



South Dakota Trust Law Update – 2025 Edition

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Significant trust law developments in South Dakota for the last year included the adoption of Senate Bill 69, the Governor’s Trust Task Force annual legislative package, the issuance of guidance memorandums from the South Dakota Division of Banking, and a South Dakota Supreme Court decision that addressed the topic of trustee self-dealing activity.

2025 STATUTORY UPDATE

The Governor’s Trust Task Force did not introduce a legislative package during the 2024 session. The Trust Task Force introduced Senate Bill 69 during the historic 100th Legislative Session, which was passed by the 2025 South Dakota Legislature, signed into law in March 2025 and became effective July 1, 2025. The highlight of the legislation is the addition of a new trust advisor position in SDCL Chap. § 55-1B, the tax trust advisor. The tax trust advisor joins the investment and distribution trust advisors who, exercising fiduciary authority and acting in a fiduciary capacity, directs the trustee on tax matters. The trustee is expressly protected, as an excluded fiduciary in a directed trust arrangement, from liability for taking actions directed by the tax trust advisor.

South Dakota was the first in the nation to authorize the trust protector and the family advisor positions in the directed trust model. The tax trust advisor position continues South Dakota’s pioneering role in developing modern trust law. The duties of a tax trust advisor are comprehensive, as set forth in SDCL § 55-1B-13. It states:

The powers and discretions of a tax trust advisor must be as provided in the governing instrument and may be exercised or not exercised, in the best interests of the trust, in the sole and absolute discretion of the tax trust advisor and are binding on any other person and any other interested party, fiduciary, and excluded fiduciary. In addition to the powers and discretions granted to the tax trust advisor in the governing instrument, the tax trust advisor may

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also exercise any of the following powers and discretions to the extent the exercise is not prohibited under the terms of the governing instrument:

- (1) Direct the trustee with respect to tax matters related to the trust, including tax elections, tax returns to be filed, positions to be taken on tax returns, tax payments to be made, and the anticipated tax impact to the trust or a beneficiary of any transaction involving the trust, including:
 - (a) The retention, purchase, sale, exchange, or tender of any asset of the trust;
 - (b) Any contribution to or distribution from the trust: or
 - (c) Any contribution to or distribution from an entity owned by the trust;
- (2) Direct the trustee to rely on any tax information received pursuant to § 55-2-23;
- (3) Select one or more tax advisors to prepare tax returns or other related filings;
- (4) Direct the trustee to sign and file tax returns;
- (5) Direct the trustee with respect to any additional powers and discretions over tax-related matters provided in the governing instrument; and
- (6) Direct the trustee as to any tax-related powers referenced in chapter § 55-1A.

As a caution, the tax trust advisor position has not yet been added to the Special Purpose Entity (“SPE”) statute, SDCL § 51A-6A-66. Until the SPE statute is updated, an SPE does not have statutory authority to serve as a tax trust advisor.

It is also worth noting the investment trust advisor historically directed the trustee on tax matters since the Directed Trusts Chapter, SDCL Chap. § 55-1B, was adopted. The creation of the tax trust advisor position does not preclude the investment advisor from directing the trustee on tax matters.

Senate Bill 69 added clarifying language to South Dakota’s decanting statute, SDCL § 55-2-15, to distinguish the decanting process from the trust modification process. South Dakota trust law offers multiple options to remodel or update an old and cold trust to reflect modern trust provisions. The three statutory options offered under South Dakota law to remodel a trust are decanting, modification, and reformation. Each option has different notice provisions and conditions to satisfy. The decanting option is the only method that a trustee can exercise their discretionary authority to decant without giving notice to qualified beneficiaries. The amendment to SDCL § 55-2-15 reinforces that each option is separate and distinct, but that a modification of a trust can be treated as a decanting in certain circumstances.

Senate Bill 69 also revised SDCL § 55-3-24, another trust modification and termination statute, to clean up its language by changing “written agreement by all beneficiaries” to “written consent by all beneficiaries.” The revision did not substantively change the modification statute.

TRUST COMPANY GUIDANCE MEMOS

The South Dakota Division of Banking has a robust and user-friendly trust company website available as a reference for trust officers, trust company executives, and advisors.

<https://dlr.sd.gov/banking/trusts/default.aspx>. Recent developments from the regulatory side and important announcements of the Division of Banking are available for review at this website. Of particular note for the past year are two guidance memos issued by the Division. One was issued in October 2024, entitled “Anti-Money Laundering and Countering the Financing of Terrorism Guidance.” The other was issued February 28, 2025, entitled “Cyber Hygiene: Actions Your Institution Should Take Today.”

Both memos provide timely reminders and substantive guidance on managing cyber risks and meaningful due diligence programs fundamental to protecting client information and ensuring South Dakota’s trust industry serves only clients engaging in lawful activities. The guidance memos serve as a resource for trust company compliance programs and it should be placed on the agenda for a trust company board of directors meeting to educate directors on the risks and responsibilities of a South Dakota trust company.

CASE LAW SUMMARY

The South Dakota Supreme Court issued one decision of significance relating to trust law, *Langbehn v. Langbehn*, 2025 S.D. 11. This case involves a mother suing her son for breaching his fiduciary duty as a co-trustee of his deceased father’s trust under the theory the son was self-dealing. The lower court agreed with the mother on her claims against her son (the co-trustee), removed the son from his position as a co-trustee of his father’s trust and awarded her money damages for the breach. The Supreme Court reversed.

The Supreme Court considered whether the son’s actions in leasing the farm land owned by the trust at below market rates constituted a breach of fiduciary duty as an act of self-dealing. Generally, a trustee does not have the authority to self-deal. SDCL § 55-2-2. A trustee has a fiduciary duty to act wholly for the benefit of the trust pursuant to SDCL § 55-2-1. However, a statutory exception to the general rule exists if the trust instrument is clear and unmistakable in allowing the trustee to self-deal. SDCL § 55-2-3(4). Whether a trust instrument permits certain conduct is a question of law requiring interpretation of the trust instrument. When interpreting a trust instrument, the court must ensure the intentions and the wishes of the settlor are honored. The trust in this case explicitly allowed the son to lease the land at below-market rates. The son did not breach his fiduciary duty based on the clear and unmistakable expression of the settlor’s intent in the language of the trust.

Langbehn provides practitioners a road map on drafting a trust to avoid a self-dealing claim in the situation where the child who is active in the family business is also a fiduciary.



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