# South Dakota's Situs Advantages Over Alaska

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## INTRODUCTION

With so many states across the nation vying for their share of the multi-billion dollar trust industry, experienced professionals and family advisors must determine which situs is the best fit for their HNW and UHNW clients. While South Dakota is a top-tier trust situs and industry pioneer, many states across the nation have followed its lead to create a landscape in which trust assets thrive. Alaska has demonstrated its dedication to being among the top-tier situs designations by enacting trust-friendly legislation and successfully attracting trust business from around the world.

However, because the subtle distinctions of law can have significant client impact, it has never been more important for wealth planning professionals and advisors to understand state trust laws and how they affect clients and their 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 laws remain among the most progressive in the nation, providing estate planning and tax-saving benefits not available in most other states.

That stature is largely due to a unique collaboration. Each term, the governor appoints new members to a trust task force whose sole purpose is to work with state legislators to proactively monitor industry trends and adjust state laws accordingly. This collaboration is exclusive to South Dakota and gives trust industry leaders the distinct ability 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 their trusted advisors will ultimately be well served by establishing trust structures in South Dakota thanks to these key distinctions–though Alaska, as one of the nation's original trust-friendly jurisdictions, remains a serious and capable competitor in several respects addressed below.

## PERPETUAL TRUSTS

In 1983, South Dakota was the first state in the nation to abolish the Rule Against Perpetuities (RAP), 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]

Alaska began dismantling its own RAP through the original Alaska Trust Act, effective April 2, 1997, and completed the process in 2000 when the legislature repealed Alaska's statutory rule against perpetuities and enacted a 1,000-year vesting/termination period for property interests in trust assets, retroactive to the 1997 effective date. [AS 34.27.051]

That places Alaska's reform roughly fourteen to seventeen years after South Dakota's 1983 abolition of the RAP–a meaningful head start that let South Dakota's dynasty-trust industry, case law, and administrative infrastructure mature well before Alaska's own regime existed.

## 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 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 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.

The same 2018 Mercatus edition ranked Alaska 11th among U.S. states for fiscal health, with between 17.07 and 17.92 times the cash needed to cover short-term obligations–though much of that cash cushion is held in the Alaska Permanent Fund and is not readily available for general spending. Revenues covered only 52 percent of expenses, producing a worsening net position of –$6,946 per capita; the state's net asset ratio was 0.77, and long-term liabilities stood at $8,670 per capita (though a lower share of total assets than the national average). Total unfunded pension liabilities guaranteed to be

paid were reported at $37.33 billion (91 percent of state personal income), with other post-employment benefit (OPEB) obligations of $8.48 billion (21 percent of state personal income). [Mercatus Center, Ranking the States by Fiscal Condition, 2018 Edition] Alaska's fiscal footing has since improved considerably: rating agencies have upgraded the state twice in recent years–Moody's to Aa2 in June 2025 and S&P to AA in April 2024, both citing the legislature's restraint on Permanent Fund Earnings Reserve draws and a rebuilt Constitutional Budget Reserve–yet Alaska's ratings (Aa2/AA/AA-) still sit a tier below South Dakota's Aaa/AAA, and South Dakota's pension system remains fully funded where Alaska's does not.

## STATE INCOME AND CAPITAL GAINS RATES

There have been no state income taxes, personal or corporate, in South Dakota since the early 1940s. 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, not merely a matter of current legislative preference. [SD Constitution Article XI, § 14]

Alaska likewise has no state income or capital gains tax, but its revenue base has shifted substantially over the past decade. Oil and gas taxes and royalties, once the overwhelming source of state revenue, now account for roughly 23 percent of Alaska's unrestricted general fund revenue; Alaska Permanent Fund earnings have been the state's single largest revenue source since 2018 and now supply roughly two-thirds of the general fund. [Alaska Department of Revenue, Revenue Sources Book, 2025] That diversification has eased–though not eliminated–Alaska's historical vulnerability to oil-price swings, and no state income or capital gains tax has been seriously advanced in recent legislative sessions. The more durable distinction is structural: South Dakota's tax advantages are locked in by a constitutional supermajority/voter-approval requirement, while Alaska's are simply today's policy choice, subject to change by ordinary legislative majority as budget pressures evolve.

## 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 and lasts in perpetuity. [SDCL § 21-22-28]

Alaska law declares that any notice or filing of a petition, summary of formal proceedings, and dispositional order or modification or termination of a dispositional order are available for public inspection and can only be sealed upon court order for good cause. The sealing of Alaska court records may be achieved pursuant to a court order, but in the absence of a formal request of the court, the records will be deemed public. [AS 13.26.013] Unlike South Dakota's automatic, permanent seal, privacy in Alaska is discretionary and must be affirmatively requested and justified to a court.

## 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]

In Alaska, creditors can reach trust assets up to four years after the transfer to the trust, or one year after the transfer is or reasonably could have been discovered by the creditor, whichever is later. [AS 34.40.110] Alaska's "lookback period" is twice that of South Dakota, doubling the length of exposure to a creditor's cause of action or claim for relief against the trust assets. This temporal distinction could have real implications, specifically for clients in high-risk professions or those anticipating major life changes.

## 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]

Steven J. Oshins' widely cited Domestic Asset Protection Trust State Rankings Chart (11th Annual Edition, April 2020) scored Alaska 8th nationally at 82.5 on a weighted scale, compared with South Dakota's 2nd-place score of 98–driven largely by Alaska's four-year lookback period (twice South Dakota's), its exception creditors, and its affidavit-of-solvency requirement for new transfers. More recent situs surveys, including WealthManagement.com's 2024 "Best Situs" tier rankings, place Alaska back among the first tier of DAPT jurisdictions alongside South Dakota, Nevada, Delaware, and Tennessee. Even so, the underlying statutory gap remains: Alaska's longer lookback period and broader creditor exceptions mean a settlor's assets stay exposed to challenge for materially longer in Alaska than in South Dakota, regardless of where either state ranks in a given year's survey.

## 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]

Alaska does permit quiet trusts, but the restriction on a beneficiary's right to be informed may only last for the shorter of the settlor's lifetime or a judicial determination of the settlor's incapacity. [AS 13.36.080] That is a significant limitation compared to South Dakota, where the silence of a quiet trust can outlive the grantor, enduring even after the settlor's death.

## SPECIAL PURPOSE ENTITIES

South Dakota is the only state providing express legislative support for Special Purpose Entities. The 2011 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. New Hampshire law provides limited protection for a "qualified trust advisor," but leaves the "entity" question unresolved (RSA 383-C:12-1201 and 1202). Delaware and Wyoming permit "trust protector companies," but these entities aren't recognized by statute. [SDCL § 51A-6A-66]

Alaska recognizes SPEs indirectly but does not expressly address them in statute. The SPE entity structure represents a significant advantage in many sophisticated and unique estate plans, and the lack of statutory guidance in Alaska may result in exposure to a damaging judicial challenge or unnecessary IRS scrutiny. An SPE statute provides a level of predictability and security not available in states that have not addressed them directly by law.

## 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]

Alaska's directed trust statute provides that "the trustee does not have an obligation to review, inquire, investigate, or make recommendations or evaluations with respect to the exercise of a power of the trustee if the exercise of the power complies with the directions given to the trustee." [AS 13.36.375(c)] Taken literally, this language fails to relieve a trustee from liability for actions of a trust director that do not require action by a trustee. If, for example, a trust director exercises a power to amend a trust, the statute would not relieve the trustee for failing to advise the beneficiaries about the amendment, because by its terms the statute only covers "the exercise of a power of the trustee" and not the exercise of an independent power of the director that requires no action by the trustee. The Alaska statute also fails to cover non-exercises (as distinct from exercises) of the powers of a director or trustee.

## 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.

Alaska's own courts have delivered a more cautionary result for its asset protection trusts. In Toni 1 Trust v. Wacker, 413 P.3d 1199 (Alaska 2018), the trustee of an Alaska self-settled asset protection trust sought a declaratory judgment that fraudulent-transfer judgments entered by a Montana court and the U.S. Bankruptcy Court–both of which had voided transfers to the Alaska-sitused trust–were void and unenforceable, on the theory that Alaska's statute (AS 34.40.110(k)) gave Alaska courts exclusive jurisdiction over such claims. The Alaska Supreme Court affirmed dismissal, holding that Alaska's legislature cannot unilaterally divest other states' or federal courts of jurisdiction over what are legally transitory fraudulent-transfer claims. Commentators have since cited the decision as a significant real-world limitation on the reliability of Alaska's asset protection trusts for settlors who have any litigation exposure outside Alaska, since an out-of-state fraudulent-transfer judgment against an Alaska trust can stand despite Alaska's exclusive-jurisdiction statute.

## 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 upon 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)]

The Alaska Trust Act of 1997 significantly changed the trust services landscape in the Frontier State. The Act began the process of abolishing the rule against perpetuities (completed in 2000), placed a time limit on actions brought under fraudulent conveyance laws, permitted the establishment of self-settled spendthrift trusts, and validated trust document choice-of-law provisions designating Alaska's exclusive jurisdiction. [AS 13.36; see also AS 34.27.050–.051 (RAP reform) and AS 34.40.110 (self-settled trust/creditor provisions)] Since 1997, however, Alaska has not matched South Dakota's pace of continued legislative refinement–several of the statutory gaps noted throughout this comparison, including the directed-trust drafting gap and the decanting limitations below, have remained unaddressed for well over a decade.

## 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]

Alaska's decanting statutes are comparatively less flexible. There are three notable limitations on decanting an Alaska-sitused trust. First, a trust with an ascertainable standard may not be decanted into a fully discretionary trust structure. Second, as it relates to a mandatory income interest, the trustee is not permitted to decant into a trust that substantially alters or removes that interest. Finally, the trustee of an Alaska-sitused trust may not decant into a structure that accelerates a remainder beneficiary's interest. [AS 13.36.157–.159; AS 13.36.215] These limitations reduce the trust's ability to evolve with the needs of its beneficiaries. South Dakota's decanting statute, by contrast, recognizes the value in a trust's ability to adapt to changing circumstances, providing more robust flexibility to serve beneficiaries' evolving interests.

## PREMIUM TAX ON PRIVATE PLACEMENT LIFE INSURANCE

For trusts that purchase private placement life insurance, South Dakota's insurance premium tax is among the lowest in the nation at 8 bps (0.08%) 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]

Alaska has since matched that rate: AS 21.09.210(m) now sets Alaska's private placement premium tax at the same 8 bps (0.08%) on net direct premiums in excess of $100,000, a reduction lawmakers enacted to keep Alaska competitive as a trust situs. The premium tax issue becomes important when considering entities like LLCs in private placement life insurance programs. Properly sitused LLCs avail clients to lower premium taxes and allow clients to be classified as "qualified purchasers" for securities law purposes.

## SOUTH DAKOTA VS. ALASKA – AT A GLANCE

| Dimension | South Dakota | Washington |
|---|---|---|
| **State Income Tax** | None (Since 1942, constitutional) | None today; no constitutional barrier; can change by simple majority |
| **Rule Against Perpetuities** | Abolished 1983 – first in the nation. [SDCL § 43-5-8] | Phased out 1997 to 2000; 1,000-yr vesting limit; 14+ years behind SD |
| **Creditor Lookback** | 2 years from transfer (or 6 months from discovery) | 4 yrs from transfer (or 1 yr from discovery); twice SD exposure |
| **DAPT Asset Protection** | Robust DAPT statute. 2-year lookback. Clear & convincing burden. [SDCL § 55-16-10] | Broader exception creditors; solvency affidavit required for new transfers |
| **Directed Trustee** | Statute since 1997; 68% of SD trust business is directed | Statutory gaps; no coverage for director-only actions or non-exercises |
| **Decanting** | Ranked #1 nationally (Oshin). Fully discretionary. [SDCL § 55-2-15] | Cannot remove ascertainable standards, alter mandatory income, or accelerate remainders |
| **Quiet Trusts** | Most comprehensive in the nation. [SDCL § 55-2-13] | Ends at settlor's death or incapacity |
| **Privacy** | Permanent, automatic seal. No petition required. [SDCL § 21-22-28] | Presumptively public; sealing requires court order for good cause |
| **Special Purpose Entities** | Only state with statute permitting trust advisory LLCs. [SDCL § 51A-6A-66] | Not addressed by statute |
| **Case Law Reliability** | In re Cameron (2019): SD protections upheld against out-of-state judgment | Toni 1 v. Wacker (2018): out-of-state fraudulent transfer judgments stand |
| **Fiscal Strength** | #1 or #2 fiscal health (PEW/ Mercatus). Pension 103% funded. AAA credit | Aa2/AA/AA-; pension underfunded |
| **Legal Modernization** | Annual update via Governor's Task Force | 1997 Alaska Trust Act; slower refinement since |

## ABOUT THE AUTHORS



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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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