South Dakota's Situs Advantages Over Pennsylvania

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INTRODUCTION

Pennsylvania-based families and their advisors often look to South Dakota as an alternative trust situs, and for good reason. While Pennsylvania enacted meaningful trust law modernizations through the Pennsylvania Trust Act of 2020 (Act 22 of 2020), a closer comparison reveals that South Dakota maintains durable advantages across most dimensions of trust planning: taxation, asset protection, directed trust structures, decanting flexibility, privacy, quiet trust provisions, and the overall stability of the state's legal and fiscal framework.

South Dakota's trust laws are updated annually through the Governor's Task Force on Trust Administration Review and Reform. Pennsylvania, by contrast, operates under a more static legal framework that was modernized once, in 2020, rather than continuously.

FLEXIBILITY

South Dakota demonstrates a sustained commitment to trust law evolution through its Governor's Task Force on Trust Administration Review and Reform, which surveys the trust landscape annually and enacts statutory updates in direct response to new planning techniques and evolving client needs. Recent innovations enacted through this process include Community Property Trusts, which allow a full income tax basis step-up at the death of one spouse; the Family Advisor concept, which allows trusted family members to participate in trust administration without accepting fiduciary responsibility; and Purpose Trusts of unlimited duration.

Pennsylvania's trust law, while significantly modernized by the Trust Act of 2020, lacks an equivalent mechanism for ongoing, annual legislative responsiveness. Pennsylvania has not codified Community Property Trusts or a Family Advisor concept, leaving a more static statutory framework that is slower to adapt to new planning opportunities.

STATE INCOME AND CAPITAL GAINS RATES

There has been no state income tax, personal or corporate, in South Dakota since 1942, and the South Dakota Constitution prohibits any new income taxes or tax increases without a voter initiative or two-thirds approval of both legislative branches. [SD Constitution Article XI, §14] Trust assets held in South Dakota grow free of state income and capital gains tax, creating substantial multi-generational savings when combined with structures such as dynasty trusts, community property trusts, and incomplete non-grantor trusts.

Pennsylvania imposes a flat 3.07% personal income tax on residents, including on trust income distributed to Pennsylvania beneficiaries, and undistributed income in trusts administered in Pennsylvania is also subject to the tax. Pennsylvania also imposes a 3.07% tax on capital gains, treated as ordinary income, with no preferential long-term rate.

Families get the most value from South Dakota siting when trust income is accumulated rather than distributed to Pennsylvania residents, and Sterling works with a family's tax advisors to structure distributions accordingly. Approached this way, South Dakota siting can eliminate the state income tax drag on trust assets going forward.

PERPETUAL TRUSTS / DYNASTY TRUSTS

South Dakota was the first state in the nation, by statute in 1983, to abolish the Rule Against Perpetuities, enabling the creation of true dynasty trusts that last in perpetuity. [SDCL § 43-5-8] South Dakota was also the first state to adopt a Trust Protector statute, in 1997, and a third-party discretionary trust statute, in 2007, and more than 40 years of experience administering perpetual trusts has produced an unmatched body of legal precedent and institutional knowledge.

Pennsylvania abolished its Rule Against Perpetuities through Act 98 of 2006, effective in 2007, roughly 24 years after South Dakota. This is a meaningful improvement that places Pennsylvania in a minority of states permitting true perpetual trusts, but the state's perpetual trust framework is newer and carries a shorter track record of case law and administrative experience.

CREDITORS CLAIMS & ASSET PROTECTION

Under South Dakota law, a discretionary interest in a trust is not treated as a property interest or an entitlement, which is highly advantageous from an asset protection standpoint. South Dakota's Domestic Asset Protection Trust statute shields trust assets from new creditor claims after just two years if the settlor was foreseeably solvent at the time of transfer, under a clear-and-convincing burden of proof, and for third-party trusts there are no exceptions for spousal or child support claims. [SDCL § 55-16-10]

Pennsylvania does not have a Domestic Asset Protection Trust statute, and a settlor who creates a trust for his or her own benefit cannot shield those assets from creditor claims under Pennsylvania law. Pennsylvania instead operates under the Uniform Voidable Transactions Act, which provides a four-year lookback period for fraudulent transfer claims, twice as long as South Dakota's two-year period.

DIRECTED TRUSTEES

South Dakota's directed trust statute, enacted in 1997, is among the most developed and widely utilized in the country, with approximately 68% of South Dakota trust business structured as directed trusts. [South Dakota Division of Banking, Annual Trust Company Report] Under this model, the trustee's responsibilities are divided among investment direction, distribution decisions, and administrative functions, allowing families to retain their existing investment advisors while gaining South Dakota's statutory, tax, and privacy advantages.

Pennsylvania's Trust Act of 2020 added directed trust provisions to Pennsylvania law, a meaningful modernization, but roughly 23 years after South Dakota's statute. Pennsylvania's market for directed trust services remains comparatively new, with fewer specialist trust companies and less statutory certainty around the boundaries of trustee and advisor liability.

DECANTING

South Dakota's decanting statute is consistently ranked #1 in the country by trust law scholar Steve Oshin in his annual ranking of decanting statutes. [SDCL § 55-2-15] It is uniquely flexible, permitting expansion of a trust to a fully discretionary trust and the inclusion or exclusion of any beneficiary, current or future.

Pennsylvania enacted a decanting statute as part of the Trust Act of 2020. [20 Pa.C.S. § 7740 et seq.] While a meaningful addition, Pennsylvania's provisions are more restrictive than South Dakota's, requiring that a decanted trust maintain distribution standards at least as favorable to current beneficiaries as those in the original trust, which limits the degree of restructuring available.

QUIET TRUSTS

South Dakota law allows the settlor, trust protector, and investment or distribution advisors to expand, restrict, eliminate, or modify beneficiaries' rights to discover information about the trust entirely. [SDCL § 55-2-13] A trust can be kept completely quiet from a beneficiary until the settlor chooses to make a disclosure.

Pennsylvania's Trust Act of 2020 introduced some provisions allowing parties to waive certain beneficiary notice rights, an improvement over prior law, but Pennsylvania does not provide the same degree of grantor and trust protector control over the complete restriction of beneficiary information rights that South Dakota's statute affords. The statutory language is also less explicit, leaving more uncertainty about how far a Pennsylvania settlor can actually restrict disclosure.

PRIVACY

South Dakota's privacy statute provides a permanent, automatic seal on all trust documents that would otherwise become part of the public record in a judicial proceeding, and the seal attaches without any court petition. [SDCL § 21-22-28] This means settlor names, beneficiary identities, and trust contents are protected from public disclosure as a matter of course.

Pennsylvania has no automatic or permanent privacy seal for trust proceedings; documents filed in Pennsylvania courts are generally accessible as public records, and a party wishing to seal trust information must petition the court, demonstrate good cause, and obtain a judicial order. That process is uncertain and burden-shifting, and it does not guarantee the level of protection South Dakota provides automatically.

STRENGTH OF STATE

South Dakota consistently ranks #1 or #2 in the country for fiscal health according to independent studies by PEW Research and Mercatus Publications, with a pension liability that is 103% funded and a AAA credit rating. South Dakota also carries several times the cash needed to cover its short-term obligations, well above the national average.

Pennsylvania's two major public pension systems, SERS and PSERS, have carried substantial unfunded liabilities for years, representing one of the larger per-capita pension burdens in the country. While Pennsylvania's own AAA credit rating reflects a strong economic base, its long-term pension obligations present a contrast to South Dakota's fiscal position. (Figures per PEW Research and Mercatus Center fiscal health rankings; readers should confirm current-year figures, as these rankings are updated periodically.)

SPECIAL PURPOSE ENTITIES

South Dakota has the only state statute that specifically permits individuals to serve in trust advisory roles, as investment advisor, distribution advisor, or trust protector, through a Special Purpose Entity, typically a South Dakota LLC, without meeting formal Department of Banking regulations. [SDCL § 51A-6A-66] The structure shields the entity's members from personal liability connected to their advisory duties.

Pennsylvania has no equivalent statutory framework for Special Purpose Entities in the trust context, so Pennsylvania advisors who wish to serve in these roles must do so in their individual capacity, without the liability shielding that South Dakota's statute provides. That gap increases uncertainty for Pennsylvania-based advisors considering trust advisory work.

PREMIUM TAX ON PRIVATE PLACEMENT LIFE INSURANCE

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]

Pennsylvania imposes a premium tax of 2% on life insurance premiums, one of the higher rates in the country. For a trust purchasing a $5 million PPLI policy, this represents approximately $97,900 in added annual cost relative to a South Dakota-sited trust.

SOUTH DAKOTA VS. PENNSYLVANIA – AT A GLANCE

Dimension	South Dakota	Pennsylvania
State Income & Capital Gains Tax	None since 1942. Constitutionally protected. [SD Const. Art. XI, §14]	3.07% flat income tax; capital gains taxed as ordinary income; may reach PA-resident beneficiaries regardless of trust situs
Rule Against Perpetuities	Abolished 1983 – first in the nation. [SDCL § 43-5-8]	Abolished 2006 (Act 98). Dynasty trusts permitted, ~24 years less precedent and institutional depth
DAPT Asset Protection	Robust DAPT statute. 2-year lookback. Clear & convincing burden. [SDCL § 55-16-10]	No DAPT statute. Self-settled trusts provide no creditor protection. 4-year lookback (UVTA)
Directed Trustees	Statute since 1997; 68% of SD trust business is directed	Directed trust provisions added by Trust Act of 2020. Newer, less developed, limited case law
Decanting	Ranked #1 nationally (Oshin). Fully discretionary. [SDCL § 55-2-15]	Decanting statute enacted 2020. Must maintain existing distribution standards. [20 Pa.C.S. § 7740]
Quiet Trusts	Most comprehensive in the nation. [SDCL § 55-2-13]	Trust Act of 2020 added limited waiver provisions; less explicit than SD
Privacy	Permanent, automatic seal. No petition required. [SDCL § 21-22-28]	No automatic seal. Trust proceedings are public record. Must petition court
Special Purpose Entities	Only state with statute permitting trust advisory LLCs. [SDCL § 51A-6A-66]	No codified SPE structure. Advisors serve in individual capacity
Flexibility / Legislative Reform	Annual updates via Governor's Task Force	Trust Act of 2020 was one-time modernization. No annual mechanism
PPLI Premium Tax	0.8 bps (0.008%) – among the lowest in country. [SDCL § 10-44-2]	2% premium tax – ~$97,900 excess on $5M policy/yr
Strength of State	#1 or #2 fiscal health (PEW/ Mercatus). Pension 103% funded. AAA credit	Large unfunded pension liabilities (SERS/PSERS). AAA credit rating but lower fiscal health ranking

CONCLUSION

The comparison between South Dakota and Pennsylvania reveals that while Pennsylvania has meaningfully modernized its trust law through the Trust Act of 2020, a gap remains across most dimensions of sophisticated trust planning. That gap is likely to widen rather than close, since South Dakota's statutes are revisited every year while Pennsylvania's most recent overhaul was a single event.

For Pennsylvania families and their advisors, the critical advantages of South Dakota situs include state income and capital gains tax that does not apply once a trust has no remaining Pennsylvania nexus; one of the country's strongest Domestic Asset Protection Trust statutes; the #1-ranked decanting statute; comprehensive quiet trust and privacy protections; a mature directed trust market; Special Purpose Entity statutes that protect family advisors; and a materially lower PPLI premium tax rate. Taken together, these advantages compound over the life of a multi-generational trust in a way a single legislative modernization cannot replicate.

Sterling Trustees, a South Dakota chartered trust company with over $13 billion across more than 500 trusts, serves Pennsylvania families and their advisors as an independent trustee in both directed and fully discretionary trust structures, administering trust assets in South Dakota. Sterling is ready to help Pennsylvania families put these advantages to work.

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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