. The private fiduciary shall work cooperatively with available community based organizations to assist in ensuring the ward resides in a non-institutional environment.
- f. The private 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.
- g. The private 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.
- h. The private 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 private fiduciary is reasonably certain these decisions will result in substantial harm to the ward.
- i. The private fiduciary, when the preferences of the ward cannot be determined or will result in substantial harm, shall make decisions with respect to care, treatment and services, in conformity with the best interests of the ward.
- j. The private fiduciary, in the event the only available treatment, care or services are not the most appropriate and least restrictive shall advocate for the right of the ward to a more desirable form of treatment, care or services, retaining legal counsel to assist if necessary.
- k. The private 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.
- l. The private fiduciary shall work cooperatively with available individuals and organizations to assist in ensuring the ward receives care, treatment and services that represent the least restrictive form of intervention available and are consistent with the wishes or best interests of the ward.

- m. The private fiduciary shall not consent to extraordinary medical procedures without prior authorization from the superior court. The procedures the fiduciary shall not consent to without prior court approval include abortion, sterilization, organ transplants, psycho surgery, electro-convulsive therapy, medical treatment for clients whose religious beliefs prohibit these treatments and any other treatments or interventions the court shall approve pursuant to state law.
- n. The private fiduciary shall keep abreast of the law of the state regarding the withholding or withdrawal of life-sustaining treatment.
- o. The private fiduciary shall monitor the care, treatment and services the ward is receiving to ensure their continued appropriateness, and shall consent to changes as they become necessary or advantageous to the ward.
- p. The private fiduciary shall ensure the ward is receiving all medical and financial benefits to which the ward may be entitled.
- q. The private fiduciary shall protect and manage the monetary interests of the ward when acting in a *de facto* conservatorship.

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

- a. Upon appointment, the private fiduciary shall take steps to become informed of the statutory requirements for managing a protected person's estate.
- b. The private fiduciary shall not co-mingle any property or assets of the protected person's estate with property or assets of other estates the private fiduciary may hold as conservator, nor co-mingle with the private fiduciary's own property or assets.
- c. The private 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.
- d. The private fiduciary shall exercise prudence in the investment of surplus funds of the estate.
- e. Where the liquid estate of the protected person is sufficient, the private fiduciary may petition the superior court for authority to make gifts consistent with the wishes or past behavior of the ward, bearing in mind both the foreseeable requirements of

the ward and the tax advantages of gifts. The private fiduciary shall receive approval from the superior court prior to expending any funds for these gifts.

- f. The private fiduciary shall have no self-interest in the management of the estate and shall exercise caution to avoid even the appearance of self-interest.
- g. The private fiduciary shall ensure the protected person is receiving all medical and financial benefits to which the protected person may be entitled.
- h. The private fiduciary shall ensure all fees and expenses incurred for the protected person by the private fiduciary, including compensation for the services of the private fiduciary are reasonable in amount and necessarily incurred for the welfare of the protected person.
- i. The private fiduciary shall prepare complete, accurate and understandable accountings.
- j. The private fiduciary shall protect the rights and make decisions in the best interest of the protected person when acting in a *de facto* guardianship.

Standard 5. Personal Representative. A private 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. Upon appointment, the private fiduciary shall take the steps to become informed of the statutory requirements for managing a decedent's estate.
- b. The private fiduciary shall not co-mingle any property or assets of the decedent's estate with property or assets of other estates the private fiduciary may hold as personal representative, nor co-mingle with the private fiduciary's own property or assets.
- c. A private fiduciary shall exercise intelligence, prudence and diligence in providing competent management of the property and income of the estate. A private fiduciary acting as a personal representative shall observe the standards of care and duties of accounting applicable to trustees.
- d. A private fiduciary shall resolve questions in good faith and make decisions that are most beneficial to the estate.

- e. A private 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.
- f. A private fiduciary shall ensure all fees and expenses for the estate, including compensation for the private fiduciary are reasonable in amount and necessarily incurred in the administration of the decedent's estate.
- g. A private fiduciary acting as personal representative shall prepare complete, accurate and understandable court documents, including, but not limited to, petitions for determination of heirs, accountings and closing statements.

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

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

Standard 7. Compliance. The private fiduciary shall perform all duties and discharge all obligations in accordance with current Arizona law and the administrative rules, administrative orders, Arizona Code of Judicial Administration § 7-201: General Requirements and this code section adopted by the supreme court governing the certification of private fiduciaries.

The AOC acknowledges Michael D. Casasanto for granting permission to pattern the code of conduct after *A Model Code of Ethics for Guardians* ©.

**Section 7-202: Private Fiduciaries
Appendix B
Fee Schedule**

- A. Individual Certification.
1. Initial training session \$ 100.00
(Includes one copy of the training manual)
 2. Initial individual certification:
 - a. Certification expiring more than one year after application date \$ 150.00
 - b. Certification expiring less than one year after application date \$ 75.00
 3. Fingerprint application processing fee \$ 24.00
(Current rate set by Arizona law and subject to change)
 4. Individual renewal certification:
 - a. Biennial training session \$ 75.00
(Includes one copy of the training materials)
 - b. Biennial certification renewal \$ 75.00
- B. Business Entity Certification.
1. Initial business certification:
 - a. Certification expiring more than one year after application date \$ 75.00
 - b. Certification expiring less than one year after application date \$ 38.00
 2. Renewal certification:
 - a. Biennial business entity renewal \$ 75.00

C. Government Employee Certification.

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| 1. Initial training
(Includes one copy of the training manual) | \$ 100.00 |
| 2. Initial certification | \$ 0.00 |
| 3. Fingerprinting
(Current rate set by Arizona law and subject to change) | \$ 24.00 |
| 4. Renewal certification: | |
| a. Biennial training session
(Includes one copy of the training manual) | \$ 75.00 |
| b. Biennial certification renewal | \$ 0.00 |

D. Government Agency Certification.

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| 1. Initial Certification | \$ 0.00 |
| 2. Renewal Certification | \$ 0.00 |

E. Additional Materials.

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| 1. Initial or biennial training manual | \$ 50.00 |
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