

## **CHAPTER 59-09 GENERAL PROVISIONS AND DEFINITIONS**

### **59-09-01. (101) Short title.**

Chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 may be cited as the North Dakota Uniform Trust Code.

### **59-09-02. (102) Scope.**

1. Except as provided in subsection 2, chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 apply to express trusts, whether charitable or noncharitable and testamentary or inter vivos, and to trusts created pursuant to a statute or a judgment or decree that requires the trust to be administered in the manner of an express trust.
2. Chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 do not apply to:
  - a. A trust account established under a qualified tuition savings program pursuant to section 6-09-38.
  - b. Trust accounts maintained on behalf of clients or customers by licensed service professionals, including trust accounts maintained by attorneys pursuant to the North Dakota Rules of Professional Conduct and by real estate brokers pursuant to chapter 43-23.
  - c. An endowment care fund established by a cemetery authority pursuant to chapter 23-21.
  - d. Funds maintained by public bodies as defined by chapter 1-07 or other governmental unit entities.
  - e. Trust funds held for a single business transaction or an escrow arrangement.
  - f. Trusts created by a depository agreement with a financial institution.
  - g. An account maintained under the North Dakota Uniform Transfers to Minors Act as contained in chapter 47-24.1.
  - h. A fund maintained pursuant to court order in conjunction with a bankruptcy proceeding or a business liquidation.
    - i. A voting trust described in chapter 10-19.1.
    - j. Funds maintained to manage proceeds from class actions.
    - k. A trust created solely to secure the performance of an obligation.
    - l. A trust created on behalf of a resident of a residential facility.
  - m. A trust managed by a nonprofit association for disabled individuals under 42 U.S.C. 1396p(d)(4), as in effect on the effective date of chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 and under the rules adopted by the department of health and human services.
  - n. A resulting or constructive trust.

### **59-09-03. (103) Definitions.**

Any term not specifically defined in this section has the meaning provided in title 30.1. Unless the context otherwise requires, in chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19:

1. "Action", with respect to an act of a trustee, includes a failure to act.
2. "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code.
3. "Beneficiary" means a person that:
  - a. Has a present or future beneficial interest in a trust, vested or contingent, including the owner of an interest by assignment or transfer; or
  - b. In a capacity other than that of a trustee, holds a power of appointment over trust property.

4. "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in subsection 1 of section 59-12-05.
5. "Conservator" is as defined in section 30.1-01-06.
6. "Distributee" means any person who receives property of a trust from a trustee, other than as a creditor or purchaser.
7. "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.
8. "Guardian" is as defined in section 30.1-01-06.
9. "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.
10. "Internal Revenue Code" means the Internal Revenue Code of 1986, or corresponding future provisions of federal tax law.
11. "Irrevocable" means if used in reference to a trust, a trust that is not revocable, including a formerly revocable trust that has become irrevocable, whether by the death of a settlor or otherwise.
12. "Jurisdiction", with respect to a geographic area, includes a state or country.
13. "Permissible distributee" means a beneficiary who is currently eligible to receive distributions of trust income or principal, whether the distribution is mandatory or discretionary.
14. "Power of withdrawal" means a presently exercisable general power of appointment other than a power:
  - a. Exercisable by a trustee and limited by an ascertainable standard; or
  - b. Exercisable by another person only upon consent of the trustee or a person holding an adverse interest.
15. "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.
16. "Qualified beneficiary":
  - a. Means a beneficiary who, on the date the beneficiary's qualification is determined:
    - (1) Is a permissible distributee of trust income or principal;
    - (2) Would be a permissible distributee of trust income or principal if the interests of the distributees described in paragraph 1 terminated on that date without causing the trust to terminate; or
    - (3) Would be a permissible distributee of trust income or principal if the trust terminated on that date.
  - b. Does not include a contingent distributee or a contingent permissible distributee of trust income or principal whose interest in the trust is not reasonably expected to vest.
17. "Record" means information that is enshrined on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.
18. "Revocable", as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.
19. "Settlor" means a person, including a testator, that creates, or contributes property to a trust and if more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.
20. "Signed" means:
  - a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by a facsimile telecommunication or electronically, or in any other manner reproduced on the record, is placed on a record or instrument with the present intention to authenticate the record or instrument.
  - b. With respect to a record or instrument required by this chapter to be filed with the clerk of court, that:

- (1) The record or instrument has been signed by a person authorized to do so by this chapter or by the trust instrument; and
  - (2) The signature and the record or instrument are communicated by a method or medium acceptable to the clerk of court.
21. "Special needs trust" means special needs trust as defined in section 59-08-01.
  22. "Spendthrift provision" means a term of a trust which restrains either the voluntary or involuntary or both the voluntary and involuntary transfer of a beneficiary's interest and does not include or prevent a disclaimer of an interest of a beneficiary.
  23. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
  24. "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.
  25. "Trust instrument" means a record signed by the settlor that contains terms of the trust, including any amendments to the record and any modifications permitted by court order or by binding nonjudicial settlement agreement.
  26. "Trustee" includes an original, additional, and successor trustee, and a cotrustee, whether or not appointed or confirmed by a court.

**59-09-04. (104) Knowledge.**

1. Subject to subsection 2, a person has knowledge of a fact if the person has actual knowledge of a fact; has received a notice or notification of a fact; or from all the facts and circumstances known to the person at the time in question, has reason to know a fact.
2. An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if the organization maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

**59-09-04.1. Settlor's capacity.**

The capacity required of a settlor is the same as that required to make a will and is required to create, amend, revoke, or add property to a trust, to direct the actions of the trustee where permitted, and to exercise powers and rights, if any, reserved or granted to the settlor under the terms of the trust or applicable law.

**59-09-05. (105) Default and mandatory rules.**

1. Except as otherwise provided in the terms of the trust, this title governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.
2. The terms of a trust prevail over any provision of this title except:
  - a. The requirements for creating a trust;
  - b. The duty of a trustee to act in good faith and in accordance with the purposes of the trust;
  - c. The requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful and possible to achieve;
  - d. The power of the court to modify or terminate a trust under sections 59-12-10, 59-12-11, 59-12-12, 59-12-13, 59-12-14, 59-12-15, and 59-12-16;

- e. The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in chapter 59-13;
- f. The power of the court under section 59-15-02 to require, dispense with, or modify or terminate a bond;
- g. The power of the court under subsection 2 of section 59-15-08 to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;
- h. The effect of an exculpatory term under section 59-18-08;
- i. The rights under sections 59-18-10, 59-18-11, 59-18-12, and 59-18-13 of a person other than a trustee or beneficiary;
- j. Periods of limitation for commencing a judicial proceeding;
- k. The power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and
- l. The subject matter jurisdiction of the court and venue for commencing a proceeding as provided in section 59-10-04.

**59-09-06. (106) Common law of trusts - Principles of equity.**

The common law of trusts and principles of equity supplement chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19, except to the extent modified by chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 or another statute of this state.

**59-09-07. (107) Governing law.**

The meaning and effect of the terms of a trust are determined by the law of the jurisdiction designated in the terms or, in the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

**59-09-08. (108) Principal place of administration.**

1. Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction, or all or part of the administration occurs in the designated jurisdiction.
2. A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.
3. Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection 2, may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.
4. The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration or a proposed transfer of some or all of the trust property to a successor trustee not less than sixty days before initiating the transfer. The notice of proposed transfer must include the name of the jurisdiction to which the principal place of administration is to be transferred; the address and telephone number at the new location at which the trustee can be contacted; an explanation of the reasons for the proposed transfer; the date on which the proposed transfer is anticipated to occur; and the date, not less than sixty days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.
5. The authority of a trustee under this section to transfer a trust's principal place of administration or a proposed transfer of some or all of the trust property to a successor trustee terminates if a majority of the qualified beneficiaries notify the trustee of an objection to the proposed transfer on or before the date specified in the notice.

6. In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to section 59-15-04.

**59-09-09. (109) Methods and waiver of notice.**

1. Notice to a person under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 or the sending of a document to a person under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last-known place of residence or place of business, or a properly directed electronic message.
2. Notice otherwise required under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 or a document otherwise required to be sent under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 does not need to be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.
3. Notice under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 or the sending of a document under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 may be waived by the person to be notified or sent the document.
4. Notice of a judicial proceeding must be given as provided in the applicable North Dakota Rules of Civil Procedure or as provided under section 30.1-03-01.

**59-09-10. (110) Others treated as qualified beneficiaries.**

1. A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 if the charitable organization, on the date the charitable organization's qualification is being determined:
  - a. Is a permissible distributee of trust income or principal;
  - b. Would be a permissible distributee of trust income or principal upon the termination of the interests of other distributees or permissible distributees then receiving or eligible to receive distributions; or
  - c. Would be a permissible distributee of trust income or principal if the trust terminated on that date.
2. A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in section 59-12-08 or 59-12-09 has the rights of a qualified beneficiary under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19.
3. The attorney general of this state has the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this state.

**59-09-11. (111) Nonjudicial settlement agreements.**

1. For purposes of this section, "interested persons" means a trustee and persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.
2. Except as otherwise provided in subsection 3, interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.
3. A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 or other applicable law. A spendthrift provision in the terms of a trust is presumed to constitute a material purpose of the trust.

4. Matters that may be resolved by a nonjudicial settlement agreement include the interpretation or construction of the terms of the trust, the approval of a trustee's report or accounting, direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power, the resignation or appointment of a trustee and the determination of a trustee's compensation, transfer of a trust's principal place of administration, liability of a trustee for an action relating to the trust, the extent or waiver of bond of a trustee, and the criteria for distribution to a beneficiary where the trustee is given discretion.
5. Any interested person may request the court to approve a nonjudicial settlement agreement to determine whether the representation as provided in chapter 59-11 was adequate and to determine whether the agreement contains terms and conditions the court could have properly approved.

**59-09-12. (112) Rules of construction.**

The rules of construction that apply to the interpretation of and disposition of property by will or other governing instrument provided for under chapter 30.1-09.1 also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property.

**59-09-13. Insurable interest of trustee.**

1. In this section, "settlor" means a person, including a person for which a fiduciary or agent is acting, that executes the trust instrument.
2. A trustee of a trust has an insurable interest in the life of an individual insured under a life insurance policy that is owned by the trustee of the trust acting in a fiduciary capacity or that designates the trust itself as owner if, on the date the policy is issued:
  - a. The insured is a settlor of the trust or an individual in whom a settlor of the trust has, or would have had if living at the time the policy was issued, an insurable interest; and
  - b. The life insurance proceeds must be primarily for the benefit of trust beneficiaries that have:
    - (1) An insurable interest in the life of the insured; or
    - (2) A substantial interest engendered by love and affection in the continuation of the life of the insured. If the trust beneficiaries do not already have an insurable interest under paragraph 1, the trust beneficiaries must be related within the third degree or closer, as measured by the civil law system of determining degrees of relation, either by blood or law, to the insured, or must be stepchildren of the insured.
3. This section does not authorize any practice that is prohibited by chapter 26.1-33.4.