

SOUTH DAKOTA
LEGAL NOTES

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Ashley Hoffman Joins Swier Law Firm

Swier Law Firm, Prof. LLC is pleased to announce the expansion of its nationally recognized legal practice with the addition of Ashley Hoffman.

Ashley will be joining the law firm's new office in White Lake and will focus her practice on general legal matters, agricultural law, and environmental law.

Ashley is a graduate of the University of South Dakota School of Law where she served on the Board of Editors for the South Dakota Law Review. She also received her Masters of Environmental Law and Policy, magna cum laude, from the Vermont Law School, generally considered the country's premier environmental law program.

Ashley grew up in Wessington Springs and attended Indiana University-Purdue University at Indianapolis, earning her Bachelor of Arts Degree in English and Creative Writing.

"Ashley is a great addition to our law firm and her arrival will strengthen our reach in South Dakota," said Scott Swier. "Her dedication to her clients aligns perfectly with the firm's commitment to providing exceptional legal representation to clients throughout South Dakota," added Mr. Swier.

"I am very excited to be joining Swier Law Firm," Ms. Hoffman said. "Working for one of the fastest growing law firms in the state is a once in a lifetime opportunity and I look forward to helping my clients achieve success on their most important legal matters in the rural areas where I am most needed."



2016 South Dakota Sales and Use Tax Increase

Effective June 1, 2016 the South Dakota state sales tax and use tax will increase from 4.0% to 4.5%.

The new tax rate applies to the following:

- The sale, lease, or rental of tangible personal property, products transferred electronically, and services.
- Excise tax on the purchase of farm machinery.
- The amusement device tax.

South Dakota Estate Planning - A Personal Representative's Checklist

More than 70% of adults avoid preparing for end-of-life realities. They don't have wills or trusts, advance medical directives or pre-need funeral planning in place before there's a death in the family. One way to convince people to make these arrangements is to examine the many responsibilities an estate's personal representative has to carry out.

An personal representative can be a spouse, adult child, a legally-appointed friend or relative, or a trust company named by the decedent in their will or trust (decedent means the person who has died). The personal representative's job is made much harder if information hasn't been pulled together nor decisions made in advance.

Here is a practical checklist for a personal representative's duties:

- Obtain copies of death certificates.
- Make copies of dated obituary notice and/or newspaper articles, to serve as further proof of death.
- Meet with the decedent's attorney.
- If necessary, obtain letters testamentary for personal representative, issued by the court that proves the authority to administer the provisions of the deceased's will.
- Check the contents of any safe deposit boxes (requires a death certificate, executor's appointment in the will, rental agreement and photo ID).
- Compile a list of heirs, next of kin and beneficiaries.
- Make copies of marriage and birth certificates.
- Review the will with the deceased's attorney to determine whether probate is needed.
- Proceed with probate filing, if no trust was created.
- Assemble life insurance policies.
- Inventory tangible real estate property and locate all real estate deeds, mortgages, leases, and tax information.
- Inventory and secure personal items such as cars, trucks, boats, recreational vehicles, mobile homes, motorcycles, furniture, fine jewelry, art and personal contents of the home(s).
- Inventory intangible financial assets such as stocks, bonds, bank accounts, IRAs, CDs, cash, mortgages, notes, pensions, life insurance, etc.
- File and collect insurance claims as applicable – life, medical, health, disability, travel, accident, homeowners, car and/or credit.



- Notify those organizations providing retirement benefits, annuities and pensions.
- Locate military records, as appropriate.
- Locate recent income tax returns.
- File for Social Security benefits, as appropriate.
- File for veteran's burial and survivor benefits, as appropriate.
- File for fraternal, union and association benefits, as appropriate.
- File for employer benefits, as appropriate.
- Open an estate bank account to hold money that is owed to the deceased, such as real estate rental checks and stock dividends.
- Collect debts due the decedent.
- Notify the Social Security Administration of the death.
- Notify Medicare of the death.
- Notify banks of the death and change information for any jointly held accounts.
- Notify stockbrokers of the death and transfer ownership of jointly or solely owned stocks, bonds and mutual funds.
- Contact credit card companies to close/cancel all individually held cards of the deceased.
- Change all jointly held credit card accounts.
- Notify creditors of the death.
- Examine and approve or reject claims of creditors and make payments, as appropriate.
- Sell or transfer the title for the deceased's automobile to a beneficiary.
- Pass real estate and other assets owned in joint tenancy to the surviving joint tenant.

- Transfer bank accounts and securities registered in “payable on death” form to beneficiaries.
- Transfer funds in IRAs and retirement plans to named beneficiaries.
- Transfer property left to the surviving spouse (in some states), or transfer assets held in trusts (such as living trusts or AB marital bypass trusts) to named beneficiaries, as appropriate.
- Redeem/re-title government bonds, either by the beneficiary or estate administrator.
- If the decedent had his/her own business, arrange for management of the business.
- If the decedent was an artist, author, musician, composer, or other creative person, arrange for the continued management of royalties and ongoing sales.
- Establish management of rental properties, both in- and out-of-state, as appropriate.
- Terminate leases and outstanding contracts on behalf of the deceased.
- Pay continuing expenses, such as mortgage payments, utility bills, and homeowner’s insurance premiums, until a property is sold or re-titled.
- Notify accountant or tax preparer that a final tax return will need to be prepared for the deceased.
- Prepare and file an estate tax return for estate taxes, or any state inheritance return, if necessary.
- Determine whether the estate qualifies for “special use valuation” under the tax laws (IRC § 2032A), deferral of estate taxes (IRC §§ 6161 or 6166), etc.
- Pay any federal taxes that may be due.
- Keep detailed records of all receipts and disbursements made on behalf of the estate, including attorney’s fees and personal representative’s fees.
- Keep detailed records of time spent and activities conducted on behalf of the estate during the administration of the estate.
- When debts and taxes have been paid and all the property distributed to the beneficiaries, the estate may be formally closed by the probate court.
- Take a deep breath and then a well-earned vacation!!



Swier Law Firm Wins Major Telecommunications Case

Swier Law Firm recently won a major telecommunications case in the United States District Court - District of South Dakota for its client Free Conferencing Corporation of Long Beach, California.

In the mid-2000s, free calling service companies and various Local Exchange Carriers engaged in access stimulation to maximize profits in a favorable regulatory environment. In response, certain interexchange carriers convinced the Federal Communications Commission to adopt new regulations to prevent access stimulation. The free calling service companies and Local Exchange Carriers still operate, but do so under these new regulations.

At the conclusion of a lengthy trial in Sioux Falls, Federal District Judge Karen Schreier ruled in Free Conferencing’s favor. First, in its effort to impose liability on Free Conferencing, Qwest failed to establish tort liability under South Dakota law. Second, Qwest did not show that Free Conferencing improperly interfered with Qwest’s tariff relationship with the Local Exchange Carrier. Third, Qwest did not show that the South Dakota Supreme Court would recognize the tort theory of inducing regulatory violations. Fourth, although Free Conferencing and the Local Exchange Carrier had an agreement to engage in access stimulation, Qwest did not establish that Free Conferencing intended to act unlawfully. Finally, Qwest did not establish circumstances that would justify an equitable remedy.

The team representing Free Conferencing included Swier Law Firm’s Managing Member Scott Swier and Stephen Wald of the Partridge Snow & Hahn Law Firm from Boston, Massachusetts.



Q: Is my motorcycle entitled to a full traffic lane in South Dakota?

A: **Yes.** Your motorcycle is allowed to use a full traffic lane and no other vehicle can deprive you of the full use of a lane.



Q: I was involved in a car accident in Sioux Falls and the other driver has no insurance. What can I do?

A: In South Dakota, if you are struck by a driver who doesn't have insurance, your uninsured motorist insurance (UM) pays for injury expenses for you and any passengers in your vehicle up to your policy limits.



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