

How to Benefit from New Hampshire's Trust Laws

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Thanda Fields Brassard, JD
VP & General Counsel
Fiduciary Trust of New England
603.695.4322
tbrassard@fiduciary-trust.com

Suma Nair, JD
Chief Fiduciary Officer
Fiduciary Trust Company
617.574.3418
snair@fiduciary-trust.com

David Scott Sloan, Esq
Co-Chair, Global Private Wealth Practice
Holland & Knight
617.574.5803
davidscott.sloan@hklaw.com

Host and Panelists



Susan Lipp
Editor in Chief
Trusts & Estates



Thanda Brassard, JD
General Counsel
Fiduciary Trust of New
England
603-695-4322
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What Makes Fiduciary Trust Distinctive?

Experienced professionals focused on our clients' best interests

Expertise	Breadth, depth and focus to help clients realize their goals	<ul style="list-style-type: none">• Highly experienced trust & estates legal, financial planning, and investment teams• 20+ years average industry experience of professionals• Access to advantageous New Hampshire trust laws
Wealth Focus	A private firm focused on our clients' best interests	<ul style="list-style-type: none">• 135-year history of integrity and financial stability• Private ownership and free from misaligned objectives• \$20 billion in assets under supervision• Only provide wealth management-related services
Personal Service	Proactive approach customized to client needs	<ul style="list-style-type: none">• 98% average annual client retention rate for over a decade• Clients have direct relationships with senior professionals• Partner with external attorneys, accountants, RIAs & other professionals
Flexible Offering	Service offering adapted to client needs	<ul style="list-style-type: none">• Corporate trustee, co-trustee, and trust administration-only services, including directed and delegated trustee arrangements• Donor-advised fund program with advice and custom features available• Custody services with principal and income as well as tax-lot accounting, backed by robust technology, personal service, and flexibility

* Based on Fiduciary Trust of New England, combined with its Massachusetts affiliate, Fiduciary Trust Company

Topics for Discussion

- The key benefits of NH's trust laws, including tax savings, asset protection, perpetual trusts, and sustainable investing
- Migration of existing trusts to NH
- How NH's trust laws can be used to modify existing trusts
- Examples of how these trust laws have benefited families
- Audience questions

New Hampshire Advantages Overview

No Tax	<ul style="list-style-type: none">• No state income tax on accumulated income or capital gains in non-grantor, irrevocable trusts
Progressive Trust Laws	<ul style="list-style-type: none">• Perpetual or “dynasty” trusts• Self-settled domestic asset protection trusts• Quiet trusts• Civil law foundations (NH was the first state to allow)• Private trust companies• Directed trusts• Decanting
Administrative Flexibility	<ul style="list-style-type: none">• Total return trusts and power to adjust• Virtual representation• Sustainable Investing• Trustee modification by statute without beneficiary consent• Pre-mortem validation• Adoption of many Uniform Trust Code elements, including the Principal and Income Act• Non-judicial settlement agreements
Dispute Resolution	<ul style="list-style-type: none">• Dedicated trust court

Tax Benefits of NH Trusts

Non-Grantor Irrevocable Trusts

No NH interest, dividend, or capital gains tax

No NH tax on accumulated income

No NH filing requirement for these trusts, however they are subject to Federal taxation

Distributed income: taxed to the beneficiary according to the rules of their state of residence

Grantor Trusts

Taxed to the donor

Self-Settled Asset Protection Trusts

Guiding Premise: A beneficiary's interest in a trust, even an irrevocable trust established by the donor, is not a property interest

Donor

May be a discretionary beneficiary
May retain a limited power of appointment over the assets

Asset Protection Features

General rule: trust assets are protected from most creditors four years from the date the assets are transferred into the trust, or, for creditors that exist at trust funding, one year after the creditor knew or should have known of the transfer

Exceptions: child support and basic alimony claims
Exception creditors can only attach present or future trust distributions

Trustee

Need not be a NH resident or trust company
However, it is usually helpful to name a NH trustee to solidify a strong nexus with NH and thus limit the number of states in which creditor claims may be brought

Quiet Trusts

Shhh...quiet trusts can preserve privacy

Traditional Trusts

In many states, including NH, under certain circumstances trustees must give beneficiaries notice of:

- A trust's existence
- Trustee names and contact information
- In some cases, additional information such as a copy of the trust document

New Hampshire "Quiet" Trusts

In NH, this default notice rule can be overridden by the trust's terms

A trust instrument can eliminate any part or all of the beneficiary notification requirements and other reporting requirements

Trust must include the terms of giving notice (or lack thereof) in the instrument

The trust can also designate a "notice recipient" to determine who receives notice instead of being required to send notices to the "qualified beneficiaries" otherwise required by statute

Civil Law Foundations: A Vehicle for Global Wealth Management

In 2017, NH became the first state to allow creation of civil law foundations by statute

Overview

Civil law foundations are wealth management vehicles that include features of corporations and limited liability companies, but act like a trust

These structures are utilized in many civil law countries instead of trusts (which are not recognized legal entities in many of those countries) to manage, protect and distribute family wealth

Benefits

Foundations allow assets to be held independently from the founders, directors and beneficiaries

Foundations can exist in perpetuity

A private trust company can be organized as a foundation

Civil law foundations can be a great way for international clients to hold and manage wealth

US Taxation of Foundations

For US tax purposes, a foundation is generally treated as a trust for tax purposes as long as it does not carry on business or commercial activities and its primary purpose is to preserve and manage its assets for its beneficiaries

Directed and Divided Trusts

A truly modern way to administer trusts

Overview

Divided trust: Different fiduciaries carry out tasks without interacting with other fiduciaries

Directed trust: One fiduciary is directed by another to take an action regarding the trust (ex: investment advisor directs the trustee to sign documents)

Benefits

Allows for division of trust administration tasks and responsibilities

Allows for an “open architecture” approach to trust administration

Fiduciaries are only liable for their own responsibilities, so are “excluded” from liability of other fiduciaries (different from a “delegation”)

Examples of Fiduciaries

Trust protectors

Distribution advisors

Trust advisors

Custodian of assets

Investment advisors

Notice recipients

Permitted by Statute

Directed and divided trusts are allowed by NH statute

NH case law further supports directed trusts (Shelton v. Tamposi case)

Total Return Legislation in NH

NH laws support total return investing, which can be valuable in a low-rate environment

Unitrust Conversion

After a trust is converted to a unitrust, "income" includes principal totaling 3-5% of the fair market value of the trust

Power to Adjust

This power allows a trustee to transfer principal to income to allow a total return payout to beneficiaries

A trustee does *not have an affirmative duty* to adjust between income and principal, so cannot be held liable for his or her action or inaction

Pre-Mortem Validation of Trusts

Another feature aligned with carrying out donor intent

Process for Pre-Mortem Validation

By NH statute, a donor may initiate a suit to prove the validity of a trust

This statute is consistent with NH trust law's goal of carrying out donor's intent

If a donor anticipates a challenge to his or her estate plan, this is a useful tool in confirming the validity of a trust and clarifying the donor's intent

Additional Limitations on Trust Contests

An action contesting the validity of a trust may not be brought more than:

- Three years after the donor's death
- Three years after certain information is sent to the trust beneficiary
- Three years after certain information, including a copy of the trust, is sent to the potential contestant

Trust Modification Tools

A study in flexibility and efficiency

Decanting by Statute

NH statute allows for transfer of assets from one trust to another trust
In some states there is no statute; reliance on case law instead
Any limits on decanting are reasonable, e.g., cannot add beneficiaries or eliminate beneficiaries with vested interests
New Hampshire allows decanting even if distributions of principal are limited
However, decanting must be consistent with donor intent and not undermine a material purpose of the trust

Statutory Trustee Modification

Allows trustees to amend administrative provisions in trust without beneficiary consent
Reasonable limits on modifications (similar to limits on decanting)
Modifications must be consistent with donor intent

Non-Judicial Settlement Agreements

Allows interested persons to enter into a binding agreement regarding provisions in a trust, including construction of trust terms, termination or modification of a trust

Trust Court

A specialty trust court was established in NH in 2014 to hear only trust litigation cases

Options for Accessing NH's Trust and Tax Advantages

NH trusts are available to grantors and beneficiaries nationwide and globally

Establish a New Trust

- Create a new trust naming a NH trustee and applying NH law to establish NH situs

Change an Existing Trust Situs

- Relocate a trust's situs from another state to NH
- Appoint a NH trustee
- Ability and process for changing situs varies by state and trust terms

Decant a Non-NH Trust to a New NH Trust

- Decant assets from an existing trust to a new NH trust with similar terms
- Ability to decant varies based on trust instrument and applicable state laws, but ideally would decant under NH law, with a NH trustee

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- A NH trustee (such as Fiduciary Trust of New England) enables access to the NH tax and trust law advantages

Example: Reducing State Tax Exposure

Income and capital gains retained in NH irrevocable, non-grantor trusts are not subject to state taxation

Client Context

- Massachusetts resident
- Purchased a tech stock for \$100,000
- Has a \$2,000,000 unrealized capital gain

Challenge

- Minimize capital gains tax upon sale of a tech stock



Approach

- Establish an irrevocable, non-grantor NH trust
- Only a NH trustee is named
- Children are beneficiaries
- The stock is gifted into trust
- Trust sells the stock and realizes \$2,000,000 in capital gains
- No state capital gains tax on the sale of stock as the proceeds were retained in the trust

Note: Example is not an actual client, but is an illustrative example based on the experiences of various clients

Example: Amending a “Broken” Trust

In many situations, a trust can be migrated to NH to amend out-of-date provisions

Client Context

- Irrevocable, non-grantor trust
- All beneficiaries are currently minors
- Massachusetts trust situs and MA trustee
- No New Hampshire trustee

Challenge

- Low interest rate environment is resulting in lower income distributions to beneficiaries than originally anticipated
- Trust provisions do not allow principal distributions until the youngest beneficiary reaches age 35



Approach

- The trustee resigns and a NH trustee is appointed (thereby making the trust subject to NH trust laws)
- Trust is decanted to a new trust that allows for principal distribution
- New trust may also contain directed trust provisions
 - Provided that it does not undermine the intent of the original trust and stays within NH trust law parameters
 - Separate trustee, trust protector, and investment advisors can be designated
 - Each can carry out duties without oversight of other fiduciaries
- NH trust situs results in no state income or capital gains tax if income and gains are retained in the trust

Note: Example is not an actual client, but is an illustrative example based on the experiences of various clients

Example: Dedicated Trust Court

It can be advantageous to resolve issues involving a NH trust in the NH trust court

Client Context

- Obtaining a well informed decision regarding a beneficiary's interest in a trust in the event of a beneficiary's divorce

Challenge

- Keeping separate assets from comingling with marital assets during marriage and protected in the event of divorce



Approach

- Establish and fund an irrevocable NH asset protection trust prior to marriage with separate assets
- The trust can be established for the benefit of the client and future issue, providing for generational succession in addition to asset protection from creditors
- In the event of divorce, certain issues regarding the trust could be brought to the NH court and provide for a well-informed decision from a judge well versed in NH trust law

Note: Example is not an actual client, but is an illustrative example based on the experiences of various clients

Q & A



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