



Welcome to *Trust Connection*, our monthly newsletter highlighting Trust news and information. Each month we will feature timely articles of interest.

## About Us

At Halliday Private Trust, it is our mission to assist our clients in the process of providing solutions, specifically through a wide range of financial advice.

Since 1982, we have utilized a full spectrum of financial services to help our clients navigate every major hurdle in their financial lives. Because we are an independent financial services firm, we utilize an open architecture approach to locating the most suitable investment options for our clients.

Our role is to help clients make smart decisions about their money. We understand that each client has unique needs and requires personalized solutions based on their goals, objectives and concerns.

## South Dakota vs. Delaware Situs – Which is Better?

The topic of South Dakota as a favorable trust situs often leads to a discussion comparing the virtues of South Dakota versus Delaware. Which jurisdiction is better? Why South Dakota?

Since abolishing the rule against perpetuities in 1983, South Dakota has worked diligently to become the most trust-friendly situs in the nation. The following table compares South Dakota and Delaware with several of the most important situs considerations. This table is not intended to be a legal guide or definitive chart; however, it is provided as a conversational reference. Each aspect is explored further after the table.

Description	South Dakota	Delaware
Directed Trust	Yes	Yes
Decanting	Yes	Yes
Privacy	Yes - automatic, perpetual	Yes - discretionary, 3 years
Quiet Trust	Yes	Yes
Domestic Asset Protection	Yes - 2 year lookback	Yes - 4 year lookback
Dynasty – Perpetual	Yes	Yes
Special Purpose Entity	Yes	Yes
Special Spousal Trust	Yes	Yes

### Directed Trusts

The South Dakota directed trust statutes (SDCL 55-1B) allow a clear separation of trustee duties, which not only aligns with the National Advisors Trust bifurcated trust model but also provides guidance to reduce potential liability for other fiduciaries acting on behalf of the trust. This includes investment advisors, trust protectors and trustees, as well as distribution advisors and other special trustees.

### Privacy is important

South Dakota privacy statutes allow for an automatic and perpetual seal on all court litigation and modification. In comparison, Delaware has the discretion to grant a seal, but it will only remain private for three years.

### What about privacy from family?

Often grantors struggle with providing too much financial information to grandchildren or others. They fear that the beneficiaries may not have the maturity, financial skill or emotional capacity to handle the information. In some cases, the information may even prove detrimental to the

## A LOCAL TRUST SOLUTION

Call us today at (800) 786-1598 to learn more about working with Halliday Private Trust.

For information and assistance, please feel free to contact one of our Trust Advisors:

- Michael F. Fleming, Esq.
- Sean S. Mohammadi

725 Glen Cove Avenue  
Glen Head, NY 11545

4 Executive Park Drive  
Clifton Park, NY 12065

1819 Main Street, Suite 300  
Sarasota, FL 34236

beneficiary. The South Dakota statute allows the grantor or a trust protector, either by the terms of the governing document or by a writing delivered to the trustee, to expand, restrict, eliminate, or otherwise modify the rights of beneficiaries to information relating to the trust (SDCL-55-2-13).

### Can an irrevocable trust be changed?

For the last six years, South Dakota has been ranked as the top state for decanting.<sup>1</sup> The statutes provide clear guidance for use in decanting or modifying irrevocable trusts. While there are certain requirements that must be met, with the tools provided in the statutes it may be possible to “fix” an irrevocable trust that has encountered unforeseen circumstances. Should court intervention be required to modify a trust, South Dakota courts are both expedient and cost-effective when compared with other jurisdictions, including Delaware.

### Asset Protection

While domestic asset protection trusts are now available in many states, South Dakota has consistently been rated as one of the best jurisdictions.<sup>2</sup> The South Dakota statute is very robust and provides strong creditor protection. It provides for a two-year lookback period, while states such as Delaware have a four-year lookback.

South Dakota’s statute specifically allows transfer of marital property to a domestic asset protection trust. Even if created during marriage, if properly established, claims for alimony are barred.

Delaware has a state fiduciary income tax on income accumulated in a non-grantor trust where the trust itself, and not the grantor, is taxed on income earned by the trust. However, there is a full exemption from this tax if the income is accumulated for beneficiaries who are not current Delaware residents.

### Dynasty – Perpetuity

Although the tax environment has changed in the past few years resulting in less need for perpetual trusts, situations still exist where a long-term solution is desirable. The South Dakota dynasty statutes allow the trust to last in perpetuity.

### Special Purpose Entity

The South Dakota Special Purpose Entity statute helps to shield investment and distribution committee members, trust protectors and family advisors from potential individual liability. By utilizing the LLC corporate structure, the individuals are protected from personal claims connected to their capacity in serving the trust.

### Summary

In addition to the points already discussed, South Dakota has statutes outlining powers for trust protectors providing solutions such as the special spousal trust. The lack of a state income tax, along with an extensive list of trust-friendly laws, makes South Dakota situs a favorable jurisdiction.

The advice of your wealth management advisor and an attorney will be helpful in determining the appropriate situs for your trust.

<sup>1</sup> Steve Oshins - [https://docs.wixstatic.com/ugd/b211fb\\_56e2ff9b82534460aebf2a221f4e955b.pdf](https://docs.wixstatic.com/ugd/b211fb_56e2ff9b82534460aebf2a221f4e955b.pdf)

<sup>2</sup> Steve Oshins - [https://docs.wixstatic.com/ugd/b211fb\\_fc5bce98b8d84985900295a749574ed4.pdf](https://docs.wixstatic.com/ugd/b211fb_fc5bce98b8d84985900295a749574ed4.pdf)

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