South Dakota's Situs Advantages Over Nevada

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INTRODUCTION

Which state is more advantageous for clients looking to set up a trust, South Dakota or Nevada? Both have strong trust laws and tax benefits that favor the high-net-worth client, but there are intricacies surrounding state statutes and provisions that, on balance, favor South Dakota in terms of privacy, asset protection, and overall control.

The difference is found in the details, and a comprehensive comparison of the states' trust laws shows contrasts that are significant to how trusts are established and able to operate in each state. It is essential when ascertaining trust situs that all factors be carefully considered in crafting a long-term legacy plan.

South Dakota's legislature has historically instituted some of the most progressive trust laws in the country. Each year, the governor assigns a trust task force that works with state legislators to proactively monitor industry trends and adjust state laws accordingly. This collaboration is unique to South Dakota and allows trust industry leaders to be directly involved with the governor and state lawmakers in the oversight, regulation, and development of trust laws.

This high-level cooperation and industry support from the state government continually strengthens South Dakota's position as a top destination for trust situs year after year. Grantors, beneficiaries, and their trusted advisors will ultimately be well served establishing trust situs in South Dakota thanks to these subtle but key distinctions–though Nevada, itself a mature and well-regarded trust jurisdiction, remains a serious competitor in several respects addressed below.

FIRST TO BE TRUST FRIENDLY / PERPETUAL TRUSTS

Of the top U.S. trust jurisdictions, South Dakota was the first, by statute in 1983, to recognize 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 the flexibility of a trust for generations) [SDCL § 55-1B-6], and enacted a comprehensive third-party discretionary trust statute in 2007, providing enhanced creditor protection for beneficiaries of discretionary trusts. [SDCL §§ 55-1-24 through 55-1-43]

Nevada takes a different approach: rather than abolishing its rule against perpetuities, Nevada law validates a nonvested property interest that vests or terminates within 365 years of its creation. [NRS 111.1031(1)(b)] That 365-year period is a ceiling, not a bar–it is precisely what lets Nevada be marketed as a long-duration, "quasi-dynasty" jurisdiction, just capped at 365 years rather than truly perpetual as in South Dakota. The cap exists because Nevada's own constitution provides that "no perpetuities shall be allowed except for eleemosynary purposes" [Nev. Const. art. 15, § 4]; in 2002, Nevada voters defeated a ballot measure (Question 5) that would have repealed that constitutional prohibition, by a nearly 20-point margin. The Nevada Supreme Court later held that the legislature may define "perpetuities" by ordinary statute notwithstanding the constitutional clause, which is how the 365-year rule coexists with an unrepealed constitutional prohibition. [Bullion Monarch Mining, Inc. v. Barrick Goldstrike Mines, Inc. (Nev. 2015)] The practical result for clients: South Dakota trusts face no duration limit at all, while Nevada trusts–however long-lived–remain subject to a 365-year outer boundary that only a further constitutional amendment could remove.

STRENGTH OF STATE

On the basis of its solvency in five separate categories, the Mercatus Center's last published fiscal-condition ranking (its 2018 Edition, based on FY2016 data) placed South Dakota among the top two states in the nation for fiscal health. That strength has held up since: South Dakota carries a Aaa/AAA credit rating from Moody's and S&P, reaffirmed as recently as 2025; the South Dakota Retirement System was reported as essentially 100% funded in its June 2024 valuation; and South Dakota posted the lowest state unemployment rate in the nation, at 2.0%, in June 2026.

The same 2018 Mercatus edition ranked Nevada tenth among U.S. states for fiscal health. Nevada's position has genuinely improved since: the Nevada Public Employees' Retirement System was 80.5% funded as of its June 30, 2025 valuation (up from 74.4% in 2021), and all three major rating agencies now rate Nevada in the AA-to-Aa1 range (Moody's Aa1, S&P AA+, Fitch AA+, all stable). Nevada's unemployment rate, however, has moved the other way, rising to 5.0% as of July 2026 and remaining persistently above the national average–a longstanding feature of Nevada's tourism-and-gaming-dependent economy. Even with Nevada's credit and pension improvements, both still sit a tier below South Dakota's Aaa/AAA rating and fully funded pension system.

STATE INCOME AND CAPITAL GAINS RATES

There is no state income tax, personal or corporate, in South Dakota. The South Dakota Constitution prohibits any new tax or any increase in an existing tax rate unless approved by the people through the initiative process or by a two-thirds vote of each branch of the state legislature–a structural, constitutional barrier to future taxation. [SD Constitution Article XI, § 14]

Nevada does not have a state income tax, either. However, in 2015 Nevada enacted a "commerce tax" on each business entity engaged in and sitused in Nevada whose annual Nevada gross revenue exceeds $4 million; the excess over that threshold is taxed at industry-specific rates set by statute. [NRS § 363C.200] The $4 million threshold and industry-rate structure remain unchanged and the tax remains in effect today. While the commerce tax is not a personal income tax, it is a real and growing feature of Nevada's business tax landscape that has no counterpart in South Dakota, where the constitutional supermajority/voter-approval requirement makes any comparable new levy far harder to enact.

PRIVACY

There is a permanent seal of privacy in South Dakota for trust documents that would otherwise be part of the record in any judicial proceeding. This seal attaches automatically. [SDCL § 21-22-28]

Nevada has no comparable automatic judicial seal for trust proceedings. Nevada's general civil sealing rule requires a court to find that sealing is justified by "compelling privacy or safety interests that outweigh the public interest" in each case–and that general rule expressly does not even apply to trust matters. [Nev. Sup. Ct. R., Part VII, Rules 1(4), 3(4)] Nevada trust practitioners instead rely on the state's nonjudicial settlement and notice-opt-out provisions to keep most routine trust administration out of the public record entirely. [NRS § 164.410 et seq.] The two approaches reach a similar practical result for routine administration, but South Dakota's automatic, permanent seal gives settlors a categorical assurance that Nevada's discretionary, case-by-case civil sealing standard does not.

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]

Nevada applies the same two-year-from-transfer, six-month-from-discovery limitations period to its self-settled spendthrift trusts. [NRS § 166.170] Unlike most other asset-protection-trust states, however, Nevada's statute contains no express carve-out naming child support, spousal support, or divorce-related claims as automatic exception creditors–a genuinely aggressive, distinguishing feature of Nevada law that sophisticated planners frequently cite in Nevada's favor. That said, the absence of a named exception is not an absolute guarantee: a family-support creditor could still attempt to reach trust assets under NRS 166.170's own fraudulent-transfer or pre-existing legal-obligation language, so the practical difference from South Dakota's express carve-out is narrower than a literal reading might suggest.

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 aspects 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]

Nevada's asset protection trust statute (NRS Chapter 166, the Nevada Spendthrift Trust Act) is shorter and more general in its drafting than South Dakota's, and does not walk through the same range of specific court-tested scenarios. Nevada asset protection

trusts are nonetheless widely regarded as robust—Nevada consistently ranks among the top tier of domestic asset protection trust jurisdictions in industry surveys alongside South Dakota, Delaware, and a small handful of other states. The more concrete distinguishing factor is procedural and judicial, not statutory: as discussed under Reliability below, a federal district court applying Nevada law has at least once allowed a creditor to pursue an alter-ego theory against a poorly administered Nevada trust, and the Nevada Supreme Court has not yet resolved whether that theory generally applies to trusts.

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]

Nevada likewise permits quiet or "silent" trusts: the terms of a trust instrument may expand, restrict, eliminate, or otherwise vary the rights and interests of beneficiaries in any manner that is not illegal or against public policy, including the right to be informed of the beneficiary's interest for a period of time. [NRS § 163.004(1)(a)] On this point, Nevada and South Dakota are substantively comparable.

SPECIAL PURPOSE ENTITIES

South Dakota was the first, and remains one of a small number of states, with an express statute permitting 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), obtaining 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. [SDCL § 51A-6A-66]

Nevada has no comparable special purpose entity statute. Nevada's trust protector statute [NRS § 163.5553] addresses what powers a protector may exercise, but says nothing about an entity serving in that role or exempting it from Nevada's trust-company licensing requirements–so an advisor who wants that liability protection in Nevada has no statutory path to it comparable to South Dakota's.

DIRECTED TRUSTEES

The directed trustee model is a predominant trust company structure in South Dakota, limiting trustee fees while allowing trusted family advisors to control the distributions and investment decisions of trust assets–a structure that has helped South Dakota grow to $906 billion in trust assets under administration across 114 chartered trust companies (69 public, 45 private) as of year-end 2025. [South Dakota Division of Banking; South Dakota Trust Association, 2025]

Nevada's directed trust statutes provide a level of protection for the directed fiduciary [NRS §§ 163.5533–163.5549], but, as in several other competing jurisdictions, there is no specific language addressing a family-advisor role of the kind South Dakota recognizes and has continued to refine, most recently with the 2025 addition of a tax trust advisor role (see Forethought, below).

RELIABILITY

The South Dakota Supreme Court's ruling in In re Cleopatra Cameron Gift Trust, 931 N.W.2d 244 (S.D. 2019), is widely viewed as a persuasive authority on a state's ability to limit enforcement of a sister state's judgment against trust assets. In that case, a California family court had entered a valid order requiring both child support and spousal support payments from the trust; the question before the South Dakota Supreme Court was not whether the California order was valid, but whether it could be enforced directly against trust assets administered in South Dakota. The obligee was the beneficiary's ex-husband, enforcing a family-support judgment rather than an ordinary commercial debt, and South Dakota law does not allow a judgment of that kind to be enforced directly against a trust's assets. The decision is regarded as one of the more favorable creditor-protection rulings in recent history, and makes clear that creditors–including former spouses holding family-

support judgments–asserting claims against trusts administered in South Dakota are subject to South Dakota's own creditor protection and enforcement laws.

Nevada's own experience with alter-ego claims against trusts is less settled. In TransFirst Group, Inc. v. Magliarditi, No. 2:17-cv-00487-APG-VCF (D. Nev. May 25, 2017), 2017 WL 2294288, a federal district court applying Nevada law allowed a judgment creditor to pursue an alter-ego theory not only against a web of Nevada LLCs and partnerships but against trusts as well, where the debtor was found to exercise "virtually unfettered control" over trust assets despite not serving as trustee, and to have commingled funds and used trust assets for personal expenses. Commentators described the facts as an outlier–egregious mismanagement rather than a routine, properly administered trust–and cautioned against reading too much into a single district court decision. The Nevada Supreme Court later addressed related certified questions in Magliarditi v. TransFirst Group, Inc., 450 P.3d 911 (Nev. 2019), but expressly declined to decide whether alter-ego doctrine applies to trusts generally, leaving the question unresolved by Nevada's highest court to this day. For clients, the practical takeaway is that a properly and professionally administered trust should not face this exposure in either state, but Nevada's law on the point remains genuinely unsettled in a way South Dakota's is not.

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 (allowing nonresidents to get a full step-up in income tax basis of assets at the death of one spouse), the Family Advisor (allowing for trusted family advisors to participate on the trust advisor team without taking on the fiduciary responsibility), 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)]

Nevada has consistently followed South Dakota and other progressive jurisdictions by enacting favorable laws for trust grantors and beneficiaries, but real distinctions remain: Nevada's 2015 commerce tax [NRS § 363C.200] applies to sizable Nevada-sitused business entities in a way South Dakota's constitutionally-protected tax structure does not; Nevada's 365-year perpetuities cap [NRS § 111.1031] is generous but finite, unlike South Dakota's fully abolished rule; and Nevada's privacy protections for trust matters depend on a mix of nonjudicial procedures and a general civil sealing standard that, by its own terms, does not apply to trusts–rather than South Dakota's single, automatic, permanent statutory seal.

DECANTING

For existing trusts, South Dakota has one of the most flexible and highly ranked trust decanting statutes in the country, 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] Steven J. Oshins' widely cited Annual Trust Decanting State Rankings Chart has repeatedly placed South Dakota's decanting statute at or near the top of the list nationally.

Nevada also maintains a modern, flexible decanting statute. [NRS § 163.556] A Nevada trustee generally need not give beneficiaries notice before decanting, and may decant both income and principal interests, subject to standard carve-outs protecting marital and charitable tax deductions. Nevada, too, is consistently rated among the top tier of decanting jurisdictions in industry rankings. On this particular feature, the two states are best described as comparably strong rather than one clearly outranking the other; families should look to the fuller set of distinctions in this comparison–perpetuities duration, privacy, and creditor protection among them–rather than decanting alone, in choosing a situs.

PREMIUM TAX ON PRIVATE PLACEMENT LIFE INSURANCE

For trusts that purchase private placement life insurance, South Dakota taxes premiums at 2.5% (250 bps) on the first $100,000 of a policy's annual premium and just 0.08% (8 bps) on premium in excess of $100,000, for policies held either directly by the trust or through a limited liability company (LLC) owned by the trust–among the most competitive rates in the country. [SDCL § 10-44-2]

Nevada's rate is considerably higher: 3.5% (350 bps) on net direct premiums written and net direct considerations written, with Nevada-domiciled Qualified Risk Retention Groups taxed at 2%. [NRS § 680B.027] The premium tax issue becomes important when considering entities like LLCs in private placement life insurance programs. Properly sitused LLCs avail clients of lower premium taxes and allow clients to be classified as "qualified purchasers" for securities law purposes.

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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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