CHAPTER 59-10.1
ACTION TO DETERMINE VALIDITY OF TRUST

59-10.1-01. Declaratory judgment.

A person seeking to challenge the validity of a trust instrument or amendment may institute a proceeding under this chapter for a declaratory judgment of invalidity.

59-10.1-02. Parties - Process.

A settlor who is not a plaintiff, a beneficiary named in the trust, and a settlor's present intestate successors must be included as parties to the proceeding. For the purposes of this chapter, a beneficiary named in the trust and the settlor's present intestate successors are deemed to possess inchoate property rights. Service of process upon the parties to the proceeding must be made in accordance with rule 4 of the North Dakota Rules of Civil Procedure.

59-10.1-03. Limitation of action.

A proceeding under this chapter may not be commenced later than the earliest of the following:

1. One hundred twenty days after the date the trustee notified the individual contesting the trust of the trust's existence or amendment. The notice must include the trustee's name and address and a copy of the trust instrument with amendments, if any, and must inform the recipient of the time allowed under this section for initiating a proceeding to contest the trust. A trustee may not have any liability under the governing instrument, to a third party, for failure to provide a notice under this subsection. Service of this notice is presumed to have been received upon delivery of the notice to the last known address of the individual to whom the notice is addressed;
2. Three years after the settlor's death;
3. If the trust was revocable immediately before the settlor's death and the trust was specifically referred to in the settlor's last will, then the time in which a petition for review of a will could be filed under state law; or
4. The date an individual's right to contest was precluded by adjudication, consent, or other limitation.

59-10.1-04. Findings.

If the court finds the settlor has executed the trust instrument and had the requisite capacity, the court shall declare the trust to be valid. An adjudication that a trust is valid is binding on the parties. If the court finds a trust or amendment to be invalid, the challenged trust or amendment is ineffective as of a date and to the extent determined by the court.

59-10.1-05. Distributions by trustee - Return of distribution determined to be invalid.

1. The trustee may proceed to distribute the trust property in accordance with the terms of the trust. This distribution may be made without liability unless the trustee has actual knowledge of a pending proceeding to contest the validity of the trust, or is notified by a potential contestant of a possible contest, followed by service of process upon the trustee for that proceeding within thirty days of the notification of a possible contest.
2. The court may order the revocation of a distribution made under the authority of a trust or amendment that is subsequently determined to be invalid and may order the recipient of an invalid distribution to return the distribution.