



PERSPECTA TRUST.

NEW HAMPSHIRE'S ATTRACTIVE LANDSCAPE FOR TRUSTS AND TRUST COMPANIES

For wealthy families, New Hampshire is one of most attractive states in which to create and manage their trusts. New Hampshire offers a trust- and business-friendly landscape that combines family trust companies, modern trust laws, and a favorable tax environment. That combination facilitates creative trust design and efficient administration, which can more effectively achieve a family's wealth planning goals.

Modern Trust Laws

New Hampshire has a robust set of modern trust laws, which afford settlors broad flexibility and creativity in designing trusts well suited to their specific needs and wishes. Those laws facilitate the more efficient administration of trusts and importantly provide a high level of certainty concerning the rights, duties, and powers of settlors, beneficiaries, trustees, trust advisors, and trust protectors.

Two important themes run through New Hampshire's trust laws. First, New Hampshire has a strong tradition of upholding settlor intent, and those laws reflect an abiding respect for settlor intent. By statute and judicial practice, settlor intent is deemed paramount. As a notable example, the state has expressly repudiated the benefit-of-the-beneficiary rule, under which the beneficiaries' interests potentially can override the settlor's intent. Accordingly, a settlor can create a trust within the state with a high degree of certainty that his or her wishes will be fulfilled.

Second, those laws reflect a commitment to balancing fairly the interests of beneficiaries and trustees. Under its default rules, New Hampshire does not create "invincible trustees," who are nearly immune from any fiduciary liability. A settlor may choose to design a trust that includes limits on trustee liability and incorporates exoneration provisions; however, the default statutory regime aims to strike a measured balance between the protection of the beneficiaries' interests and the trustee's wish for protection against a beneficiary's claims.

Some of the notable aspects of New Hampshire's trust laws include:

- **Directed Trusts and Divided Trusts.** Directed trusts and divided trusts have become a staple of modern trust design. The directed trust and the divided trust are two multi-party models for governing and administering a trust. In addition to expressly recognizing trust advisors and trust protectors – who can play roles in a trust's governance structure – New Hampshire allows a trustee to act at the

direction of another person (such as a trust advisor or trust protector), and it allows the division of duties among trustees, trust advisors, and trust protectors. Importantly, New Hampshire's laws ring-fence liabilities, so that a trustee, trust advisor, or trust protector is liable only for matters within their powers.

- **Modifications and Waiver of the Duty to Diversify.** New Hampshire allows a settlor to modify or waive the trustee's duty to diversify. In contrast, many states preclude a trustee from holding a concentrated position – such as an interest in a privately-held business – even if the trust document seemingly allows the trustee to hold a concentrated position.
- **Perpetual Trusts.** In 2004, New Hampshire repealed the rule against perpetuities. With the rule's repeal, a trust created in the state need not be subject to any arbitrary limit on its duration. Accordingly, a settlor now may create a trust that will last forever.
- **Purpose Trusts.** In New Hampshire, a settlor can create a purpose trust, which is a trust for a specific non-charitable purpose or a trust that does not have any specific beneficiaries. A purpose trust may be perpetual. In certain cases, a purpose trust can be a particularly useful structure for managing certain assets, such as a privately-held business or a family compound.
- **Self-Settled Spendthrift Trusts.** In New Hampshire, a self-settled spendthrift trust generally is not subject to the claims of the settlor's creditors. Thus, a settlor may create an irrevocable trust in which he or she retains an interest and a certain degree of control (e.g., managing the trust's investments), and the settlor's creditors generally cannot reach the trust assets. The trust must have a qualified trustee, such as a New Hampshire-chartered trust company. For some individuals, a nongrantor self-settled spendthrift trust potentially provides an opportunity for state income tax planning.
- **Decanting.** New Hampshire has one of the most flexible and versatile decanting statutes. Through decanting, a trustee often can eliminate impediments to sound investment or trust administration, protect better the trust assets for the family's benefit, resolve ambiguities and potential disputes, and generally improve administrative efficiencies.

- **No-Contest Provisions.** In New Hampshire, a no-contest provision is enforceable even if a beneficiary may have acted in good faith or with reasonable cause in contesting the trust. Thus, a settlor has broad latitude to craft a no-contest provision that suits his or her wishes.

- **Non-Judicial Settlement Agreements.** In New Hampshire, the trustee and beneficiaries often can use a nonjudicial settlement agreement resolve certain issues that arise in the administration of the trust, such as fixing an ambiguity in the terms of the trust. Subject to important limitations designed to protect settlor intent, they also can use a nonjudicial settlement agreement to modify the terms of the trust.

- **Privacy/Notice to beneficiaries.** In most states, a trustee must provide certain information to beneficiaries, even if the settlor would prefer that the trustee refrain from making such disclosures. Under the New Hampshire Trust Code, the settlor can establish when, what, and to whom a trustee must provide information concerning the trust. This provision is especially helpful to those settlors who do not want beneficiaries to know that a particular trust exists or be aware of its detailed provisions. In addition, New Hampshire law allows a trustee to require that the beneficiaries maintain the confidentiality of certain information that the trustee discloses to them.

Tax Laws

New Hampshire offers a favorable tax environment for trusts. The state does not impose any income tax on nongrantor trusts. The state does not have a tax on earned income or capital gains, but does impose a tax on a resident's interest and dividends. For any taxable period ending on or after December 31, 2013, a nongrantor trust is exempt from the interest and dividends tax (I&D tax). In addition, the trust is not subject to any I&D tax filing obligations.

For earlier taxable periods, a nongrantor trust with a New Hampshire trustee did not owe any I&D tax unless it had one or more resident beneficiaries. If the trust had a resident beneficiary, then it was taxable to the extent that the trust's interest and dividends were reasonably allocable to the beneficiary. Whether or not the trust owed any tax, the trustee had an I&D tax filing obligation.

Trust Court

New Hampshire has a specialty court dedicated to handling complex trust and estate litigation. With its specialization, the trust court helps to promote the more effective and efficient resolution of complex trust disputes. The trust court, which formally is the trust docket of the probate division, began handling cases on January 1, 2014, and is the first specialty court of its kind in the nation.

Family Trust Companies

Since 2006, New Hampshire has permitted the formation of family trust companies (also known as private trust companies). A family trust company is a family-owned, non-depository trust company that provides trust, investment, and related services to the family, their trusts, and their businesses. A family trust company can provide an advantageous structure for administering a family's trusts and wealth. As an institutional trustee, a family trust company provides continuity of trusteeship, helps to manage fiduciary liability, and can provide heightened privacy. In addition, it provides access to the state's modern trust laws and favorable tax environment.

In New Hampshire, a family trust company must have at least three directors, and the minimum required capital is \$250,000. As a state-chartered trust company, a New Hampshire family trust company is exempt from SEC registration. The family trust company instead is regulated by the New Hampshire Banking Department. Accordingly, a family trust company may be an especially appealing arrangement if the family office does not qualify under the SEC's family office exemption.

About Perspecta Trust

Perspecta Trust provides bespoke trust, investment, and business services for wealthy families. Founded in 2007 by Paul Montrone and Paul Meister, who respectively are the former chairman and former vice chairman of Fisher Scientific International Inc., Perspecta Trust brings an experienced, business-centric approach in working with families. Perspecta Trust is chartered as a New Hampshire non-depository trust company.

For additional information, please contact Scott T. Baker:

Scott T. Baker, CFA, CFP®
President
Perspecta Trust LLC
One Liberty Lane East
Hampton, NH 03842
(603) 929-2700