

Cambridge Trust Company of New Hampshire

Advantages of New Hampshire Trusts

With its robust trust laws and favorable tax climate, New Hampshire is one of the leading states in which to administer and manage trusts. Those laws enable a settlor (that is, the person who creates a trust) great flexibility in creating a trust that suits his or her particular goals and wishes. In addition, those laws facilitate the more efficient administration of trusts. As a result, New Hampshire is an attractive place in which to create a new trust or to which to transfer the administration of an existing trust. Some of the key aspects of New Hampshire's laws affecting trusts are summarized below.

State Income Taxes

New Hampshire does not impose an income tax or any capital gains tax on an irrevocable trust. Thus, New Hampshire potentially offers a more tax-favorable environment in which to administer a trust—especially a multi-generational or other long-lived trust—because the trust would not pay any state tax on its income or capital gains. A beneficiary who receives a distribution from the trust, of course, may owe taxes to the state in which he or she resides. Nonetheless, there would be no state-level tax on the trust's gains or its accumulated income.

Wealth Preservation Trusts

For an individual who wishes to protect a portion of his or her net worth in trust while retaining the right or eligibility to receive distributions, the individual can create a wealth preservation trust in New Hampshire. Under traditional trust laws, a settlor's creditor can reach some or all of a trust's assets if the settlor is a beneficiary of the trust. With a wealth preservation trust (also called an asset protection trust), a settlor can be a beneficiary and receive either mandatory or discretionary distributions, and the interests of the other beneficiaries would be protected if, in the future, the settlor ever faces financial misfortune.

Trust Protectors and Trust Advisors

New Hampshire's statutes expressly recognize trust protectors and trust advisors, and they enable a settlor—or, in the case of an existing trust, the trustee and the trust's beneficiaries—to define a trust protector's or trust advisor's role and responsibilities. For example, a trust protector or trust advisor may have the power to veto a trustee's investment decisions or the power to direct a trustee to make a distribution to a beneficiary.

As a default rule, a trustee is responsible for following a trust protector's or trust advisor's directions and does not have any duty to investigate the propriety of the trust protector's or trust advisor's decisions and directions. Since it expressly recognizes trust protectors and trust advisors, New Hampshire (unlike most states) affords settlors, trustees, trust protectors, and trust advisors with a high level of certainty that a trust protector's or trust advisor's role and actions will be respected.

Cambridge Trust Company of New Hampshire

Delegated Trusts, Directed Trusts, and Excluded Fiduciaries

In New Hampshire, a trustee generally may delegate powers to a co-trustee or, in certain cases, to an agent. For example, a trustee may delegate investment powers to a co-trustee or an investment manager. The delegating trustee must ensure that the delegation is prudent, and the delegating trustee generally must supervise the co-trustee or the agent for purposes of ensuring that the co-trustee or agent is acting prudently and within the scope of the delegation.

Although a delegated trust provides a good deal of flexibility, a directed trust often is a more attractive option. In New Hampshire, the administration of a trust can be divided among two or more trustees, and each trustee is responsible only for the tasks that have been assigned to that trustee. For example, one trustee may be exclusively responsible for the management of the trust's assets, and a second trustee exclusively responsible for distributions, recordkeeping, and all other aspects of trust administration. A trustee, trust protector, or trust advisor can have the power to direct a trustee to take (or refrain from taking) certain actions. With respect to any aspects of administration for which a trustee does not have responsibility or must follow the direction of a trustee, trust protector, or trust advisor, the trustee is an "excluded fiduciary" and does not have any liability.

Decanting

Under New Hampshire law, a trustee has the power to decant a trust, which is the power to transfer assets from one trust to a second trust. Most typically, a trustee would exercise the power to decant for purposes of improving the administrative provisions governing the trust. For example, by today's standards, an older trust may have inflexible, restrictive, or ambiguous provisions governing investments, distributions, or trustee succession. Using the power to decant, the trustee of the old trust can create a new trust and transfer the assets from the old trust into the new trust. In New Hampshire, the power to decant is a statutory power, and it does not require a trustee to seek a court's approval.

Efficient Administration

New Hampshire's comprehensive trust laws facilitate the efficient administration of trusts. Through concepts like virtual representation (which allows certain beneficiaries to represent the interest of other beneficiaries) and non-judicial settlement agreements, trustees often can resolve administrative issues—such as the interpretation of ambiguous trust provisions or confirming the scope or propriety of the trustee's actions—without having to seek court involvement.

For more information, contact Erin Cooper at 603-369-5057 or erin.cooper@cambridgetrust.com or Susan Martore-Baker at 603-369-5101 or susan.martore-baker@cambridgetrust.com.