South Dakota's Situs Advantages Over Texas

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INTRODUCTION

Texas has positioned itself as a trust-friendly state in recent years, enacting significant modernizations including a Domestic Asset Protection Trust statute in 2021, abolition of the Rule Against Perpetuities for personal property, and directed trust provisions. A close analysis shows, however, that South Dakota's trust law remains more developed across most critical planning dimensions, particularly on asset protection lookback periods, privacy, decanting flexibility, quiet trusts, PPLI premium taxes, and Special Purpose Entity statutes.

South Dakota's advantage reflects more than 40 years of continuous legislative refinement through the Governor's Task Force on Trust Administration Review and Reform. This whitepaper provides a detailed comparison across twelve critical planning dimensions.

FLEXIBILITY & LEGISLATIVE MODERNIZATION

South Dakota's Governor's Task Force meets annually and has continuously modernized the state's trust statutes for over 40 years. [SDCL § 55-17-5] Its work has produced tools such as Community Property Trusts and the Family Advisor concept that most other states have not adopted.

The Texas Trust Code is updated through the standard biennial legislative process, with no annual dedicated trust law reform mechanism and no codified Community Property Trust or Family Advisor concept. This slower cadence leaves Texas structurally behind South Dakota in responding to new planning techniques.

STATE INCOME & CAPITAL GAINS TAX

South Dakota has had no state income or capital gains tax since 1942, and the state constitution prohibits any new tax without a supermajority vote. [SD Const. Art. XI, §14] That constitutional protection gives families durable certainty that the zero-tax environment will persist across a multi-generational trust.

Texas has no state personal income tax, but it does impose a franchise tax, known as the Texas Margin Tax, on businesses, including trusts holding business interests, at 0.75% for most entities or 0.375% for wholesale and retail businesses. The practical difference for passive investment assets is minimal, but franchise tax exposure is meaningful for trusts holding operating business interests, and Texas also lacks South Dakota's constitutional prohibition on future income taxes.

RULE AGAINST PERPETUITIES & DYNASTY TRUSTS

South Dakota was the first state to abolish the Rule Against Perpetuities, in 1983, for all asset classes. [SDCL § 43-5-8] Over 40 years of case law now support true perpetual dynasty trust planning in the state.

Texas had a 300-year limitation until 2021, when SB 2243 abolished the RAP for personal property held in trust. Texas real property held directly in trust may still be subject to duration limitations unless held through an LLC or other entity.

CREDITOR CLAIMS & ASSET PROTECTION (DAPT)

South Dakota's Domestic Asset Protection Trust statute has been in place since 1997, with a two-year lookback period and a clear-and-convincing standard of proof. [SDCL §§ 55-16-10; 55-1-44] Trustee attorney fees are reimbursed if a creditor's suit fails, which discourages meritless challenges.

Texas enacted the Texas Qualified Disposition in Trust Act in 2021, roughly 24 years after South Dakota. Texas's DAPT carries a four-year lookback period, double South Dakota's, and the statute remains newer and less tested in the courts.

DIRECTED TRUSTEES

South Dakota's directed trust statute has been in place since 1997, and approximately 68% of South Dakota trust business is conducted on a directed basis. [South Dakota Division of Banking, Annual Trust Company Report] That level

of adoption has produced a deep bench of specialist trustees and a substantial body of directed trust case law.

Texas Property Code § 114.0031 provides for directed trustees, enacted around 2013, but the market remains less developed, with a smaller pool of specialist directed trustees. Texas-based directed trust administration does not yet benefit from the same depth of institutional practice South Dakota has built up over a longer period.

DECANTING

South Dakota's decanting statute is ranked #1 nationally for flexibility. [SDCL § 55-2-15] It permits full restructuring of an irrevocable trust, including changing current or future beneficiaries.

Texas's decanting statute (Texas Property Code §§ 112.071 et seq.) requires maintenance of existing beneficial interests and does not permit the same degree of restructuring. Advisors with clients holding irrevocable Texas trusts in need of modification will find substantially fewer tools available than in South Dakota.

QUIET TRUSTS (BENEFICIARY NOTIFICATION RIGHTS)

South Dakota has the most comprehensive quiet trust statute in the nation. [SDCL § 55-2-13] A settlor, trust protector, or advisor can restrict or eliminate a beneficiary's information rights about the trust entirely.

Texas allows some restriction of beneficiary notification rights, but the provisions are less explicit and comprehensive than South Dakota's. That gap creates real uncertainty in high-stakes dynasty trust designs where quiet trust functionality is essential.

PRIVACY

South Dakota provides a permanent, automatic seal on all trust judicial records. [SDCL § 21-22-28] No court petition is required, and the protection does not depend on judicial discretion.

Texas has no automatic or permanent privacy seal, and parties must petition for sealing under Texas Rule of Civil Procedure 76a, demonstrating specific harm. That process is burdensome, expensive, and uncertain, and it leaves most Texas trust proceedings exposed to public view.

SPECIAL PURPOSE ENTITIES (SPE)

South Dakota is the only state with a statute permitting trust advisory roles through an LLC for liability protection. [SDCL § 51A-6A-66] Advisors can therefore serve as trust protector or investment advisor through the entity rather than accepting personal liability.

Texas has no codified Special Purpose Entity framework in the trust context. Advisors serving as trust protectors, investment direction advisors, or distribution advisors in Texas must do so in their individual capacity, without statutory liability protection.

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]

Texas imposes a premium tax of 1.75% on life insurance premiums. On a $5 million PPLI policy, this differential represents approximately $85,400 in excess annual cost.

COMMUNITY PROPERTY TRUSTS & STEP-UP IN BASIS

South Dakota's Community Property Trust statute allows married couples to receive a full step-up in basis on both halves of trust assets at the death of the first spouse. [SDCL § 55-17] This can produce meaningful capital gains tax savings on highly appreciated assets that would otherwise retain a lower cost basis on the surviving spouse's half.

Texas is itself a community property state, and Texas-resident families should work with counsel to confirm how South Dakota's Community Property Trust statute interacts with their specific asset mix. For assets that are not already characterized as Texas community property, South Dakota's structure can provide the same full double step-up available to South Dakota residents.

TRUST MODIFICATION & JUDICIAL ECONOMY

South Dakota's comprehensive nonjudicial modification statutes allow most changes without court involvement. [SDCL §§ 55-3-24 et seq.] South Dakota courts have also developed particular expertise in the trust modification matters that do reach them.

Texas has nonjudicial modification provisions, but they are more constrained than South Dakota's, and contested modifications are more likely to require full court proceedings. Texas trust courts are also general courts of equity rather than specialized trust courts, which adds time and cost to contested matters.

SOUTH DAKOTA VS. TEXAS – AT A GLANCE

Dimension	South Dakota	Texas
State Income Tax	None (constitutional prohibition since 1942)	No income tax; franchise tax on business trusts at 0.75%
Rule Against Perpetuities	Abolished 1983 – first in the nation. [SDCL § 43-5-8]	Abolished 2021 (personal property only); real property may still face limits
DAPT Asset Protection	Robust DAPT statute. 2-year lookback. Clear & convincing burden. [SDCL § 55-16-10]	4-yr lookback; enacted 2021; less tested in courts
Directed Trustees	Statute since 1997; 68% of SD trust business is directed	Since ~2013; less utilized; smaller specialist market
Decanting	Ranked #1 nationally (Oshin). Fully discretionary. [SDCL § 55-2-15]	More restrictive; must maintain existing beneficial interests
Quiet Trusts	Most comprehensive in the nation. [SDCL § 55-2-13]	Less explicit; greater uncertainty for dynasty structures
Privacy	Permanent, automatic seal. No petition required. [SDCL § 21-22-28]	No automatic seal; must petition under Rule 76a
Special Purpose Entities	Only state with statute permitting trust advisory LLCs. [SDCL § 51A-6A-66]	No codified SPE framework; advisors in individual capacity
Community Property Trust	Full double step-up at first death [SDCL § 55-17]	No comparable CPT statute; benefit depends on TX community property characterization
PPLI Premium Tax	0.8 bps (0.008%) – among the lowest in country. [SDCL § 10-44-2]	1.75% – ~$85,400 excess on $5M policy/yr
Legislative Modernization	Annual updates via Governor's Task Force	Biennial legislature; no dedicated reform mechanism
Trust Modification	Comprehensive nonjudicial modification; specialized courts	More constrained; general courts of equity

CONCLUSION

While Texas has made meaningful strides in trust law modernization since 2021, a comparison with South Dakota reveals a persistent gap. South Dakota's 40-year head start in trust law innovation, its more established DAPT protections, its #1-ranked decanting statute, its automatic privacy seal, its comprehensive quiet trust framework, its unique SPE statute, and its lower PPLI premium tax combine to create a planning environment that Texas is unlikely to match in the near term.

For Texas-based families and their advisors, South Dakota trust siting through Sterling Trustees delivers these advantages directly. 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, and is ready to help Texas 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.

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

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