

2015 South Dakota Trust Legislative Update

June 2015

The South Dakota Standing Task Force on Trusts each year submits a proposed bill for consideration by the state legislature. The bill may cover simple clean up provisions to legislative language or it may make sweeping changes on how trusts are administered in South Dakota. In 2015, the Task Force's proposals, which will become law on July 1, 2015, addressed both aspects. The most relevant of these changes are discussed in this Client Memorandum.

Drafting Flexibility

A new section clarifies and codifies the previous understanding of drafting attorneys that the settlor has a great deal of flexibility when drafting or modifying a trust. The new statute provides that, with the exception of the power to modify the rule against corporate self-dealing, a settlor may expand, restrict, eliminate or otherwise vary the provisions generally applicable to trusts and trust administration.

Arbitration

Arbitration has become a popular method of resolving disputes both for its cost and time savings. A new section to the South Dakota trust law clarifies that the trustee's power to submit matters (other than a challenge to the validity of a trust) to arbitration is now enforceable by court order. All arbitration proceedings must take place in South Dakota unless the terms of the trust otherwise provide. The new statute section also extends the privacy protections afforded to court records (perpetually sealed records) to all arbitration proceedings.

Enhanced Transparency

The desire for enhanced transparency is also evident in this year's legislation. Absent a specific prohibition in the governing instrument, a corporate trustee is permitted to utilize the services offered by affiliates and receive compensation so long as there is full disclosure of the fees made to all statutory beneficiaries who are not subject to a notice restriction (imposed under SDCL 55-2-13) by the settlor, trust advisor or trust protector.

Termination for Uneconomic Charitable Trusts

Another amendment gives the trustee of a charitable trust the power to seek a termination of a trust that has a value of one hundred fifty thousand dollars or less, when the terms of the trust are silent. The prior limit was fifty thousand dollars. The termination is not automatic. The trustee now has the power to petition the court for relief at such time.

LLC as Settlor

A new provision that has broad reaching estate planning potential is the change in the definition of a 'person' to include a limited liability company. This provision resolves a question that has existed for some time and now confirms that a limited liability company can act as a settlor of any trust created under South Dakota laws.

2015 South Dakota Trust Legislative Update

June 2015

Settlor's Role in Court Supervision Proceedings

A settlor of an irrevocable trust will now be permitted to petition and have a voice in court supervision proceedings. Under existing law the settlor has no such standing. It is now clear that if the settlor objects, a court may not dispense with court supervision.

For more information on the 2015 amendments, a copy of our Quick Guide to South Dakota Trusts or our South Dakota trustee services please contact:

Alice Rokahr
President
Trident Trust Company (South Dakota) Inc
+1-605-679-4355
arokahr@tridenttrust.com

**Trident Trust Company
(South Dakota) Inc**
200 North Phillips Avenue
Suite 301
Sioux Falls
South Dakota, 57104, USA
Tel +1-605-679-4355
Fax +1-605-679-4357
sd@tridenttrust.com