

# **Estate and Business Planning Council of Worcester County**

## **Trust Law Developments in New Hampshire and Business Development Opportunities in Massachusetts**

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# New Hampshire Trust Law: A Decade of Change



# **New Hampshire Trust Law: A Decade of Change**

- **Modification of the Prudent Investor Standard**
- **Elimination of Rule against Perpetuities**
- **Directed Trust Statute – Trust Advisors, Trust Protectors and Excluded Fiduciaries**
- **Allowance of Perpetual Purpose Trusts**
- **Additional Options for Trustee Removal**



# **New Hampshire Trust Law: A Decade of Change**

- **Virtual Representation**
- **Waiver of Beneficiary Notification Requirements**
- **Nonjudicial Settlement Agreements**
- **Decanting**
- **Self-Settled Irrevocable Trusts**
- **Codification of Beneficiary's Interest in a Discretionary Trust as a "Mere Expectancy"**
- **Private Unitrusts and Power to Adjust**

# **New Hampshire Trust Law: A Decade of Change**

- **Codification of No-Contest Clauses**
- **Opt-out of judicial accountings for testamentary trusts**
- **Codification of “grantor intent” rule**
- **Three year limitations period for actions against fiduciaries**

# New Hampshire Trust Law: A Decade of Change



## **No New Hampshire Tax on Non-Grantor Trusts!!!** 2012 Change – Senate Bill 326

- **Interest & Dividends Tax Does Not Apply to Non-Grantor Trusts.**
- **This is true *regardless* of the state of residence of the beneficiaries or the grantor.**
- **Note: New Hampshire does not tax capital gains earned by individuals or trusts that are not engaged in trade or business.**

# **Massachusetts Initiatives**

- **Uniform Probate Code (effective March 31, 2012)**
  - ❖ **Laws of intestacy redefined (who will get your property if you die without a will and in what percentages).**
  - ❖ **Informal and formal probate administration introduced to streamline probate administration.**
  - ❖ **Supervised and unsupervised probate administration introduced to reduce court involvement in administering estates.**
  - ❖ **Virtual representation introduced to reduce court-appointed Guardians Ad Litem (also present in the MUTC). Parents can represent minor children and unborn descendants if no conflict.**



# Massachusetts Initiatives

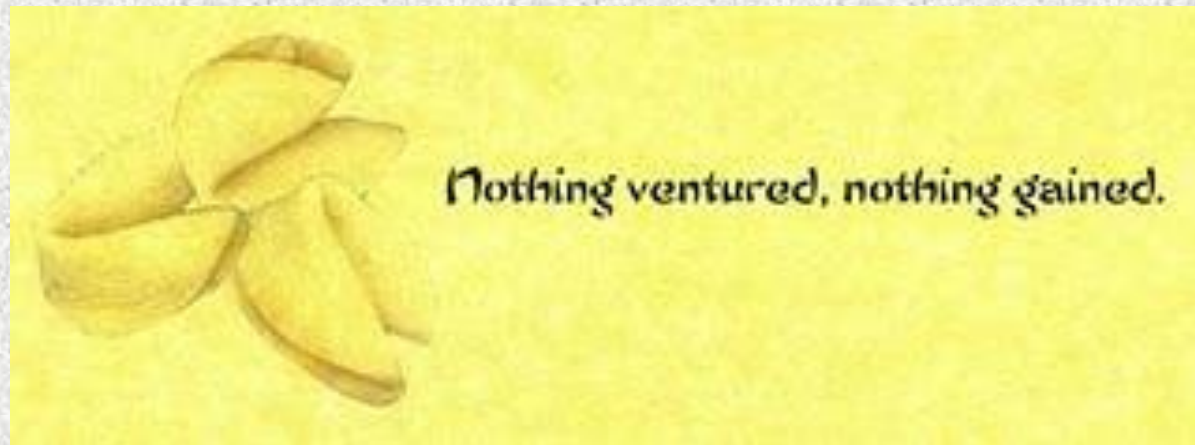
- **Uniform Trust Code (effective July 8, 2012)**
  - ❖ **Non-Judicial Settlement Agreements**
  - ❖ **Pet trusts**
  - ❖ **Purpose trusts**
  - ❖ **Courts may modify trust terms to account for changes in the law or facts and circumstances**
  - ❖ **Merger and division of trusts**
  - ❖ **Trustees act by majority vote**
  - ❖ **Duty to inform and report to beneficiaries**



# QUESTION: Will the Trust Legislation Provide Business Development Opportunities?



# **ANSWER: Open Architecture Trusts May Be the New Business Model**



# What Are Open Architecture Trusts?

- **Multi-Participant Trust Structures Involving:**
  - **Multiple Co-Trustees**
  - **Directors**
  - **Trust Protectors and Trust Advisors**
  - **Investment and Distribution Committees**
  - **Directed Trustees**

# **Evolution of Trust Structures**

**Passive “Country Squire” Trustees**

**to**

**Fully Empowered “Unitary” Trustees**

**to**

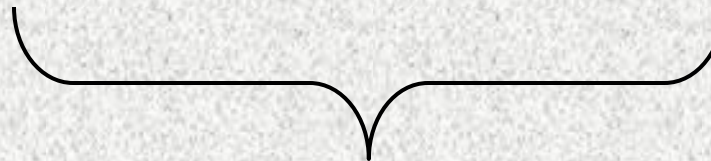
**Delegated and Directed Trustees under  
Modern Open Architecture Structures**



# Fully Empowered “Unitary” Trustee – Trust Administration

**Tax Accounting**  
(preparation of trust tax  
returns and K-1s)

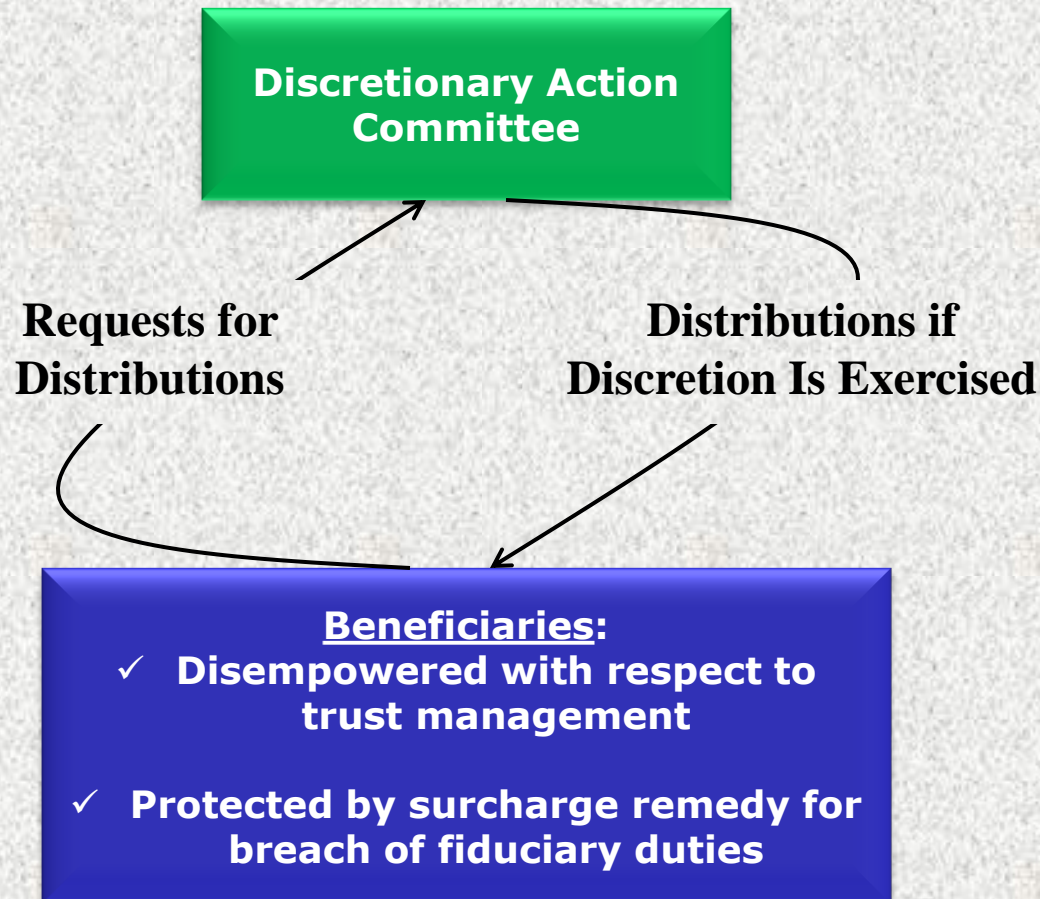
**Fiduciary Accounting**  
(principal and income)



**In-House or through  
Third Party  
Vendors/Agents**

**Fee Schedule: 50 to 150 basis points for entire “bundle” of trustee services**

# Fully Empowered “Unitary” Trustee – Trust Distributions



# **Post Prudent Investor Act (Early 90's) – “Delegated Trusts”**

- **Trustee is fully empowered, but not required, to delegate functions to agents**
  - **Agents must be competent**
  - **Trustee has duty of care in selection, instruction & monitoring of agents**
- **Trust administration and distributions same as with Unitary Trustee**
- **Fee schedule generally 50 to 150 bps, except:**
  - **No double dipping**
  - **Trustee must exercise care in delegating to affiliates (due to conflict of interest)**

# **Late 90's to Present – Open Architecture Trusts**

- **Corporate Trustee as *Directed* Trustee**
  - **More flexible on investments due to excluded fiduciary role**
  - **Open to working with distribution advisors**
  - **Flexible, lower cost fee schedule**
    - **Less risk and reduced overhead**
    - **15 to 40 basis points**
- **Empowers family members & other advisors**
  - **Fosters participation by beneficiaries**
  - **Tasks divided among trustees and committees run or influenced by the family**



## DIRECTED TRUSTEE

- Holds legal title to trust assets, integrates with wealth managers' custodial agents
- Not responsible for investment decisions
- Processes contributions & distribution payments as directed
- Provides fiduciary and tax accounting information

## TRUST DOCUMENT GOVERNANCE

As originally drafted or as modified by court order or NJSA

Defines and coordinates participants' roles and responsibilities

## INVESTMENT ADVISOR

- Makes investments decisions (often is the grantor or a beneficiary)
- Can contract with other investment wealth managers (RIAs)



## TRUST PROTECTOR

May be authorized to:

- Remove and replace the trustee
- Amend the trust agreement
- Veto certain decisions by the trustee
- Modify a beneficiary's interest
- Change the trust's situs



## DISTRIBUTION ADVISOR

- Empowered to make discretionary distribution decisions
- Instructs directed trustee on distributions



# **The New Frontier – Additional Statutory Enhancements**

- **Trust law is evolving in the United States.**
- **New Hampshire has enacted some of the most progressive trust laws in the country.**
- **Part of this progression includes the development of open architecture techniques for trust governance.**
- **Careful and thoughtful use of OAT structures will provide new opportunities that will empower families and provide comfort to fiduciaries.**

# The End

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