



**STANDARDS FOR CERTIFICATION
OF LAWYERS SPECIALIZING IN
ESTATE AND TRUST LAW**

Approved 1/8/2020

Pursuant to the authority vested in the Arizona Board of Legal Specialization (“BLS”) by the Board of Governors of the State Bar of Arizona, the BLS prescribes the following standards and requirements for certification of lawyers specializing in estate and trust law in accordance with the Rules and Regulations of the Arizona Board of Legal Specialization established by the Board of Governors.

No provision herein contained shall in any way limit the right of a lawyer certified as specializing in estate and trust law to practice law in all fields or to act as counsel in every type of legal matter. Any lawyer, alone or in association with any other lawyer, shall have the right to practice in all fields of law, even though the lawyer is certified as specializing in estate and trust law.

No lawyer shall be required to be certified as specializing in estate and trust law before that lawyer can practice law in the field of estate and trust law or act as counsel in any particular type of estate and trust law matter. Any lawyer, alone or in association with another lawyer, shall have the right to practice in the field of estate and trust law and to act as counsel in every type of estate and trust law case, even if the lawyer is not certified as specializing in estate and trust law.

The Board of Legal Specialization is committed to promoting racial, ethnic, and gender diversity, and to assuring the rights of the disabled within all Board of Legal Specialization programs, committees, and activities, and will periodically monitor all existing programs, committees, and activities for compliance with the goal of diversity and with assurance of the rights of the disabled in every aspect of the Board of Legal Specialization.

I. GENERAL REQUIREMENTS

- A. Active Member of the State Bar.** An applicant for certification as a lawyer specializing in estate and trust law shall be an active member in good standing of the State Bar of Arizona.
- B. Application.** An applicant shall be required to complete an application in a form prescribed by the BLS to furnish such additional and supplemental information as may be required by the BLS or the Estate and Trust Law Advisory Commission, and to comply with all applicable Rules and Regulations of the Arizona Board of Legal Specialization.
- C. Recommendation by Estate and Trust Law Advisory Commission.** An applicant shall be recommended to the BLS for certification as a lawyer specializing in estate and trust law when the applicant is found to have complied with the applicable standards by no less than five (5) of the ten members of the Estate and Trust Law Advisory Commission.
- D. Expiration of Certification.** A certificate of specialization shall expire five (5) years after the date thereon; provided, however, that if timely application for renewal of certification is made as provided under the Rules and Regulations of the Board of Legal Specialization, the certificate shall remain in effect until the BLS has acted upon the renewal application. Renewal

of certification shall be required every five (5) years.

- E. Revocation/Suspension of Certification.** The BLS may revoke or suspend the certification of a lawyer recognized as specializing in estate and trust law for any reason specified in the Rules and Regulations of the Arizona Board of Legal Specialization, including but not limited to, advice from the Estate and Trust Law Advisory Commission that the certified lawyer no longer meets the criteria for substantial involvement in the field of estate and trust law as set forth in Section II hereof.
- F. Fees.** Every applicant shall pay application and testing fees as may be prescribed by the BLS.

II. STANDARDS FOR CERTIFICATION

- A. Required Period of Law Practice.** Applicants must be admitted to the practice of law for a minimum of five years, of which a minimum of two years immediately preceding the application must have been in the practice of law within the State of Arizona and after such admission shall have engaged in legal service (as defined in Section 1 of the Rules and Regulations of the Arizona Board of Legal Specialization) equivalent to at least 50% of a full-time law practice.
- B. Substantial Involvement in Estate and Trust Law.** “Estate and trust law” is defined as legal representation in matters involving tax planning, wills and trusts, estate and trust administration, and estate and trust litigation.

An applicant shall make a satisfactory showing, as determined by the BLS in accordance with objective and verifiable standards, based upon advice of the Estate and Trust Law Advisory Commission, of substantial involvement in the field of estate and trust law during at least four of the preceding six years, including the year immediately preceding this application. This can be shown by providing such information as may be required by the BLS, including but not limited to, peer review and evidence of special competence and experience.

For purposes hereof, “substantial involvement in the field of estate and trust law” shall mean the engagement by the applicant in legal service (as defined in Section I of the Rules and Regulations of the Arizona Board of Legal Specialization) equivalent to at least 50% of a full-time practice to matters in which issues of estate and trust law are significant factors.” An applicant shall certify that they are actively involved in a minimum of five of the following substantial involvement categories:

1. Rendition of advice as to the state and federal estate, gift and generation-skipping transfer tax consequences of transactions such as gifts to individuals, trusts and charitable organizations; the drafting and implementation of irrevocable trusts, including present interest trusts, irrevocable life insurance trusts and charitable trusts; the drafting and implementation of wills and revocable trusts; and the formation and implementation of estate and trust business arrangements, including closely held corporations, partnerships and buy-sell agreements.
2. The preparation of state and federal estate, gift and generation-skipping transfer tax returns, including the rendition of advice concerning the preparation and filing of such returns and all applicable elections.

3. Rendition of advice regarding the valuation of assets and partial interests in assets in situations described in subparagraphs A. and B. above.
4. Rendition of advice incident to the planning, drafting and implementation of wills and/or trusts; and beneficiary designations, including:
 - a. Distribution of all property to surviving spouse with alternate to children as each attains the age of majority, or when the youngest attains a specified age, or distributing to children using a testamentary trust; and
 - b. Utilizing a marital trust, a qualified election trust, credit shelter trusts, generation-skipping trusts, or charitable remainder trusts; and
 - c. Distribution of retirement assets, and life insurance and annuity proceeds.
5. Rendition of advice incident to the drafting and implementation of amendment and auxiliary documents, including:
 - a. Codicil to will;
 - b. Amendment to trust;
 - c. Powers of attorney;
 - d. Disclaimers.
6. Rendition of advice incident to the drafting and implementation of business succession documents, including estate and trust business arrangements, closely-held corporations, partnerships and buy-sell agreements.
7. Rendition of advice regarding applications for public benefits; including, but not limited to, Social Security retirement benefits, Supplemental Security Income benefits, Medicare or Medicaid (Arizona Long Term Care System or Arizona Health Care Cost Containment System) benefits, and Railroad Retirement benefits.
8. Rendition of advice regarding completing transfers of decedents' assets by probate administration, terminations of joint tenancies, collection of real or personal property by affidavit and retirement plans.
9. Rendition of advice regarding completing transfers of assets by trust terminations or otherwise; including, but not limited to, terminations of revocable living trusts, life insurance trusts, gift trusts, testamentary trusts or other procedures resulting in the transfer of assets in which the decedent held an interest.
10. Rendition of advice to a fiduciary or administration as a fiduciary of estate and trust; including, but not limited to, the preparation of periodic accounting, distributions, court settlement of accounts and the preparation of appropriate tax returns or trust tax information;
11. Acting as trial counsel in contested matters involving will contests, determinations of heirship, objections to accounting, fiduciary appointments, creditors' claims, breaches of fiduciary duty, financial exploitation, guardianship, conservatorship, mental health proceedings asset ownership disputes, tax matters or such other activities in the estate and

trust litigation law area which the applicant demonstrates to the satisfaction of the Board of Legal Specialization.

“Trial counsel” means an attorney who presents all or a substantial portion of a case or proceeding to the court or jury.

“Contested matters” means legal representation in any dispute where a trial or other evidentiary hearing on the merits was or might ultimately be necessary whether by a court, with or without a jury, or by other alternative method of dispute resolution such as arbitration. Service as a judge pro tem for particular cases may qualify if the matter or hearing resulted in a decision based upon submitted memoranda or oral testimony.

12. Representing an interested party in mental health, guardianship and/or conservatorship proceedings either from the filing of an initial petition through the appointment of the guardian and/or conservator, or after the appointment of the conservator and/or guardian, or
13. Such other activities in the estate and trust law areas which the applicant demonstrates to the satisfaction of the Board of Legal Specialization.

C. Competence and Integrity. An applicant must demonstrate honesty, integrity, professionalism as defined by the Lawyer’s Creed of Professionalism of the State Bar of Arizona, and a high degree of competence in the practice of estate and trust law. The required degree of competence is substantially higher than that possessed by a general practitioner who regularly handles an estate and/or trust matter. A “high degree of competence” shall mean the satisfaction of the following standards:

1. The applicant demonstrates a substantially complete knowledge of substantive law and rules of practice, procedure, evidence and ethics pertaining to estate and trust law practice;
2. The applicant demonstrates a high degree of skill, thoroughness, professionalism, preparation, effectiveness and judgment in the field of estate and trust law; and
3. The applicant satisfactorily completes a written examination in the topics specified in paragraphs 1 and 2 above. This examination shall be given at least once each calendar year at a date, time and location determined by the Estate and Trust Advisory Commission. The test and its grading criteria shall be formulated at the direction of the Advisory Commission and approved by the BLS. Any applicant may retake the exam for a third time only after reapplying and paying all applicable examination fees. No applicant may retake the exam for an additional time thereafter unless upon applicant’s petition to the Advisory Commission special circumstances are demonstrated which improve Applicant’s prospects for successfully completing the examination.
4. That the applicant demonstrate a substantially complete knowledge of and a high degree of skill in the use of alternative dispute resolution as it applies in the field.
5. Legal competence is measured by the extent to which an attorney (1) is specifically knowledgeable about the fields of law in which the attorney practices, (2) performs the

techniques of such practice with skill, (3) manages such practice efficiently, (4) identifies issues beyond his or her competence relevant to the matter undertaken, bringing these to the client's attention, and (5) properly prepares and carries through the matter undertaken.

6. **Disciplinary History:**

Imposition of a discipline sanction under Rule 60, Ariz. R. Sup. Ct. within the five-year period preceding the date of application may be grounds for denying, suspending, or revoking certification.

The following shall not be considered in approving or denying an application for certification:

- a. Diversion,
- b. Dismissals, or
- c. Allegations of misconduct that did not result in a disciplinary charge.

D. References. With each application, the applicant will submit the names of at least five Arizona attorneys who practice in the field or judges before whom the applicant has appeared, familiar with the applicant's practice, and not including current partners or associates. In addition, the applicant may submit names of other professionals familiar with the applicant's practice such as accountants, trust officers, life insurance agents and financial consultants. The Advisory Commission will select at least five Arizona lawyers, judges, or qualified professionals as references from cases/matters/projects submitted by the applicant to demonstrate substantial involvement. The references will be requested to provide written comments concerning the applicant not only on such specific topics as knowledge, skill, thoroughness, preparation, effectiveness, and judgment, but also concerning the applicant's ethics and professionalism.

Names of applicants will be published in a State Bar of Arizona publication, providing an opportunity for comment, at least 30 days before consideration of applications by the Advisory Commission. Reference names supplied by the applicant shall not include members of the Board of Legal Specialization or Estate and Trust Advisory Commission. The Estate and Trust Advisory Commission may also consult other sources. Documentation of all matters and comments considered by the Advisory Commission shall be contained in the applicant's file.

E. Continuing Legal Education Requirements. Continuing legal education requirements for attorneys certified as estate and trust law specialists shall be 12 hours per year in one or more seminar of advanced level programming, concentrated in estate and trust issues, consisting of 12 hours of substantive CLE activities in estate and trust law and 3 hours in professional responsibility. Credit for other educational activities may be granted by the BLS as specified in the Rules and Regulations, Section VIII.B.

III. STANDARDS FOR RE-CERTIFICATION

For the purposes of re-certification, the lawyer shall demonstrate continued substantial involvement in the area of estate and trust law as set forth in paragraph II.B(1-13) above on the application for re-certification.

These services shall be detailed on an application form, showing the nature of the legal services in which the applicant has been engaged in the past five years, and identifying the types of issues of estate and trust law with which the applicant has dealt and the frequency of involvement. Such demonstration shall be made upon re-certification through the completing by the applicant of a form of questionnaire approved by the BLS. Formal written examination for recertification shall not be required where there has been no break in certification.