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NOTICE

Section § 14-5111: Duties of Appointed Attorney

- No later than 7 days before the initial hearing, the attorney must interview the person, inform them of their rights (e.g. to a jury trial, appear in court and select an attorney of their choosing), review the Court process and timelines and expected future proceedings and provide them with a copy of the order to the proposed appointee.
- Attorney must attest to completing the required notice, or explain reason for failure to meet the deadline.
- Attorney can be held in contempt for not completing.

A.R.S. § 14-1401: Notice by certified mail is required.

Make sure proof of notice documents are updated to reflect language affirming notice was sent by certified mail and attaching receipts.

A.R.S. § 14-5405, -5407, and -5409: Notice of hearing for conservatorship hearings must now provide notice of right to jury trial under A.R.S. § 14-1306. In addition, under § 14-5303, court is now required to recite right to jury trial at initial hearing.

Court can now assess damages, fees and costs against anyone the court finds "intentionally" failed to give notice or knowingly made a false claim that they did not receive notice.

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ACCESS

Section § 14-5316: Significant Relationships

Requires the guardian (applies to health care agents in separate statute) to foster and maintain the ward's contact with those with whom the ward has significant relationships.

The guardian may not limit the ward's contact unless the guardian reasonably believes that the contact will be detrimental to the ward's health, safety or welfare. Contacts that have been prevented from access can challenge in Court to obtain access.

If challenged, the burden is now on the guardian to prove by clear and convincing evidence that the contact should not be permitted because it would be detrimental to the ward's health, safety or welfare. Court has 15 days to schedule initial hearing.

Remedies for unreasonable denial of contact include, removal of guardian/agent and attorney's fees.

May want to consider updating health care powers of attorney to include language addressing powers of agent to deny contact and defining "significant relationships."

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PROTECTION

- **Jury Trials**
A.R.S. § 14-1306, allows judge to empanel a jury to proffer an advisory decision only. Applies even in cases in which no right to jury trial traditionally existed or the right to jury trial has been waived.
- **Clear and Convincing Standard**
A.R.S. § 14-5401, requires proof by clear and convincing evidence that the person is unable to manage their affairs and has property that will be wasted or dissipated unless the appointment is made. Protected person is required to appear before the court. If the protected person is unable or unwilling to attend the hearing, there must be evidenced presented explaining the reason (including a declaration signed by the person).
- **INFORMATION**
A.R.S. § 14-5303 and 5404, petition for appointment of a guardian and/or conservator must now contain the following statements:
 - Whether the alleged incapacitated person is the principal under a health care power of attorney or durable power of attorney in which the petitioner is nominated as a guardian. (If so, include copies with petition.)
 - Whether the person has a vested interest in a trust, and, if so, the name of the trust and the current trustee of the trust.

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SUPPORTIVE DECISION MAKING

Adding Sections 14-5721 and 14-5722.

SDMA's are legal instruments that allow individuals, particularly those with disabilities to make their own decisions about their lives with the support of trusted individuals. Instead of removing or limiting a person's decision-making rights, as is the case with guardianships or conservatorships, SDMA's enable the person to retain their rights while receiving assistance in understanding and making decisions.

Key points of Article 9

- **Purpose and Intent:** Respect and autonomy.
- **Appointment of Supporters:** One or more individuals. This can include accessing, collecting and obtaining information relevant to a decision. The appointment must be made on the form set forth in A.R.S. section 14-5722(H).
- **Duties of Supporters:** Supporters must act in good faith, be loyal and act in the best interests of the individual. They should provide accurate and complete information to help the individual make informed decisions.
- **Limitations:** The SDMA **does not** give supporters the authority to make decisions on behalf of the individual. It only allows them to assist in the decision-making process.
- **Termination:** The individual has the right to terminate or modify the SDMA at any time. Incapacity of the adult or appointment of a guardian for the person, automatically terminates the agreement.
- **In essence, Supported Decision-Making Agreements offer an alternative to the more-restrictive guardianship rules for wards with cognitive disabilities who may still want to act independently.**

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SDMAs (Cont.): POTENTIAL PITFALLS

- **Undue Influence.**
- **Misunderstanding of Roles.** Some might mistakenly believe that the supporter has decision-making authority.
- **Conflicts of Interest.** A supporter might have personal or financial interests that conflict with the best interests of the individual.
- **Potential for Abuse.** The SDMA framework might be used to take advantage of vulnerable individuals, especially in financial matters.
- **Reluctance by Third Parties.** This can lead to delays or disputes when trying to carry out decisions.
- **Ambiguities in the Agreement.** Examples include scope of the supporter's role or the types of decisions covered by the agreement.
- **Over-reliance on the Supporter.**
- **Termination Disputes.** An example would be disagreements about whether conditions for termination, such as incapacity of the individual, have been met.
- **Multiple Supporters.** There could be conflicts among supporters regarding the best course of action for the individual.
- **Lack of Oversight.** Lack of court oversight could result in misuse or abuse.
- **Legal Recognition.** Because this is a new legal concept, there might be challenges with it being recognized or enforced in jurisdictions that are unfamiliar with it, such as Arizona.

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Final Regs Basis Reporting

- Treas. Regs. Section 1.6035-1(c)(4) updated to assets actually distributed;
- Elimination of zero basis rules;
- Eliminates needless catch all reporting;
- If distributed after the deadline, supplemental reporting by January 31 the year after distribution;
- Before the reported value becomes final, executors should report, and beneficiaries should use the value as reported on the return. If the estate tax value is later adjusted, the beneficiary may be subject to an income tax deficiency and potential penalty, though the penalty may be waived due to reasonable cause, depending on the circumstances;
- A more expansive list of property that doesn't need to be reported for basis consistency purposes, including life insurance proceeds paid as a lump sum, property subject to IRC Section 1014(e), various cash equivalents such as tax refunds and notes that aren't forgiven at death;
- An explanation and examples of how property subject to debt should be reported for basis consistency purposes;
- Guidance on applying basis consistency rules when property passes to charity or a spouse but isn't entirely reduced by an offsetting estate tax deduction;
- Clarification that an estate that's subject to basis consistency rules but has no property to report on a Schedule A to a beneficiary because it's all exempted property should still file Form 8971 indicating all property was exempted from reporting; and
- Additional guidance on who's an executor for basis consistency purposes if there isn't a court-appointed executor.

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Questions

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