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## Trusts 101 for Investment Advisors: Why South Dakota Is the Top Situs for Your Clients' Trusts

When setting up a trust, situs (or location) is critical. It's essential to choose a state where both grantor and beneficiaries gain maximum value. States have different regulations and laws regarding trusts, so the situs you select will significantly impact tax efficiency, privacy and asset protection.

Many investment advisors fail to consider a trust jurisdiction that differs from a client's home jurisdiction – because they fear that it will be either overly complicated or too expensive. Here at Sterling Trustees, we help investment advisors, attorneys and client families leverage the unique benefits found in South Dakota – offering specific advantages over other states that make it a top choice among HNW and UHNW families.

Creating a South Dakota trust has far greater opportunities than other states. By partnering with an advisor-friendly [trust administration company](#) like Sterling Trustees, you can set up a trust in South Dakota for your clients, regardless of whether or not you are domiciled in the state. This can be a wise choice for your clients who want to preserve their wealth and maximize benefits...regardless of location.

A South Dakota trust offers some of the most advanced trust laws in the United States, providing grantors and beneficiaries far greater asset protection and tax efficiencies for many generations to come.

### **The Main Benefits of a South Dakota Trust**

Creating a South Dakota trust is one of the best ways to safeguard your client's interests and assets. This progressive trust situs offers valuable benefits to grantors for greater preservation of generational wealth. Here are some of the key laws and regulations that make South Dakota trusts so appealing.

#### *Tax Benefits*

South Dakota trusts are free from all state income tax, city/local tax, intangibles taxes, dividends taxes, interest tax and corporate tax. There are also no state capital gains taxes on trusts, which can save beneficiaries a significant amount when generational wealth is passed down.

While there are many states that don't have any income or capital gains taxes, more digging must be done to identify which states are protected from enacting a state income or capital gains tax in the future. South Dakota has had no state income, personal or corporate tax since 1942, and its constitution prohibits any new taxes or increases in taxes without a voter initiative or two-thirds approval of both state legislative branches. This constitutional clarity does not exist in other no-tax states.

With many state budgets decimated by the pandemic, there are no assurances that some of these states won't be forced to implement a tax to make up for the short falls. Advisors and their clients need to consider carefully the right no-tax state to avoid significant problems in the future.

[Click here and use our calculator](#) to see how much you save in state Income and capital gains taxes with a trust in South Dakota

How to eliminate state taxes with South Dakota trusts

[View video here](#)

### *Unlimited Duration*

South Dakota trusts can be set up to preserve generational wealth for an unlimited period. In fact, it's the first state in the country to abolish the rule against perpetuities (RAP), which dictated when trusts needed to be terminated.

Before RAP was eliminated, South Dakota was only attractive because of its tax laws. Then, in 1983, Governor Bill Janklow saw an opportunity to position South Dakota as the top jurisdiction for personal trusts and convinced legislative leaders to repeal RAP. And [the rest is history](#).

Now your client's trust, if properly funded, can last forever, which is how the dynasty trust was created:

- Clients can put assets into trust.
- Assets don't pass down from generation to generation but stay in trust.
- The trust is never subject to generation-skipping tax – unlike trusts subject to a rule against perpetuities.

For HNW and UHNW families, this is a tremendous vehicle for passing assets down to future generations without any significant tax implications other than federal income tax and capital gains tax paid at the trust level.

### *Enhanced Creditor Protection*

South Dakota trusts offer strong creditor protection over assets placed in the trust. South Dakota was the first state in the U.S. with a discretionary support statute, which defines the types of interests a beneficiary has in a trust and therefore the rights of a beneficiary's creditor. Under South Dakota law, a discretionary interest in a trust is not a property interest nor an entitlement. Additionally, limited powers of appointment and remainder interests are also not property interests – extremely advantageous from an asset protection standpoint.

Along with discretionary support statute, South Dakota is among a handful of states to offer self-settled trusts. Here, the trust's settlor can also be a discretionary beneficiary, as long as an independent trustee makes all distribution decisions. So the settlor can get strong creditor protection and also enjoy the benefits of assets he/she has given away. Keep in mind, to get this type of protection, there can be no outstanding creditor claims before setting up a self-settled trust, and the assets transferred must be in a trust for two years without any further creditor claims. Still, this waiting period is the shortest of any state, matching Nevada which is also two years.

### *Privacy Protection*

South Dakota trusts offer two forms of privacy not achievable elsewhere in the country:

- For any trusts made part of a lawsuit, a trustee can go to court and have a permanent seal put on the trust document, so it is never made public. While many states have similar measures, no other state offers a permanent seal.
- A settlor can create quiet trusts, which allows the settlor, investment advisor and trust protector to withhold information from beneficiaries, thereby protecting young beneficiaries from finding out the trust's value. In most states, a trustee has a duty to inform a beneficiary at age 18 of the existence of a trust and also to provide statements. A college-bound beneficiary who learns of the trust's existence can have his/her ambition stifled...with lifelong consequences. Trustees can manage what information is shared and available around the trust in order to protect them.

### *Directed Trusts*

South Dakota is one of the first states to implement directed trusts – and today, South Dakota directed trust statutes consistently rank as the nation's best. A directed trust allows the settlor, who establishes a trust with an administrative trustee, to appoint an advisor or committee that in turn directs the administrative trustee as to trust investments and/or distributions.

A directed trust provides a family and its advisors with the most flexibility and control regarding the trust's investment management as it relates to asset allocation, diversification, non-diversification and distributions. Additionally, the directed trust features a structure that involves family members and advisors and minimizes trustee fees. Very few states accommodate directed trusts.

#### Flexible Reformation and Modification Process

In South Dakota, the trust reformation and modification process is superior to other states and more cost-effective. Any reformations or modifications to a South Dakota trust are carried out very quickly and remain completely private. Altering or reforming a trust is much easier than it would be in a different situs, too.

Distributing assets from one trust to a new trust (or decanting) is likewise more straightforward. Decanting to a South Dakota trust offers numerous benefits, such as changing beneficial interests, removing mandatory income interest and decanting assets into a discretionary trust.

South Dakota's reformation, modification and decanting statutes make it very easy to move trusts with antiquated state trust laws or high tax states to a more modern and progressive situs. Best of all, you don't have to live in South Dakota to take advantage of its remarkable trust laws.


#### It's Time to Consider a South Dakota Trust

Establishing a South Dakota trust gives your clients numerous advantages and ensures long-lasting advisor relationships. Sterling Trustees offers an advisor-friendly partnership, so you can provide your clients with greater value from a wealth management perspective.

Regardless of where you or your clients are based, you can establish a trust in South Dakota. [Just ask us how](#) to design a trust model that works best for your practice.

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