

FORGET DELAWARE—HERE'S WHY SOUTH DAKOTA IS THE REAL TRUST POWERHOUSE

South Dakota has surpassed Delaware legislatively leading the country in their trust/estate planning regulation and repeatedly comes out ahead in terms of privacy, tax advantages, cost and flexibility.

Privacy

South Dakota: Stands out with its robust privacy laws. Trusts are automatically and perpetually sealed, meaning details of the trust, court litigation, and asset information are not part of the public record. South Dakota permits quiet trusts limiting notification requirements.

Delaware: Offers privacy protections, but they are not as extensive as South Dakota's. Delaware's privacy seal lasts for three years and requires a judge's discretion.

Taxation

South Dakota: Does not impose a state income tax, which can lead to significant tax savings for trusts and beneficiaries. Trust corpus can grow tax free in this dynastic jurisdiction.

Delaware: Has a state fiduciary income tax, with exemptions.

Flexibility

South Dakota: Generally, has more flexible, less burdensome decanting laws and allows for broader powers to be included in trust instruments. This can provide greater ease in modifying trusts due to changed circumstances.

Delaware: More statutory restrictions on decanting.

Asset Protection

South Dakota: Offers strong asset protection, including a shorter lookback period (two years) to qualify for asset protection. (ie Domestic Asset Protection Trusts)

Delaware: Offers asset protection with a four-year lookback period and the statute is more general.

Directed Trust Statute

South Dakota has the premier Directed Trust statute. This permits the grantor or relevant party to engage experts to handle various parts of the trusteeship. Such as investment advisory, distribution advisory, and administrative trustee. This structure offers more accountability, transparency, risk management, compliance, quality assurance, and resource allocation.

Delaware has a Directed Trust statute, but most trustees work in a traditional model.