

AN ACT

ENTITLED, An Act to revise certain provisions regarding the administration of trusts and estates.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 55-4-30 be amended to read as follows:

55-4-30. The settlor of any trust affected by this chapter may, by provision in the instrument creating the trust if the trust was created by a writing, or by oral statement to the trustee at the time of the creation of the trust if the trust was created orally, or by an amendment of the trust if the settlor reserved the power to amend the trust, relieve the trustee from any or all of the duties, restrictions, and liabilities which would otherwise be imposed upon the trustee by this chapter; or alter or deny to the trustee any or all of the privileges and powers conferred upon the trustee by this chapter; or add duties, restrictions, liabilities, privileges, or powers, to those imposed or granted by this chapter. However, no act of the settlor relieves a trustee from the duties, restrictions, and liabilities imposed upon the trustee by §§ 55-4-10 to 55-4-12, inclusive.

Section 2. That § 55-4-31 be amended to read as follows:

55-4-31. Any beneficiary of a trust affected by this chapter may, if of full legal capacity and acting upon full information, by written instrument delivered to the trustee relieve the trustee as to such beneficiary from any or all of the duties, restrictions, and liabilities which would otherwise be imposed on the trustee by this chapter, except as to the duties, restrictions, and liabilities imposed by §§ 55-4-10 to 55-4-12, inclusive. Any such beneficiary may release the trustee from liability to such beneficiary for past violations of any of the provisions of this chapter.

Section 3. That chapter 21-22 be amended by adding thereto a NEW SECTION to read as follows:

An accounting by a trustee of a court supervised trust and the final approval thereof by a court is conclusive against all persons in any way interested in the trust, and the trustee, absent fraud, intentional misrepresentation, or material omission, shall be released and discharged from any and all

liability as to all matters set forth in the accounting. For purposes of this section, the term, accounting, means any annual, interim, or final report or other statement provided by a trustee reflecting all transactions, receipts, and disbursements during the reporting period and a list of assets as of the end of the period covered by the report or statement.

Section 4. That chapter 55-4 be amended by adding thereto a NEW SECTION to read as follows:

Unless the terms of the trust refer to this section and provide otherwise, a power exercisable by or attributable to a person, other than the settlor, in such person's capacity as a trustee to make discretionary distribution of either principal or income:

- (1) To or for the benefit of himself or herself shall be exercisable by the person only for the person's health, education, maintenance, and support in the person's accustomed manner of living; or
- (2) To or for the benefit of others, may not be exercisable to discharge any of the person's own legal obligations.

Section 5. That chapter 55-4 be amended by adding thereto a NEW SECTION to read as follows:

The reference to trustee in section 4 of this Act includes any person who is deemed to have any power of a trustee, whether because such person has the right to remove or replace any trustee, or because a reciprocal trust or power doctrine applies, or otherwise.

Section 6. That chapter 55-4 be amended by adding thereto a NEW SECTION to read as follows:

The provisions of sections 4 and 5 of this Act apply to any trust established before or after July 1, 2000.

Section 7. That chapter 55-4 be amended by adding thereto a NEW SECTION to read as follows:

The provisions of sections 4, 5, and 6 of this Act do not apply to a decedent's or settlor's spouse who is the trustee of a testamentary trust or an inter vivos trust for which a marital deduction is allowable.

Section 8. The grantor or a trustee of a trust, at any time after execution or creation of a trust,

may execute a certificate of trust that sets forth less than all of the provisions of a trust instrument and any amendments to the instrument. The certificate of trust may be used for purposes of selling, conveying, pledging, mortgaging, leasing, or transferring title to any interest in real or personal property. The certificate of trust shall include:

- (1) The name of the trust, if one is given;
- (2) The date of the trust instrument;
- (3) The name of each grantor;
- (4) The name of each original trustee;
- (5) The name and address of each trustee empowered to act under the trust instrument at the time of execution of the certificate;
- (6) The following statement: "The trustees are authorized by the instrument to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real or personal property, except as limited by the following: (if none, so indicate)";
- (7) Any other trust provisions the grantors or trustees include; and
- (8) A statement as to whether the trust instrument has terminated or been revoked.

The certificate of trust shall be upon the representation of the grantors or trustees that the statements contained in the certificate of trust are true and correct and that there are no other provisions in the trust instrument or amendments to it that limit the powers of the trustees to sell, convey, pledge, mortgage, lease, or transfer title to interests in real or personal property. The signature of the grantors or trustees shall be under oath before a notary public or other official authorized to administer oaths.

Section 9. A certificate of trust executed under section 8 of this Act may be recorded in the Office of the Register of Deeds with respect to land described in the certificate of trust or any attachment to it. If it is recorded or filed in an county where real property is situated, or in the case of personal property, if it is presented to a third party, the certificate of trust serves to document the existence

of the trust, the identity of the trustees, the powers of the trustees and any limitations on those powers, and other matters the certificate of trust sets out, as though the full trust instrument had been recorded, filed, or presented. Until amended or revoked under section 10 of this Act, or until the full trust instrument is recorded, filed, or presented, a certificate of trust is prima facie proof as to the matters contained in it and any party may rely upon the continued effectiveness of the certificate.

Section 10. Amendment or revocation of a certificate of trust may be made only by a written instrument executed by the grantor or a trustee of a trust. Amendment or revocation of a certificate of trust is not effective as to a party unless that party has actual notice of the amendment or revocation.

For purposes of this section, actual notice means that a written instrument of amendment or revocation has been received by the party or, in the case of real property, that either a written instrument or amendment or revocation has been received by the party or that a written instrument of amendment or revocation containing the legal description of the real property has been recorded in the Office of the Register of Deeds where the real property is situated.

Section 11. Sections 8 to 10, inclusive, of this Act are effective July 1, 2000, but apply to trust instruments whenever created or executed.

Section 12. An affidavit of a trustee or of trustees of an inter vivos trust in support of a real property transaction may be substantially in the following form:

STATE OF SOUTH DAKOTA) AFFIDAVIT OF TRUSTEE

_____, being first duly sworn on oath, says that:

1. Affiant is the trustee (one of the trustees) named in that certain Certificate of Trust (or Trust Instrument)

filed for record _____, as Document No. _____ (or in Book _____ of _____, Page _____) in the Office of the Register of Deeds of _____

County, South Dakota.

- OR -

to which this Affidavit is attached,

executed by Affiant or another trustee or the grantor of the trust described in the Certificate of Trust (or set forth in the Trust Instrument), and which relates to real property in _____ County, South Dakota, legally described as follows:

(If more space is needed, continue on back or on attachment.)

2. The name(s) and address(es) of the trustee(s) empowered by the Trust Instrument to act at the time of the execution of this Affidavit are as follows:

3. The trustee(s) who have executed that certain instrument relating to the real property described above between _____, as trustee(s) and _____, dated _____:

- (a) are empowered by the provisions of the trust to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real property held in trust; and
- (b) are the requisite number of trustees required by the provisions of the trust to execute and deliver such an instrument.

4. The Trust has not terminated and has not been revoked.

- OR -

4. The Trust has terminated (or has been revoked). The execution and delivery of the instrument

described in paragraph 3 has been made pursuant to the provisions of the Trust.

5. There has been no amendment to the Trust which limits the power of trustee(s) to execute and deliver the instrument described in paragraph 3.

6. The Trust is not supervised by any court.

- OR -

6. The Trust is supervised by the _____ Court of _____ County.
_____ All necessary approval has been obtained from the court for the trustee(s) to execute and deliver the instrument described in paragraph 3.

7. Affiant does not have actual knowledge of any facts indicating that the Trust is invalid.

_____, Affiant

Subscribed and sworn to before me

this _____ day of _____, _____.

Notary Stamp or Seal Signature of
Notary Public or Other Official

This instrument was drafted by:

Section 13. An affidavit of a trustee or of trustees of a testamentary trust in support of a real property transaction may be substantially in the following form:

STATE OF SOUTH DAKOTA)

COUNTY OF _____)

:SS AFFIDAVIT OF TRUSTEE

_____, being first duly sworn on oath, says that:

1. The _____ Trust was created by the Last Will and Testament of _____, Decedent, dated _____. Decedent died on _____. Affiant as trustee of the Trust, acquired by instrument or decree dated _____, filed in the Office of the Register of Deeds, _____ County, South Dakota, as Document No. _____, an interest in real property in _____, County, South Dakota, legally described as follows:

(If more space is needed, continue on back or on attachment.)

2. The name(s) and address(es) of the trustee(s) empowered by the terms of the decedent's will to act at the time of the execution of this Affidavit are as follows:

3. The trustee(s) who have executed that certain instrument relating to the real property described above between _____, as trustee(s) and _____, dated _____:

- (a) are empowered by the provisions of the trust under decedent's will to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real property held in trust; and
- (b) are the requisite number of trustees required by the provisions of the will to execute and deliver such an instrument.

4. The Trust has not terminated and has not been revoked.

- OR -

4. The Trust has terminated (or has been revoked). The execution and delivery of the instrument described in paragraph 3 has been made pursuant to the provisions of the Trust.

5. There has been no amendment to the Trust which limits the power of the trustee(s) to execute and deliver the instrument described in paragraph 3.

6. The Trust is not supervised by any court.

- OR -

6. The Trust is supervised by the _____ Court of _____ County.
_____ All necessary approval has been obtained from the court for the trustee(s) to execute and deliver the instrument described in paragraph 3.

7. Affiant does not have actual knowledge of any facts indicating that the Trust is invalid.

_____, Affiant

Subscribed and sworn to before me
this ____ day of _____, _____.

Signature of Notary Public or
Other Official

Notary Stamp or Seal
This instrument was drafted by:

Section 14. An affidavit by the trustee or trustees under section 12 or section 13 of this Act is proof that:

(1) The trust described in the affidavit is a valid trust;

- (2) Either the trust has not terminated or been revoked or, if the trust has terminated or been revoked, the conveyance described in the affidavit is made pursuant to the provisions of the trust;
- (3) The powers granted the trustee or trustees extend to the real property described in the affidavit or attachment to the affidavit;
- (4) No amendment to the trust has been made limiting the power of the trustee or trustees to sell, convey, pledge, mortgage, lease, or transfer title to the real property described in the affidavit or attachment to the affidavit, if any;
- (5) The requisite number of trustees have executed and delivered the instrument of conveyance described in the affidavit; and
- (6) Any necessary court approval of the transaction has been obtained.

The proof is conclusive as to any party relying on the affidavit, except a party dealing directly with the trustee or trustees who has actual knowledge of facts to the contrary.

Section 15. An affidavit of trustee or trustees under section 12 or section 13 of this Act may be recorded in the Office of the Register of Deeds for any county, or in the certificate of trust or trust instrument referred to in the affidavit, and may be recorded or filed as a separate document or combined with or attached to an original or certified copy of a certificate of trust or trust instrument, and recorded or filed as one document.

Section 16. That § 55-1A-3 be amended to read as follows:

55-1A-3. The entirety of all the powers described in this chapter may be incorporated in any instrument or agreement by specific reference to this section, or shall be incorporated if the instrument or agreement expressly makes reference to the trustee being granted powers set forth under a trustees' or fiduciaries' powers act and does not expressly limit those powers.

Section 17. That § 51A-11-6 be amended to read as follows:

51A-11-6. Joint leaseholds in and to a safe deposit box may be created by contract with two or

more persons, including minors, named as lessees. The terms of the contract may provide that any one or more of the lessees, or the survivor or survivors of the lessee or lessees shall have access and entry to the safe deposit box and the right to remove the contents from the box whether the other lessee or lessees be living, incompetent, or dead, and in case of such removal the lessor is not liable for the removal. The existence of a joint leasehold agreement in and to a safe deposit box shall in no way affect a determination as to what persons hold title to the contents of such box.

Section 18. That § 51A-11-7 be amended to read as follows:

51A-11-7. If only one lessee is named in the lease agreement covering a safe deposit box rental and such lessee shall die, the safe deposit box may be opened at any time thereafter and all contents may be delivered, without inventory, to the personal representative or special administrator of a deceased lessee, and without liability to the lessor.

In the alternative, after the lessee's death, the safe deposit box may be opened at any time, in the presence of those persons presenting the key thereto and claiming to be interested in the contents thereof, by two employees of the lessor, one of whom shall be an officer of the lessor. The employees may remove all instruments of a testamentary nature and personally deliver or forward them by registered or certified mail to the probate court having apparent jurisdiction. The employees may deliver life insurance policies contained in the box to the beneficiary named in the policies. Any and all other contents of the box so opened shall be kept and retained by the lessor and shall be delivered only to the parties legally entitled to the same.

If no person presents the key to the safe deposit box within six months after the death of the lessee, the lessor, by two employees, one of whom shall be an officer of said lessor, may open the box by forcible entry and remove the contents and deliver the same to the probate court, subject to the payment of rentals, of expenses, and the repairs.

This section applies if all of the lessees under a joint leasehold agreement are deceased.

Section 19. That § 21-22-2 be amended to read as follows:

21-22-2. This chapter applies to all trusts if any part of the trust estate has its situs within this state or if the trustee or a beneficiary resides in this state, except as otherwise specifically provided by statute or rule of court, the intent being to exclude therefrom such trusts as a statutory assignment for the benefit of creditors, probate administrations, conservatorships, and all other trusts as to which specific provision is made for court supervision. The provisions of §§ 55-3-24 to 55-3-44, inclusive, are applicable to actions or proceedings relating to trusts supervised or administered under this chapter.

Section 20. That § 29A-5-103 be amended to read as follows:

29A-5-103. This chapter applies to all guardianships and conservatorships in this state, including guardianships created prior to July 1, 1993. Unless otherwise modified or terminated, all guardianships created prior to July 1, 1993, shall remain in full force and effect and all guardians shall retain their assigned powers and duties with respect to either financial or personal decision making except to the extent that the powers and duties under this chapter are broader or more clearly expressed. The provisions of this chapter concerning the filing of reports by guardians and the filing of accountings by conservators may not be retroactively applied and prior law shall control as to whether a report or accounting will be required for any period prior to July 1, 1993. The provisions of §§ 55-3-24 to 55-3-44, inclusive, are applicable to actions or proceedings relating to guardianships and conservatorships supervised or administered under this chapter.

Section 21. That chapter 29A-1 be amended by adding thereto a NEW SECTION to read as follows:

The provisions of §§ 55-3-24 to 55-3-44, inclusive, are applicable to actions or proceedings relating to estates supervised or administered under Title 29A.

An Act to revise certain provisions regarding the administration of trusts and estates.

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I certify that the attached Act
originated in the

SENATE as Bill No. 174

Secretary of the Senate

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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 174

File No. _____

Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
SS.
Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State