South Dakota Dynasty Trusts

Purpose: A dynasty trust is a vehicle used to allow a settlor to pass his or her wealth from generation to generation by insulating the trust assets from transfer taxes like estate, gift and generation skipping transfer ("GST") tax, creditor claims, and beneficiaries who are unable to responsibly manage their finances (e.g. minor, disabled or spendthrift beneficiaries).

KEY POINTS

- No requirement that the settlor of a South Dakota dynasty trust be a resident of South Dakota.
- To avoid inclusion in the Settlor's estate for tax purposes, a dynasty trust must be irrevocable.
- To qualify as a South Dakota dynasty trust, the trust must be "situsedd" in South Dakota (meaning under the jurisdiction of South Dakota law). To establish situs in South Dakota, at least one of the trustees or beneficiaries of the trust must be a South Dakota resident and/or some or all of the trust assets must be held in South Dakota.

SOUTH DAKOTA HAS BEEN CONSISTENTLY RANKED ONE OF THE BEST JURISDICTIONS FOR DYNASTY TRUSTS. HERE'S WHY:

- Dynasty trusts in South Dakota may be of unlimited duration. Although all states allow for dynasty trusts, the large majority of states limit the duration of these trusts to a finite number of years under a law known as the "rule against perpetuities." South Dakota is one of only 19 states that has repealed its rule against perpetuities, meaning a settlor may establish a dynasty trust in South Dakota to continue in perpetuity for the benefit of future generations.
- South Dakota has no state income tax. South Dakota is one of only a handful of states that does not impose state tax on trust income, capital gains, dividends, interest, or intangibles.
- Trust laws in South Dakota allow for efficiency and flexibility in times of change. South Dakota provides for some of the most efficient and cost-effective processes for court supervision, trust modification, reformation, decanting, and virtual representation.
- South Dakota law also permits the appointment of trust investment advisors and trust protectors to help ensure that the settlor's wishes will be carried out in perpetuity.
- Privacy is protected under South Dakota law. South Dakota does not require trust instruments to be filed or recorded in public records. South Dakota law also allows court records to be sealed with respect to any court proceedings concerning the administration of a trust. This is particularly important for high-profile families, families with significant wealth or in the case of disputes between interested parties.
- South Dakota statutes afford superior asset protection benefits. Discretionary interests, limited powers of appointment, or remainder interests in a third party trust are not considered property interests subject to creditor claims under South Dakota law. South Dakota's self-settled trust statutes and advantageous limited partnership and LLC statutes also provide additional opportunities for maximum creditor protection in connection with dynasty trusts.

SOUTH DAKOTA LAW

- In 1983, South Dakota repealed the rule against perpetuities with respect to trusts established in the state.

Cornerstone
PRIVATE ASSET TRUST COMPANY, LLC