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New Hampshire: Why the Granite State *Still* Rocks at Trust Administration

New Hampshire continues to modernize its trust laws to add efficiency and flexibility that attracts domestic and foreign wealth.

Author: STEVEN M. BURKE, LINDA R. GAREY, THANDA FIELDS BRASSARD, VON E. SANBORN, and CONSTANCE E. SHIELDS.

STEVEN M. BURKE, Esq., shareholder and director, and LINDA R. GAREY, counsel, McLane Middleton, P.A.; THANDA FIELDS BRASSARD, vice president and general counsel, Fiduciary Trust Company of New England; VON E. SANBORN, Esq.; and CONSTANCE E. SHIELDS, partner, Withers Bergman, LLP.

Why New Hampshire *still* rocks!

New Hampshire continues to be a premier location for establishing and administering trusts. The state's progressive trust code, revised frequently to remain relevant and at the forefront of trust law, is often cited as the primary reason individuals and families choose New Hampshire as the location for their trusts.

Since the authors last shared why New Hampshire is a great place to establish and administer trusts, [1](#) the state has continued to strengthen its trust code. The most significant enhancements include the following:

- (1) New Hampshire provides greater creditor protection than ever before.
- (2) Self- settled trusts are now easier to create.
- (3) New Hampshire is the first state to allow for the establishment of civil foundations.
- (4) Private family trust companies may be formed without having to register or be regulated by the state's banking commission.

Importantly, New Hampshire continues to offer significant flexibility and a welcoming environment: offering perpetual trusts, allowing trustee functions to be bifurcated (directed and divided trusts), providing useful tools for fixing "broken" trusts, and ensuring that the state continues to be a tax friendly venue for trusts. Many who consider creating a dynasty trust take comfort in one of the bedrock

principles of the New Hampshire Trust Code, recognized by the New Hampshire trust court: the sanctity of the settlor's intent in creating a trust. When disputes arise, the settlor's intent, as expressed in the terms of the trust, cannot be overridden. While in all cases, all fiduciaries must act in good faith, in accordance with the terms and purposes of the trust, and in the interests of the trust's beneficiaries, the intent of the settlor is of paramount importance.

So, what's new and improved?

Enhanced creditor protection and asset protection trusts.

New Hampshire has narrowed the class of creditors who have access to assets held by irrevocable trusts governed by New Hampshire law. These trusts do not protect against a state or federal claim against a beneficiary if state or federal law so provides, [2](#) but otherwise, the only creditors who may at some point benefit from trust assets are those that existed at the time of the creation of the trust and a limited group of the following "exception creditors:" (i) an individual to the extent that there is a judgment or court order against the settlor or a trust beneficiary for child support or (ii) a spouse or former spouse to the extent that there is a judgment or court order against the settlor or a trust beneficiary for basic alimony. [3](#)

Importantly, even for an exception creditor, the only remedy is to seek a court order to attach present or future distributions. The rights of creditors that existed at the time of trust funding are limited by one of two very narrow windows in which to bring a claim against the trust. Specifically, a current creditor who received notice of the trust funding may only bring a lawsuit against the settlor for one year after the creditor knew or reasonably should have known of the transfer to the trust. [4](#) Other existing creditors are precluded from bringing a lawsuit against the settlor four (4) years after the transfer of assets to the trust. [5](#) Thus, four years after the settlor has transferred assets to the trust (and merely one year if notice is provided), the settlor of a trust should be fully protected from most creditor claims.

These limitations on creditors' rights also apply to self-settled "asset protection trusts" ("SSTs"). In part because of this, SSTs have moved into the mainstream in New Hampshire, and are now specifically authorized by provisions of the New Hampshire Trust Code, rather than by a separate statutory scheme. Previously, the Qualified Dispositions in Trusts Act ("QDTA") permitted asset protection trusts, but with significant constraints. [6](#) The QDTA has been repealed and new provisions of the New Hampshire Trust Code allow future creation of a more robust form of SST. It is no longer required by law that each trustee of a New Hampshire SST be a New Hampshire resident or trust company, although in order to establish a strong nexus with the state and limit the number of states in which creditor claims may be brought, it may still be advisable to use only New Hampshire trustees. [7](#)

Self-settled trusts have also become more attractive trusts because the settlor can be a beneficiary and still shield trust assets from creditors, provided that the trust instrument includes a spendthrift provision.

8 Importantly, the settlor must irrevocably transfer assets to the trust, so such assets are no longer under the settlor's control. However, as a permissible beneficiary, the settlor may receive a distribution of assets from the trust through the exercise of trustee discretion in accordance with the distribution standard set in the trust document. 9 In addition, the settlor or beneficiary may be granted a "power of appointment" to distribute trust property to different subsets of beneficiaries, exercisable through an inter vivos written instrument, or through a provision in a will or codicil. These powers provide the settlor with significant control over trust property, while still protecting the trust assets from creditors.

Tools for fixing a "broken" trust

An important advantage to administering a trust in New Hampshire is the ability to "fix" a trust that is "broken," by taking advantage of certain favorable provisions of the New Hampshire Trust Code. The most frequently utilized of these incredibly useful tools are nonjudicial settlement agreements ("NJSAs"), nonjudicial dispute resolution, trustee modifications, and decanting.

NJSAs are agreements between trustees and beneficiaries allowing them to reach an agreement on various issues relating to trust administration or the interpretation of a specific provision in a trust. 10 The New Hampshire Trust Code establishes NJSAs as a procedure whereby parties to a trust agreement enter into a binding settlement regarding trust administration, distribution, or procedural issues, such as appointment of successor trustees, without court involvement or approval. 11 Further, with the existence of "virtual representation" in New Hampshire, a NJSA may bind subsequent generations, as long as no conflict exists between the assenting party and the individuals being bound by that assent. 12

The New Hampshire Trust Code also recognizes the utility of nonjudicial dispute resolution. 13 For example, if the terms of a trust require parties to resolve a trust dispute exclusively by reasonable nonjudicial procedures, then under New Hampshire law the parties must do so, and a beneficiary's access to a court proceeding is limited. 14

Administrative provisions in a trust may be changed through the very straightforward process of "trustee modification," permitted by the New Hampshire Trust Code. 15 There are reasonable limitations on a trustee's ability to modify a trust. When used appropriately, trustee modifications can be a simple and useful tool for fixing certain trust administration problems. Currently, New Hampshire is still the only state with this kind of trustee modification statute.

In situations where a trust needs more than a "tune up," the New Hampshire Trust Code also permits trust "decanting," a process whereby a trustee through the unilateral exercise of discretion, creates a new trust, and appoints or transfers some or all of trust assets from the existing trust (the "first trust") to the newly established trust (the "second trust"). 16 In New Hampshire, a trust may be decanted even where the distribution standard in the first trust is limited. 17 Some other states permit decanting only where the trustee has full discretion to invade the assets of first trust. While the New Hampshire Trust

Code permits the second trust to eliminate one or more beneficiaries of the first trust (as long as the beneficiary does not have a "vested interest"), the New Hampshire Supreme Court has ruled that a trustee must always consider the interests of all beneficiaries (under the trustee's duty of impartiality), suggesting that if a non-vested beneficial interest is eliminated in a decanting, a trustee should document the rationale for eliminating such interest. [18](#)

Finally, where problems with a trust cannot be fixed by one of the above tools, New Hampshire offers another solution. New Hampshire has established a dedicated "trust court" that oversees complex trust litigation and trust reformation cases. Since its creation in 2014, the Trust Court has ruled on a number of complex cases for individuals and families seeking judicial relief in their trust matters. While other states have started to follow New Hampshire's lead, such as Massachusetts, New Hampshire still stands out as having a trust court that is dedicated to handling complex trust issues. The New Hampshire trust court has reinforced New Hampshire's reputation as a state that encourages appropriate, well thought-out solutions to challenging trust provisions and administration issues for trusts and trustees (whether legislative or judicial) administered in the Granite State.

More effective, efficient administration of trusts

The New Hampshire Trust Code continues to be regularly refined by the New Hampshire legislature, ensuring that the state's trust laws are constantly evolving to meet the challenges of an ever-changing fiduciary environment. This allows trusts created under the New Hampshire Trust Code to continue to be effective wealth management vehicles as the fiduciary and regulatory environment around the world continues to shift.

One significant example is the development and growth of directed and divided trusts. [19](#) New Hampshire has been on the forefront of recognizing the important roles of trust advisors and trust protectors, [20](#) and today many irrevocable trusts in New Hampshire utilize a directed trust structure to establish and design these roles within a trust document. [21](#) A directed or divided trust enables the duties and powers of the trustee to be assigned to a number of different fiduciaries. [22](#) A "directed trust" divides the administration of the trust among two or more trustees, or between trustees and third parties such as trust advisors and trust protectors. [23](#) For example, under the terms of a directed trust, an investment manager can have the exclusive duty to invest trust assets while the trustee is only responsible for the other aspects of administering the trust. [24](#) The New Hampshire Trust Code also allows for a "divided trust" structure whereby the trust document divides the trust administration duties between co-trustees, perhaps with one being responsible for tax preparation, and another being responsible for recordkeeping and distribution decisions. [25](#)

As noted above, utilization of a directed trust structure can ensure that settlors are able to design the role of each trust actor to fit the overall design of the trust structure. The New Hampshire Trust Code allows the role of trust protectors and trust advisors to oversee or advise trustees or assume the trustee's responsibility for issues such as trust distribution or investment decisions. [26](#) A directed trust

structure provides an additional layer of checks and balances for a trust settlor, who can name a trust protector and/or trust advisor to assist the trustee and to make certain decisions in areas that the settlor does not wish to leave to the trustee. Consequently, with respect to any responsibilities that a directed trustee does not have or which have been given by the settlor to a trust protector, trust advisor or co-trustee, the original trustee who does not have such powers is deemed an "excluded fiduciary" and generally does not have any fiduciary liability for any actions undertaken by the other fiduciaries. [27](#)

The concept of "divided trusts" was added to the New Hampshire Trust Code in 2017.

Divided trusts are trusts whereby different fiduciaries have different powers to carry out various trustee functions. [28](#) Unlike directed trusts, where one fiduciary (e.g., an investment advisor) directs a trustee to take an action (e.g., enter into a specific investment), in a divided trust, the fiduciary would have complete discretion and authority to act in their capacity without involving any other fiduciary. [29](#) This can result in streamlined administration of a trust, but anyone setting up a directed trust should consider that the checks and balances of having multiple fiduciaries involved in the administration of such a trust would not be as strong as in a directed trust.

The existence of directed and divided trusts is not intended to reduce overall fiduciary standards. Notably, the New Hampshire Code provides that each trust advisor or trust protector has a duty to act in good faith and in accordance with the terms of the trust instrument, the purposes of the trust, and the interest of the beneficiaries. [30](#)

In addition, the New Hampshire Trust Code permits settlors to create so-called "Quiet Trusts." Many settlors wish to ensure that beneficiaries intentionally are not made aware either of the existence of the trust or the full extent of their beneficial interest in the trust. Often, a settlor desires that his or her issue attain a certain age before being made aware of the existence of the trust or of their beneficial interest, out of a concern that even the knowledge of a significant future benefit may be a significant disincentive to work hard during their formative years. New Hampshire is one of the few jurisdictions that permits a settlor to restrict notice requirements to beneficiaries and create a quiet trust.

Benefits of New Hampshire situs for trusts supported by U.S. Supreme Court decision and New Hampshire's favorable tax regime for trusts

The recent ruling in the *Kaestner* case made it clear that a state cannot tax undistributed income of an out-of-state trust (such as a New Hampshire trust established by an out of state settlor) without violating the Due Process Clause of the U.S. Constitution when there is not sufficient nexus with the trust in such state. [31](#) In the *Kaestner* decision, the Court upheld the state court ruling that North Carolina could not tax a trust merely based on the in state residence of a beneficiary who never received a distribution from the trust.

Also in 2019, the Supreme Court denied a petition for *certiorari*, [32](#) letting stand a Minnesota Supreme Court decision in the *Fielding* case. [33](#) In 2018, the Minnesota Supreme Court had ruled that the state's definition of a "resident trust" was unconstitutional as applied to the Fielding trusts. [34](#) The fact that the settlor of the trusts resided in Minnesota when the trusts became irrevocable was not sufficient contact with Minnesota to justify state taxation. In this case, the trustee of the various trusts was not a resident of Minnesota, the trusts were not administered in Minnesota, and the trusts did not hold any real property located in Minnesota. The Minnesota Supreme Court concluded that the trusts in question had insufficient contacts with Minnesota to justify taxing the trusts under the Due Process clauses of the U.S. and Minnesota constitutions. [35](#)

Many out-of-state residents create trusts in New Hampshire, or in some cases, a trust's governing law is changed to New Hampshire. The reasons for doing so are complex, but two key factors often considered are the broad creditor protection afforded under New Hampshire law and the fact that New Hampshire does not tax complex trusts. The *Kaestner* decision affirms the fact that states other than New Hampshire require significant nexus in order to tax a New Hampshire trust.

Consequently, another benefit to administering a trust in New Hampshire is the potential state income tax savings. Generally, irrevocable trusts that are administered in New Hampshire (and are not taxed to the settlor) are not subject to state income tax. There are exceptions to this rule (for example, income distributed to a beneficiary of a New Hampshire trust may be taxed to the beneficiary under the rules of the state in which the beneficiary resides), so any potential change in state income tax status of an irrevocable trust should be carefully considered.

Other vehicles for wealth management: civil foundations and family trust companies

Civil foundations.

New Hampshire law recognizes that there are a number of vehicles to manage wealth, and trusts are not the only solution. Many countries around the world do not recognize the legal contract of a trust. Instead, the laws of these countries recognize the concept of a civil foundation. Until recently, no state in the United States recognized the concept of a civil foundation, and the legal treatment of such entity remained uncertain. Recently, New Hampshire became the first state to permit the establishment of civil law foundations. [36](#)

Civil law foundations (not to be confused with charitable foundations) have attributes similar to trusts, [37](#) but are also legal entities with attributes similar to that of corporations and other types of business entities. [38](#) For example, like corporations, foundations are legal entities separate from their founders, directors, and beneficiaries. [39](#) This separation permits a foundation to hold assets independently, sue and be sued, and even enjoy a virtually perpetual existence as they are not confined by a state's

perpetuities period applicable to trusts. Additionally, like limited liability companies, foundations provide founders, directors, and beneficiaries limited liability from the foundation's debts and obligations. [40](#)

Civil foundations have long been popular across Europe and parts of Asia as trusts are not recognized legal entities in many of those countries and are consequently not easily classified under local law. As a result of the enactment of the New Hampshire Foundation Act, a New Hampshire-based civil foundation may be used as a wealth management vehicle for clients residing in civil law jurisdictions. With New Hampshire law now permitting the establishment of civil foundations, New Hampshire now competes on a different level in the area of international wealth management.

Family trust companies.

In addition to the recognition of civil law foundations, New Hampshire law authorized the establishment of regulated private trust companies (also called "family trust companies") in 2006. [41](#) A family trust company is subject to a much less expensive regulatory scheme than a commercial regulated trust company. [42](#) A family trust company is a private trust company that provides trust, investment, and related services to an extended single family, the family's trusts, and the family's businesses. [43](#) The structure of a private trust company offers many advantages for a family with long-term estate planning goals, such as privacy, flexibility, and control as well as intangible benefits such as promoting family succession, cohesion, and wealth preservation. Further, a family trust company can act both (i) as a single-family office, providing financial, investment, and family governance and development guidance, and (ii) as a trustee that manages family wealth.

In yet another example of modernization of the New Hampshire Trust Code, New Hampshire also permits the establishment of unregulated family trust companies that are exempt from New Hampshire Banking Department regulation and oversight. [44](#) Previously, a family wishing to operate its own private trust company was required to apply to the New Hampshire Banking Department, maintain a required minimum capital reserve requirement and liquidation pledge, file annual and quarterly reports with the Banking Department, and submit to a New Hampshire Banking Department examination every 18 months. [45](#)

Note that in order to avoid the requirements of having to register a family trust company as an investment adviser under the applicable SEC regulations, a family trust company must be wholly owned by family members (or trusts for their benefit) and exclusively controlled either directly or indirectly by family members or family entities.

Conclusion

New Hampshire compares favorably with other trust-friendly states, as illustrated in Exhibit 1, which compares certain provisions of New Hampshire's trust laws to those in Delaware, Nevada, and South Dakota. To illustrate in a practical manner the benefits of administering a trust in New Hampshire, the

authors have also prepared the examples presented in Exhibit 2.

New Hampshire has proven itself to be a true leader in the trust industry by continually improving its trust laws and establishing new ones, which help make trust creation and administration easier, more flexible, and more effective. The Granite State continues to provide a rock-solid foundation for trusts created or administered within the state.

Exhibit 1. Comparison of Trust Laws: New Hampshire, Delaware, Nevada, and South Dakota

	New Hampshire	Delaware	Nevada	South Dakota
Trust Flexibility				
Non-Judicial Settlement Agreements (N/SA)	RSA § 564-B:1-10	12 Del. C. § 3333 and 3342 (But does not include trust termination or modification ability.)	N.R.S. § 164.942	No "N/SA", but statute permits modification or termination with court approval. SDCL § 55-3-24
Decanting Authority	RSA § 564-B:4-410	12 Del. C. § 3328	N.R.S. § 163.5403	SDCL § 55-3-15
Trustee Modification (2nd/3rd/4th) Permitted by Statute	RSA § 564-B:4-405 (Trustee can unilaterally modify a trust so long as modification does not defeat a material purpose or eliminate a vested interest.)	No	No	No
Virtual Representation: A person with a substantially identical interest may represent and bind another	NH RSA § 564-B:3-304	12 Del. C. § 3547(a)	N.R.S. § 164.038	SDCL § 55-3-35
Trust Merger	RSA 564-B:4-407	12 Del. C. § 3325(2)(i)	N.R.S. § 163.025	SDCL § 55-3-29
Asset Protection Trusts				
Self-Settled Asset Protection Trusts	RSA § 564-B:5-505A	12 Del. C. §§ 3570-3576	N.R.S. § 164.070-164.070	SDCL §§ 55-10-1 et seq
Perpetual Trusts				
Perpetual Trusts (Rule Against Perpetuities Does Not Apply)	RSA §§ 564:24, 564-B:4-402A	Only for personal property, not for real property (which is limited to 70 years) 27 Del. C. § 3705.	No Limited to 365 Years N.R.S. § 163.021	SDCL § 43-5-8
Directed Trusts				
Directed Trusts (Ability to direct trustees & protection of trustee for following direction)	NH RSA § 564-B:7-71, NH RSA § 564-B:8-801, NH RSA §§ 564-B:12-1201 to 1206	12 Del. C. § 3381, 12 Del. C. § 3397	N.R.S. § 163.553 to 163.556	SDCL Ch. 55-10
Trust Protector/Trust Advisor Recognized by Statute	RSA § 564-B:1-102(2)(b), RSA § 564-B:7-71, RSA § 564-B:7-72, RSA § 564-B:8-803(a), RSA §§ 564-B:12-1201-1205	12 Del. C. § 3380	N.R.S. § 163.553 to 163.556	SDCL Ch. 55-10
Delegated Trusts				
Delegated Trusts	RSA 564-B:7-703 and 8-807	12 Del. C. § 3302	N.R.S. § 163.275(2)	SDCL § 55-5-16
Dedicated Trust Court				
Dedicated Trust Court Only for Complex Trust Litigation	Yes	No	No	No
State Taxation				
Income Taxation of Irrevocable Trusts	No RSA 77:10.	No tax imposed on trust income distributed or accumulated for Delaware non-residents 30 Del. C. § 1605-36, 30 Del. C. § 1607 and 1608	No	No
Capital Gains Tax	No	Yes for trusts with Delaware beneficiaries, 30 Del. C. § 1605	No	No
Estate and Gift Tax	No	No	No	No
Civil Law Foundations				
Civil Law Foundations May Be Established by Statute	RSA 564-F	No	No	No
Quiet Trusts				
"Quiet Trusts" Permitted (Notice requirements may be restricted)	RSA § 564-B:1-105, see also RSA § 564-B:8-816(b) (terms of trust may override trustee's duty to report)	Yes, but only for a period of time, 12 Del. C. § 3303(a) and 30. See also 12 Del. C. § 3333.	N.R.S. § 163.004 (5)(b)	SDCL § 55-2-13
Ability to Change Governing Law				
Statute Provides Ability to Choose Trust's Governing Law	RSA § 564-B:1-107	Yes, but with limitations, 12 Del. C. § 3332, 12 Del. C. § 3341.	N.R.S. § 164.045	SDCL § 55-3-33
Total Return Trust Legislation				
Unifund Conversion Statute	RSA 564-C:1-106	12 Del. C. § 61-106	N.R.S. § 164.795	SDCL § 55-15-6
Power to Adjust Principal/Income	RSA 564-C:3-104	12 Del. C. § 43-104	N.R.S. § 164.795	SDCL § 55-15a-104
"NOC" Trusts				
Irrevocable Non-Grantor Incomplete Gift Trusts Permitted	Yes	Yes	Yes	Yes
"Purpose" Trusts				
Purpose Trusts Permitted	Yes (but trusts for animals cannot be perpetual) RSA 564-B:4-403, RSA 564-B:4-406	12 Del. C. § 3555-3556	Yes, but not perpetual, N.R.S. § 163.051	SDCL § 55-1-20
Private Trust Companies				
Private Trust Companies Permitted?	RSA 383-D	No, but "limited purpose" trust companies permitted: 7 Del. C. § 704	N.R.S. § 660A	SDCL § 55A-6A:1
Minimum Capital Requirements	\$200,000 RSA 383-D:4-402	\$500,000 5 Del. C. § 745	\$200,000 N.R.S. § 660A.140	\$200,000 SDCL § 55A-6A:10
Liquidation Surety Bond/Asset Pledge Requirement	No RSA 383-D:6-603	No	\$25,000 liability bond N.R.S. § 660.240 (\$2 million trustholders equity N.R.S. § 660.302)	\$1M SDCL § 55A-6A:10
Frequency of Examination	Every 36 months RSA 383-D:11-108	Annually, or subject to Commissioner discretion, as Commissioner deems necessary 1 Del. C. § 722	Subject to Commissioner discretion, as Commissioner deems necessary N.R.S. § 660.250	Every 36 months SDCL § 55A-6A:11
Unregulated Private Trust Companies Allowed	RSA 564-F:8-802	No	N.R.S. § 660A.080	No

Exhibit 2. Practical Examples of the Benefits of Administering a Trust in New Hampshire

1. Client "A" lives in Massachusetts and owns stock in a company ("C Corp") that has the potential to eventually go public. A decides to transfer a large amount of stock to an irrevocable non-grantor trust administered in New Hampshire with a New Hampshire 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. The capital gain on the increased value of the stock will not be taxed for state income tax purposes because the trust is an irrevocable, non-grantor New Hampshire trust.
2. Client A decides to set up another trust and put C Corp stock in it, for the purpose of managing this pool of A's wealth for future generations to come. A would like to have this trust last for more than a few generations. In Massachusetts, trusts are subject to the rule against perpetuities. This is a New Hampshire trust that is being administered by a New Hampshire trustee, which allows the trust to last indefinitely, and there is no requirement to terminate within any mandated period.
3. Client A establishes a third trust and puts C Corp stock into it. After C Corp goes through the IPO and the stock is sold, the cash is invested, and the assets start to grow. The trust beneficiaries do not need any of the income generated from the trust, so no income is distributed to the trust beneficiaries. In a New Hampshire trust administered by a New Hampshire trustee, the accumulated income is not subject to state income tax, allowing for even more growth of the trust assets since they are not depleted by state income tax.
4. Client B created an irrevocable trust that does not allow for any distributions of principal until the youngest beneficiary reaches the age of 35. Currently the beneficiaries are all minors. Under the decanting laws of many states, such a trust could not be decanted into a new trust that would allow for current principal distributions. In New Hampshire, this trust can be decanted into a new trust which includes provisions for making discretionary distributions of principal by the trustee.
5. Client B's trust referenced above is not a New Hampshire trust and does not have a New Hampshire trustee. In many cases, it is possible for a New Hampshire trustee to be appointed and some or all the administration of the trust to thereafter occur in New Hampshire. Decanting is an administrative power. If the trust is transferred for administration in New Hampshire, the new (New Hampshire) trustee may decant the trust into a new trust that allows for distributions of principal.

1 Why the Granite State Rocks at Trust Administration, Estate Planning Journal, Volume 43 Number 6 (June 2016).

2 New Hampshire Revised Statutes Annotated ("NH RSA") 564-B:5-505A(o) (2017). In addition, a spendthrift provision in a New Hampshire irrevocable trust is considered "a restriction on the transfer of the settlor's beneficial interest that is enforceable under nonbankruptcy law within the meaning of 11 U.S.C. section 541(c)(2)11 U.S.C. section 541(c)(2)." NH RSA 564-B:5-505A(p) (2017).

3 NH RSA 564-B:5-505A(q)(1)(A) (2017).

4 NH RSA 564-B:5-505A(f)(2) (2017).

5 NH RSA 564-B:5-505A(f)(1) (2017).

6 Under the Qualified Dispositions in Trust Act, "a qualified trustee is any person, other than the transferor, who in the case of a natural person, is a resident of this state or who, in all other cases, is a state or federally chartered bank or trust company having a place of business in New Hampshire, is authorized to engage in a trust business in this state, and maintains or arranges for custody in this state of some or all of the property that is the subject of the qualified disposition, maintains records in this state for the trust on an exclusive or nonexclusive basis, prepares or arranges for the preparation in this state of fiduciary income tax returns for the trust, or otherwise materially participates in this state in the administration of the trust." NH RSA 564-D:3 (2014).

7 The Qualified Dispositions in Trust Act was previously codified in NH RSA 564-D. NH RSA 564-D

was repealed in 2017 and the provisions providing asset protection moved into the New Hampshire Trust Code, codified at NH RSA 564-B:5-505A. See NH RSA 564-B:5-505B (2017).

8 NH RSA 564-B:5-505A(d) and NH RSA 564-B:5-505A(i)(1) (2017).

9 The process of receiving distributions from a grantor self-settled asset protection trust is less complicated than for a non-grantor self-settled asset protection trust. The IRS has issued numerous private letter rulings ("PLRs") for various "non-grantor incomplete trusts." While PLRs cannot be relied upon as binding precedent, the PLRs do provide an indication of how the IRS views these incomplete gift trusts, and the type of structure that should be established in order to withstand scrutiny.

10 NH RSA 564-B:1-111 (2017).

11 *Id.*

12 NH RSA 564-B:3-303 and NH RSA 564-B:3-304 (2017).

13 NH RSA 564-B:1-111A (2017).

14 *Id.*

15 NH RSA 564-B:4-419 (2017).

16 NH RSA 564-B:4-418 (2017).

17 NH RSA 564-B:4-418(d) (2017).

18 *Hodges v. Johnson*, 177 A.3d 86 (N.H. 2017).

19 NH RSA 564-B:7-711 (2017).

20 NH RSA 564-B:12-1201 through 12-1207 (2017).

21 NH RSA 564-B:12-1207 (2017).

22 NH RSA 564-B:7-711; NH RSA 564-B:12-1209 (2017).

- 23** NH RSA 564-B:7-711(b) (2017).
- 24** NH RSA 564-B:7-711(b) and NH RSA 564-B:12-1201(13) (2017).
- 25** NH RSA 564-B:7-711(a) (2017).
- 26** NH RSA 564-B:12-1201 and NH RSA 564-B:12-1207 (2017).
- 27** NH RSA 564-B:1-103(24); NH RSA 564-B:7-711(c)-(f); NH RSA 564-B:12-1202(b); and NH RSA 564-B:12-1204 (2017).
- 28** NH RSA 564-B:7-711(a) (2017).
- 29** *Id.*
- 30** NH RSA 564-B:12-1202(a) (2017).
- 31** *North Carolina Department of Revenue v. Kimberley Rice Kaestner 1992 Family Trust*, 139 S.Ct. 2213 (2019).
- 32** The Supreme Court denied certiorari in *Fielding v. Commissioner of Revenue*, 139 S.Ct. 2773 (June 28, 2019).
- 33** *Fielding v. Commissioner*, 916 N.W.2d 323 (Minn. 2018).
- 34** *Id.*
- 35** *Id.* at 323.
- 36** The New Hampshire Foundation Act is codified at NH RSA 564-F (2017).
- 37** NH RSA 564-F:8-802 (2017).
- 38** See generally NH RSA 564-F. For example, foundations must adopt by-laws (NH RSA 564-F:7-701) and have a Board of Directors (NH RSA 564-F:10-1001).

39 NH RSA 564-F:3-303 (2017).

40 NH RSA 564-F:15-1501 (2017).

41 The Family Trust Company Act is codified at NH RSA 383-D (2019).

42 For example, a family trust company is exempt from public notice and hearing. NH RSA 383-D:5-504 (2019).

43 NH RSA 383-D:3-301 (2019).

44 NH RSA 383-D:7-702 (2019).

45 The Trust Company Act, codified at NH RSA 383-C, requires examinations of trust companies every 18 months. (NH RSA 383-C:14-1401 and NH RSA 383-C:14-1402 (2019)), but effective September 2019, a family trust company will only be subject to examination every 36 months and is exempt from the requirements of NH RSA 383-C:14-1401 and NH RSA 383-C:14-1402. NH RSA 383-D:11-1101 (2019).