

THE ANDRICH LAW FIRM, P.C.
Real Estate * Estate Planning * Commercial Transactions
4538 North Fortieth Street Phoenix, Arizona 85018
Tel: 602.774.3200 Fax: 602.774.3205

TO: Families, Financial Planners, Accountants and Anyone That Has An Living Trust, Will or Estate Plan

FROM: Devin Andrich, Esq.

DATE: September 23, 2008

RE: The Arizona Trust Code Goes Into Effect On January 1, 2009 – Please Ensure That You Have Your Trust Created or Amended No Later Than December 31, 2008.

The State of Arizona has adopted the “Arizona Trust Code” (“ATC”). The ATC was inspired by the Model Uniform Trust Code, first adopted by the state in 2004, but repealed after wide-criticism from the public. Arizona has quickly and quietly passed the ATC in an effort to avoid the past community uproar. The state seems to believe that the rights of the heirs or beneficiaries ultimately take priority over the privacy of the families that create and often manage their own trusts. Arizona’s ultimate objective is to know what assets your trust owns and how those assets will be distributed.

If you either have a living trust (aka “revocable trust,” “family trust” or some other title) as part of your estate plan, or are contemplating a living trust, there are important reasons to create or amend your current living trust before the new legislation takes effect. There are provisions that may be objectionable or burdensome to trustees (including the original trustees, i.e. parents, grandparents, as well as others such as financial planners and accountants) under the ATC.

The most offensive part of the ATC is the duty to inform and report to “Qualified Beneficiaries.” Qualified Beneficiaries now extend beyond the person or persons (typically, husband and wife) to people who become “permissive beneficiaries” during the life of the trust. Many couples who create a trust do not want the beneficiaries (typically, children and other relatives) to know of the nature and extent of their anticipated future interest in trust assets and distributions that a beneficiary may receive.

Certain “opt-out” provisions are available as to some notices. Trusts created/amended on or before December 31, 2008 will not be subject to the ATC notice requirements. Simply stated: if you do not want to tell your beneficiaries what assets are in your trust; who will receive the assets; or eventually provide them with reports on the performance of those assets, it is imperative that you create/amend your trust to opt-out of the ATC requirements no later than December 31, 2008!!!

Additionally, for couples that are either contemplating, or have started a family, the ATC makes it a more difficult for individuals to serve as the guardian or the conservator for children. Arizona treats the conservator and guardian roles separately (the guardian has the power to select schools, health care, residence, etc. and conservator manages the money for the ward). This remains a volatile area with abuses abound, so the ATC is designed to address some of those problems.

Extra duties are added for personal representatives, if estates are required by law to be probated. These new duties create an additional incentive for using a living trust (as opposed to just having a will) and avoiding probate.

The purpose of this information is to encourage you to either finish your estate plan, or amend your existing estate plan before year's end. These steps should ensure that your estate continues to clearly express how you want your estate(s) handled. Please share this information with your clients and significant other, and if necessary, take prompt action.