

DISTINCTIVELY SOUTH DAKOTA

A review of South Dakota & Delaware trust industry factors - 2017

1. South Dakota has the Governor's Task Force on Trust Administration and Reform, which is composed of state officials, legislators, trust officers and attorneys for the purpose of maintaining South Dakota's status as a top trust jurisdiction. Delaware does not.
2. South Dakota leads the nation on the number of state chartered private and public nondepository fiduciary services only trust companies with 89 as of the end of 2016.
3. South Dakota leads the nation on the amount of bank assets with 3.1 TRILLION nosing out Ohio with 3.0 trillion, which is more than the third highest state North Carolina with 2.0 trillion and the fourth highest state Delaware with 1.0 trillion combined New York is less than 1 trillion.
4. South Dakota enjoys a Triple A Bond Rating. Delaware does not.
5. South Dakota has a constitutional prohibition on the taxation of inheritances. Don't believe DE has the same thing.
6. South Dakota was the first state to repeal its Rule Against Perpetuities ("RAP") in 1983, well before the enactment of the GSTT in 1986 and way before Delaware repealed their RAP in 1995.
7. The repeal of the RAP prior to the enactment of the GSTT is significant because of the potential challenge a state's RAP was repealed only for the purpose of avoidance of tax.
8. South Dakota's trust privacy seal is better. It is absolute and permanent. Delaware's is limited to 3 years.
9. South Dakota enjoys a 20 year tradition of enhancing, preserving and confirming grantor sovereignty.
10. The SOL for a creditor to claim a fraudulent transfer to a DAPT occurred is 2 years and can be shortened to 6 months in certain circumstances. Compare with a 4 year SOL in Delaware.
11. South Dakota's quiet trust statutes are more effective and direct than Delaware's. SDCL 55-2-13 allows the grantor to waive notice of a trust to a beneficiary in the trust document. This feature was expanded in a 2017 amendment to SDCL 55-2-13, which reinforces the grantor's power to direct their intentions. In Delaware, the power to waive notice must be given to a trust advisor or protector who must then make the determination.
12. South Dakota enjoys the status of the best asset protection jurisdiction in the nation on the strength of its trust laws and charging order statutes. South Dakota enjoys status in the top tier of DAPT states. Delaware does not. Delaware now resides in the second tier. Mark

Merric & Dan Worthington, "Best DAPT Jurisdictions Based on Three Types of Statutes, Where to set up these trusts," *Trusts & Estates*, Jan. 2017, page 64.

13. In 2007, South Dakota adopted the first in the nation Third Party Discretionary Trust statutes providing more defenses to wily creditors seeking to pierce the trust veil in the search for assets to satisfy claims against a trust beneficiary. SDCL 55-1-24 thru 55-1-43. Mark Merric & Dan Worthington, "Best DAPT Jurisdictions Based on Three Types of Statutes, Where to set up these trusts," *Trusts & Estates*, Jan. 2017, page 64; Al King III, "The Trust Spendthrift Provision - Does it Really Protect" *Trusts & Estates*, Dec. 2016, page 8.
14. South Dakota has more precise conflict of law and public policy statements embedded in state law to defend against the UVTA threat. *Id.*
15. South Dakota authorizes community property trusts, which are labeled Special Spousal Property Trusts. Delaware does not. SDCL Chap. 55-17.
16. In 1997, South Dakota adopted the first trust protector statute.
17. In 2011, South Dakota became the first state to statutorily authorize special purpose entities to serve as a trust advisor or trust protector.
18. In 2013, South Dakota became the first (and only?) state to statutorily authorize a trust owned captive insurance company.
19. In 2015, South Dakota became the first state to authorize the appointment of a Family Adviser to consult with trust fiduciaries.
20. In 2017, South Dakota adopted a modernized virtual representation statutes that use plain language applying common sense rules.
21. Delaware has a tax trap. South Dakota does not.