

SOUTH DAKOTA
LEGAL NOTES

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Dr. Tim Mitchell Receives 2016 SASD-Swier Law Firm Legislative Leadership Award

On February 3, 2016, the inaugural School Administrators of South Dakota-Swier Law Firm “Legislative Leadership Award” was presented to Dr. Tim Mitchell of Rapid City.

Dr. Mitchell became the Superintendent of Schools for the Rapid City Area Schools on July 1, 2010. He previously served as the Superintendent of Schools for the Chamberlain School District from 1995-2010. He received his M.A. in Educational Administration (1995), his Ed.S in School Superintendency (2000), and his Ed.D in School Superintendency (2008) from the University of South Dakota.

Dr. Mitchell serves on the Executive Board of the South Dakota School Superintendents Association and was President during the 2005-2006 school year. For the 2014-2015 school year he was selected as SDSSA South Dakota Superintendent of the Year. Dr. Mitchell has served on the Executive Board of the School Administrators of South Dakota and was President for the 2006-2007 school year. He currently serves as the SASD’s Legislative Chairperson. Dr. Mitchell served on the American Association of Administrators National Governing Board from 2008-2012. He currently serves on the AASA Executive Board representing Region 3. He is also member of the AASA Century Club, AASA Legislative Corp., and Horace Mann League. Dr. Mitchell also serves on the REL Central Advisory Board and has held the position of Chairperson since 2013.

The purpose of the Legislative Leadership Award is to recognize a school administrator who has provided exceptional service in governmental advocacy on behalf of the SASD.



Dr. Tim Mitchell and South Dakota Secretary of Education Dr. Melody Schopp

“Swier Law Firm is honored to join with the SASD to sponsor the Legislative Leadership Award and to recognize Dr. Tim Mitchell’s achievements, which have made a lasting impact on public education in South Dakota,” said Scott Swier. “Our law firm recognizes the role played by our state’s school administrators in shaping and leading the future. Dr. Mitchell’s commitment to educational excellence is reflected in his dedication to making a difference in the lives of South Dakota’s students.”

Law Firm Video - 3 Tips to Protect Your Loved Ones' Legal Rights

When your loved ones begin to show signs of aging, your focus tends to be on medical issues - the kinds of treatment that may be available or the effectiveness of different medications. However, there are also steps that you need to take as soon as possible to protect your loved ones' legal rights.

Here are 3 tips on how to protect your loved one's legal rights:

1. Have the right legal documents.
2. Organize important documents.
3. Investigate possible benefits.



Three Tips Every South Dakota Business Owner Needs to Know About Contracts

Certain contract provisions can create “lawsuit chaos” for a South Dakota business. Many times, these provisions are buried in the “fine print” in an exceedingly long (and boring!) business contract.

Here are three tips every South Dakota business owner needs to know about these “lurking” provisions:

Tip # 1 - Force Majeure

This provision is also known as an “Act of God” clause and can suspend another party's performance of a contract when unforeseen disasters, such as blizzards and floods, occur. To fit within the meaning of force majeure, the unforeseeable event must be the actual cause of the delay, as opposed to other business considerations existing at the same time.

Tip # 2 - Choice of Law

This provision designates which law is used to resolve any dispute. Most of the time, parties are free to choose which state's laws will apply to their business relationship (as long as that state has a “substantial relationship” to either the transaction or the parties). The reason this provision is important is that laws are often different from state to state. This can be particularly important in non-compete agreements or lawsuits in which a South Dakota business may seek damages.



Tip # 3 - Limiting Liability and Indemnification

As a general rule, breach of contract damages are measured by the amount of money needed to put the non-breaching party back in the position it would have been if the breach hadn't occurred. Of course, each state can define “damages” differently, so a South Dakota business owner must pay attention to what constitutes “allowable damages.” For instance, a liquidated damages provision anticipates the amount of any loss ahead of time and sets a cap on any potential recovery.

These three provisions are just a few examples of what may be “hidden” in a contract. And although these provisions may appear harmless, they can have a significant impact on a South Dakota business owner's legal rights.

For more information about this topic, go to [Inside Counsel - Business Insights for Law Department Leaders](#).



Have You Been Served?

Here Are the Next Five Steps You Must Take After a South Dakota Lawsuit is Started

Has your business just been sued—and now you are unsure of what you should do next?

Receiving notice of a lawsuit against your company is a frightening experience and one that should not be taken lightly. When you have been served a lawsuit, you are faced with a number of risks against your company that have the potential to divert your forward momentum and cost you a lot of money. These high stakes are nothing to take lightly.

Here are five steps you must take as soon as you have been served in a South Dakota lawsuit against your business:

- 1. ACT FAST.** Business lawsuits in South Dakota come with their fair share of strict deadlines that you must adhere to in order to have a chance at fighting back. This is not the time to delay. Act fast to find out the deadlines you are up against.
- 2. INTERVIEW BUSINESS LITIGATION ATTORNEYS.** After notice of a lawsuit, you need to get a business litigation attorney on your side to help you understand the complexities of the documents you have been served. Start interviewing attorneys to find the right fit for your company.

- 3. GATHER INFORMATION.** You will need to gather as much evidence and information as you can to help state your case. Start by putting together a file filled with as much paperwork and documentation as you can find to enhance your company's position in the lawsuit.

- 4. CONSIDER A SETTLEMENT OR MEDIATION.** Going to court and through a trial can be time-consuming and very costly for a business. Whenever possible, consider the option of mediation or settling if it makes sense for your situation.

- 5. FILE A COUNTERSUIT.** In many situations, it can make sense to file a counter lawsuit against the person or company suing you. Your attorney will be able to decide if this is an appropriate action given your circumstances.

Business lawsuits in South Dakota are complex and often benefits from the legal guidance of an experienced attorney from the start. Contact Swier Law Firm, Prof. LLC, to learn more about how we can help you with your case.

Three Reasons to Create a South Dakota Limited Liability Company

For many businesses in Sioux Falls and throughout South Dakota, a Limited Liability Company (LLC) is an excellent business entity choice for three primary reasons.

First, a South Dakota LLC offers protection from personal liability for business debts (just like a corporation).

Second, unlike a corporation, which must pay its own taxes, an LLC is a “pass-through tax entity.” This means that the profits and losses of the business pass through to its owners, who report them on their personal tax returns just as they would if they owned a partnership or sole proprietorship.

Third, although setting up an LLC is more difficult than creating a partnership or sole proprietorship, running one is significantly easier than running a corporation.



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