South Dakota's Situs Advantages Over Florida

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INTRODUCTION

Trusts play a pivotal role in estate planning and asset protection, serving as indispensable tools for individuals and families seeking to secure their financial legacies. In the United States, every state possesses the authority to establish its own trust laws, leading to significant variations in how trusts are administered and governed. South Dakota and Florida are two states that have emerged as prominent players in the realm of trust law, each with its own distinct set of regulations and advantages. This is a comprehensive examination of trust laws in South Dakota and Florida, with a primary focus on highlighting why South Dakota often stands out as a superior jurisdiction for trust establishment and administration.

South Dakota's ascendancy as a trust-friendly jurisdiction has garnered widespread attention, attracting both domestic and international trust settlors. The state has successfully crafted a legal framework that prioritizes the interests of trust grantors and beneficiaries while offering innovative trust solutions. Florida, while renowned for its favorable tax climate and robust financial industry, presents a unique landscape for trusts, characterized by a set of laws that may not always align with the evolving needs of the trust industry.

In this comparative analysis, we will delve into key facets of trust laws in South Dakota and Florida, including multi-generational wealth transfer, asset protection, tax considerations, privacy, and flexibility. By examining these critical dimensions, we aim to elucidate why South Dakota's trust laws often outshine those of Florida, shedding light on the factors that drive individuals and institutions to choose South Dakota as their preferred jurisdiction for trust planning and administration. In an era marked by increasing complexity in wealth management and estate planning, the choice of trust jurisdiction holds profound implications, making this comparative analysis a timely and valuable resource for practitioners, advisors, and individuals seeking to navigate the intricate landscape of trust law.

PERPETUAL TRUSTS

In 1983 South Dakota was the first state in the nation to abolish the Rule Against Perpetuities, recognizing the advantages of dynasty trusts by allowing trusts to last perpetually for all assets. [SDCL § 43-5-8] South Dakota was also the first to adopt a Trust Protector statute in 1997 (maximizing flexibility of the trust for generations). [SDCL § 55-1B-6]

Florida extended its statutory Rule Against Perpetuities period to 1,000 years effective July 1, 2022 (Fla. Stat. § 689.225), up from the 360-year period the statute previously allowed. While a 1,000-year term will outlast any current planning horizon in practice, it remains a fixed, finite term rather than a true abolition of the rule–meaning a Florida trust is not, as a matter of law, a perpetual trust. Ultra-high-net-worth individuals (UHNW) seeking trusts that endure indefinitely, with no statutory end date at all, must look to jurisdictions such as South Dakota, which abolished the Rule Against Perpetuities outright in 1983 rather than extending its term. [Fla. Stat. § 689.225]

STRENGTH OF STATE

On the basis of its solvency in five separate categories, the Mercatus Center's last published fiscal-condition ranking placed South Dakota second among U.S. states, with between 4.76 and 6.78 times the cash needed to cover short-term obligations, revenues exceeding expenses by 2 percent, an improving net position of $106 per capita, and a net asset ratio of 0.34, with long-term liabilities of just 8 percent of total assets, or $650 per capita. [Mercatus Center, Ranking the States by Fiscal Condition, 2018 Edition] That fiscal strength has held up since: South Dakota carries a Aaa/AAA credit rating from Moody's and S&P, reaffirmed as recently as 2025, and the South Dakota Retirement System was reported as essentially 100% funded in its June 2024 valuation–a funding position Florida's own pension system does not match.

Florida's own fiscal position is strong in absolute terms: its enacted FY2025-2026 budget totals $114.8 billion, backed by $12.6 billion in reserves, and the state carries the same top-tier Aaa/AAA/AAA credit ratings South Dakota does. The meaningful difference lies in

pension funding–the Florida Retirement System (FRS) was 80.7% funded as of its July 1, 2024 actuarial valuation, a gap South Dakota's fully funded system does not carry. [Florida TaxWatch, FY2025-26 Budget Guide; FRS 2024 Actuarial Valuation]

Strength of state is particularly important because fiscally insecure states may view taxing trusts as a straightforward means to generate revenue, helping to offset operating deficits that cannot be covered by issuing new debt or other funding sources. These metrics help evaluate how favorable a state's fiscal and regulatory environment is for trust administration.

STATE INCOME AND CAPITAL GAINS RATES

Since 1942, South Dakota has imposed no state income taxes, either personal or corporate. The South Dakota Constitution further protects this favorable tax environment by prohibiting the imposition of new taxes or any increases without direct voter approval or a two-thirds majority in both legislative chambers, as outlined in Article XI, Section 14. This constitutional safeguard reinforces the state's long-standing commitment to maintaining a low-tax, business-friendly environment for individuals and corporations alike.

Florida has no personal income tax, but it does impose a corporate income tax. A temporary, revenue-triggered mechanism under House Bills 7093 and 7127 cut that rate to as low as 3.535% for tax years 2021 and 2022, but the trigger expired and Florida's corporate income tax reverted to 5.5% for tax years beginning on or after January 1, 2022–where it remains today. South Dakota, by contrast, imposes no income tax of any kind, personal or corporate, and its constitution requires a voter initiative or two-thirds legislative supermajority to create one–a durable structural protection Florida's corporate rate, which has already moved more than once in the past five years, does not offer.

PRIVACY

In South Dakota, trust documents are permanently shielded from public disclosure in judicial proceedings under SDCL § 21-22-28. This automatic and perpetual privacy

seal ensures that trust records remain confidential indefinitely, providing an added layer of protection for settlors and beneficiaries within the state's favorable trust law framework.

Florida trusts can provide privacy in terms of limiting reporting requirements and avoiding probate. However, there are significant exceptions and limitations to the privacy of trusts in Florida. For example, if disputes arise among beneficiaries or if there are legal challenges to the trust, information about the trust, its assets, and its parties may become subject to scrutiny by virtue of becoming a public record.

CREDITORS CLAIMS

If the settlor is foreseeably solvent, South Dakota trusts are shielded from new claims of creditors of the settlor after two years of a transfer to the trust. A window of six months from discovery of the transfer is provided for existing claims, if longer. For self-settled trusts (for the benefit of the settlor) that are "qualified dispositions", there are exceptions for debts of spousal/child support and the division of marital property existing before the transfer. For third party trusts (not self-settled) there are no such exceptions. [SDCL § 55-1-44] [SDCL § 55-16-10; 16]

The statute of limitations applicable to fraudulent transfers of personal property in Florida remains genuinely unsettled. Florida courts have split: a 2014 decision allowed a creditor to challenge a debtor's transfer of personal property any time during the twenty-year life of a civil judgment under Florida's proceedings supplementary statute (Fla. Stat. § 56.29(3)); a 2020 decision applied the general four-year statute of limitations instead; and a 2023 decision affirmed the twenty-year, life-of-judgment reading. The conflict is now before the Florida Supreme Court, which agreed to resolve it after the question was certified by the Eleventh Circuit in Saadi v. Maroun (merits briefing ordered October 2025)–meaning settlors and creditors alike are working with unsettled law in Florida until that decision issues. South Dakota's two-year (or six-month-from-discovery) lookback period, by contrast, is fixed by statute and not subject to competing judicial interpretations.

ASSET PROTECTION

South Dakota has a thorough statute with respect to the protection of trust assets and avoidance of claims, specifically addressing (i) numerous arguments made in court cases and disputes, (ii) weaknesses caused by the Restatement of Trusts (scholarly positions on legal aspect of trust law), (iii) inadvertent/ ill-advised actions of trust settlors and beneficiaries, (iv) withholding otherwise mandatory distributions from the trust to a beneficiary and (v) vulnerable provisions and drafting errors in trust documents. [SDCL § 55-1-25, 32, 33, 38, 39]

Florida has no domestic asset protection trust (DAPT) statute. Under Fla. Stat. § 736.0505, a settlor's creditors can reach the maximum amount a trustee could distribute to or for the settlor's benefit, regardless of any spendthrift provision–Florida law does not permit a self-settled trust to shield assets from the settlor's own creditors the way a true DAPT jurisdiction does. Florida's protective trust statutes work only for third-party trusts, where the settlor is not also a beneficiary. South Dakota, by contrast, has a fully developed DAPT statute that protects self-settled trusts after a two-year seasoning period, imposes no residency requirement on the trustee, and is used extensively by non-residents establishing trusts from out of state. For anyone seeking to protect their own assets from their own future creditors through a self-settled trust, Florida does not offer that option at all, while South Dakota is built for exactly that purpose. [Fla. Stat. § 736.0505; SDCL § 55-16-1 et seq.]

QUIET TRUSTS

There are detailed provisions in the South Dakota statute for the trust settlor, trust instrument and trust advisors (i.e., trust protector) to restrict or eliminate information to trust beneficiaries and to keep the trust instrument and trust actions quiet. The South Dakota statute directly addresses the ability to restrict the right of a beneficiary to receive a copy of the trust instrument and the right of the settlor, trust protector, or trust advisor to retain the power to change the beneficiaries' rights to trust information. [SDCL § 55-2-13]

Florida does not have a true settlor-directed quiet trust statute. Under Fla. Stat. § 736.0813, a trustee must notify qualified beneficiaries within 60 days of a trust becoming irrevocable, keep them reasonably informed, and provide the trust instrument and asset information on request. Only the trustee's duty to account—not the underlying duty to notify and inform–can be waived, and only by the individual qualified beneficiary personally, not preemptively by the settlor on behalf of beneficiaries generally. Florida practitioners sometimes describe certain drafting techniques informally as "silent trusts," but Florida law does not give a settlor the statutory tool South Dakota's quiet trust statute provides: the ability to direct, in the trust instrument itself, that beneficiaries be kept uninformed for an extended period. [Fla. Stat. § 736.0813]

SPECIAL PURPOSE ENTITIES

South Dakota law specifically permits individuals to serve in trust roles (i.e., investment advisor, distribution advisor, trust protector) for a particular family through an entity (i.e., a limited liability company) for their liability protection without meeting formal Department of Banking regulations and requirements. This feature gives individuals more comfort in serving and taking on these trust advisor roles. South Dakota and New Hampshire remain among a small number of states that expressly permit special purpose entities (SPE) pursuant to codified law–Florida has no comparable statute, leaving individuals who serve in Florida trust advisor roles without the same liability protection.

DIRECTED TRUSTEES

The directed trustee model is the predominant trust company structure in South Dakota, limiting trustee fees while allowing trusted family advisors to control the distributions and investment decisions of the trust assets. South Dakota trust assets under administration reached approximately $906 billion at year-end 2025, spread across 114 chartered trust companies (69 public and 45 private) –scale built substantially on the directed trust model South Dakota pioneered decades before most other states, including Florida, adopted one. [South Dakota Division of Banking; South Dakota Trust Association, 2025]

Florida enacted its own directed trust framework in 2021 through the Florida Uniform Directed Trust Act (Fla. Stat. §§ 736.1401–736.1416), which–like South Dakota's statute–lets the trust instrument itself appoint a trust director to hold investment or distribution authority, without requiring beneficiary consent. The more meaningful difference is one of maturity and market practice: South Dakota's directed trust model has operated since the 1990s, is used in the substantial majority of South Dakota trust business and is supported by trust companies and a Division of Banking with decades of specific regulatory experience in the structure. Florida's framework, while structurally similar on paper, is only a few years old and has not yet developed the same depth of practice, precedent, or specialized trust company infrastructure. [Fla. Stat. §§ 736.1401–736.1416]

RELIABILITY

In re Cleopatra Cameron Gift Trust, 931 N.W.2d 244 (S.D. 2019), the South Dakota Supreme Court affirmed a circuit court's decision concluding that the validity of a trust's spendthrift provision prohibiting direct payments of a trust beneficiary's child support obligation to her ex-husband, was indeed recognized by South Dakota law. Effectively siding with the trustees who stopped paying support claims to the ex-husband because those payments had been mandated when the trust was previously sitused in California. This case is widely accepted as one of the most favorable creditor protection cases in recent history.

Florida does not provide for the establishment of domestic asset protection trusts (DAPTs) under its statutory framework. While certain estate planning trusts, such as irrevocable trusts, may offer some protection from future creditors, Florida lacks the comprehensive statutory regime necessary to fully utilize trusts as asset protection vehicles. Consequently, those seeking robust asset protection should consider other jurisdictions that offer specific statutory support for DAPTs as part of their overall estate and wealth preservation strategies.

FORETHOUGHT

South Dakota reviews its trust law statutes annually and provides guidance on updating the laws through its highly effective Governor's Task Force on Trust Administration Review and Reform which is very responsive to the legal and advisor landscape. Examples of new trust laws in recent years in South Dakota include Community Property Trusts in 2016 (allowing nonresidents to get a full step-up in income tax basis of assets at the death of one spouse), the 2016 Family Advisor (allowing for trusted family advisors to participate on the trust advisor team without taking on the fiduciary responsibility), 2006/2008 Purpose Trusts of unlimited duration (trusts for pets, vacation homes, or any non-charitable purpose without a beneficiary), and the 2025 addition of the tax trust advisor as a recognized directed trust fiduciary role under SDCL Chapter 55-1B, allowing a family's own tax advisor to serve as a trust advisor with authority over tax-related decisions alongside the existing investment trust advisor and distribution trust advisor categories. [SDCL § 55-17-5; SDCL §§ 55-1B-4, 55-1B-13 (2025 S.B. 69, eff. July 1, 2025)]

This commitment and support from the highest levels of state government continually strengthen South Dakota's position as the top destination for trust situs. Grantors, beneficiaries, and their trusted advisors will ultimately be better served establishing trust structures in South Dakota thanks to these subtle but key distinctions.

DECANTING

For existing trusts, South Dakota has the most flexible and highly ranked trust decanting statute, allowing for the expansion of a trust to a fully discretionary trust (adding the ability to distribute for any reason or purpose) and allowing for the inclusion/exclusion of any beneficiaries (both current and future can be changed). This provides much more opportunity for future planning for estate/ gift tax and income tax purposes for a family. [SDCL § 55-2-15]

Florida's decanting statute, Fla. Stat. § 736.04117 (most recently amended in 2025), provides trustees with the authority to adjust various trust provisions, such as extending the trust's duration, changing distribution schemes, or updating administrative terms, without requiring court approval, provided certain statutory requirements are met. For

example, the trustee must have discretionary distribution powers in the original trust and generally cannot alter a beneficiary's vested interest without consent unless the trust explicitly grants that authority. South Dakota's decanting statute remains broader on the dimension that matters most for multigenerational planning–the ability to add or exclude beneficiaries, both current and future–which Florida's statute does not permit to the same degree.

PREMIUM TAX ON PRIVATE PLACEMENT LIFE INSURANCE

For trusts that purchase private placement life insurance, South Dakota has among the lowest insurance premium tax at 8 bps (.008%) on premiums in excess of $100,000 for both policies held by the trust or in a limited liability company (LLC) owned by the trust. [SDCL § 10-44-2]

Under Florida law, life insurance premiums are subject to the state's general insurance premium tax, which imposes a rate of 1.75% on gross premium receipts for life insurance policies. This tax applies uniformly, reflecting the state's approach to the regulation and taxation of insurance products within its jurisdiction.

CONCLUSION

In selecting the optimal jurisdiction for your trust, numerous factors warrant careful consideration. Among the prominent options, South Dakota and Florida stand out. However, when evaluating the nuances of each, South Dakota's status as a premier trust jurisdiction becomes evident. This distinction is the result of deliberate legislative action and a long-standing commitment to fostering a favorable legal environment for trust administration. South Dakota offers robust asset protection, privacy, and flexibility in trust management, positioning it as the superior choice for those seeking to maximize the benefits of modern trust law.

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This white paper is provided for educational purposes and does not constitute legal, tax, or investment advice. Trust siting decisions depend on the residency of the grantor and beneficiaries, the location and character of trust assets, and the specific terms of the trust instrument, among other factors. Readers should consult with qualified legal and tax advisors regarding situs selection and trust structure decisions specific to their circumstances.

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