South Dakota's Situs Advantages Over California

STERLING | TRUSTEES

THE POWER OF INDEPENDENT THINKING℠

INTRODUCTION

California is home to more high-net-worth and ultra-high-net-worth families than virtually any other state in the country, yet it remains one of the more difficult trust siting jurisdictions in the United States. California imposes the nation's highest marginal income tax rate on trust income, has no Domestic Asset Protection Trust statute, actively limits dynasty trust duration, and provides no automatic privacy protection for trust judicial proceedings. For California families with significant trust wealth, the cost of remaining entirely within the state's planning framework can be measured in millions of dollars over a trust's lifetime, and properly structured South Dakota siting is designed to capture the full range of those savings.

South Dakota offers a fundamentally different planning environment, one built over more than 40 years of deliberate, expert-driven trust law reform. This whitepaper provides a detailed comparison of South Dakota and California across twelve critical planning dimensions, written for investment advisors, estate planning attorneys, and high-net-worth families evaluating a move to South Dakota trust situs.

STATE INCOME TAX ON TRUST INCOME

South Dakota has imposed no state income or capital gains tax since 1942, and the state constitution prohibits any new tax without a supermajority vote of the legislature. As a result, trust income can accumulate entirely free of state tax once a trust has no remaining California nexus, and for a trust generating $1 million annually in income, South Dakota siting can save up to $133,000 per year in state income tax once that nexus has been fully eliminated. [SD Const. Art. XI, §14]

California imposes state income tax on trust income at the same marginal rates that apply to individuals, up to 13.3% on ordinary income and capital gains, since California taxes capital gains as ordinary income. California also levies a 1% Mental Health Services Tax on income above $1 million, bringing the effective top rate to 13.3%, and the California Franchise Tax Board aggressively asserts jurisdiction over trusts based on the residence of the trustee, any beneficiary, or the location of trust administration.

A trust with California-resident beneficiaries may therefore remain subject to California income tax even after the trustee has relocated out of state. [Cal. Rev. & Tax. Code §§ 17742–17745]

Families get the most from South Dakota siting when the trust's California nexus, through trustee residence, beneficiary residence, or place of administration, is fully addressed as part of the situs change. Sterling works with a family's counsel to structure that transition so the income tax benefit described above is realized going forward.

FLEXIBILITY & LEGISLATIVE MODERNIZATION

South Dakota's Governor's Task Force on Trust Administration Review and Reform meets annually and has continuously modernized the state's trust statutes for over 40 years. Its innovations include Community Property Trusts, the Family Advisor concept, Purpose Trusts of unlimited duration, and comprehensive directed trust infrastructure, with reforms that are expert-driven, proactive, and regular. [SDCL § 55-17-5]

California's trust law is governed by the California Probate Code and updated through the state's standard legislative process. California has no annual dedicated trust law reform mechanism, and while the California Law Revision Commission periodically reviews trust law, its reforms tend to move more slowly and are often oriented toward consumer protection rather than planning flexibility.

RULE AGAINST PERPETUITIES & DYNASTY TRUSTS

South Dakota was the first state in the nation to abolish the Rule Against Perpetuities, doing so by statute in 1983, which enables true perpetual trusts for all asset classes, both real and personal property. More than 40 years of established case law and institutional practice now support multi-generational dynasty trust planning without duration constraints. [SDCL § 43-5-8]

California retains a modified Rule Against Perpetuities under the Uniform Statutory Rule Against Perpetuities, which limits most trust interests to a 90-year wait-and-see period. [Cal. Prob. Code §§ 21200–21231] True perpetual dynasty trusts are simply not

available under California law, which imposes a hard ceiling on how long a single trust structure can keep assets outside a beneficiary's taxable estate.

CREDITOR CLAIMS & ASSET PROTECTION (DAPT)

South Dakota has had a Domestic Asset Protection Trust statute since 1997, making it one of the first states to enact one. The statute applies a two-year lookback period and requires creditors to meet a clear-and convincing standard of proof, and for third-party trusts, as opposed to self-settled trusts, it carries no exception for spousal or child support claims. Trustee attorney fees are reimbursed if a creditor's suit fails. [SDCL §§ 55-16-10; 55-1-44]

California has no Domestic Asset Protection Trust statute at all. Under California Probate Code § 15304, a settlor who is also a discretionary beneficiary of a trust they created receives no creditor protection, and California will not honor the asset protection provisions of a self-settled trust sited in another state where its courts have jurisdiction over the settlor.

DIRECTED TRUSTEES

South Dakota's directed trust statute, in place since 1997, is one of the most developed and widely utilized in the country, with approximately 68% of South Dakota trust business conducted on a directed basis. [South Dakota Division of Banking, Annual Trust Company Report] Under this structure, investment advisors retain complete control over portfolio management while Sterling, as directed trustee, handles administration, compliance, and fiduciary oversight. [SDCL § 55-1B-1]

California has only limited directed trust provisions and generally follows a traditional trustee model, under which the trustee bears full fiduciary responsibility for all aspects of trust administration, including investment oversight. [Cal. Prob. Code §§ 16000 et seq.] This makes it harder for a California family to keep its existing investment advisor in place while shifting fiduciary and administrative duties to an independent trustee.

DECANTING

South Dakota's decanting statute is ranked #1 nationally for flexibility, permitting full discretionary expansion of trustee powers and the ability to change current and future beneficiaries. [SDCL § 55-2-15] The trustee needs only discretion over income or principal distributions to exercise the power, which gives South Dakota trustees wide latitude to update an aging or poorly drafted trust document.

California's decanting statute is more restrictive, requiring court involvement in more situations and imposing stricter beneficiary notice requirements than South Dakota's. [Cal. Prob. Code §§ 19501 et seq.] For families with older, rigid trust documents, this means meaningful restructuring in California often cannot happen without a judge's sign-off.

QUIET TRUSTS (BENEFICIARY NOTIFICATION RIGHTS)

South Dakota has the most comprehensive quiet trust statute in the nation, allowing beneficiary information rights to be fully restricted by the settlor, a trust protector, or a trust advisor. [SDCL § 55-2-13] A beneficiary can be kept unaware of a trust's existence entirely until the settlor or trust protector chooses to make a disclosure.

California imposes mandatory notice requirements under Cal. Prob. Code § 16060 et seq., requiring trustees to keep beneficiaries "reasonably informed." Attempts to restrict those information rights routinely face legal challenges, leaving California settlors with far less control over what a beneficiary learns and when.

PRIVACY

South Dakota provides a permanent, automatic seal on all trust judicial records, with no court petition required. [SDCL § 21-22-28] The seal attaches at filing and lasts in perpetuity, so settlor names, beneficiary identities, and trust contents never enter the public record in the first place.

California court proceedings, including trust disputes and accountings, are presumptively public. Sealing a record requires a noticed motion under Cal. R. Ct. 2.550 and a compelling interest showing that California courts rarely grant, which means most contested trust matters in California become part of the public record.

SPECIAL PURPOSE ENTITIES (SPE)

South Dakota is the only state with a statute that specifically permits trust advisory roles to be performed through an LLC for liability protection purposes. [SDCL § 51A-6A-66] Advisors who serve as trust protector or investment direction advisor can operate through the entity rather than exposing themselves personally to liability for that role.

California has no codified Special Purpose Entity framework in the trust context, so advisors serving as trust protectors or distribution advisors must do so in their individual capacity. That leaves California-based RIAs and family office professionals personally exposed in a way their South Dakota counterparts are not.

PPLI PREMIUM TAX

South Dakota imposes a premium tax of just 0.8 basis points (0.008%) on Private Placement Life Insurance premiums over $100,000, among the lowest such rates in the country. This translates into material savings for UHNW families using PPLI as a trust-based tax deferral strategy, with the difference compounding over the life of the policy. [SDCL § 10-44-2]

California imposes a premium tax of 2.35% on life insurance premiums. On a $5 million PPLI policy, this differential represents approximately $113,500 in excess annual cost compared to a South Dakota-sited trust.

COMMUNITY PROPERTY TRUSTS & STEP-UP IN BASIS

South Dakota's Community Property Trust statute allows married couples to hold assets in a South Dakota trust and receive a full step-up in basis on both halves of the trust assets at the death of the first spouse, rather than only on the decedent's half. [SDCL § 55-17] This can produce dramatic capital gains tax savings for highly appreciated assets that would otherwise carry forward a low-cost basis on the surviving spouse's half.

California, as a community property state, already provides a full step-up in basis on community property at the first death under federal law. The added benefit of South Dakota's Community Property Trust statute is therefore most relevant to non-community-property or separately-held appreciated assets, rather than to assets that already qualify as California community property, so the incremental benefit should be sized to the family's actual asset mix.

TRUST MODIFICATION & JUDICIAL ECONOMY

South Dakota's comprehensive nonjudicial modification statutes enable changes to irrevocable trusts – purpose changes, beneficiary additions, administrative restructuring – without court involvement in most cases. [SDCL §§ 55-3-24 et seq.] South Dakota's courts have also developed particular expertise in the trust modification matters that do reach them.

California trust modifications frequently require court petitions with mandatory beneficiary notice, Attorney General notice in charitable matters, and hearings in a court system that is often heavily burdened. For families needing timely restructuring, this process can add months of delay and expense compared to South Dakota's nonjudicial route.

SOUTH DAKOTA VS. CALIFORNIA – AT A GLANCE

Dimension	South Dakota	New Jersey
State Income Tax on Trust Income	None (constitutional prohibition since 1942)	Up to 13.3% + 1% surcharge; CA may retain jurisdiction via trustee, beneficiary, or administration nexus
Rule Against Perpetuities	Abolished 1983 – first in the nation. [SDCL § 43-5-8]	Modified RAP; 90-year maximum; no perpetual dynasty trusts
DAPT Asset Protection	Robust DAPT statute. 2-year lookback. Clear & convincing burden. [SDCL § 55-16-10]	No DAPT statute; Prob. Code § 15304 invalidates self-settled APTs
Directed Trustees	Statute since 1997; 68% of SD trust business is directed	Limited statutory directed trust framework; traditional unified trustee model
Decanting	Ranked #1 nationally (Oshin). Fully discretionary. [SDCL § 55-2-15]	More restrictive; broader court involvement and notice requirements
Quiet Trusts	Most comprehensive in the nation. [SDCL § 55-2-13]	Mandatory beneficiary notification rights; hard to waive; Prob. Code § 16060
Privacy	Permanent, automatic seal. No petition required. [SDCL § 21-22-28]	Presumptively public; must move to seal under CRC Rule 2.550; rarely granted
Special Purpose Entities	Only state with statute permitting trust advisory LLCs. [SDCL § 51A-6A-66]	No codified SPE framework; advisors act in individual capacity
Community Property Trust	Full double step-up at first death [SDCL § 55-17]	CP step-up already applies to CA community property; limited for separate/trust-held property
PPLI Premium Tax	0.8 bps (0.008%) – among the lowest in country. [SDCL § 10-44-2]	2.35% – ~$113,500 excess on $5M policy/yr
Legislative Modernization	Annual updates via Governor's Task Force	Standard biennial/annual legislative process; consumer-protection orientation
Trust Modification	Comprehensive nonjudicial modification; courts experienced in trust matters	Court petition often required; mandatory beneficiary notice; overburdened courts

CONCLUSION

For California families with significant trust assets, income, or beneficiaries located outside California, the case for South Dakota trust siting is among the most compelling of any state in the country. The combination of California's 13.3% income tax on trust income, its absence of domestic asset protection trust law, its 90-year RAP cap on dynasty trusts, its mandatory beneficiary disclosure requirements, its lack of court privacy protections, and its higher PPLI premium tax creates a planning environment that is structurally more difficult for sophisticated trust wealth management.

South Dakota trust siting through Sterling Trustees addresses each of these gaps directly. Families gain a zero-state tax income environment, one of the strongest asset protection statutes in the country, true perpetual dynasty trust planning, and automatic court privacy, all of which compound in value over generations. Sterling Trustees administers over $13 billion across more than 500 trusts as an independent trustee, serving families in both directed and fully discretionary trust structures. For California families ready to put these advantages to work, Sterling stands ready to walk through the specifics of a South Dakota-sited trust.

ABOUT THE AUTHORS



Antony Joffe is the Chairman of Sterling Trustees LLC and oversees Sterling's vision and mission. He has over 20 years of trust industry operating experience and has led the growth of Sterling to over $13 billion of assets under administration. He earned his MBA in finance from Temple University and his bachelor's degree in accounting from Emory University.

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Nicole Byrum brings over a decade of experience in trust and wealth transfer services to her role as Chief Fiduciary Officer—partnering with clients and their advisors to craft strategic trust vehicles that provide asset protection, governance, and long-term wealth transfer. She has been with Sterling Trustees for more than five years, joining the team at its Sioux Falls, SD, headquarters after building her career in global trust services. Nicole earned a JD from the University of South Dakota School of Law and a BA from the University of Washington, holds the Certified Trust and Financial Advisor (CTFA) designation from the ABA, and is a full member of STEP (the Society of Trust and Estate Practitioners).

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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.

One in a series of white papers authored by the independent trust administration firm of Sterling Trustees.

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