

SOUTH DAKOTA TRUST CODE INDEX

Proposed Code

Article 1

General Provisions & Definitions

§101	Short Title
§102	Definitions
§103	Distribution by Representation
§104	Common Law of Trusts; Principle of Equity
§105	Default & Mandatory Rules
§106	Scope
§107	Governing Law
§108	Situs Requirement
§109	Knowledge
§110	Methods & Wavier of Notice
§111	Others Treated as Qualified Beneficiaries
§112	Nonjudicial Settlement Agreements

Article 2

Creation, Validity, Modification, & Termination of Trust

§201	Capacity of Settlor
§202	Methods of Creating Trust
§203	Requirements for Creation
§204	Enforceability of No Contest Provision
§205	Trust Purposes
§206	Charitable Purposes
§207	Trust for Care of Animal
§208	Trusts Created in Other Jurisdictions
§209	Creation of Trust Induced by Fraud, Duress, or Undue Influence
§210	Evidence of Oral Trust
§211	Trust without Ascertainable Beneficiary
§212	Modification or Termination of Trust
§213	Modification or Termination of an Irrevocable Trust
§214	Modification or Termination Because of Unanticipated Circumstances or Inability to Administer Trust Effectively
§215	Cy Pres
§216	Modification or Termination of Uneconomic Trust
§217	Reformation to Correct Mistakes
§218	Modification to Achieve Settlor's Tax Objectives
§219	Combination & Division of Trusts
§220	Effect of Omitting Children
§221	Effect of Divorce or Dissolution

Article 3

CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

§301	Retention of the Common Law Distinction of a Discretionary Support Trust
§302	General Provisions Applying to All Trusts
§303	Spendthrift Provisions
§304	Classifications of a Current Distribution Interest
§305	Power to Force Distribution & Judicial Review Standard

§306	Creditors' Claims Against Settlor
§307	Exercise of a Minor Beneficiary's Right to Request a Distribution
§308	Trustee Termination when Foreign Court Attempts Action against Trustee

Article 4

QUALIFIED DISPOSITIONS TO TRUST

§401	Qualified Disposition Definitions
§402	Dispositions to Trust – Definition of a Trust Instrument – Incorporation of Laws – Irrevocable – Provisions not Deemed to be Revocable – Transfer of Property or Interest
§403	Dispositions to Trust – Fiduciary – Appointment – Powers
§404	Dispositions to Trust – Fiduciary – Transferor as a Fiduciary – Limitations on Powers
§405	Dispositions to Trust – Qualified Trustee – Loss of Qualifications – Appointment of Successor by Circuit Court
§406	Qualified Dispositions to Multiple Trustees
§407	Transferors Retention of Powers Limited
§408	Qualified Dispositions – Exempt from Actions or Attachment
§409	Extinguishment of Creditors' Claims
§410	Restrictions of Creditor's Claims Against Qualified Dispositions
§411	Creditor Claims – Limitation of Actions Against Qualified Dispositions
§412	Trustees, Fiduciaries, and Certain Persons Immune from Suit by Creditors
§413	Subsequent Dispositions Disregarded in Determination Under Section 609
§414	Chapter Inapplicable to Certain Creditors
§415	Dispositions Avoided Under Certain Circumstances – Factors for Determination
§416	Dispositions to Trust – Effective Date of Act

Article 5

Revocable Trusts

§501	Revocation or Amendment of Revocable Trust
§502	Settlor's Powers; Powers of Withdrawal
§503	Limitation on Action Contesting Validity of Revocable Trust; Distribution of Trust Property
§ 504	Creditors Claims Against Trust

Article 6

Charitable Trusts

§601	Liberal Construction of Trust to Carry Out Intentions of Donor
§602	Charitable Trust: Enforcement
§603	Restrictions to Avoid Taxability of Income – Definition of Terms
§604	Restrictions deemed Incorporated in Instrument Creating Charitable Trust or Foundation
§605	Trustee Prohibitions
§606	Distributions Required to Avoid Taxes
§607	Judicial Determination that Restrictive Provisions are Contrary to Instrument Creating Trust
§608	State Supervisory Powers Unimpaired by Restrictions to Avoid Taxability of Income

Article 7

Directed Trusts

§701	Definitions
§702	Trust Protector's Powers & Discretion
§703	Powers of Trust Protector Incorporated by Reference in Will or Trust Instrument
§704	Investment Trust Advisor's Powers & Discretions
§705	Distribution Trust Advisor's Powers & Directions
§706	Investment Advisor & Distribution Trust Advisor Provided in Trust Instrument
§707	Limited Abrogation of Trust Protector, Investment Trust Advisor & Distribution Trust

	Advisor Liability
§708	Liability Limits of Excluded Fiduciary
§709	Death of Settlor
§710	Submission to Court Jurisdiction – Effect on Trust Advisor or Trust Protector

Article 8

Total Return Trusts

§801	Definitions (55-15-1)
§802	Trustee's authority to convert income trust, total return trust - Calculate trust amount, value – Conditions (55-15-2)
§803	Interested trustee's authority over actions enumerated in § 55-15-2 – Conditions (55-15-3)
§804	Trustee may petition court - Appointment of disinterested person (55-15-4)
§805	Annual valuation of unitrust amount (55-15-5)
§806	Calculation of unitrust amount (55-15-6.)
§807	Minimum amount as net income of trust (55-15-7)
§808	Unitrust amount as net income of trust - Allocation of capital gains to trust income (55-15-8)
§809	Administration of total return unitrust - Authority of trustee (55-15-9)
§810	Distributions of principal not affected by conversion (55-15-10)
§811	Spouse may compel reconversion to income trust for certain trusts - Written instrument required (55-15-11)
§812	Applicability of chapter (55-15-12)
§813	Trustee acting in good faith not liable – Remedy (55-15-13)
§814	No duty to act created (55-15-14)

Article 9

Office of Trustee

§901	Accepting or Declining Trusteeship
§902	Trustee's Bond
§903	Cotrustees
§904	Vacancy in Trusteeship; Appointment of Successor
§905	Resignation of Trustee
§906	Removal or Discharge of Trustee
§907	Delivery of Property by Former Trustee
§908	Compensation of Trustee
§909	Reimbursement of Expenses

Article 10

Duties of Trustee

§1001	Duty to Administer Trust
§1002	Duty of Loyalty
§1003	Impartiality
§1004	Collecting Trust Property
§1005	Control & Protection of Trust Property
§1006	Recordkeeping & Identification of Trust Property
§1007	Duty to Inform & Report
§1008	Enforcement & Defense of Claims
§1009	Prudent Administration

Article 11

Powers of Trustee

§1101	General Powers of Trustee
§1102	Specific Powers of Trustee

§1103	Discretionary Powers
§1104	Powers to Direct
§1105	Costs of Administration
§1106	Distribution Upon Termination
§1107	Actions by Foreign Fiduciaries

Article 12

Prudent Investor Act

§1201	Prudent Investor Rule
§1202	Standard of Care; Portfolio Strategy; Risk & Return Objectives
§1203	Diversification
§1204	Duties at Inception of Trusteeship
§1205	Prudent Investment
§1206	Delegation of Investment & Management Functions
§1207	Language Invoking Prudent Investor Rule

Article 13

Uniform Principal and Income Act

We reserve this for the Governor's Trust Task Force, which is currently considering action would replace SDCL 55-13. Otherwise we would move SDCL 55-13 here.

Article 14

Liability of Trustees & Rights of Persons Dealing with Trustee

§1401	Remedies for Breach of Trust
§1402	Damages for Breach of Trust
§1403	Damages in Absence of Breach
§1404	Limitation of Action Against Trustee
§1405	Reliance on Trust Instrument
§1406	Event Affecting Administration or Distribution
§1407	Exculpation of Trustee
§1408	Beneficiary's Consent, Release, or Ratification
§1409	Personal Liability of Trustee
§1410	Interest as General Partner
§1411	Protection of Person Dealing with Trustee
§1412	Certificate of Trust
§1413	Certificate of Trust of Non-Testamentary Trust relating to Real Property Transaction
§1414	Certificate of Trust of Testamentary Trust relating to Real Property Transaction

Article 15

Judicial Proceedings

§1501	Role of Court in Administration of Trust
§1502	Jurisdiction over Trustee & Beneficiary
§1503	Venue
§1504	Trusts Requiring Court Supervision
§1505	Requirements Under Court Supervision
§1506	Appointment of Agent to Receive Process
§1507	Inventory-Time for Filing-Contents
§1508	Petition to Dispense with Court Supervision-Grounds
§1509	Resumption of Court Supervision
§1510	Notice Requirements of Court Supervision
§1511	Petition to Review Trust Activities
§1512	Accountings of Court Supervised Trusts
§1513	Petition to Seal Court Action Involving a Trust
§1514	Action Against Trustee in Representative Capacity – Execution Against Trust Property –

§1515 Intervention by Beneficiary
Notice to Beneficiary of Action Against Trustee

Article 16

Representation

§1601 Representation: Basic Effect
§1602 Representatives
§1603 Appointment of Representative
§1604 Representation by Person Having Substantially Identical Interest
§1605 Serving/Obtaining Consent From a Virtual Representative
§1606 Service on a Virtual Representative
§1607 Service Not Required

Article 17

Miscellaneous Provisions

§1701 Electronic Records & Signatures
§1702 Severability Clause
§1703 Effective Date
§1704 Application to Existing Relationships
§1705 Validation of pre-July 1, 2007 Decrees/Accountings-Stale Claims Barred