South Dakota's Situs Advantages Over Wyoming

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INTRODUCTION

With so many states across the nation vying for top-tier status in the multibillion-dollar trust services industry, experienced professionals and family advisors are asking the same question: which state is most advantageous for clients looking to establish a trust? Wyoming is a relative newcomer to the modern trust services industry compared to South Dakota, which has been a top-tier trust situs and industry pioneer for decades. Both states have trust laws and tax benefits that favor the HNW client, but the history and substance of each state's statutes suggest that South Dakota remains the better choice in terms of consistency and predictability.

It has never been more important for wealth planning professionals and advisors to understand how different trust laws affect clients and beneficiaries. Trusts established in favorable jurisdictions provide the most effective means of wealth transfer for generations, while eliminating current and future federal or state gift and death taxes and state income taxes.

South Dakota has historically instituted the country's most progressive trust laws. Each term, the governor appoints a new trust task force that works with state legislators to proactively monitor industry trends and adjust state laws accordingly. This collaboration is exclusive to South Dakota and allows trust industry leaders to be directly involved with the development of trust laws.

This commitment and support from the highest levels of state government continually strengthen South Dakota's position as a top destination for trust situs. Grantors, beneficiaries and trusted advisors are ultimately well served establishing trust structures in South Dakota, thanks to these key distinctions–though Wyoming, itself a serious and well-regarded trust jurisdiction, remains a capable 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]

Wyoming has not abolished its Rule Against Perpetuities outright. For trusts created on or after July 1, 2003, Wyoming law allows non-real-property trust assets to continue for up to 1,000 years unless an earlier term is set in the instrument–one of the longer vesting periods in the country–but interests in real property remain subject to the traditional common-law RAP. [WY Stat § 34-1-139] The reason is structural, not a matter of legislative choice: Wyoming's own constitution provides that "perpetuities and monopolies are contrary to the genius of a free state, and shall not be allowed," [Wyo. Const. art. 1, § 30] so the legislature extended the vesting period rather than abolishing the rule the way South Dakota did by ordinary statute. No Wyoming court has yet tested the 1,000-year extension against this constitutional clause, but the underlying tension is real and unresolved–a structural uncertainty South Dakota's dynasty trust statute does not share.

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 Wyoming sixth among U.S. states for fiscal health. Wyoming's position has moved in different directions on different measures since: its state pension system (Wyoming Retirement System) was 79.75% funded as of the January 1, 2025 valuation, essentially flat since 2021 but on an improving trajectory

following 2018 contribution-rate reforms, with full funding projected by 2044. Wyoming's unemployment rate has fallen substantially, to 3.0% as of July 2026. On credit quality, S&P affirmed Wyoming's AA issuer rating and revised its outlook from Stable to Positive in April 2024, citing strong budgetary performance and a growing mineral trust fund reserve–Fitch, notably, does not rate Wyoming's general obligation debt at all, since the state's constitution sharply limits its ability to issue traditional debt. Wyoming's economy still leans on mineral extraction–coal production has continued its long national decline–but investment earnings on the state's Permanent Mineral Trust Fund have recently outperformed budget projections and are increasingly cited as the more relevant fiscal story. Even so, Wyoming's best current rating (AA) still sits two full notches below South Dakota's Aaa/AAA, and unlike South Dakota's fully funded pension system, Wyoming's retirement system remains roughly one-fifth underfunded.

STATE INCOME AND CAPITAL GAINS RATES

There are no state income taxes, 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]

Wyoming likewise has no state personal or corporate income tax, but its revenue base has historically relied heavily on mineral severance taxes and royalties from coal, oil, and natural gas–industries that, particularly coal, have been in long-term national decline. Wyoming has cushioned that exposure by building substantial reserves in its Permanent Mineral Trust Fund, whose investment earnings have become an increasingly significant, and recently outperforming, budget stabilizer. Still, Wyoming's tax advantages remain a function of ordinary legislative policy rather than a constitutional supermajority requirement of the kind South Dakota has–meaning Wyoming's lawmakers retain more latitude to revisit the state's tax structure as mineral markets evolve than South Dakota's legislature does.

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]

Wyoming lawmakers followed South Dakota's lead on privacy: trust-related petitions, inventories, fiduciary reports, and related court orders are sealed automatically upon filing, with no separate motion required to trigger the seal. [WY Stat § 4-10-205 (2017)] Unsealing a Wyoming trust record to a third party, however, requires a showing of need and a court's permission–a modest but real distinction from South Dakota's seal, which lasts in perpetuity by default.

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]

Wyoming falls short by comparison on creditors' claims: a transfer to a Wyoming qualified spendthrift trust generally remains open to challenge for four years (or one year after a creditor discovers or reasonably should have discovered the transfer, if later) –twice South Dakota's two-year window–with a pre-existing tort claimant recognized as an exception creditor. [WY Stat § 34-14-201 et seq. (Uniform Fraudulent Transfer Act)]

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]

Wyoming also has comprehensive asset protection legislation, but funding a Wyoming qualified spendthrift trust carries an extra formality South Dakota does not impose: the settlor must execute a sworn affidavit at the time of transfer attesting to solvency, absence of intent to defraud, no pending or threatened litigation, no outstanding child-support arrears, and personal liability insurance coverage of $1,000,000 (or the fair market value of the transferred property, if less). [WY Stat §§ 4-10-510, 4-10-512] There is no comparable affidavit or insurance-coverage condition for a qualified transfer to a South Dakota-sitused asset protection trust.

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]

Wyoming does not require mandatory trust or beneficial-interest registration, and it is one of the few Uniform Trust Code states to have affirmatively opted out of the model act's mandatory beneficiary-notification provisions–so a Wyoming trust instrument can limit or eliminate the trustee's duty to keep beneficiaries informed. [WY Stat § 4-10-105]

SPECIAL PURPOSE ENTITIES

South Dakota is the only state 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]

Wyoming permits "trust protector companies" in practice, but does not expressly recognize the entity structure by statute the way South Dakota does. Wyoming's separate private family trust company statute (W.S. § 13-5-701 et seq.) allows a family to charter its own unlicensed trust company to act as full trustee–a different and broader mechanism than South Dakota's SPE statute, but not a direct substitute for the specific liability protection South Dakota's statute affords an individual serving only as an advisor or protector.

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]

Wyoming's directed trust statute provides a level of protection for the directed fiduciary, but the statute itself runs only seven brief subsections and lacks the specificity of South Dakota's dedicated directed-trust chapter–including no language addressing a family-advisor role of the kind South Dakota recognizes. [WY Stat § 4-10-718] Wyoming's directed-trust, trust-protector, and special purpose entity statutes have remained largely unchanged since 2011, while South Dakota has continued to refine its own directed-trust framework, most recently adding a tax trust advisor role in 2025 (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.

Wyoming's leading entity-protection precedent points the other way. In GreenHunter Energy, Inc. v. Western Ecosystems Technology, Inc., 2014 WY 144, 337 P.3d 454 (Wyo. 2014), the Wyoming Supreme Court allowed a creditor to pierce the veil of a single-member Wyoming LLC without any finding of actual fraud, holding that misuse of the entity–undercapitalization, commingling, and diverting funds to other creditors–could work an injustice sufficient to disregard the entity on its own. It bears noting that GreenHunter was an ordinary commercial dispute involving an actively managed operating LLC, not a trust or an asset-protection structure, and that Wyoming's charging-order-exclusivity statute–the actual doctrine that shields an LLC's assets from a member's personal creditors–was untouched by the decision. Even so, GreenHunter remains, over a decade later, the leading reminder that a Wyoming LLC's liability shield depends on rigorously observing corporate formalities; a family entity used to hold trust assets that is administered loosely could face similar scrutiny.

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)]

Wyoming has consistently followed South Dakota and other progressive trust jurisdictions by enacting favorable laws for trust grantors and beneficiaries. Disadvantages to a Wyoming-sitused trust remain, however: Wyoming's four-year lookback period for creditor claims is double South Dakota's two-year window, and funding a Wyoming spendthrift trust requires the settlor's sworn affidavit and $1,000,000 in personal liability insurance coverage (or the value of the transferred property, if less) –formalities South Dakota does not impose.

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]

Wyoming does not have a dedicated decanting act; its decanting authority is instead one enumerated power within Wyoming's general trustee-powers statute. [WY Stat § 4-10-816(a)(xxviii), (b)] That provision is, in one respect, broader than many states'–it extends to trustees holding only a mandatory (not just discretionary) distribution power–but it does not appear to address whether a second trust may remove a mandatory income interest, grant a power of appointment to a non-beneficiary, or accelerate a remainder beneficiary's

interest, and it imposes no notice requirement on affected beneficiaries. South Dakota's dedicated decanting statute speaks directly to each of these points, giving families and their advisors more certainty when adapting an existing trust to changed circumstances.

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 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. [SDCL § 10-44-2]

Wyoming's rate is lower at both tiers: 0.75% (75 bps) on the first $100,000 and, since lawmakers enacted SF 0071 in 2020, just 0.075% (7.5 bps) on premium in excess of $100,000. [WY Stat § 26-4-103] Nevada, by comparison, taxes private placement premiums at a flat 3.5% (350 bps) on net direct premiums, with qualified risk retention groups taxed at 2%. [NRS § 680B.027] On this particular metric, Wyoming's premium tax is the more competitive of the three states; South Dakota's advantage lies instead in the breadth and maturity of its overall trust administration infrastructure, its directed-trustee ecosystem, and its longer track record of legislative and judicial consistency for the private placement life insurance structures such policies typically fund. 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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