

New Hampshire's Favorable Trust Environment



Trust Insights

For families with assets to protect or a desire to pass wealth to future generations, trusts are a common estate planning vehicle. However, many individuals are not aware of the benefits a New Hampshire trust can offer, regardless of a grantor or beneficiary's state of residence. The advantages range from no state income or capital gains tax to perpetual trusts and beyond.

The Granite State has proven to be a true leader in the trust industry by continually improving its trust laws and establishing new ones that help make trust administration easier, more flexible, and more effective, including allowing for vehicles beyond traditional trust structures. For those who have established trusts or who are creating a new one, New Hampshire is a trust situs worth exploring.

This article details the benefits of New Hampshire trusts and provides examples of how the state's trust laws can be put into use for individuals and families.



Learn More:

For more information on Fiduciary Trust visit:

www.fidtrustco.com

or contact:

Michael Costa
mcosta@fiduciary-trust.com
603-695-4321



Income and Capital Gains Tax Benefits

No Income or Capital Gains Tax

One potential benefit to administering a trust in New Hampshire is income and capital gains tax savings. As a general rule, irrevocable trusts that are administered in New Hampshire (and which are not taxed to the grantor) are not subject to state income or capital gains tax. New Hampshire does have an interest and dividends tax, but irrevocable trusts administered in New Hampshire are not subject to this tax. There are exceptions and nuances in this tax treatment. For example, income distributed to a beneficiary of a New Hampshire trust will be taxed to the beneficiary under the rules of the state in which the beneficiary resides.

Effective and Efficient Administration of Trusts

New Hampshire allows for more effective and efficient administration of trusts by utilizing a number of legal concepts that are useful tools for administering trusts but are not always available in other states. The legal framework includes:

- **Asset Protection Trusts:** These trusts may prevent a settlor's or beneficiary's creditors from making a successful claim against trust assets.
- **Perpetual Trusts:** These trusts need not terminate within a period of time mandated by state law; instead, they may continue indefinitely with no specific termination date.
- **Trustee Modification:** In New Hampshire, there are a number of ways a trustee can efficiently and effectively modify or "fix" a broken trust, including through modification by the trustee.
- **Decanting:** This is a process by which a trustee creates a new trust and transfers assets from an old trust to the new trust in order to resolve ambiguities and/or improve the administration of the trust.
- **Directed and Divided Trusts:** These trusts allow for investment and administrative responsibilities to be clearly divided among trustees, investment advisors, and other fiduciaries.
- **Purpose Trusts:** This is a trust that has no specific beneficiaries or that supports a specific, non-charitable objective (such as managing a family asset).
- **Waiver of the Duty to Diversify Trust Assets:** New Hampshire law allows a settlor to modify or waive a trustee's duty to diversify investments in the trust instrument. Thus, the trustee could continue to hold a concentrated stock position in the trust.
- **Nonjudicial Settlement Agreements:** Use of these agreements to resolve ambiguities in a trust are allowed under New Hampshire law.
- **"Quiet" Trusts:** These are trusts in which statutory notice requirements are modified or eliminated.

As the world changes, trusts need to be flexible to meet the evolving circumstances of the trust beneficiaries. Similarly, trust law needs to adapt to take into consideration changes in society. New Hampshire laws are well crafted and well supported by the New Hampshire legislature and judiciary. New Hampshire's trust laws are carefully refined on a regular basis by the New Hampshire legislature, thus ensuring that New Hampshire trust law is constantly evolving and improving.

"Fixing" a Broken Trust by Trustee Modification or Decanting

An important advantage to administering a trust in New Hampshire is having the ability to "fix" a trust that is "broken" (no longer works as intended), by using cutting-edge tools. For example, in New Hampshire, a trust can be fixed by trustee modification, which is a straightforward process that is permitted by statute, and allows a trustee to modify a trust for administrative purposes without notice to the beneficiaries. There are reasonable limitations on a trustee's ability to modify a trust; for example, a trustee cannot undermine the intentions of the person who created the trust. When used appropriately, this is a useful tool for fixing very simple problems. At this time, New Hampshire remains the only state with this kind of trustee modification statute.

For a trust that needs more than just a "tune-up," decanting the old trust into a new trust may be more helpful if the old trust has a number of issues that need to be fixed in order for it to be effective. Unlike many states, New Hampshire has a statute which creates a clear set of rules for decanting that are practical and reasonable. In recent years, the

decanting laws of New Hampshire have helped many families update family trusts that are no longer easy to administer. In fact, many practitioners now look to New Hampshire as an ideal place for decanting trusts, because its laws are well constructed and easy to understand and utilize.

A Dedicated Trust Court

Finally, if you have a trust that cannot be modified by one of these tools, or any other tools available (e.g., a non-judicial settlement agreement), New Hampshire has another solution. New Hampshire has a dedicated trust court that oversees complex trust litigation or reformation cases. Since it was created in 2014, the New Hampshire trust court has handled a number of complex cases for individuals and families who needed judicial intervention in their trust matters. There are states attempting to follow New Hampshire's lead on this (such as Massachusetts), but New Hampshire still stands out as having a trust court that is dedicated to handling complex trust issues. The decisions of the New Hampshire trust court are well respected and often considered by practitioners across the nation. Thus, in the past few years, the trust court has reinforced New Hampshire's reputation as an optimal trust location.

Sustainable Investing and Trusts

Recognizing the appropriateness and growing interest in ESG investing in trusts, in 2021 New Hampshire became one of the first states to allow trustees to pursue a sustainable investing strategy, regardless of investment performance, at the express direction of all persons interested in the trust. This is accomplished through a non-judicial settlement agreement (NJSA) – a process already available under the New Hampshire Trust Code for other purposes.

Alternatives to Traditional Trusts

Civil Law Foundations

New Hampshire law recognizes that there are a number of vehicles that can be used to manage wealth, and trusts are not the only solution. New Hampshire recently demonstrated its open-minded approach by becoming the first state in the nation to permit the establishment of civil law foundations. Generally, civil law foundations (not to be confused with charitable foundations which are common in the United States) are legal entities similar to trusts, but have features similar to that of corporations and limited liability companies. Foundations have long been popular in Europe and parts of Asia, and in many of these countries trusts are not recognized legal entities and thus are not easily classified. This non-recognition has made it harder for residents of other countries to utilize trusts as vehicles for managing wealth. Now, as a result of the 2017 New Hampshire Foundation Act, a New Hampshire-based foundation can be used as a wealth management tool for clients in civil law jurisdictions. Civil law foundations can also potentially provide beneficial tax treatment and asset protection for clients. With New Hampshire's new law permitting the establishment of foundations, at least one state in the United States can now compete on a different level in the international wealth management arena.

Family Trust Companies

Since 2006 New Hampshire has allowed for the creation of family trust companies. A family trust company is a private trust company that provides trust, investment, and related services to a family, its trusts, and the family's businesses. A family trust company can provide continuity of trusteeship, manage potential trustee (and other fiduciary) liability, and provide privacy to families. It also allows for consolidation of family assets and resources in dealing with wealth management issues. Like public trust companies, it provides access to New Hampshire's modern trust laws and favorable tax environment. Because it takes resources and infrastructure to administer a family trust company, one may want to partner with a well-established corporate trustee (such as Fiduciary Trust of New England) to provide some of the services needed to administer the family trust company.



Learn More:

For more information about our New Hampshire Trust services, please contact your Fiduciary Trust officer or Mike Costa at mcosta@fiduciary-trust.com or 603-695-4321

In summary, New Hampshire continues to lead the nation in having some of the best laws for administering trusts. With a proactive legislature that carefully crafts and refines its trust laws, and a trust court that enforces them in a thoughtful, consistent manner, New Hampshire is emerging as a powerhouse in the international wealth management arena. Fiduciary Trust is proud to be able to offer the New Hampshire advantage to our clients. ■

Illustrative Examples of New Hampshire Trust Benefits

Sale of a Business (or other appreciated asset): No State Capital Gains Tax

Client A owns stock in a company (“C Corp”) that has the potential to go public. A decides to transfer a large amount of stock to an irrevocable trust administered in New Hampshire with Fiduciary Trust of New England as Trustee, when the stock has a low value so the value of the gift for gift tax purposes is small. Five years later, C Corp goes through an IPO and the value of the stock skyrockets in value. Any future capital gain on the increased value of the stock will not be taxed for state capital gains tax purposes because the trust is an irrevocable, non-grantor New Hampshire trust.

Multi-Generational Trust: Ability to Continue in Perpetuity

Client B decides to set up a trust for the purpose of managing B’s wealth for future generations. B would like to have this trust last for more than a few generations. In many states trusts are subject to the conventional rule against perpetuities, which usually means the trust must terminate within a mandated period of time (no later than 90 years after its creation or 21 years after a life in being at the time of creation dies). Because B is establishing a New Hampshire trust that is being administered by Fiduciary Trust of New England, however, this trust can last indefinitely, and is not required to terminate within any mandated period of time.

Irrevocable Trust: No State Income Tax to Beneficiaries

Client C establishes a trust and transfers income-generating investment assets into it, including equities and fixed income securities. The trust beneficiaries are in the top income-tax brackets in their respective states of residence and do not need the income generated from the trust. Therefore, no income is distributed to the trust beneficiaries. Because the assets are in a New Hampshire trust administered by Fiduciary Trust of New England as Trustee, the accumulated income is not subject to state income (or state capital gains) tax, thus allowing for even more growth of the trust assets since they are not depleted by state income tax.

FIDUCIARY-TRUST.COM

Fiduciary Trust Company
53 State Street
Boston, MA 02109
617-482-5270

Fiduciary Trust of New England
1155 Elm Street
Manchester, NH 03101
603-695-4320

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