

# Informal Trust Contest Fails and Subsequent Lawsuit Time-Barred

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The South Dakota Supreme Court recently decided a unique case which may be persuasive to jurists in many other states that have adopted the Uniform Trust Code, particularly as it relates to literal compliance with shortened time frames for beneficiaries to take action under the Code. In doing so, the Court ruled that an informal objection to a revocable trust did not constitute an effective contest of the trust's validity under their trust law, because it was not a timely filed suit.

In this case, a South Dakota trust law allowed the trustee to give the beneficiaries notice of the trust imposing a sixty (60) day time period to file a proceeding in court to contest the validity of the trust. This South Dakota statute was taken from the Uniform Trust Code ("UTC"), which has been adopted by Kentucky and in varied form by Ohio and Indiana. The trustee in this case mailed such a notice to the beneficiaries, setting forth the 60 day time limit on a trust contest.

One beneficiary emailed an unsigned "Notice of Objection" to the County Clerk of Courts and the trust's attorney within 60 days after receiving notice of the trust contest period. However, the Notice of Objection was not signed, and did not state the grounds for the objection. No suit was filed to challenge the trust within the sixty day period; in fact, the beneficiary's suit contesting the trust case was not filed until well more than a year after the Notice was received.

The beneficiary unsuccessfully asserted several arguments as to why his suit should not be time-barred. He claimed that his objections were based on undue influence and lack of capacity, and these did not fall within the ambit of the trust contest statute. The Court found that the lack of capacity and undue influence would be claims that are barred, since they affect the "validity of the Trust" as set forth in the statute. The beneficiary next argued that there was a general statute of limitations in South Dakota which gave him a longer time to file. However, the Court found that the trust statute of limitations was more specific to this case, and therefore did govern. Finally, the beneficiary argued that the Notice of Objection substantially complied with the statute, or that the statute's time limitation should be equitably tolled. The Court rejected these arguments, finding that the Notice of Objection did not identify the grounds for the objection nor make any claim for relief. Therefore, there was not substantial compliance with the statute. As for equitable tolling, the Court found that the beneficiary had presented no evidence of any extraordinary circumstance beyond his control that prevented him from filing a timely trust contest. On the foregoing basis, the Court held that the beneficiary's case was time-barred. *Matter of Elizabeth A. Briggs Revocable Living Trust*, 898 N.W. 2nd 465 (S.D. 2017).

This decision highlights the importance of timely and complete compliance with many of the