South Dakota's Situs Advantages Over Washington

STERLING | TRUSTEES

THE POWER OF INDEPENDENT THINKING℠

INTRODUCTION

Washington State has attracted increasing attention as a potential trust siting destination, particularly following a wave of trust law modernizations enacted between 2019 and 2021. Washington enacted a Domestic Asset Protection Trust statute, abolished the Rule Against Perpetuities for personal property, and added directed trust provisions, real progress for a state that previously offered families little reason to consider it as a trust jurisdiction.

A close analysis shows, however, that South Dakota's trust law remains more developed across most critical planning dimensions, an advantage built over more than 40 years of continuous legislative refinement through the Governor's Task Force on Trust Administration Review and Reform. Washington also took a step in the other direction in 2021 by enacting a 7% capital gains tax on long-term gains above $262,000, upheld by the Washington State Supreme Court in March 2023, a cost South Dakota's constitutionally protected zero-rate environment does not carry. This whitepaper provides a detailed comparison of South Dakota and Washington across the planning dimensions that matter most to advisors and families weighing a change of situs.

FLEXIBILITY & TRUST LAW REFORM

South Dakota's Governor's Task Force updates trust laws annually, and its innovations include Community Property Trusts, the Family Advisor concept, and Purpose Trusts of unlimited duration. No other state has an equivalent annual trust law reform mechanism.

Washington has enacted meaningful trust law modernizations through its legislature, but lacks an annual dedicated trust reform mechanism, a codified Community Property Trust statute, or a Family Advisor concept. Those gaps leave Washington's framework a step behind South Dakota's on the planning techniques families most often ask about.

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, allowing trust assets to compound free of state tax across generations. That constitutional protection gives families durable certainty that the zero-tax environment will hold over the long run.

Washington has no state personal income tax, but in 2021 it enacted a 7% capital gains tax (ESSB 5096) on long-term capital gains exceeding $262,000 per year, which was upheld by the Washington State Supreme Court in Quinn v. State of Washington in March 2023. On a $10 million capital gain, the Washington tax would be approximately $681,700, money that would instead compound tax-free in a South Dakota trust for generations, assuming the trust has no other Washington nexus.

PERPETUAL TRUSTS & DYNASTY PLANNING

South Dakota was the first state to abolish the Rule Against Perpetuities, in 1983, enabling true perpetual trusts for all asset classes since SDCL § 43-5-8. More than 40 years of institutional depth and case law now support that framework.

Washington abolished the Rule Against Perpetuities for personal property held in trust in 2021 (SB 5306). Washington's perpetual trust framework is newly enacted, with limited case law and no comparable institutional infrastructure, and Washington real property held directly in trust may also still face duration limitations.

DOMESTIC ASSET PROTECTION TRUSTS (DAPT)

South Dakota's DAPT statute has been in place since 1997, with a two-year lookback and a clear-and convincing burden of proof, and no exceptions for spousal or child support claims in third-party trusts. Trustee attorney fees are reimbursed if a creditor's suit fails.

Washington enacted a DAPT statute in 2021, the Washington Qualified Disposition in Trust Act (RCW 19.300). Washington's DAPT has a four-year lookback, double South Dakota's period, and requires transfers to be "qualified dispositions," with exceptions for existing claims, spousal or child support, and tort claims. As a community property state, Washington trusts may also face additional complications around spousal community property claims.

DIRECTED TRUSTEE FRAMEWORK

South Dakota's directed trustee statute has been in place since 1997, and 68% of South Dakota trust business is directed. [South Dakota Division of Banking, Annual Trust Company Report] That level of adoption reflects decades of accumulated case law and a deep bench of specialist trust companies built around the model.

Washington enacted directed trust provisions as part of its 2019 trust law modernization. The market for specialist directed trust companies in Washington is comparatively new, and the liability protections afforded directed trustees are less tested than under South Dakota's statute.

TRUST DECANTING

South Dakota's decanting statute is ranked #1 nationally by the Oshin annual ranking, offering fully discretionary expansion and the ability to change current and future beneficiaries. The trustee needs only discretion over income or principal distributions to exercise the power.

Washington has decanting provisions under RCW 11.107, but they require maintenance of existing distribution standards and do not permit the same degree of restructuring as South Dakota's statute. Families needing to meaningfully update older, rigid Washington trust documents will find fewer tools available than in South Dakota.

QUIET TRUSTS & BENEFICIARY INFORMATION CONTROL

South Dakota has the nation's most comprehensive quiet trust provisions, allowing the settlor, trust protector, or advisor to fully restrict or eliminate beneficiary information rights. A trust can be kept entirely quiet from a beneficiary until the settlor chooses to disclose it.

Washington's trust code includes provisions for restricting beneficiary notification, but they are less comprehensive than South Dakota's, with less granular control over the scope and duration of restrictions. The statutory language is also more general, leaving uncertainty in edge cases.

PRIVACY & CONFIDENTIALITY

South Dakota provides a permanent, automatic seal on all trust judicial records, with no petition required. The seal attaches at filing and does not depend on a judge's discretion.

Washington has no automatic or permanent privacy seal. Trust documents filed in Washington court proceedings are generally public records under Washington's Public Records Act (RCW 42.56), and sealing requires a formal motion, a specific showing of harm, and a court order.

SPECIAL PURPOSE ENTITIES (SPE) FOR TRUST ADVISORS

South Dakota is the only state with a statute permitting trust advisory roles through an LLC for liability protection. Advisors can therefore serve as trust protector or investment advisor through the entity rather than accepting personal liability.

Washington has no codified Special Purpose Entity framework in the trust context, so advisors serve in their individual capacity, without the statutory liability protections, D&O/E&O insurance structures, or banking registration framework that South Dakota's SPE statute provides. That leaves Washington-based investment professionals personally exposed in a role their South Dakota counterparts can perform through a shielded entity.

PRIVATE PLACEMENT LIFE INSURANCE (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]

Washington imposes a 2% premium tax on life insurance premiums. On a $5 million PPLI policy, the Washington premium tax represents approximately $97,900 in excess cost relative to South Dakota, and Washington also imposes a business and occupation tax on insurers that may further affect the cost of PPLI products domiciled in the state.

FISCAL STRENGTH & STATE CREDIT RATING

South Dakota is ranked #1 or #2 for fiscal health nationally by PEW and Mercatus, with a pension that is 103% funded and a AAA credit rating. South Dakota also runs a lean government with a cash ratio of 4.76 to 6.78 times its short-term obligations, well above the national average.

Washington is generally regarded as fiscally healthy, with strong credit ratings, but its PERS (Public Employees' Retirement System) has had funded ratios below 100% in recent years, and the state's overall government spending is significantly larger than South Dakota's. Washington's enactment of the capital gains tax signals a shift in its historically tax-light posture.

SOUTH DAKOTA VS. WASHINGTON – AT A GLANCE

Dimension	South Dakota	Washington
State Income Tax	None (Since 1942, constitutional)	None (Constitution prohibits graduated income tax)
Capital Gains Tax	None (Constitutional protection)	7% on gains above $262,000/year (Quinn v. State, March 2023). $10M gain ≈ $681,700 tax
Rule Against Perpetuities	Abolished 1983 – first in the nation. [SDCL § 43-5-8]	Abolished 2021 for personal property (limited precedent; real property may still have limitations)
DAPT Asset Protection	Robust DAPT statute. 2-year lookback. Clear & convincing burden. [SDCL § 55-16-10]	Since 2021; 4-yr lookback (double SD); limited case law; exceptions for spousal/child support, tort claims
Directed Trustee	Statute since 1997; 68% of SD trust business is directed	Since 2019; nascent market; less developed liability protections
Decanting	Ranked #1 nationally (Oshin). Fully discretionary. [SDCL § 55-2-15]	RCW 11.107; more restrictive; must maintain distribution standards
Quiet Trusts	Most comprehensive in the nation. [SDCL § 55-2-13]	Limited provisions; less granular control; mostly trustee-driven
Privacy	Permanent, automatic seal. No petition required. [SDCL § 21-22-28]	No automatic seal; Public Records Act applies; requires motion + showing of harm
Special Purpose Entities	Only state with statute permitting trust advisory LLCs. [SDCL § 51A-6A-66]	No SPE framework; advisors in personal capacity
PPLI Premium Tax	0.8 bps (0.008%) – among the lowest in country. [SDCL § 10-44-2]	2% premium tax; $5M policy ≈ $97,900 tax
Fiscal Health	#1 or #2 fiscal health (PEW/ Mercatus). Pension 103% funded. AAA credit	Strong credit rating; PERS historically underfunded; larger government spending
Legal Infrastructure	40+ years of trust specialization; mature case law	Newer framework (2019–2021); limited case law; emerging trust industry

CONCLUSION

Washington State's trust law modernizations since 2019 represent genuine progress, but they have not closed the gap with South Dakota, and in one respect Washington has moved in the other direction: its 7% capital gains tax on gains above $262,000, now affirmed by the Washington Supreme Court, represents a real tax cost on trust assets compared to South Dakota's constitutionally protected zero-rate environment. Combined with a four-year DAPT lookback, no automatic privacy seal, more limited quiet trust provisions, no SPE statute, a 2% PPLI premium tax, and a perpetual trust framework that is less than five years old, Washington's trust siting environment falls short of South Dakota's across most material dimensions.

For Washington-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 Washington families put these advantages to work.

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.

ajoffe@sterlingtrustees.com / 610-234-0626



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).

nbyrum@sterlingtrustees.com / 605-809-3991

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.

STERLING | TRUSTEES

THE POWER OF INDEPENDENT THINKING℠

sterlingtrustees.com

© 2026 Sterling Trustees LLC