



SOUTH DAKOTA TRUST LAW UPDATE - 2017 Edition
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The 2017 session of the South Dakota legislature is now in the books. Beginning July 1, 2017, several new trust laws became effective. South Dakota's legislature annually approves an array of modern trust statutes fortifying South Dakota's already robust trust law demonstrating the state's commitment to South Dakota's status as a premier trust jurisdiction. Here's what you need to know about the 2017 revisions to better serve your clients.

South Dakota joins the wave of states adopting the Uniform Fiduciary Access to Digital Assets Act ("UFADAA"). UFADAA modernizes fiduciary law for the internet age. The new law grants your clients the power to plan for the management and disposition of their digital assets and remedies for fiduciaries if the client fails to plan. Adoption of a uniform law enables South Dakotans to draw on the experience and authority generated by other states in the application of the new law. UFADAA is codified in SDCL Chap. 55-19.

The passage of UFADAA was an initiative of the South Dakota Trust Association. The remainder of trust law revisions discussed in this memo emanates from the annual work of the Governor's Trust Task Force ("TTF").

South Dakota replaced its virtual representation statutes with a more user-friendly version. It is a fundamental principle that a trust is for the benefit of the beneficiaries named in the trust. Identifying who the beneficiaries are at any one time can be a challenge given the different categories of beneficiaries that exist. Notice to beneficiaries is important to comply with due process requirements. Virtual representation provides a framework for identifying and giving notice to different categories of beneficiaries. The new law uses plain language and improves our understanding of who is entitled to notice. SDCL Chap. 55-18.

To accommodate international families who seek to form South Dakota trusts or bring existing trusts to South Dakota, a voluntary trust registration procedure was added to the code. In some foreign jurisdictions, before a foreign trust can be moved, it must be registered in the new jurisdiction. SDCL 55-1-56 thru 55-1-59 were added to authorize the registration of a trust and govern the process, plus it provides a sample registration form. The new law also makes it clear the registration is completely voluntary and the contents of the registration are confidential.

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The current trustee is granted the power to appoint a co-trustee unless prohibited by the trust. SDCL 55-1A-41.

Trustees are provided more options to pay the costs of defending the trust and trustee in the event litigation is filed. If a trust holds illiquid assets, the new law provides options to indemnify the trustee for expenses incurred in defending claims against the trust. SDCL 55-1A-32 & 55-1A-32.1.

Further enhancing South Dakota's quiet trust statute, SDCL 55-2-13, additional provisions were added to restrict the flow of information to trust beneficiaries if desired by the grantor. A quiet trust is one where the grantor does not want the trust beneficiary to know about the existence of the trust, its terms, or the extent and nature of the trust assets.

Typically, when an old trust is decanted to a new trust, the assets owned by the old trust are retitled in the name of the new trust. SDCL 55-2-15 was amended to give the option of skipping the step of retitling the trust assets.

Since the enactment of South Dakota's nonjudicial modification and trust termination statutes in 1998, a trust could be modified or terminated without the need for obtaining a court order. SDCL 55-3-24 & SDCL 55-3-25. Obtaining a court order is and always has been purely optional. To reinforce the option of the court order, SDCL 55-3-24 & 25 have been supplemented to make it absolutely clear and unambiguous a court order is not required to modify or terminate a trust.

A trustee is authorized to loan funds to itself, affiliates and other related parties, but only under certain circumstances. SDCL 55-4-10.

Enhancing South Dakota's pre mortem trust challenge statute, a court order may be obtained to confirm a trust is valid and enforceable. SDCL 55-4-57.

South Dakota's DAPT statutes have been fortified to assure SD law will be applied to transfers made to a DAPT by a nonresident grantor. SDCL 55-16-10 supplements SD's already strong statutory language which aids the court in a conflict of laws analysis and application of South Dakota's public policy in protecting assets transferred to a properly drawn and administered DAPT from claims of the grantor's creditors. Further assisting the court in a conflict of laws analysis regarding any South Dakota trust, SDCL 21-22-31 was amended and a new statute, SDCL 21-22-32, was added.

The definition of "beneficiary" in SDCL 21-22-1(1) has been revised to clarify who a beneficiary is for purposes of notice in a court supervised trust proceeding.

South Dakota's robust trust privacy statute was further strengthened by a revision to SDCL 21-22-28 which specifically addresses sealing trust records in the event of litigation.

The Real Property Trust statutes in SDCL Chap. 43-10 were repealed. They were adopted in 1877 and last amended in 1939. Two concepts were retained. Trusts holding real property must be in writing and innocent third party purchasers are protected as they are now.