

BRIDGEFORD[®]



Trust Company

...Delivering Direction & Control

www.bridgefordtrust.com

BRIDGEFORD[®]

Trust Company

Bridgefords 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*

Table of Contents

South Dakota Advantage	1
Directed Trusts	2
• <i>Typical Modern “Directed” Trust Structure</i>	
Trust Protector	4
South Dakota Family Advisor	5
Special Purpose Entity	6
Domestic Asset Protection Trusts	7
Privacy vs. Secrecy	9
Tax Planning, not Tax Evasion	10
• <i>Dynasty Trust</i>	
• <i>State Taxation of Trusts</i>	
• <i>South Dakota Community Property Special Spousal Trust</i>	
• <i>The South Dakota Incomplete Non-Grantor Trust (“ING”)</i>	
Decanting	14
Coming to America	15
• <i>Foreign Grantor Trust</i>	
• <i>CRS vs FATCA</i>	
Choosing the Correct Jurisdiction	17



South Dakota Advantage

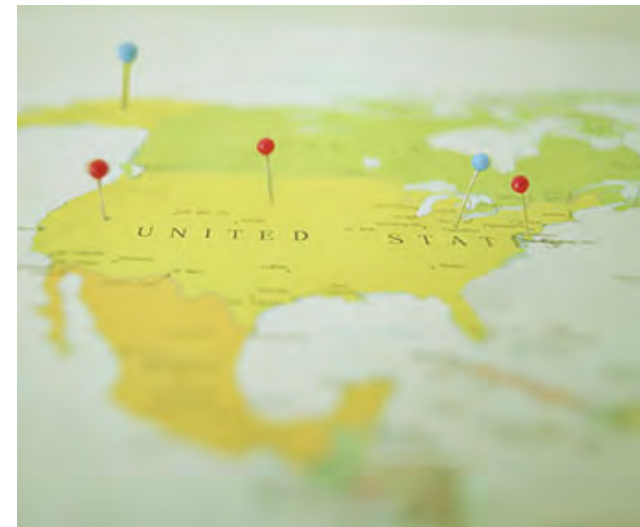
Delivering Direction & Control

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*

In January 2018, South Dakota was again ranked by *Trusts & Estates Magazine* as being a top tier U.S. trust jurisdiction. Noting that Delaware, long considered to be a leading U.S. trust jurisdiction, is not keeping pace with other progressive U.S. trust jurisdictions, the authors' state, "*While Delaware has been in the top 4 jurisdictions consistently for the past ten (10) years, we think that its asset protection laws still need to be strengthened for it to remain competitive.*" ^[1]



^[1] Merric, Mark & Worthington, Daniel G., "*Which Situs is Best in 2018?*" *Trusts & Estates* January 2018

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.

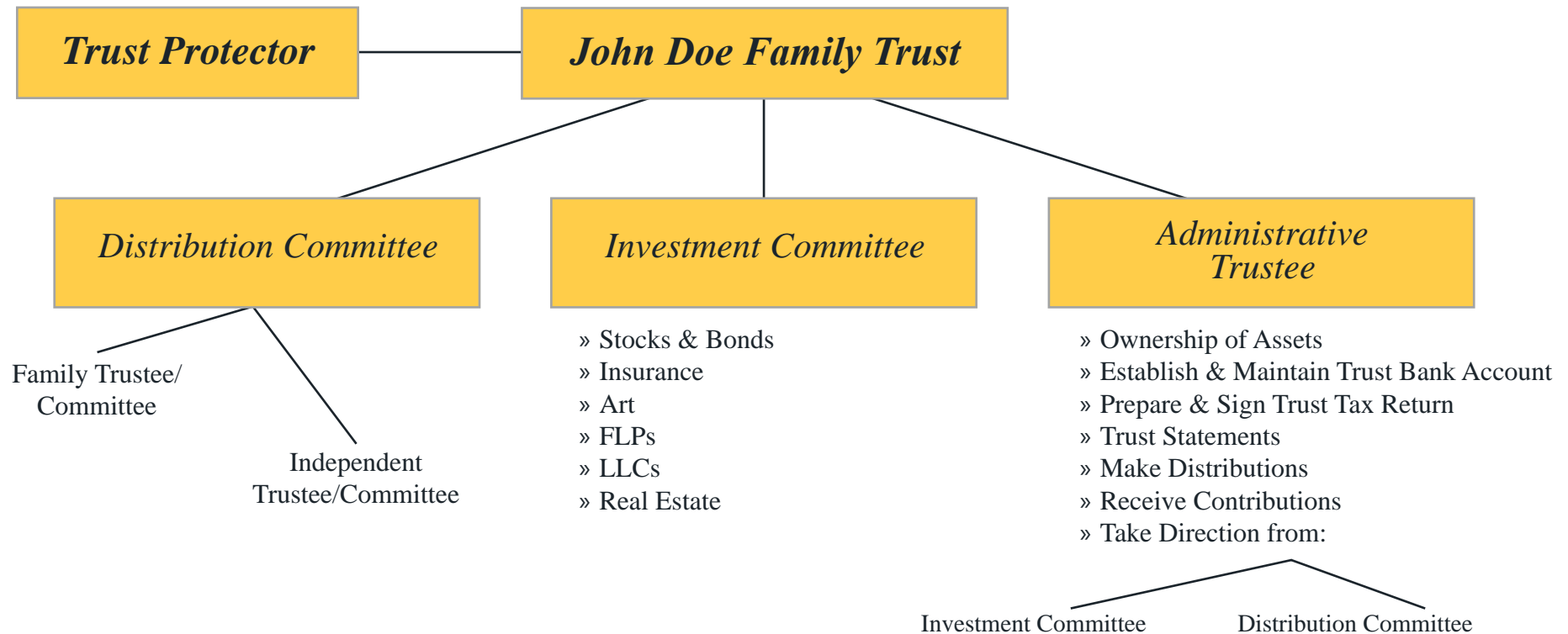
- *The directed trust concept unbundles functions (asset management and trust services) that have been and are traditionally bundled together by large bank-based corporate trustees.*
- *Directed trusts provide a family with maximum flexibility and control regarding the trust's asset allocation, diversification, 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.*

“Offering unbundled services provides great flexibility and lower fees for families and their advisors.”^[1]

^[1] McDonald, III, Joseph F., “Emerging Directed Trust Company Model” Trusts & Estates February 2012

Directed Trusts

Typical Modern “Directed” Trust Structure



Trust Protector

“Super Trustee”

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*).

South Dakota Family Advisor

“Trust Protector Light”

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 fiduciary, 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.*

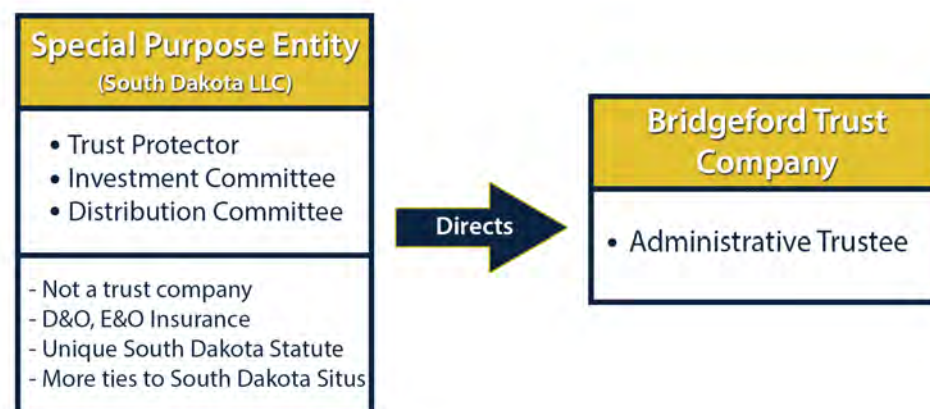
Special Purpose Entity

Protection and Nexus

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 (see Title 55 - Fiduciaries and Trusts Section 51A-6A-66).*

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.



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 examined Domestic Asset Protection Trust statutes in the context of various objective factors. Based upon a thorough analysis, the authors concluded that South Dakota is a top tier Domestic Asset Protection Trust jurisdiction, while Delaware, Alaska, and Wyoming are all second tier jurisdictions.^[1]

^[1] Merric, Mark, Worthington, Daniel G., MacArthur, Paul & Sullivan, John E. “*Best Situs for DAPTs in 2019*” *Trusts & Estates* December 2018

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 versus 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.

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.



Privacy vs. Secrecy

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 beneficiary 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 beneficiaries to discover information about a trust.



^[1] Merric, Mark & Worthington, Daniel G., “Which Situs is Best in 2018?” *Trusts & Estates* January 2018

Tax Planning, not Tax Evasion

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 8th position.*

See Attorney Steve Oshins' "7th Annual Dynasty Trust State Rankings Chart" for a more detailed and objective comparison of the Dynasty Trust states.



Tax Planning, not Tax Evasion

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 beneficiaries.

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 one of the lowest insurance premium tax in the nation at 8 basis points, which applies to **BOTH** policies held by individuals **AND** policies held within an LLC. (While Delaware boasts 0 basis points on policies held by individuals, policies held within an LLC – which is typically the case – are taxed at 200 basis points.)*

Tax Planning, not Tax Evasion

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 South Dakota Codified Law (SDCL) § 55-17 for the complete details on this progressive new legislation.



Tax Planning, not Tax Evasion

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.
- To avoid state income tax on subsequent liquidity when created in a jurisdiction that does not have a state income tax, such as South Dakota.
- To avoid future state income tax on undistributed investment income.
- Strong recent PLR support.

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 13.3% (CA) income tax rate = \$2.66 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.

Decanting

“Do Over”

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 unwanted 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.

For more information, see South Dakota Codified Law (SDCL) § 55-2-15 to 55-2-18 as well as Attorney Steve Oshins’ “6th Annual Trust Decanting State Rankings Chart” for a more detailed and objective comparison of the decanting statutes across the nation.

Coming to America

Foreign Grantor Trust

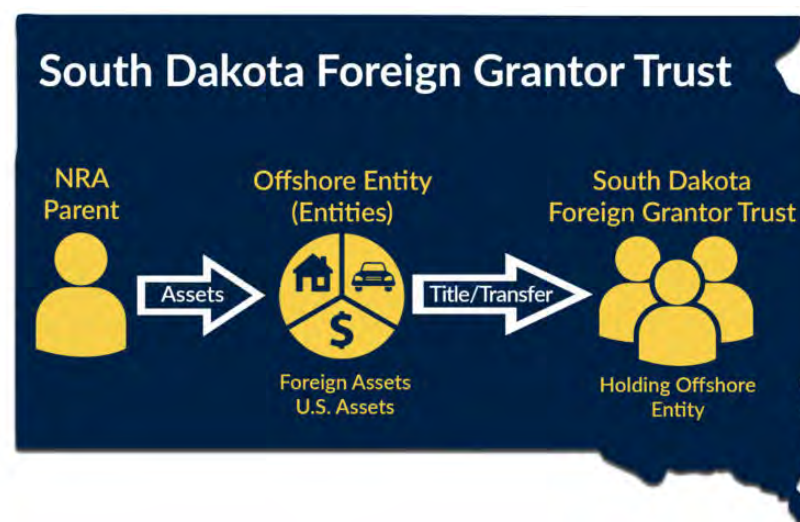
For a myriad of reasons, including privacy and asset protection, wealthy families from around the world are seeking U.S. trust solutions. Because of the power and sophistication of its trust laws, international families are increasingly selecting South Dakota for trust situs of foreign grantor trusts.

Through appropriate planning and drafting, a ***South Dakota Foreign Grantor Trust*** may be established as a “foreign” trust for U.S. tax purposes and therefore treated the same as an offshore trust, while availing itself of powerful U.S. trust laws. Failure of the “Court Test” or “Control Test,” as outlined by the IRS, will result in the trust being treated as a non-U.S. entity and therefore not subjecting it to U.S. Taxation.

Since the trust is considered a South Dakota trust for legal purposes, the state’s industry leading dynasty trust, asset protection, and privacy laws may also be incorporated into the trust.

Why a Foreign Trust?

- *Repatriation to the U.S.*
- *Reporting protocols*
- *Taxation*
- *Foreign born person living in U.S.*
- *Foreign person with U.S. assets*
- *Privacy/political corruption concerns*



Coming to America

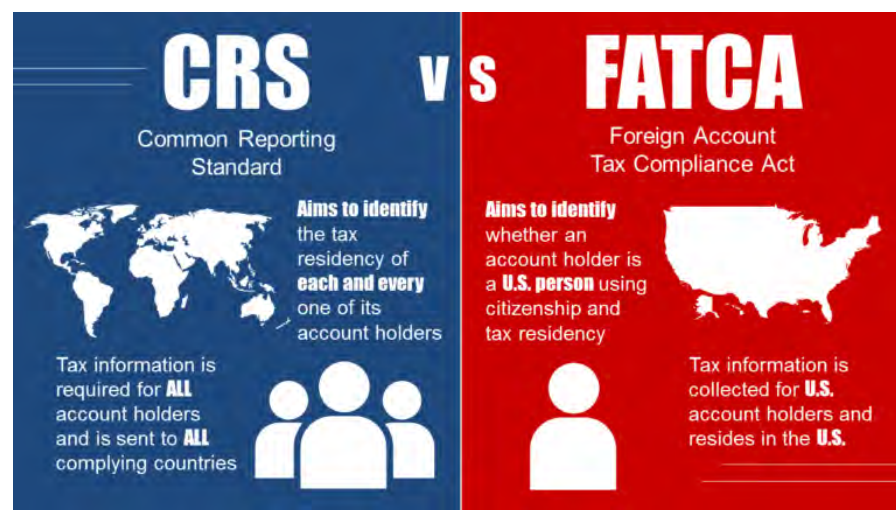
CRS vs FATCA

Common Reporting Standard (CRS) has had a tremendous impact on planning for both domestic and international families with asset protection and privacy concerns. Very similar to FATCA, CRS is a powerful tool that is designed to reduce tax evasion and illegal financial activity by imposing very strong transparency rules and disclosure requirements relative to financial transactions.

While the reporting requirements of CRS and FATCA are similar:

- *FATCA focuses on collecting information from individuals only holding U.S. based accounts, and such information is not shared with other countries.*
- *CRS is broader in scope, seeking global cooperation and the sharing of financial information between and among participating jurisdictions, with enhanced transparency in multi-national business and investment reporting.*

To date, well over 100 countries have committed to implement CRS, including jurisdictions traditionally used by families with privacy and asset protection concerns such as Switzerland, Cooks Islands, BVI, Nevis, and New Zealand. The United States has not signed on to CRS, prompting many planners, academics, and industry publications to consider the United States as both a tax and privacy haven.



Choosing the Correct Jurisdiction: *An Objective Comparison*

	South Dakota	Nevada	Wyoming	Alaska	Delaware
Dynasty Trusts	Yes <i>Ranked as #1 [1]</i>	Yes <i>Ranked as #2 [1]</i> <i>State constitution prohibits modification to RAP [2]</i>	Yes <i>Ranked as #5 [1]</i> <i>State constitution prohibits modification to RAP [2]</i>	Yes <i>Ranked as #4 [1]</i>	Yes <i>Ranked as #8 [1]</i>
State Income Taxation	No	No	No	No <i>Future uncertain</i>	No <i>Only for non-residents</i>
Community Property Trusts	Yes [3]	Yes <i>Only for residents</i>	No	Yes <i>Future uncertain</i>	No
Domestic Asset Protection Statute	Yes [4] <i>2 year statute of limitations</i> <i>Exception for child support</i>	Yes [4] <i>2 year statute of limitations</i> <i>No exceptions for child and spousal support</i>	Yes [4] <i>4 year statute of limitations</i> <i>Exception for child support</i>	Yes [4] <i>4 year statute of limitations</i> <i>Exception for divorcing spouse</i>	Yes [4] <i>4 year statute of limitations</i> <i>Exceptions for child and spousal support</i> <i>Future as top tier trust jurisdiction uncertain [6]</i>
Trust Protector	Yes	Yes	Yes	Yes	Yes
Directed Trusts	Yes	Yes	Yes	Yes	Yes
Decanting Statute	Yes <i>Ranked as #1 [5]</i>	Yes <i>Ranked as #2 [5]</i>	Yes <i>Ranked as #13 [5]</i>	Yes <i>Ranked as #8 [5]</i>	Yes <i>Ranked as #4 [5]</i>
Trust Privacy Provision	Yes - Total Privacy Seal Forever <i>Automatically attaches</i> <i>“Of the top tier trust jurisdictions, South Dakota has the best trust privacy laws.” [2]</i>	No Total Privacy Seal [2] <i>Subject to judge discretion</i>	No Total Privacy Seal [2] <i>Subject to judge discretion</i>	No Total Privacy Seal [2] <i>Subject to judge discretion</i>	Yes - Three Year Privacy Seal [2] <i>Subject to judge discretion</i>
Special Purpose Entity	Yes [2] <i>Codified by statute</i>	No	No	No	No
Family Advisor	Yes	No	No	No	No

* Denotes superior distinction among jurisdictions.

[1] Attorney Steve Oshins’ “7th Annual Dynasty Trust State Rankings Chart”

[2] Merric, Mark & Worthington, Daniel G. “Which Situs is Best in 2018?” *Trusts & Estates* January 2018

[3] South Dakota Special Spousal Trusts, House Bill 1039 (2016) (Sections 29-42)

[4] Attorney Steve Oshins’ “9th Annual Domestic Asset Protection Trust State Rankings Chart”

[5] Attorney Steve Oshins’ “6th Annual Trust Decanting State Rankings Chart”

[6] Merric, Mark, Worthington, Daniel G., MacArthur, Paul & Sullivan, John E. “Best Situs for DAPTs in 2019” *Trusts & Estates* December 2018

BRIDGEFORD[®]

Trust Company

www.bridgefordtrust.com

Contact us at info@bridgefordtrust.com
or by calling (888) 224-6562

Subscribe to our blog to stay up-to-date with future news and updates:

www.bridgefordtrust.com/subscribe

