



SOUTH DAKOTA TRUST LAW UPDATE - 2020 Edition

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Not even a pandemic could postpone the July 1, 2020, effective date for several new laws affecting South Dakota trust companies and South Dakota trusts; however, the pandemic did (and continues to) impact trust company operations - all of which will be discussed right here, right now in the 2020 Edition of GPNA's Trust Law Update. During my annual testimony on trust legislation to the legislature, I compare the process of updating South Dakota's trust statutes to weeding the garden to keep it healthy and bountiful. The annual package of legislative changes resulting from the work of the Governor's Task Force on Trust Administration and Reform ("TTF") yields the statutory equivalent of a healthy and productive garden for families, fiduciaries and other folks to harvest toward the goal of achieving their objectives.

Three Bills were enacted this past session affecting South Dakota trust law and trust companies. Notably, the SD Division of Banking ("DOB") did NOT submit legislation to amend laws relating to trust companies, which represents the first time in a long, long time no amendments to SDCL Chap. 51A-6A were introduced during the session. Typically, the DOB introduces a Bill addressing regulatory matters impacting South Dakota trust companies and the TTF introduces the trust industry piece on trust law. Senate Bill 65, authored by the TTF, represents the trust industry piece impacting trusts. Senate Bill 119 amended statutes impacting private placement life insurance. House Bill 1179 authorizes series LLCs. Both private placement life insurance and series LLCs enhance South Dakota's trust industry. Note the series LLC statutes have a delayed effective date of November 15, 2020.

Notable Items in Senate Bill 65 (the TTF legislation) include:

- SDCL 55-1-21.4, et.seq. were amended to clarify the role of an enforcer in a non-charitable purpose trust in order to allow for a mechanism to monitor and supervise the trustee. Purpose trusts typically do not have beneficiaries. The enforcer fulfills the supervisor role in such a trust.
- SDCL 55-1-36, 55-1-44, & 55-1-45 were amended to align SD law with changes to asset protection trusts in other states as well as to synchronize the statutes with other SD laws.
- SDCL 55-1B-2 was amended in recognition of the fact South Dakota trusts often hold closely held business assets or assets difficult to value. The task of valuing those assets are typically delegated to others with authority to value such assets. This revision simply confirms the trustee can rely on the value of such assets by others.

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- SDCL 55-1B-6 was amended to further address the trust protector’s role in adhering to quiet trust concepts which protect the confidentiality of trust information.
- SDCL 55-2-13 was amended to address more quiet trust principles regarding notice to beneficiaries and acknowledges conditions can be placed on giving notice to beneficiaries.
- SDCL 55-3-13 was amended to confirm a former trustee can be reimbursed for expenses incurred defending itself from actions brought against the trustee.
 - SDCL 55-3-20.1 was amended to address removal of a trust enforcer.
 - SDCL 55-3-45 was amended to make it clear trustee accountings can be approved by trust advisors and trust protectors, furthering quiet trust concepts.
 - SDCL 55-16-2 was amended to accommodate a clean-up associated with the intentionally defective grantor trust.

Senate Bill 119 positively affects private placement life insurance planning under South Dakota law. This amendment addresses in-kind policy benefits and investor control issues. The amendment allays concern regarding investor control over such policies and enhances South Dakota’s appeal to clients and advisors who utilize PPLI in their planning.

House Bill 1179 authorizes series LLCs under South Dakota law. The effective date of this legislation is deferred until November 15, 2020. This new development unlocks the tactic of forming multiple LLCs under an efficient technique that accommodates related, but separate ownership of assets in LLCs by a trust, or other owner.

Operating a trust company in the midst of a pandemic presents its own challenges. After all, I am confident it has never been done before in South Dakota or anywhere in the past century. Illustrating South Dakota’s common sense approach, the DOB issued guidance on easing the burden on the governance of trust companies. Through separate edicts issued by the DOB, guidance was provided on holding director meetings, appointing contingent directors and the conduct of audits. Please refer to Director Afdahl’s memo dated March 23, 2020, Number 10-007 and Senior Financial Institution Examiner Pesicka’s email dated March 27, 2020 for additional information and guidance.

There you have it. Another eventful Legislative Session and aftermath is now in the books. Planning is under way for the next Legislative Session. If you have any recommendations for legislation or need additional information on 2020 legislation, please don’t hesitate to contact me.



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