

*As seen in*

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## Why the Granite State Rocks at Trust Administration

New Hampshire has been modernizing its trust laws to add efficiency and flexibility that attracts domestic and foreign wealth.

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**N**ew Hampshire has some of the most progressive and flexible trust statutes in the U.S. Consequently, it is one of the premier jurisdictions for establishing and administering trusts. Over the last decade, New Hampshire legislators have actively engaged in modernizing New Hampshire's trust laws so that the state is an attractive safe haven for both domestic and foreign private wealth. Among other benefits, New Hampshire affords asset protection legislation that is as good as or better than that offered by other U.S. jurisdictions.

Only a few states have enacted progressive trust legislation comparable to that of New Hampshire. The Granite State, however, is unique among these states because of its accessible East Coast location, the relatively low cost of trust services in the state, and its Uniform Trust Code (UTC) based statutes that enable more seamless relocation of other UTC state law trusts to New

Hampshire. In contrast, for instance, Delaware is a non-UTC state. In addition, New Hampshire has a specialized court solely focused on resolving trust disputes.

### **Premium flexibility in trust administration**

Since 2004, the New Hampshire legislature has continually modernized its trust legislation to make trust administration significantly more efficient and flexible. New Hampshire trust law now includes favorable provisions permitting, for example:

- Nonjudicial settlement agreements.

- Trustee decanting.
- Trustee modification.
- Virtual representation.

Each of these allows trustees to administer trusts more efficiently and to modify a trust's operative provisions when circumstances require, without the need to obtain court approval.

Nonjudicial settlement agreements (NJSAs) are agreements between trustees and beneficiaries allowing them to compromise on various issues relating to trust administration. New Hampshire law provides for NJSAs as a method whereby parties to a trust agreement can enter into a binding settlement regarding trust administration, distribution, and procedural issues (such as appointment of successor trustees) without court involvement or approval.<sup>1</sup> As long as all parties agree, NJSAs allow for clarification or modification of trust terms without the expense and delay of seeking court approval.

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The New Hampshire Trust Code (the “Trust Code”) explicitly provides that NJSAs may be used to address the following matters:

1. Interpretation or construction of the terms of a trust.
2. Approval of a trustee’s report or accounting.
3. Direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power.
4. Resignation or appointment of a trustee and the determination of a trustee’s compensation.
5. Transfer of a trust’s principal place of administration.
6. Liability of a trustee or an action relating to the trust.
7. Termination or other modification of a trust’s terms.<sup>2</sup>

New Hampshire law also permits trust decanting, a process whereby a trustee creates a new trust and appoints (or transfers) some or all of the assets from one trust (the “first trust”) to another trust (the “second trust”).<sup>3</sup> In most instances, a trustee exercises such power to improve the administrative provisions governing the first trust. By today’s standards, some older trusts have inflexible, restrictive, or ambiguous provisions governing investments, distributions, or trustee succession. In that situation, decanting is an attractive option to “modernize” the operative terms of such trusts. That being said, certain estate and gift tax considerations and other statutory provisions limit a trustee’s ability to decant. For instance, the second trust cannot have new beneficiaries who were not beneficiaries of the first trust, nor can decanting reduce or eliminate a vested interest of a beneficiary of the first trust.<sup>4</sup>

In addition, as of 7/1/2014, trustees have the authority in certain circumstances to modify and update

trusts without creating a new trust and decanting assets into that new trust.<sup>5</sup> A trustee modification may be exercised for any reason, including:

1. Furthering the settlor’s intent or a material purpose of the trust.
2. Preserving any favorable tax treatment for the trust, the settlor, or the beneficiaries.
3. Enhancing the efficient administration of the trust.
4. Otherwise minimizing the costs of administration.<sup>6</sup>

New Hampshire has other laws that facilitate the efficient administration of trusts. Through concepts like virtual representation, whereby certain beneficiaries represent the interests of other beneficiaries, parties can enter into agreements (whether an NJSA or a court settlement), that bind all parties, including minors, unborn and unascertained individuals. Under New Hampshire law, an unrepresented minor, incapacitated, or unborn individual (or a person whose identity or location is unknown and not reasonably ascertainable) “may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute.”<sup>7</sup> Such representation is permissible provided there is no conflict of interest between the representative and the person represented.

The ability to use virtual representation minimizes, and in some cases, eliminates, the need for a court-appointed guardian ad litem to intervene and represent the interests of persons who are unborn, unascertained, or legally incapacitated. Instead, a parent with the same interests as his or her descendants can represent their future and potential interests and, thus, streamline certain procedures, such as the approval of a trust modification.

## Asset protection trusts

New Hampshire is one of a few states in which transferors may create self-settled asset protection trusts enabling the transferor to shield assets from creditors while still being able to benefit personally from the assets transferred to the trust.<sup>8</sup> In order to be effective, an asset protection trust instrument must:

- Be irrevocable.
- Contain a “spendthrift” clause.
- Expressly appoint at least one “qualified” New Hampshire trustee.
- Expressly state that New Hampshire law governs the validity, construction, and administration of the trust, except for trusts which have “migrated” from another state to New Hampshire.<sup>9</sup>

Despite such restrictions, the transferor may still receive distributions of income and principal from the trust and maintain control over trust investment decisions.

The requirements for a “qualified” New Hampshire trustee are that the trustee must be a resident of New Hampshire (in the case of a natural person) or a state or federally chartered bank or trust company having a place of business in the state, authorized to engage in trust business in New Hampshire and either:

1. Maintain or arrange for custody of some or all of the trust property in New Hampshire.
2. Maintain records in New Hampshire for the trust.

<sup>1</sup> NH RSA § 564-B:1-111.

<sup>2</sup> NH RSA § 564-B:1-111(d).

<sup>3</sup> NH RSA § 564-B:4-418.

<sup>4</sup> NH RSA §§ 564-B:4-418(b) and (g)(1).

<sup>5</sup> NH RSA § 564-B:4-419.

<sup>6</sup> NH RSA § 564-B:4-419(a).

<sup>7</sup> NH RSA § 564-B:3-304.

<sup>8</sup> NH RSA Chapter 564-D.

<sup>9</sup> NH RSA § 564-D:2, I; NH RSA § 564-D:11.

**EXHIBIT 1**  
**How New Hampshire Trust Laws Compare With Those**  
**of Delaware and Massachusetts**

	New Hampshire	Massachusetts	Delaware
<b>1. Trust flexibility</b>			
a. Non-Judicial Settlement Agreement (NJSA)	<b>Yes</b> —RSA §564-B:1-11 — allows for “interested persons” to enter into a binding agreement as to a trust, including to effect “the termination or modification of a trust.”	<b>Yes</b> —M.G.L. 203E §111 — Does not include broad termination or modification ability provided in NH.	<b>Yes</b> —12 Del. C. §3338 — Does not include broad termination or modification ability provided in NH.
b. Decanting Authority	<b>Yes</b> —RSA § 564-B-4-419.	<b>Yes</b> —But limited, based on <i>Morse v. Kraft</i> , 466 Mass. 92 (2013). No statutory authority to decant.	<b>Yes</b> —12 Del. C. §3528.
c. Trustee Modification	<b>Yes</b> —RSA § 564-B-4-419.	<b>No.</b>	<b>No.</b>
d. Virtual Representation: by parents and fiduciaries	<b>Yes</b> —To extent there is no conflict of interest. NH RSA §564-B:3-303.	<b>Yes</b> —To the extent there is no conflict of interest. M.G.L. 203E §303.	<b>Yes</b> —If there is no material conflict of interest. 12 Del. C. §3547(c).
e. Virtual Representation: A person with a substantially identical interest may represent and bind another	<b>Yes</b> —To extent there is no conflict of interest. NH RSA §564-B:3-304.	<b>Yes</b> —To the extent there is no conflict of interest. M.G.L. 203E §303.	<b>Yes</b> —If there is no material conflict of interest. 12 Del. C. §3547(c).
<b>2. Asset protection trusts</b>	<b>Yes</b> —RSA §§ 564-D:1-D:18	<b>No.</b>	<b>Yes</b> —12 Del. C. §§3570 through 3576.
<b>3. Perpetual trusts — Rule Against Perpetuities does not apply</b>	<b>Yes</b> —RSA §§ 564:24.	<b>No.</b>	<b>Only for personal property, not for real property</b> — There is a 110-year rule against perpetuities for real property held in trust. 25 Del. C. §503.
<b>4. Directed trusts</b>	<b>Yes</b> —NH RSA §564-B:7-711; NH RSA §564-B:8-808; NH RSA §§564-B:12-1201 through 1206.	<b>Yes</b> —M.G.L. 203E §808.	<b>Yes</b> —12 Del. C. §3313.
a. Ability to direct trustees and protection of trustee for following direction	<b>Yes</b> —RSA § 564-B:1-103(23), (24), (27), (28); RSA § 564-B:7-711; RSA § 564-B:7-712; RSA § 564-B:8-808; RSA §§ 564-B:12-1201-1206.	<b>Yes and no</b> —MA permits directed trusts, but does not clearly limit liability of trustee for relying on direction. M.G.L. 203E § 808.	<b>Yes</b> —12 Del. C. §3313; 12 Del. C. §3317.
b. Trust protector / trust advisor recognized	<b>Yes</b> —RSA § 564-B:1-103(28); RSA § 564-B:7-711; RSA § 564-B:7-712; RSA § 564-B:8-813(k); RSA §§ 564-B:12-1201-1205.	<b>Yes</b> —M.G.L. 203E §807; M.G.L. 203E §808, but more limited than under NH law	<b>Yes</b> —12 Del. C. §3313(f).

**EXHIBIT 1, *cont'd***  
**How New Hampshire Trust Laws Compare With Those**  
**of Delaware and Massachusetts, *cont'd*.**

	New Hampshire	Massachusetts	Delaware
<b>5. Trustee protections</b>			
a. Trust may restrict notice requirements to beneficiaries ("Quiet Trusts")	<b>Yes</b> —RSA §564-B:1-105; see also RSA §564-B:8-813(d) (terms of trust may override trustee's duty to report).	<b>No</b> —M.G.L. 203E §813 does not provide that the terms of a trust may override a trustee's duty to report.	<b>Yes</b> —But only for a period of time. 12 Del. C. §3303(a) and (c).
b. Prudent investor act /rules	<b>Yes</b> —RSA §§564-B:9-901 through 907 codifies the Uniform Prudent Investor Act.	<b>Yes</b> —M.G.L. Chapter 203C is the Massachusetts Prudent Investor Act.	<b>Yes</b> —12 Del. C. §3302.
c. Relief from liability for failure to diversify	<b>Yes</b> —RSA §564-B:9-901(b): trust terms will prevail over the prudent investor rule, and the trustee is not liable if acts in good faith reliance on the terms of the trust.	<b>Yes</b> —M.G.L. 203C §2(b).	<b>Yes</b> —12 Del. C. §§3303(a)(3) and 3304.
<b>6. Trusts—generally</b>			
a. Terms of trust control common law interpretive precedents	<b>Yes</b> —RSA § 564-B:1-106.	<b>Yes</b> —M.G.L. 203E §106.	<b>Yes</b> —12 Del. C. §3303(a).
b. No Contest – In Terrorem Clauses Enforced	<b>Yes</b> —RSA §551:22, RSA § 564-B:10-1014.	<b>Not always</b> —Enforcement of in terrorem clauses in trusts is based on common law; but in terrorem clauses in wills are enforceable (M.G.L. 190B § 2-517).	<b>Yes</b> —12 Del. C. §3329.
c. Spendthrift clauses are enforceable	<b>Yes</b> —RSA §564-B:5-502. Exceptions: RSA 564-B:5-503 (child support, alimony for most basic needs only); attachment of distributions to beneficiary is sole remedy.	<b>Yes</b> —M.G.L. 203E § 502.	<b>Yes</b> —12 Del. C. §3536.
c. Distribution of discretionary interest may not be compelled by creditor	<b>Yes</b> —RSA §564-B:5-504(b) and (e).	<b>No.</b>	<b>Yes</b> —12 Del. C. §§3315 and 3536.

**EXHIBIT 1, cont'd**  
**How New Hampshire Trust Laws Compare With Those**  
**of Delaware and Massachusetts, cont'd.**

	<b>New Hampshire</b>	<b>Massachusetts</b>	<b>Delaware</b>
<b>7. Settlor intent</b>			
a. Settlor intent is paramount	<b>Yes</b> —NH RSA §B-112 “Interpreting or construing terms of trust, settlor’s intent shall be sovereign” and “Settlor’s intent as expressed in the terms of the trust is paramount.”	<b>No.</b>	<b>Yes</b> —12 Del. C. §3303(a)
b. Settlor may obtain judicial opinion of the trust’s validity during lifetime	<b>Yes</b> —NH RSA § 564-B:4-406(d)	<b>No.</b>	<b>Yes</b> —12 Del. C. §1312.
c. Decanting /Modification /NJSA protects a material purpose of the trust	<b>Yes</b> —Must be consistent with the settlor’s intent as expressed in the terms of the trust. NH RSA §564-B:1-111(c); NH RSA §§564-B:4-418(f) and (o); NH RSA §§564-B:4-419(a) and (j).	<b>Yes—for NJSA.</b> M.G.L. 203E § 111. Decanting: “intent of the settlor is paramount” per <i>Morse v. Kraft</i> , 466 Mass. 92 (2013); NJSA	<b>Yes—for NJSA.</b> 12 Del. C. § 3338. No such language in the decanting statute 12 Del. C. §3528.
<b>8. State tax on trust income in defined circumstances</b>	<b>No tax</b> —Income of a non-grantor trust, without NH-based beneficiaries, is not subject to NH tax. NH beneficiaries subject to 5% tax on interest and dividends. RSA §§77:1, 77:3-a, 77:4, 77:10, 77:14-d; and NH Code Admin R. Ann 902.07.	<b>Yes</b> —Income of trust with MA-based settlor or testator or grantor is subject to MA tax. 5.25% (12.00% for short-term gains and gains on sales of collectibles) M.G.L. 62, §§4, 10(c); see also Mass Regs. Code tit. 830, §62.10.1(1); and 2013 Instructions for MA Fiduciary Income Tax, Form 2, at 3-5.	<b>No tax</b> —Income of a non-grantor trust, without DE-based beneficiaries and without DE-based settlor, testator or grantor. Otherwise, 6.75% tax on income over \$60,000/ year. 30 Del. C. §§ 1102(a)(12), (13), 1601(8); and 2013 Delaware Form 400-k Instructions, at 2-3.
<b>9. State specialty trust court</b>	<b>Yes</b> —Specialty Trust Docket initiated 1/1/2014.	<b>No.</b>	<b>No</b> —The Court of Chancery handles corporate and business matters as well as trust issues.

3. Prepare (or arrange for the preparation of) fiduciary tax returns for the trust in New Hampshire.

4. Otherwise materially participate in the administration of the trust in New Hampshire.<sup>10</sup>

If any qualified trustee ceases to meet these requirements, and there is no other qualified trustee then serving, the formerly qualified trustee shall be deemed to have resigned and a replacement qualified trustee will be appointed in accordance with the terms of the trust.<sup>11</sup> If the trust instrument does not provide for a successor qualified trustee, then the probate court

has authority to appoint one upon petition of any interested party.

A New Hampshire asset protection trust may have one or more trust advisors.<sup>12</sup> For example, the trust settlor may be a trust advisor or trust protector.<sup>13</sup> Generally, trust advisors may remove and appoint qualified trustees or other trust advisors and may direct, consent to, or disapprove distributions

<sup>10</sup> NH RSA § 564-D:3.

<sup>11</sup> NH RSA § 564-D:6.

<sup>12</sup> NH RSA § 564-D:4

<sup>13</sup> NH RSA § 564-D:5.

from the trust, except that the settlor may not participate in any distribution decisions for the settlor's own benefit.<sup>14</sup>

Notably, New Hampshire law bars creditor claims against property held by an asset protection trust if the claim arises after the date property is placed in trust and the claim is brought after the fourth anniversary of the date of such placement.<sup>15</sup> For creditor claims against property arising prior to the date property is placed in an asset protection trust, the claim will be barred to the extent extinguishment is permitted under the New Hampshire Uniform Fraudulent Transfer Act,<sup>16</sup> which provides that, absent proof of intent to defraud, a creditor claim against property held by a trust is barred unless the claim is brought within four years after the transfer of property is made into trust, or, if later, within one year after the creditor could reasonably have discovered the transfer.<sup>17</sup>

New Hampshire law does not, however, extinguish claims against trust property by creditors whose claims arise:

1. Under antenuptial agreements.
2. Under child support or alimony orders.
3. As a result of death, personal injury, or property damage occurring prior to the transfer of property into trust, if such harm is caused by the settlor or a person for whose acts the settlor is vicariously liable.<sup>18</sup>

New Hampshire law specifically provides that the spendthrift clause in an asset protection trust is to be considered a restriction described in section 541(c)(2) of the U.S. Bankruptcy Code,<sup>19</sup> which states that a restriction on the transfer of a beneficial interest of a debtor in trust that is enforceable under state law will be enforceable in a bankruptcy case.<sup>20</sup> However,

the Bankruptcy Code also includes a ten-year statute of limitations for a transfer "made to a self-settled trust or similar device" where the debtor is a beneficiary of the trust, and the transfer was made with the "actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made, indebted."<sup>21</sup>

The New Hampshire statute further provides that trusts formed outside of New Hampshire may be converted to New Hampshire asset protection trusts as long as the trust has a qualified trustee, is irrevocable, and includes a spendthrift clause. Importantly, such trusts need not provide that New Hampshire law govern the trust.<sup>22</sup>

An asset protection trust in New Hampshire can be established as either a "grantor trust" whereby the settlor is taxed on trust income, or as a "non-grantor trust" under which the trust itself is subject to federal income tax. Nevertheless, a New Hampshire "nongrantor" trust is not subject to New Hampshire income tax. However, at the transferor's death, remaining trust property is includable in the transferor's estate for estate tax purposes.

### Perpetual "dynasty" trusts

In 2004, New Hampshire repealed its rule against perpetuities.<sup>23</sup> Thus, under New Hampshire law, the settlor of a trust may create a "perpetual trust." A perpetual trust may be labeled a "dynasty" trust, in recognition of the fact that the trust could, in theory, continue forever. Dynasty, or perpetual, trusts may hold assets for multiple future generations, enabling settlors to provide for their current or future beneficiaries unfettered by time. Dynasty trusts can also minimize the extent to which asset appreciation is subject to estate tax because assets placed in the trust are sub-

ject to the federal estate or gift tax only upon their transfer to the trust. Of course the federal generation-skipping transfer tax cannot be avoided merely by placing assets in a dynasty trust.

Careful planning should be done in consideration of the tax consequences. Nevertheless, in New Hampshire, many generations of beneficiaries can enjoy the benefit of family assets while limiting the associated burden of state income tax.

### Significant protections for trustees

In New Hampshire, a trustee may delegate powers to a co-trustee or to an agent. For example, a trustee may delegate "duties, powers and investment and management functions to any person ... that a prudent trustee of comparable skills could properly delegate under the circumstances."<sup>24</sup> Thus, provided that the delegation is prudent (i.e., the trustee must "exercise reasonable care, skill and caution" in selecting the agent and establishing the scope and terms of the delegation) and the delegating trustee continues to monitor and supervise the co-trustee or agent performing the delegated powers, the trustee will not be liable for any errors made by such co-trustee or agent.<sup>25</sup> Accordingly, ongoing monitoring is criti-

<sup>14</sup> NH RSA § 564-D:4.

<sup>15</sup> NH RSA § 564-D:10, II.

<sup>16</sup> NH RSA § 564-D:10, I.

<sup>17</sup> NH RSA § 545-A:9.

<sup>18</sup> NH RSA § 564-D:15.

<sup>19</sup> NH RSA § 64-D:2, V.

<sup>20</sup> 11 U.S.C. section 541(c)(2).

<sup>21</sup> 11 U.S.C. section 548(e)(1).

<sup>22</sup> NH RSA § 564-D-11.

<sup>23</sup> NH RSA § 564:24.

<sup>24</sup> NH RSA § 564-B:8-807.

<sup>25</sup> NH RSA § 564-B:8-807(c).

<sup>26</sup> NH RSA § 564-B:7-711(a).

<sup>27</sup> NH RSA § 564-B:12-1201.

<sup>28</sup> See NH RSA § 564-B:7-711(b) and (c) and NH RSA § 564-B:12-1202.

<sup>29</sup> New Hampshire adopted the Uniform Prudent Investor Act, codified at NH RSA § 564-B, Article 9.

<sup>30</sup> NH RSA § 564-B:9-901(b).

cal to ensure that the co-trustee or agent is acting prudently and within the scope of the delegation.

As an alternative to delegation, New Hampshire trust law also permits “directed” trusteeships.<sup>26</sup> Under these rules, a directed trust clearly divides the administration of the trust among two or more trustees, or between trustees and third parties such as trust advisors and trust protectors. For example, under the terms of a directed trust, an investment manager can have the exclusive duty to invest the trust’s assets while the trustee is only responsible for the other aspects of administering the trust. Additionally, the trust document may divide the remaining trust administration duties between co-trustees, perhaps with one being responsible for tax preparation, and another being responsible for recordkeeping and distribution decisions.

New Hampshire also recognizes the role of trust protectors and trust advisors who can oversee or advise trustees on issues such as trust distribution or investment decisions.<sup>27</sup> This provides an additional layer of checks and balances for a trust settlor, who can name a trust protector 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. New Hampshire law is very clear about dividing responsibilities in directed trusteeships and in the use of trust protectors and trust advisors. 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 another trustee, the original trustee who does not have those powers is deemed an “excluded fiduciary” and generally does not have any fiduciary liability for any actions by the other fiduciaries.<sup>28</sup>

A trust instrument may also waive a trustee’s normal duties, such as the duty of prudent investment. Normally, the duty of prudent investment includes the duty to diversify a trust’s assets. In New Hampshire, this is the default rule.<sup>29</sup> However, if the trust document permits it, a trustee may hold concentrated stock positions or other types of investments without subjecting the trustee to potential fiduciary liability. “The prudent investor rule may be expanded, restricted, eliminated or otherwise altered by the terms of the trust,” in which case a “trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust ... or determined not to diversity the investments of a trust in good faith reliance on the express terms of a trust.”<sup>30</sup>

Finally, New Hampshire law protects confidential communications between attorneys and trustees, trust advisors, or trust protectors in their role as trust fiduciaries under attorney-client privilege to the same extent that such communications would be protected if made between the attorney and the trustee acting in his or her individual capacity.<sup>31</sup>

#### **Favorable state-level taxation**

New Hampshire does not impose a broad-based tax on personal income, but does impose a 5% tax on interest and dividends earned by New Hampshire taxpayers (the “I&D tax”).

As of the 2013 tax year, New Hampshire trusts are not subject to the I&D tax. As a result, New Hampshire trusts are not required to file I&D tax returns, and interest and dividend income accumulated in a New Hampshire trust is no longer subject to state tax. New Hampshire resident trust beneficiaries are subject to I&D tax only to the extent that the trustee dis-

tributes interest or dividend income to them. This means that non-grantor New Hampshire trusts earning and distributing interest and dividends to non-New Hampshire beneficiaries will do so completely free of New Hampshire tax. Of course, income received by a beneficiary is taxed to that beneficiary pursuant to the rules of the state where the beneficiary resides.

**Trustees have the authority in certain circumstances to modify and update trusts without creating a new trust and decanting assets into that new trust.**

Residents of states that impose income tax on trust income may benefit from moving the situs of an existing trust to New Hampshire. In a state like Massachusetts, which bases its taxing jurisdiction primarily on the residence of the trustee of a trust, a trust may become a New Hampshire trust by appointing, or replacing, all Massachusetts-resident trustees with New Hampshire trustees. Such a trust would not be subject to tax in New Hampshire, and would be subject to tax in Massachusetts on only its Massachusetts-source income.

#### **New Hampshire trust laws generally**

The modernization of New Hampshire’s trust law that began in 2004 has led to a statutory framework that includes many provisions favorable to trust settlors, beneficiaries, and fiduciaries. To address potential challenge by a family member of a settlor’s intentions, New Hampshire law limits the period in which anyone can challenge the validity of a trust to:

1. Three years after the settlor's death for a revocable trust established during the settlor's lifetime.
2. Three years after the trustee sends notification to the beneficiary about an irrevocable trust.
3. 180 days after a trustee sends a person information on an irrevocable trust, including a copy of the trust agreement and information about the trustee and the time allowed for commencing such an action to contest the validity.<sup>32</sup>

**Dynasty, or perpetual, trusts may hold assets for multiple future generations, enabling settlors to provide for their current or future beneficiaries unfettered by time.**

Moreover, a settlor may commence a judicial proceeding to establish the validity of the trust he or she created.<sup>33</sup>

In addition, New Hampshire law includes a provision authorizing enforcement of a "no-contest" provision within a trust that reduces or eliminates the interest of a beneficiary who challenges the trust or its provisions in a manner to defeat the settlor's intent.<sup>34</sup>

Under New Hampshire law, a trust created for a noncharitable, but otherwise valid purpose is enforceable even if it does not have an ascertainable beneficiary.<sup>35</sup> Similarly, a settlor may create a trust to provide for the care of an animal that was alive during the settlor's lifetime.<sup>36</sup> An animal care trust

will terminate on the death of the last animal benefitting under the trust. In either circumstance, if the trust document does not name a person with authority to enforce the trust, the court may appoint someone to fulfill this role.<sup>37</sup>

Many of the provisions in the New Hampshire Trust Code are default provisions. Therefore, they are applicable to a trust unless the trust document specifically provides otherwise. Creating default rules simplifies the process of drafting a trust document to benefit from these provisions.

### **Favorable jurisdiction for trust activity**

Another significant advantage of New Hampshire as the jurisdiction for trust administration is the quality of the institutional trustees domiciled in New Hampshire and of the trusts and estates bar. Major banks, trust companies, and private banks have created trust company subsidiaries, or have established national bank offices within New Hampshire. Currently, more than 34 nondepository trust companies have formed in New Hampshire to provide fiduciary trust services. As a result, trust settlors have many choices for a fiduciary and can benefit from competitive trustee fee pricing. New Hampshire provides additional benefits to wealthy families by enabling the creation of limited-purpose (family service) trust companies. New Hampshire law permits creation of a nondepository trust company to provide asset management services and serve as trustee for wealthy families.

New Hampshire's legislature has been quick to react to new developments and has been willing to modify existing statutes to improve

their effectiveness. The New Hampshire Trust Council and the Trusts Section of the New Hampshire Bar Association maintain standing legislation committees and are actively involved in shaping the trust and tax laws in New Hampshire. The committees monitor the New Hampshire trust laws and laws in other states and respond to feedback from practitioners and fiduciaries.

These committees also propose annual trust legislation updates that the legislature frequently enacts into law. Finally, New Hampshire recently established a specialized trust court that is charged with addressing solely trust-related matters. This makes New Hampshire an important jurisdiction for litigation (if necessary), in addition to trust administration.

### **Conclusion**

Estate planners who customarily advise clients to establish trusts in the traditional trust-friendly states, such as Delaware, should take a fresh look at state trust laws and compare the New Hampshire legislative framework with that of their favored states. To assist with this process, Exhibit 1 compares certain provisions of New Hampshire's trust laws to those in Massachusetts and Delaware. ■

<sup>31</sup> NH RSA § 564-B:2-205(a).

<sup>32</sup> NH RSA § 564-B:4-406(b). See also NH RSA § 564-B:10-1005 (limitations on a beneficiary's action against a trustee); NH RSA § 564-B:10-1005A (limitations on actions by a trustee against co-trustees, trust advisors, or trust protectors); and NH RSA § 564-B:12-1206 (limitation on actions against trust advisors and trust protectors).

<sup>33</sup> NH RSA § 564-B:4-406(d).

<sup>34</sup> NH RSA § 564-B:10-1014.

<sup>35</sup> NH RSA § 564-B:4-409.

<sup>36</sup> NH RSA § 564-B:4-408.

<sup>37</sup> NH RSA § 564-B:4-408(2) and NH RSA § 564-B:4-409(2).