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...Delivering Control

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Bridgeford Trust is...

An independent trust company providing industry leading trust administrative services to families across the nation and around the world.

A new and emerging wealth management service paradigm built around true independence, collaboration, and world-class capabilities.

...the Difference

Speed
at which we efficiently operate and interact

Experts
in South Dakota law, surrounded by advisors providing greater attention to detail

Creative
minds that think outside the box and provide new perspectives

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South Dakota Advantage

Delivering Control

Because of its progressive and cutting edge trust laws, South Dakota is routinely ranked among the best Trust Jurisdictions in the United States by industry publications, law review articles, white papers, and surveys of leading trust and estate professionals.

Through its South Dakota trust charter, ***Bridgeford Trust delivers tremendous control and flexibility*** to settlors and beneficiaries of trusts, as well as their advisors, because of South Dakota's progressive and modern trust laws outlined in detail in the following pages.

Factors Distinguishing South Dakota as a National Trust Jurisdiction Leader are:

- *Directed Trusts*
- *Domestic Asset Protection Trusts*
- *Privacy Laws*
- *Trust Taxation*
- *Decanting*

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Directed Trusts

Leading Trust Provisions

Directed Trusts, only available in a handful of states across the country, including South Dakota, have drastically changed the trust world by putting control back into the hands of settlors, beneficiaries, and their advisors. Through bifurcating liability, the directed trust model creates a legal framework allowing trustees and beneficiaries to work with asset managers and independent trust companies of their choosing.

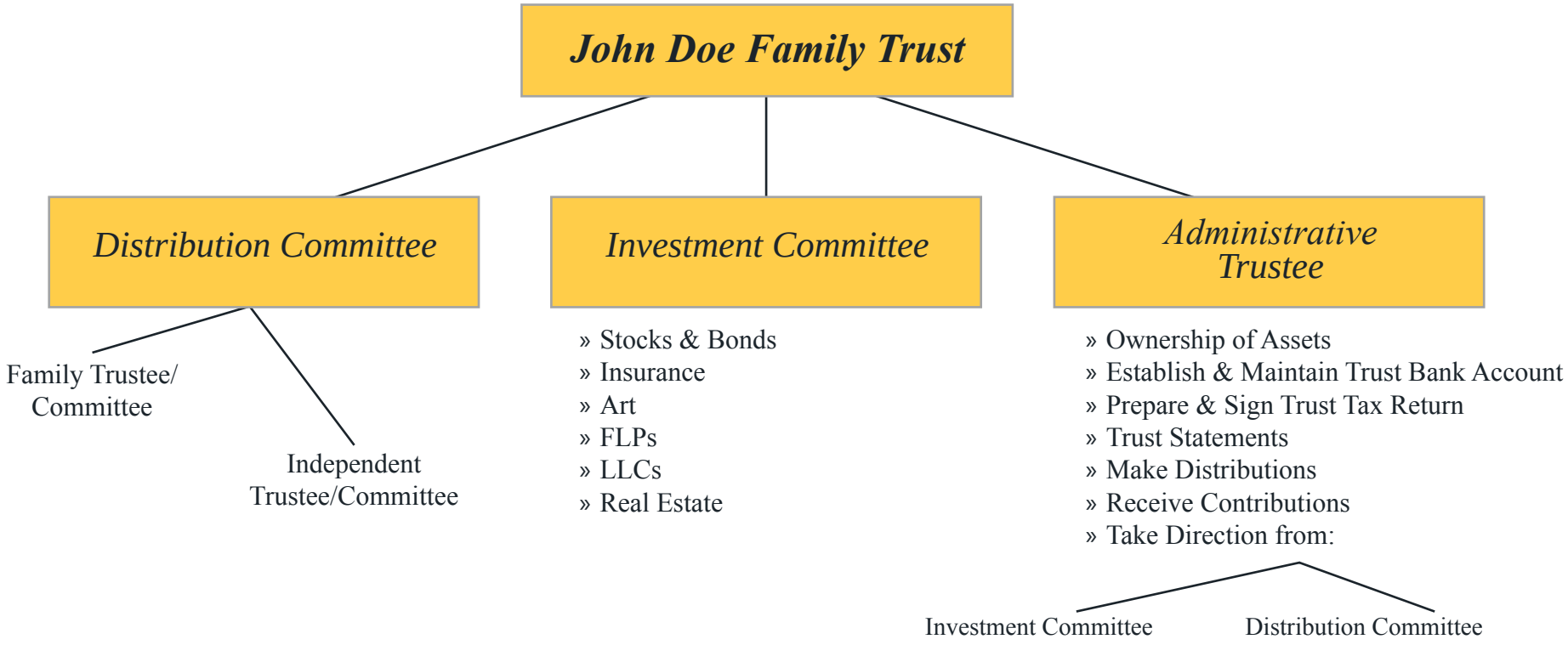
- *The directed trust concept unbundles functions (asset management and trust services) that have been and are traditionally bundled together by large bank-based corporate trustees.*

- *Directed trusts provide a family with maximum flexibility and control regarding the trust's asset allocation, diversification, investment management, and distributions. This is particularly ideal for a settlor who wants to fund an irrevocable trust with a closely held company or a specialized asset, while maintaining control.*

- *A directed trust allows the settlor to appoint an administrative trustee of their choosing and to appoint a trust advisor or an investment trustee/committee, who in turn may select outside investment advisor(s) and/or manager(s) to manage the trust's investments.*

Directed Trusts

Typical Modern "Directed" Trust Structure



Directed Trusts

Trust Protector

The inclusion of a ***Trust Protector*** in an irrevocable trust, in conjunction with the directed trust model, gives tremendous control to the settlor, beneficiaries, and advisors to modify many important aspects of the trust.

Acting as a "super trustee," the trust protector concept enhances the control aspects of the directed trust because it provides for direction or restraint of powers of the trustee.

Reasons why a settlor may wish to appoint a trust protector include:

- *Protectors allow for a great degree of flexibility when dealing with changes in circumstances, including both factual circumstances (death, premature divorce, previously unknown children) and legal changes (any legal changes, but most frequently changes to applicable revenue laws);*
- *The settlor may be concerned that the trustee may not pay sufficient attention to his wishes;*
- *The settlor wishes certain powers to be withheld from the trustees; or*
- *The settlor wishes a third party to act as a main point of contact between the beneficiaries and the trustees.*

South Dakota's trust protector statute is an example of one of the most robust trust statutes in the nation (see *Title 55 - Fiduciaries and Trusts Section 55-1B-6*).

Directed Trusts

South Dakota Family Advisor

The ***Family Advisor*** is yet another South Dakota modern trust law tool that delivers far more control to settlors of trusts, beneficiaries, and their advisors than ever before when used in conjunction with a Directed Trust.

Appropriately referred to as a "Trust Protector Light," because of its **non-fiduciary status** and limited powers, the South Dakota Family Advisor is an excellent option for settlors of trusts and beneficiaries who may want family advisors, such as attorneys, CPAs, or investment advisors, to have some control and input over important aspects of trust administration without elevating the position to that of a fiduciar , which carries with it heightened liability that may deter advisors from serving.

The Family Advisor role, similar to the Trust Protector, has the power to modify, control, and participate in many important aspects of trust administration. The powers that may be granted to the Family Advisor are:

> *(1) Remove and appoint a trustee, a fiduciary provided for in the governing trust instrument, trust advisor, investment committee member, or distribution committee member;*
>
> *(2) Appoint a successor trust protector or a successor family advisor;*
>
> *(3) Advise the trustee on matters concerning any beneficiary; receive trust accountings, investment reports, and other information from the trustee or to which a beneficiary is entitled; attend meetings, whether in person or by any other means, with the trustee, investment trust advisors, distribution trust advisors, or other advisors, whether in person or by any means, electronic or otherwise; and to consult with a fiduciary regarding both fiduciary and non-fiduciary matters or actions, all without any power or discretion to take any action as a fiduciary; or*
>
> *(4) Provide direction regarding notification of qualified beneficiaries pursuant to § 55-2-13.*

For more detailed information about the South Dakota Family Advisor, see the Appendix.

Directed Trusts

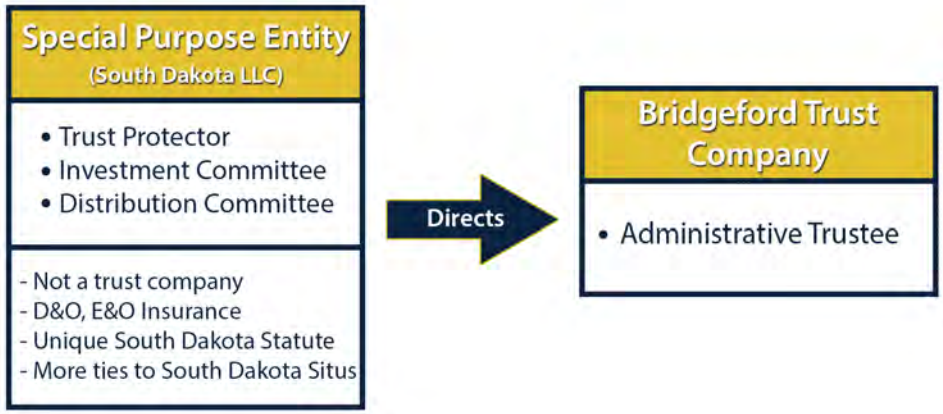
Special Purpose Entity

The ***Special Purpose Entity*** is a powerful planning tool because it places a liability umbrella over the individuals filling the roles within the directed trust structure (investment committee, and/or distribution committee members), as well as the trust protector; therefore protecting them from personal claims connected to their actions in this capacity.

- *The special purpose entity concept is also used to destroy nexus between in-state trust protectors, investment committee members, and/or distribution committee members, therefore maintaining the jurisdictional integrity of a resident trust with situs in a progressive trust jurisdiction like South Dakota.*

- *The sole legal purpose, under South Dakota law, of the special purpose entity is to direct an administrative trustee, such as Bridgeford Trust, relative to trust investments, distributions, and trust protector functions within the directed trust framework.*

The special purpose entity is an important planning tool as it supports and encourages the benefits associated with selecting progressive jurisdictions for trust situs, such as South Dakota, in the wealth and trust planning process.



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Domestic Asset Protection Trusts

A Powerful Protection Tool

Similar to an offshore asset protection trust in jurisdictions like Nevis and the Cook Islands, ***Domestic Asset Protection Trusts***, available only in a small number of states, including South Dakota, are a formidable domestic planning strategy that legally shields assets from third party liability (including spouses in a divorce proceeding) and lawsuits, while permitting settlors to retain some control over the trust assets and enjoy a discretionary benefit during their lifetime

- *A Domestic Asset Protection Trust is fully discretionary, meaning settlors can receive financial benefit from the trust (income and discretionary principal distributions), and protect trust assets from creditor claims and lawsuits, while maintaining control over the investment management function through the directed trust structure.*

- *With its two year "look back" fraudulent conveyance statute, South Dakota's is among the shortest in the country (Delaware has a four year fraudulent conveyance statute).*

Trusts & Estates Magazine closely and objectively examined Domestic Asset Protection Trust statutes in the context of various factors including a state's discretionary support and anti-alter ego statute. Based upon a thorough analysis of these, and other factors, the authors concluded that South Dakota is a top tier Domestic Asset Protection Trust jurisdiction, while both Delaware and Alaska are second tier jurisdictions.[1]

[1] Merric, Mark & Worthington, Daniel G., *"Best DAPT Jurisdictions Based on Three Types of Statutes"* Trusts & Estates January 2017

Domestic Asset Protection Trusts

Domestic and Offshore Protection: Best of Both Worlds

By combining the power of both ***Domestic and Offshore Asset Protection Strategies*** in one trust instrument, South Dakota law renders the debate over domestic verses offshore asset protection moot and gives settlors an easy to understand and compelling option for obtaining asset protection.

South Dakota Codified Law (SDCL) § 55-3-47 provides a mechanism to have both domestic and offshore asset protection within one trust instrument.

See the Appendix for a more detailed and technical discussion on this asset protection strategy.

Privacy Laws

Keeping Trust Information Confidential

Privacy has always been of paramount concern to wealthy families and is one of the primary reasons why billions of dollars have been and are being moved into South Dakota for trust administration from around the globe. South Dakota is considered to have the best trust privacy and quiet trust statutes in the United States, as noted in a recent article appearing in *Trust & Estates Magazine*, wherein the authors note,

"Of the top tier trust jurisdictions, South Dakota has the best trust privacy laws." [1]

Privacy (Keeping Trust Information Out of the Public Domain)

South Dakota's privacy statute provides for a total seal forbidding the release of trust information, including names of settlors, beneficiaries, and the contents of a trust, to the public during litigation. Most states do not have privacy statutes specific to trusts and, as such, privacy is not mandated or guaranteed by law as it is in South Dakota. Of the states that do have privacy provisions, most only limit privacy for a certain duration (Delaware is three years); then the information is released to the public, and the privacy provisions are subject to the Court's discretion, which is routinely denied.

Quiet Trust

Most states require trustees to inform a benefici ry of his or her beneficial interest in a trust at the age of 18. South Dakota is universally considered by advisors and academics to have the most comprehensive and flexible quiet trust statute in the nation, granting the settlor, trust protector, and the investment/distribution advisor the power to expand, restrict, eliminate, or modify the rights of the beneficiar es to discover information about a trust.

For a more detailed discussion of South Dakota's privacy laws and how they compare to other states, see the Appendix.

[1] Merric, Mark & Worthington, Daniel G., "*Which Situs is Best in 2016?*" Trusts & Estates January 2016

Trust Taxation

Dynasty Trust

A ***Dynasty Trust***, not available in all states, is a powerful planning tool that essentially allows a trust to live in perpetuity (forever), therefore NEVER subjecting the assets to federal estate taxation through a forced distribution.

- *South Dakota was the first state in the nation to abolish the Rule Against Perpetuities in 1983, clearing the way for the creation of the Dynasty Trust.*

- *South Dakota is ranked as being the top Dynasty Trust state in the nation while Delaware, long considered a top tier trust jurisdiction, is currently in the 7th position.*

See the Appendix for Attorney Steve Oshins' "6th Annual Dynasty Trust State Rankings Chart" for a more detailed and objective comparison of the Dynasty Trust states.

Trust Taxation

State Taxation of Trusts

Undistributed trust income retained in a trust is taxed in most states at the applicable income tax levels of that state. By situsing a trust in a state that does not have an income tax or does not tax trusts, it provides a compelling ***Tax Planning Opportunity*** for trustees and beneficiarie .

Resident Trust

A Resident Trust is a trust with situs and trust administration in a jurisdiction other than where the settlor, beneficiaries, or co-trustees reside. State appellate case law across the nation is supporting the proposition that it is unconstitutional to tax undistributed retained trust income in a resident trust.

- *Pennsylvania, North Carolina, and New Jersey each have appellate court case law, indicating that taxing retained income in a resident trust is a violation of the* ***Commerce Clause of the United States Constitution*** *and* ***Due Process****.*
- *This recent case law makes a compelling argument for the movement of trusts to states like South Dakota, where there is no state income tax.*
- *Trusts with situs in states without a state income tax would avoid taxation on undistributed retained trust income, which clearly has a very substantial impact on the value of trust assets over subsequent generations, particularly in high tax states like California and New Jersey.*

Insurance Premium Tax

There is an insurance premium tax that is levied upon insurers, both domestic and foreign, for the privilege of engaging in the business of providing insurance in the state.

- *Most states in the country have an insurance premium tax between 150 and 250 basis points. Nevada's is 350 basis points and Delaware's is 200 basis points.* ***South Dakota has the lowest in the country at 8 basis points, meaning that the purchase of insurance through a South Dakota trust will result in substantial tax savings.***

Trust Taxation

South Dakota Community Property Special Spousal Trust

The ***South Dakota Community Property Special Spousal Trust*** is created by one or both spouses with both spouses as beneficiaries to avoid taxation, because it treats the property as community property at the death of the first spouse, applying a 100% percent step-up in basis at date of death of the first spouse

- *The South Dakota Community Property Special Spousal Trust avoids federal capital gains taxation of marital/trust assets when subsequently sold. (In non-community property states, the step-up in basis at date of death is only 50%, which means that taxes would be owed on the remaining 50% of the cost basis of the marital property when sold.)*

- *Combining the benefits of a South Dakota Community Property Special Spousal Trust with the federal estate tax benefits of a Dynasty Trust, in a jurisdiction that does not have an income tax, such as South Dakota, creates a powerful tax move that has the potential to result in compelling federal and state tax savings over subsequent generations.*

- *A South Dakota Community Property Special Spousal Trust may also be created, in appropriate cases, to take advantage of South Dakota's Directed Trust laws, delivering more control to settlors and Domestic Asset Protection Trust laws for enhanced protection from creditors.*

See the Appendix for more information on this progressive new legislation.

Trust Taxation

The South Dakota Incomplete Non-Grantor Trust ("ING")

An ***Incomplete Non-Grantor Trust ("ING")*** is a vehicle that potentially eliminates state income tax while taking advantage of domestic asset protection.

- An incomplete gift – never leaves settlor's estate, so NO GIFT TAX.
- Non-Grantor Status – income taxed at the trust level.
- Strong Private Letter Ruling (PLR) Support.

When to use the Incomplete Non-Grantor Trust

- Asset with significant appreciation, such as low cost basis stock
- Avoids state income tax on subsequent liquidity event if created in a jurisdiction that does not have a state income tax, such as South Dakota.
- Avoids future state income tax on undistributed investment income.
- PLR requests with the IRS recommended.

Example of the Tax Savings Associated with an Incomplete Non-Grantor Trust

- Closely held business with fair market value significantly over basis with a gain in excess of $20 million
- Transfer of closely held stock into an Incomplete Non-Grantor Trust created in jurisdiction with no income tax.
- No gift tax consequence.
- Assuming home state has a 6% income tax rate = $1.2 million state tax savings.
- Assuming an estimated future investment portfolio of $16 million earning a conservative 4% undistributed total return, continued state tax savings of $38,400 per year.

Modern Trust Laws

Decanting

Appropriately referred to as a "do over," ***Decanting*** is essentially distributing assets from an irrevocable trust to a new trust with different, and presumably more desirable and flexible terms, leaving the u wanted terms in the original trust and not binding on the assets.

- *Distribution of trust principal in further trust allows an irrevocable trust to evolve through decanting to meet a family's changing needs without court involvement.*

- *The concept of decanting has become a very powerful tool for planners to modify irrevocable trusts and has emerged as one of the most progressive planning strategies available in dealing with irrevocable trusts and dynasty planning issues, and can be applicable to both domestic and international trusts.*

- *Decanting also creates a streamlined option for easily transferring a trust from one state jurisdiction to another more favorable jurisdiction.*

Many states do not have a decanting statute and not all decanting statutes are created equally. It is very important to evaluate the differences among the statutes when selecting proper situs for a trust.

See the Appendix for Attorney Steve Oshins' "5th Annual Trust Decanting State Rankings Chart" for a more detailed and objective comparison of the decanting statutes across the nation.

Jurisdiction Showdown

The Vital Importance of Choosing the Correct Trust Jurisdiction

	South Dakota	Nevada	Wyoming	Alaska	Delaware
Dynasty Trusts	**Yes** *Ranked as #1* [1]	**Yes** *Ranked as #2* [1] *State constitution prohibits modification to RAP* [2]	**Yes** *Ranked as #5* [1] *State constitution prohibits modification to RAP* [2]	**Yes** *Ranked as #4* [1]	**Yes** *Ranked as #8* [1]
State Income Taxation	**No**	**No**	**No**	**No** *Future uncertain*	**No** *Only for non-residents*
Community Property Trusts	**Yes** [3] *Effective July 1, 2016*	**Yes** *Only for residents*	**No**	**Yes** *Future uncertain*	**No**
Domestic Asset Protection Statute	**Yes** [4] *2 year statute of limitations* *Exception for child support*	**Yes** [4] *2 year statute of limitations* *No exceptions for child and spousal support*	**Yes** [4] *4 year statute of limitations* *Exception for child support*	**Yes** [4] *4 year statute of limitations* *Exception for divorcing spouse*	**Yes** [4] *4 year statute of limitations* *Exceptions for child and spousal support*
Trust Protector	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**
Directed Trusts	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**
Decanting Statute	**Yes** *Ranked as #1* [5]	**Yes** *Ranked as #2* [5]	**Yes** *Ranked as #10* [5]	**Yes** *Ranked as #7* [5]	**Yes** *Ranked as #5* [5]
Trust Privacy Provision	**Yes - Total Privacy Seal Forever** *Automatically attaches* *"Of the top tier trust jurisdictions, South Dakota has the best trust privacy laws."* [2]	**No Total Privacy Seal** [2] *Subject to judge discretion*	**No Total Privacy Seal** [2] *Subject to judge discretion*	**No Total Privacy Seal** [2] *Subject to judge discretion*	**Yes - Three Year Privacy Seal** [2] *Subject to judge discretion*
Special Purpose Entity	**Yes** [2] *Codified by statute*	**No**	**No**	**No**	**No**
Family Advisor	**Yes**	**No**	**No**	**No**	**No**

** Denotes superior distinction among jurisdictions.*

[1] *Attorney Steve Oshins' "6th Annual Dynasty Trust State Rankings Chart"*
[2] *Merric, Mark & Worthington, Daniel G. "Which Situs is Best in 2016?" Trusts & Estates January 2016*
[3] *South Dakota Special Spousal Trusts, House Bill 1039 (2016) (Sections 29-42)*
[4] *Attorney Steve Oshins' "8th Annual Domestic Asset Protection Trust State Rankings Chart"*
[5] *Attorney Steve Oshins' "5th Annual Trust Decanting State Rankings Chart"*

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THE SOUTH DAKOTA FAMILY ADVISOR: "TRUST PROTECTOR LIGHT"

Proving once again South Dakota's status as the premier U.S. trust jurisdiction and the vital importance of proper situs selection in the trust planning process, South Dakota is the first state in the nation to enact progressive new legislation creating the South Dakota Family Advisor (for a definition of terms, reference 55-1B-1). The Family Advisor is yet another South Dakota modern trust law tool that delivers far more control to settlors of trusts, beneficiaries, and their advisors than ever before when used in conjunction with a Directed Trust.

The Family Advisor role, similar to the Trust Protector but acting as a NON-FIDUCIARY, has the power to modify, control, and participate in many important aspects of trust administration. The powers that may be granted to the Family Advisor are:

> (1) Remove and appoint a trustee, a fiduciary provided for in the governing trust instrument, trust advisor, investment committee member, or distribution committee member;
>
> (2) Appoint a successor trust protector or a successor family advisor;
>
> (3) Advise the trustee on matters concerning any beneficiary; receive trust accountings, investment reports, and other information from the trustee or to which a beneficiary is entitled; attend meetings whether in person or by any other means with the trustee, investment trust advisors, distribution trust advisors, or other advisors whether in person or by any means, electronic or otherwise; and to consult with a fiduciary regarding both fiduciary and non-fiduciary matters or actions, all without any power or discretion to take any action as a fiduciary; or
>
> (4) Provide direction regarding notification of qualified beneficiaries pursuant to § 55-2-13.

Appropriately referred to as a "Trust Protector Light", because of its non-fiduciary status and limited powers, the South Dakota Family Advisor is an excellent option for settlors of trusts and beneficiaries who may want family advisors, such as attorneys, CPAs, or investment advisors to have some control and input over important aspects of trust administration **without** elevating the position to that of a fiduciary, which carries with it heightened liability that may deter advisors from serving.

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The Family Advisor, only available under South Dakota law, is yet another affirmation of South Dakota's status as the most progressive trust jurisdiction in the nation. For more information about how Family Advisors can be incorporated into the trust planning process, please contact Bridgeford Trust via our **contact page**.

To learn more about South Dakota's industry leading modern trust laws, including Trust Protector, Directed Trusts, Decanting, Modification, and Reformation, please **click here** for more information.

In: News

http://bridgefordtrust.com/articles/the-south-dakota-family-advisor-trust-protector-light/

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ASSET PROTECTION: BRINGING TOGETHER DOMESTIC AND OFFSHORE STRATEGIES

Commentators and advisors continue to debate whether offshore asset protection trusts, available in jurisdictions such as Nevis and the Cooks Island, are better asset protection vehicles than U.S. domestic asset protection trusts, available in a small number of states including South Dakota. The debate is typically fueled by esoteric legal distinctions and hyperbole or, more commonly, based upon a subjective planning bias of the particular advisor. Unfortunately, the debate does not always serve a client interested in obtaining asset protection well, as they are often left confused and uncertain as to what is the best option. However, a South Dakota statute appears to create the opportunity to bring both offshore and domestic asset protection strategies together in one trust instrument, thereby providing a solution that brings the "best of both worlds" to the asset protection planning space.

Similar to an offshore asset protection trust, a domestic asset protection trust shields assets in trust from third party liability (including spouses in a divorce proceeding), creditor claims, and judgements, while permitting settlors (individuals establishing the trust) the ability to retain some control over the trust assets, receive income, and enjoy a discretionary benefit during their lifetime. With its 2 year fraudulent conveyance statute (look back), South Dakota's is among the shortest in the country (Delaware has a 4 year fraudulent conveyance statute).

South Dakota Statute 55-3-47 appears to provide a mechanism that provides both domestic and offshore asset protection within one trust instrument. If a judgment is obtained in any action brought against a trustee of a South Dakota trust for payment, where a foreign court declines to apply the law of South Dakota relative to the asset protection nature of the trust in determining the validity, construction, or administration of such trust, or the effect of a spendthrift provision, the statute clearly indicates that the trust company has no power or authority under South Dakota law to recognize or pay the judgment. Under the statute, the only power granted to the trust company is to resign and appoint a successor trust company in accordance with the terms of the trust instrument, and convey the trust property to the successor trustee. Presumably, the judgment obtained would then be returned unsatisfied and the creditor would need to commence the action against the successor trustee.

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In this instance, it is important to note that there is nothing in the statute preventing a South Dakota trust company from transferring the trust and its assets to an offshore successor trust company, properly named in the document, thereby creating a very formidable asset protection strategy utilizing both domestic and offshore asset protection in one trust instrument. By operation of law and under appropriate trust provisions, the trust assets can be transferred offshore only when needed. Until the offshore asset protection is needed, the trust is administered in South Dakota and assets are held in the U.S. Therefore, the settlor truly enjoys the best of both worlds by avoiding the negative attributes associated with having a trust administered in an offshore jurisdiction (high costs, unstable governments, potential restrictive access to assets) while availing himself of the protection benefits of an offshore jurisdiction, should the need arise.

By combining the power of both offshore and domestic asset protection strategies in one trust instrument, South Dakota law appears to render the debate over offshore verses domestic asset protection moot and gives settlors an easy to understand and compelling option for obtaining asset protection. This asset protection planning technique available under South Dakota law is yet another example of the vital importance of selecting the proper trust jurisdiction in the trust planning process.

To learn more about South Dakota's asset protection trusts, check out our asset protection trusts page on our website by clicking here. You can also watch a webinar that details the importance of choosing a trust jurisdiction with asset protection by clicking here.

Contact Bridgeford Trust via our contact page for additional information.

In: News

PRIVACY AND TRUST PLANNING: THE SOUTH DAKOTA ADVANTAGE

Privacy has always been of paramount concern to wealthy families and is one of the primary reasons why billions of dollars have been and are being moved into South Dakota for trust administration from around the globe. Most states do not have provisions or laws protecting trust information from being revealed to beneficiaries or to the public during litigation. Furthermore, the few trust privacy laws in existence in the United States are not "created equally", making it vitally important for clients and their advisors to understand which state trust jurisdiction offers the best and most powerful privacy protection. For the reasons outlined below, South Dakota clearly has the most robust privacy provisions in the nation rendering that state the trust jurisdiction of choice for wealthy families from all over the world.

Quiet Trust

Most wealthy families want the option of deciding whether to reveal to a child or grandchild that they have a beneficial interest in a trust. However, most states require trustees to inform a beneficiary of his or her beneficial interest in a trust at the age of eighteen (18). The top tier U.S. trust jurisdictions of South Dakota, Nevada, Alaska, and Delaware, as determined by Trust & Estates Magazine and other industry publications, have addressed this issue and passed rules that allow a trust to waive notice requirements regarding its existence and its assets to beneficiaries. Referred to as a Quiet Trust, settlors of trusts in the above mentioned states have control over what information is revealed to a beneficiary and when it is revealed, if at all.

South Dakota is universally considered by advisors and academics to have the most comprehensive and flexible quiet trust statute in the nation, granting the *settlor*, *trust protector*, and the *investment/distribution advisor* the power to expand, restrict, eliminate, or modify the rights of the beneficiaries to discover information about a trust. Nevada law is silent on the issue of granting the power to these roles, and Delaware and Alaska's provisions, while similar, place significantly more restriction on the waiver of notice requirement, rendering all three jurisdictions significantly less favorable than South Dakota.

Privacy (Keeping Trust Information Out of the Public Domain)

South Dakota's privacy statute provides for a total seal forbidding the release of trust information, including names of settlors, beneficiaries, and the contents of a trust, to the public during litigation. Alaska and Nevada do not have privacy statutes specific to trusts and, as such, privacy is not mandated or guaranteed by law as it is in South Dakota. To the contrary, Courts in those jurisdictions consider requests to seal the record on a case by case basis, after the commencement of litigation. It

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is not uncommon for such requests to be denied. Similar to that of Alaska and Nevada, Delaware gives the Court discretion over whether to seal trust information. It is very important to note that, even if a Delaware Court grants the seal, the information is only protected for three (3) years. This is a major departure from South Dakota's statute which seals trust information from the public forever without the need to petition for a Court degree. Therefore, South Dakota's privacy provisions are clearly superior to that of any other state in the nation and are generally regarding by many practitioners, advisors, and academics as being among the best in the world.

The desire for privacy and keeping trust information out of the public domain is critically important to most families with wealth. Therefore, it is a compelling factor for planners to consider and accentuates the vital importance of evaluating alternative trust jurisdictions in the wealth and trust planning process. For more information about South Dakota's privacy provisions and how they can be incorporated into a wealth plan, please feel free to contact us via our contact page.

In: News

6th Annual Dynasty Trust State Rankings Chart

Rank	State	Perpetuities Statute	Rule Against Perpetuities (35% weight)	State Income Tax (25% weight)	Third-Party Spendthrift Trust Provision Effective Against Divorcing Spouse/Child Support (Divorcing Spouse – 7.5% weight/Child Support – 2.5% weight)	Discretionary Trust Protected from Divorcing Spouse/Child Support (7.5% weight)	Domestic Asset Protection Trust State Ranking (10% weight)	Trust Decanting State Ranking (10% weight)	Non-Judicial Settlement Agreement Statute (2.5% weight)	Total Score
1	SD	SD Codified L § 43-5-8	Perpetual	No	Protected	Protected	Ranked #2	Ranked #1	Yes	99.5
2	NV	NV Rev Stat § 111.1031	365 years	No	Protected	Protected	Ranked #1	Ranked #2	Yes	98.5
3	TN	TN Code § 66-1-202(f)	360 years	No (except dividends/ interest on residents)	Protected	Protected	Ranked #3	Ranked #3	Yes	96
4	AK	AK Stat § 34.27.051	Perpetual/ 1,000 years if exercise power of appointment	No	Protected	Protected	Ranked #8	Ranked #7 (tie)	No	94
5	WY	WY Stat § 34-1-139	1,000 years	No	Divorcing spouse = Protected Child support = Not Protected (WY Stat § 4-10-503(b))	Protected	Ranked #10	Ranked #10 (tie)	Yes	89.5
6	RI	RI Gen L § 34-11-38	Perpetual	No (except residents)	Protected	Protected	Ranked #9	Ranked #19	No	87.5
7	OH	Ohio Rev Code § 2131.09(B) and (C)	Perpetual/ 1,000 years if exercise power of appointment	No (except residents)	Divorcing spouse = Not Protected Child support = Not Protected (Ohio Rev Code § 5805.02(B)(1))	Protected	Ranked #4	Ranked #6	Yes	85.5
8 (tie)	DE	25 DE Code § 503	Perpetual for personal property/ 110 years for real estate	No (except residents)	Divorcing spouse = Not Protected Child support = Not Protected (Garretson v. Garretson (1973))	Protected	Ranked #7	Ranked #5	Yes	84.5
8 (tie)	IL	765 ILCS 305/3	Perpetual	No (except residents)	Divorcing spouse = Protected Child support = Not Protected (735 ILCS 5/2-1403 codifying *In re Matt* (1985))	Protected	None	Ranked #7 (tie)	Yes	84.5
10 (tie)	MO	MO Rev Stat § 456.025	Perpetual	No (except residents)	Divorcing spouse = Not Protected Child support = Not Protected (Mo. Rev. Stat. § 456.5-503(2))	Protected	Ranked #6	Ranked #10 (tie)	Yes	83
10 (tie)	NH	NH Rev Stat § 564:24	Perpetual	No (except dividends, interest on residents)	Divorcing spouse = Not Protected Child support = Not Protected (NH Rev Stat § 564-B:5-503(b)(1)-(2))	Protected	Ranked #11	Ranked #4	Yes	83
12	FL	FL Stat § 689.225(2)(f)	360 years	No	Divorcing spouse = Not Protected Child support = Not Protected (FL. Stat § 736.0503(2)(a) codifying *Bacardi v. White* (1985))	Writ of garnishment allowed for spouse, former spouse, child support (FL Stat §736.0503(3); *Berlinger v. Casselberry* (2013))	None	Ranked #25	Yes	63

*The Domestic Asset Protection Trust State Ranking column is based on the 8th Annual Domestic Asset Protection Trust State Rankings Chart created in April 2017 at http://www.oshins.com/images/DAPT_Rankings.pdf.

*The Trust Decanting State Ranking column is based on the 4rd Annual Trust Decanting State Rankings Chart created in January 2017 at http://www.oshins.com/images/Decanting_Rankings.pdf.

*This Dynasty Trust State Rankings Chart created in October 2017. Original Dynasty Trust State Rankings Chart created in October 2012.

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THE SOUTH DAKOTA COMMUNITY PROPERTY SPECIAL SPOUSAL TRUST: A COMPELLING STATE AND FEDERAL TAX PLANNING TOOL

Proving once again South Dakota's status as a top tier trust jurisdiction AND the vital importance of proper situs selection in the wealth planning process, South Dakota's Governor Dennis Daugaard just recently signed a progressive new legislation which unanimously had passed both the South Dakota House and Senate creating the South Dakota Community Property Special Spousal Trust – House Bill 1039 (2016) (Sections 29-42). The trust may be a revocable or irrevocable trust created by one or both spouses with both spouses as beneficiaries. This is a very powerful state income and estate tax planning tool because it will likely allow married settlors of the trust to avoid state taxation on undistributed retained income within the trust (because South Dakota does not have an income tax) AND treats the property as community property at the death of the first spouse, applying a 100% percent step-up in basis at date of death, therefore, avoiding federal capital gains taxation of marital/trust assets when sold. (In non-community property states, the step-up in basis at date of death is only 50%, which means that taxes would be owed on the remaining 50% of the cost basis of the marital property when sold). Combining these benefits creates a powerful tax move that has the potential to result in compelling federal and state tax savings, particularly if the trust is also designed as a dynasty trust, which would avoid federal estate taxation on trust assets over subsequent generations in perpetuity. In addition, the trust may also be created, in appropriate cases, to take advantage of South Dakota's Domestic Asset Protection Trust laws for protection from creditors.

South Dakota's new legislation becomes effective July 1, 2016. At this time, the only other state with a similar statute creating a Community Property Special Spousal Trust, applying to non-residents, without a state income tax is Alaska. However, given that state's extremely unstable financial situation and recent statements and submitted budget proposal by Alaska's Governor Bill Walker regarding the creation of a state income tax in the very near term, it appears that South Dakota is the preferred choice for this type of trust planning primarily because of its widely known financial strength, no state income tax, and clear commitment to being the most progressive trust jurisdiction in the nation.

For information about South Dakota's progressive and industry leading trust laws, click here. For a more thorough discussion of taxation of trusts, click here for a recent webinar. Contact Bridgeford Trust via our contact page for additional information.

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5th Annual Trust Decanting State Rankings Chart

Rank	State	Has Decanting Statute? (60% weight)	Can Decant Trust with Ascert. Standard? (7.5% weight)	Notice to Beneficiaries Required? (7.5% weight)	Can Decant Trust with Ascertainable Standard into Discretionary Trust? (7.5% weight)	Can Remove Mandatory Income Interest? (2.5% weight)	Allow Power of Appointment in Second Trust to Non-Bene? (2.5% weight)	Can Accelerate Remainder Bene's Interest? (2.5% weight)	Dynasty Trust State Ranking (7.5% weight)	Domestic Asset Protection Trust State Ranking (2.5% weight)	Total Score
1	SD	§55-2-15	Yes	No	Yes	Yes	Yes	Yes	Ranked #1	Ranked #2	99.5
2	NV	§163.556	Yes	No	Yes	Yes	Yes	Yes	Ranked #2	Ranked #1	99
3	TN	§35-15-816(b)(27)	Yes	No	Yes	No	Yes	Silent	Ranked #3	Ranked #3	93
4	NH	§564-B:4-418	Yes	No, except charitable trusts	Yes	No	Yes	Silent	Ranked #10 (tie)	Ranked #11	89.5
5	DE	12, §3528	Yes	No	No	Yes	Yes	No	Ranked #8 (tie)	Ranked #7 (tie)	86
6	OH	§5808.18	Yes	Yes	No	Yes	Yes	No	Ranked #7	Ranked #4	79.5
7 (tie)	AK	§13.36.157-159; §13.36.215	Yes	Yes	No	No	Yes	No	Ranked #4	Ranked #7	77.5
7 (tie)	IL	760 ILCS 5/16.4	Yes	Yes	No	No	Yes	Silent	Ranked #8 (tie)	Not allowed	77.5
9	IN	§30-4-3-36	Yes	Yes	Yes	No	Silent	Silent	Unranked	Not allowed	75
10 (tie)	MO	§456.4-419	Yes	Yes, only to beneficiaries of second trust	No	Yes	Silent	Yes	Unranked	Ranked #6	74
10 (tie)	WY	§4-10-816(a)(xxviii)	Yes	No	Yes	Silent	Silent	Silent	Ranked #5	Ranked #10	74
12 (tie)	SC	§62-7-816A	Yes	Yes	No	Yes	Yes	No	Unranked	Not allowed	72.5
12 (tie)	TX	§§112.071 to 112.087	Yes	Yes	No	No	Yes	Yes	Unranked	Not allowed	72.5
14 (tie)	CO	§15-16-901-930	Yes	Yes	No	No	Yes	No	Unranked	Not allowed	70
14 (tie)	KY	§386.175	Yes	Yes	No	No	Yes	No	Unranked	Not allowed	70
14 (tie)	NM	§46-12-101-129	Yes	Yes	No	No	Yes	No	Unranked	Not allowed	70
14 (tie)	NC	§36C-8-816.1	Yes	Yes	No	No	Yes	No	Unranked	Not allowed	70
14 (tie)	VA	§64.2-779.1-.25	Yes	Yes	No	No	Yes	No	Unranked	Ranked #NR	70
14 (tie)	WA	§11.107	Yes	Yes	No	No	Yes	No	Unranked	Not allowed	70
20	RI	§18-4-31	Yes	Yes	Silent	No	Silent	No	Unranked	Ranked #9	68.5
21 (tie)	AZ	§14-10819	Yes	No	Yes	No	Silent	Silent	Unranked	Not allowed	67.5
21 (tie)	MI	§700.7820a / §556.115a	No	Yes	No	No	Yes	Silent	Unranked	Not allowed	67.5
21 (tie)	MN	§502.851	Yes	Yes	No	No	No	No	Unranked	Not allowed	67.5
21 (tie)	NY	§10-6.6	Yes	Yes	No	No	Yes	No	Unranked	Not allowed	67.5
21 (tie)	WI	§701.0418	Yes	Yes	No	No	Silent	No	Unranked	Not allowed	67.5
26	FL	§736.04117	No	Yes	No	No	Silent	Silent	Ranked #12	Not allowed	63.5

*The Dynasty Trust State Ranking column is based on the 6th Annual Dynasty Trust State Rankings Chart and the Domestic Asset Protection State Rankings Chart is based on the 8th Annual Domestic Asset Protection State Rankings Chart, both at http://www.oshins.com/state-rankings-charts.

*This Trust Decanting State Rankings Chart created in January 2018. Original Trust Decanting State Rankings Chart created in January 2014.

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