

CHAPTER 257
SB 225-FN - FINAL VERSION

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2017 SESSION

17-0783
08/04

SENATE BILL ***225-FN***

AN ACT revising the New Hampshire trust code.

SPONSORS: Sen. D'Allesandro, Dist 20

COMMITTEE: Commerce

ANALYSIS

This bill:

- I. Makes changes to the statutes governing trusts.
- II. Makes changes to the statutes governing trust companies and family trust companies.
- III. Creates a new chapter defining and governing civil law foundations.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struck through.]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Seventeen

AN ACT revising the New Hampshire trust code.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 257:1 Purpose. The general court finds:

2 I. The fiduciary services sector is an important and growing part of this state's economy.
3 The sector provides well-paying jobs for trust, investment, legal, accounting, and other
4 professionals.

5 II. Through the development of thoughtful, innovative laws, New Hampshire has become
6 one of the best legal environments for trusts, trust companies, and fiduciary services. This legal
7 environment attracts individuals and families to this state for purposes of creating new trusts or
8 administering existing trusts, thereby supporting and encouraging the growth of this state's
9 fiduciary services sector.

10 III. Continuing New Hampshire's firm commitment to being one of the best legal
11 environments for trusts, trust companies, and fiduciary services, this act further enhances modern
12 trust design, further facilitates the efficient administration of trusts, promotes the formation of
13 family trust companies within the state, and allows the formation and domestication of civil-law
14 foundations.

15 257:2 Definitions. Amend RSA 564-B:1-103(23) to (25) to read as follows:

16 (23) "Directed trust" means a directed trust as defined in ~~[RSA 564-B:7-711(a)]~~
17 ***RSA 564-B:7-711(b).***

18 (24) "Excluded fiduciary" means:

19 ~~[(1)-a]~~ ***(A) A trustee who is an excluded fiduciary under [RSA 564-B:7-711(b)] RSA 564-***
20 ***B:7-711(c) or RSA 564-B:7-711(d); or***

21 ~~[(2)-a]~~ ***(B) A trust advisor or trust protector who is an excluded fiduciary under***
22 ***[RSA 564-B:7-711(e)] RSA 564-B:7-711(e) or RSA 564-B:7-711(f).***

23 (25) "Include" and "including" means the same as "include, without limitation" and
24 "including, without limitation" regardless of whether expressly specified. ***Accordingly, the word***
25 ***"include" and any variation of that word shall be construed as words of enlargement and***
26 ***not as words of limitation or restriction.***

27 257:3 New Subparagraphs; Definitions; Agent; Incapacity. Amend RSA 564-B:1-103 by

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1 inserting after subparagraph (31) the following new subparagraphs:

2 (32) "Agent" includes an agent appointed under a power of attorney.

3 (33) "Incapacity" means an individual's inability to manage property or business
4 affairs because the individual:

5 (A) Has an impairment in the ability to receive and evaluate information or
6 make or communicate decisions even with the use of technological assistance; or

7 (B) Is:

8 (i) Missing;

9 (ii) Detained, including incarcerated in a penal system; or

10 (iii) Outside the United States and unable to return.

11 257:4 Default and Mandatory Rules. Amend RSA 564-B:1-105(b)(15) to read as follows:

12 (15) if, under the terms of the trust, a trust advisor or trust protector is a fiduciary,
13 the duty of the trust advisor or trust protector to act in good faith and in accordance with the terms
14 of the trust, the purposes of the trust, and the interests of the beneficiaries; ~~and~~

15 257:5 Nonjudicial Dispute Resolution. Amend RSA 564-B:1-111A(e) to read as follows:

16 (e) Unless the director of charitable ~~trust~~ **trusts** expressly consents to the nonjudicial
17 procedures, those procedures shall not apply to any matter involving a charitable trust. Unless the
18 department of health and human services expressly consents to the nonjudicial procedures, those
19 procedures shall not apply to any matter in which that department would be an interested person.

20 257:6 New Subparagraph; Nonjudicial Dispute Resolution. Amend RSA 564-B:1-111A by
21 inserting after subparagraph (e) the following new subparagraph:

22 (f)(1) The nonjudicial dispute resolution procedures may include a reasonable procedure
23 by which a person is appointed to represent and bind any one or more of the following persons:

24 (A) any unborn person;

25 (B) any minor or other incapacitated person; or

26 (C) any person whose identity or location is unknown and is not reasonably
27 ascertainable.

28 (2) The procedure for the appointment of a representative is not reasonable if:

29 (A) There is a conflict of interest between the person appointing the
30 representative and any interested person;

31 (B) There is a conflict of interest between the representative and any
32 represented person; or

33 (C) With respect to any matter that is the subject of the trust dispute, there is a
34 conflict of interest among the persons whom the representative is appointed to represent.

35 (3) To the extent that the trust dispute involves a trust's modification or
36 termination, a settlor of the trust shall not represent any of the trust's beneficiaries.

37 257:7 New Hampshire Trust Code; Representation by Holder of General Testamentary Power

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1 of Appointment. Amend RSA 564-B:3-302 to read as follows:

2 564-B:3-302 Representation by Holder of [~~General Testamentary~~] **a** Power of Appointment.

3 **(a)** To the extent there is no conflict of interest between the holder of a [~~general~~
4 ~~testamentary~~] power of appointment and the persons represented with respect to the particular
5 question or dispute, the holder may represent and bind persons whose interests, as permissible
6 appointees, takers in default, or otherwise, are subject to the power.

7 **(b) Subsection (a) applies to any power of appointment, including:**

8 **(1) A power in which the permissible appointees include any one or more of:**

9 **(A) The holder of the power;**

10 **(B) The holder's creditors;**

11 **(C) The holder's estate; and**

12 **(D) The creditors of the holder's estate; or**

13 **(2) A power of appointment in which the permissible appointees:**

14 **(A) Excludes each of the persons described in subsection (b)(1), (b)(2),**
15 **(b)(3), and (b)(4); and**

16 **(B) May excluded any one or more other persons;**

17 **(3) A testamentary power of appointment; and**

18 **(4) A power of appointment exercisable during the holder's life.**

19 257:8 New Paragraph; Validity of Trusts. Amend RSA 564-B:4-406 by inserting after
20 paragraph (f) the following new paragraph:

21 **(g)** If the laws of this state govern a trust's validity and the trust has its principal place
22 of administration in this state, then the trust and any transfer of property by a settlor to the trust
23 shall not be void or voidable for either of the following reasons:

24 **(1)** The laws of a foreign jurisdiction prohibit or do not recognize the concept of a
25 trust; or

26 **(2)** The trust or the transfer defeats any forced heirship, legitime, forced share, or
27 any similar heirship right under the laws of a foreign jurisdiction.

28 257:9 Modification or Termination of Trust; Proceedings for Approval or Disapproval. Amend
29 RSA 564-B:4-410 to read as follows:

30 564-B:4-410 Modification or Termination of Trust; Proceedings for Approval or Disapproval.

31 **(a)** In addition to the methods of termination prescribed by RSA 564-B:4-411 through
32 RSA 564-B:4-414, a trust terminates to the extent the trust is revoked or expires pursuant to its
33 terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become
34 unlawful, contrary to public policy, or impossible to achieve.

35 **(b) [A] Any of the following persons may commence a judicial** proceeding to
36 approve or disapprove a proposed modification or termination under RSA 564-B:4-411 through
37 RSA 564-B:4-416, **a proposed trust combination under RSA 564-B:4-417(a), or a proposed**

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trust ~~[combination or]~~ division under RSA 564-B:4-417(b); ~~[may be commenced by a trustee or beneficiary.]~~

(1) *A trustee;*

(2) *A trust advisor or trust protector to the extent that, under the terms of the trust, the trust advisor or trust protector has:*

(A) *The power to modify the terms of the trust;*

(B) *The power to terminate the trust;*

(C) *The power to commence a judicial proceeding to modify the terms of the trust;*

(D) *The power to commence a judicial proceeding to terminate the trust;*

(E) *The power to direct the modification of the terms of the trust;*

(F) *The power to direct the termination of the trust; or*

(G) *Any substantially similar power;*

(3) *A beneficiary; or*

(4) *To the extent that the trust is a charitable trust, the director of charitable trusts.*

(c) A ~~[The]~~ settlor of a charitable trust may ~~[maintain]~~ **commence** a **judicial** proceeding to modify the trust under RSA 564-B:4-413, and in ~~[such]~~ **that** proceeding, the director of charitable trusts shall be ~~[joined as]~~ a necessary party.

~~[(e)]~~ (d) A modification or termination under RSA 564-B:4-410, RSA 564-B:4-411, RSA 564-B:4-412, RSA 564-B:4-413, RSA 564-B:4-415, or RSA 564-B:4-416 shall not violate any of the trust's material purposes.

257:10 Modification or Termination Because of Unanticipated Circumstances or Inability to Administer Trust Effectively. Amend RSA 564-B:4-412(a) to read as follows:

(a) Upon petition by ~~[the]~~ **a** trustee ~~[or trustees]~~, the director of charitable trusts (in the case of a charitable trust) or an interested ~~[party]~~ **person** other than the settlor, the court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

257:11 Cy Pres. Amend RSA 564-B:4-413(a)(3) to read as follows:

(3) upon petition by ~~[the]~~ **a** trustee ~~[or trustees]~~, the director of charitable trusts or an interested ~~[party]~~ **person** other than the settlor, the court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, to a charitable purpose ~~[which]~~ **that** is useful to the community and ~~[which]~~ fulfills as nearly as possible the general charitable intent of the settlor.

257:12 Modification or Termination of Uneconomic Trust. Amend RSA 564-B:4-414(a) to read

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1 as follows:

2 (a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust
3 property having a total value less than \$100,000 may terminate the trust if: ~~the~~

4 (1) *The* trustee concludes that the value of the trust property is insufficient to
5 justify the cost of administration; *and*

6 (2) *Within 30 days after the notice was sent to the qualified beneficiaries, a*
7 *beneficiary does not notify the trustee of the beneficiary's objection to the trust's*
8 *termination.*

9 257:13 Combination and Division of Trusts. RSA 564-B:4-417 is repealed and reenacted to read
10 as follows:

11 564-B:4-417 Combination and Division of Trusts.

12 (a) After notice to the qualified beneficiaries, a trustee may combine 2 or more trusts
13 into one trust if the result does not impair rights of any beneficiary or adversely affect achievement
14 of the trust's purposes.

15 (1) Upon the combination of the trusts, the following shall apply:

16 (A) Each of the trusts other than the surviving trust shall terminate;

17 (B) The terms of the surviving trust shall govern the surviving trust and its
18 property, including any property acquired from the other trusts that combined into the surviving
19 trust;

20 (C) All title to real property and other property owned by each trust that
21 combined into the surviving trust and all contractual rights possessed by each trust that combined
22 into the surviving trust are vested in the surviving trust without reversion or impairment; and

23 (D) All liabilities of each trust that combined into the surviving trust are vested
24 in the surviving trust.

25 (2) After the combination is effective, the name of the trustee of the surviving trust
26 may be substituted in any pending proceeding for the name of the trustee of any trust that
27 combined into the surviving trust.

28 (b) After notice to the qualified beneficiaries, a trustee may divide a trust into 2 or more
29 separate trusts if the result does not impair rights of any beneficiary or adversely affect
30 achievement of the trust's purposes.

31 257:14 Trustee's Power to Decant Trust. Amend RSA 564-B:4-418(b) to read as follows:

32 (b)(1) The beneficiaries of the second trust may include only one or more of the
33 beneficiaries of the first trust.

34 (2) The second trust may exclude one or more of the beneficiaries of the first trust.

35 (3) A person is not a beneficiary of the second trust solely by reason of being a
36 permissible appointee of a power of appointment under the terms of the second trust.

37 (4) *The current distributees and current permissible distributees of the second*

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trust may include one or more persons who, under the terms of the first trust, are not current distributives or current permissible distributives, but would be distributees or permissible distributees upon the occurrence of a future date or event.

257:15 Trustee's Power to Decant Trust. Amend RSA 564-B:4-418(k)(1) through (3) to read as follows:

(1) the trustee does not have the discretion to make or participate in making distributions to himself or herself unless the terms of *the* second trust impose the same limitation on that trustee's discretion;

(2) the trustee's discretion to make or participate in making distributions to himself or herself is limited by an ascertainable standard unless the terms of *the* second trust impose the same limitation on that trustee's discretion;

(3) the trustee's discretion to make or participate in making distributions to himself or herself is exercisable only with the consent of a cotrustee or a person holding an adverse interest, unless the terms of *the* second trust impose the same limitation on that trustee's discretion; or

257:16 New Paragraphs; Trustee's Power to Decant Trust. Amend RSA 564-B:4-418 by inserting after paragraph (p) the following new paragraphs:

(q) Upon a decanting in which all of the first trust's property is appointed to the second trust, the following shall apply:

(1) The first trust shall terminate;

(2) The terms of the second trust shall govern the second trust and its property, including any property acquired from the first trust;

(3) All title to real property and other property owned by the first trust and all contractual rights possessed by the first trust are vested in the second trust without reversion or impairment; and

(4) All liabilities of the first trust are vested in the second trust.

(r) After a decanting in which all of the first trust's property is appointed to the second trust, the name of the trustee of the second trust may be substituted in any pending proceeding for the name of the trustee of the first trust.

257:17 Rights of Beneficiary's Creditor or Assignee. RSA 564-B:5-501 is repealed and reenacted to read as follows:

564-B:5-501 Creditor's Claim Against a Beneficiary.

(a) To the extent that a beneficiary's interest in a trust is not subject to a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by:

(1) Attachment of present or future distributions to or for the benefit of the beneficiary; or

(2) Subject to RSA 564-B:5-504, any other means.

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(b) The court may limit the relief under subsection (a) as is appropriate under the circumstances.

(c) Subject to RSA 564-B:5-504(b) and (c), a creditor or assignee of a beneficiary may not compel the beneficiary to exercise any right or power that, in any fiduciary or nonfiduciary capacity, the beneficiary has under the terms of the trust, including any of the following:

- (1) Any power of appointment;
- (2) Any power to direct or veto a distribution;
- (3) Any power to appoint or remove a trustee, trust advisor, or trust protector; or
- (4) Any right to receive reports, notices, or other information concerning the trust and its administration.

257:18 Spendthrift Provision. RSA 564-B:5-502 is repealed and reenacted to read as follows:

564-B:5-502 Creditor's Claim Against a Beneficiary of a Trust Containing a Spendthrift Provision.

(a) A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest.

(b) A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust," or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

(c) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision.

(d) To the extent that a beneficiary's interest in a trust is subject to a spendthrift provision, a creditor or assignee of the beneficiary may not reach:

- (1) The beneficiary's interest in the trust; or
- (2) A distribution from the trust before its receipt by the beneficiary.

(e) To the extent that a beneficiary's interest in a trust is subject to a spendthrift provision, the beneficiary's interest:

- (1) Is not property for purposes of RSA 458:16-a, I; and
- (2) Shall not be subject to any forced heirship, legitime, forced share, or any similar heirship rights under the laws of any jurisdiction.

(f) To the extent that a beneficiary's interest in a trust is subject to a spendthrift provision, a court may authorize an exception creditor of the beneficiary to attach present or future distributions to or for the benefit of the beneficiary.

(1) For purposes of this subsection (f), the following definitions shall apply:

(A) "Exception creditor" means, with respect to a beneficiary:

(i) An individual to the extent that there is a judgment or court order against the beneficiary for child support in this or any other state;

(ii) A spouse or former spouse to the extent that there is a judgment or court

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1 order against the beneficiary for basic alimony;

2 (iii) A judgment creditor who has provided services for the protection of a
3 beneficiary's interest in the trust; or

4 (iv) This state or the United States for a claim against the beneficiary to the
5 extent that a statute of this state or federal law so provides.

6 (B) "Basic alimony" means the portion of alimony attributable to the most basic
7 food, shelter, and medical needs of the spouse or former spouse if the judgment or court order
8 expressly specifies that portion.

9 (2) Attachment of present or future distributions is the exception creditor's
10 exclusive remedy against the beneficiary's interest in the trust.

11 (3) The court may limit the relief as is appropriate under the circumstances.

12 (4) Subsection (d)(2) shall not apply to an exception creditor.

13 257:19 Discretionary Trusts. RSA 564-B:5-504 is repealed and reenacted to read as follows:

14 564-B:5-504 Creditor's Claim Against a Beneficiary of a Discretionary Trust.

15 (a) Whether or not a trust contains a spendthrift provision, a creditor or assignee of a
16 beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:

17 (1) The discretion is expressed in the form of a standard of distribution; or

18 (2) The trustee has abused the discretion.

19 (b) Subject to subsection (c), a creditor or assignee of a beneficiary may not compel a
20 distribution to the beneficiary solely by reason that the beneficiary:

21 (1) Is a trustee; or

22 (2) In any fiduciary capacity, has the power to direct distributions.

23 (c) Upon petition by a creditor or assignee of a beneficiary, a court may compel a
24 distribution to the beneficiary to the extent that:

25 (1) The beneficiary:

26 (A) Is a trustee; or

27 (B) In any fiduciary capacity, has the power to direct distributions;

28 (2) In the capacity described in subsection (c)(1), the beneficiary has:

29 (A) The discretionary power to make distributions to himself, herself, or itself;

30 or

31 (B) The discretionary power to direct distributions to himself, herself, or itself;

32 (3) The discretion is expressed in the form of a standard of distribution;

33 (4) The beneficiary can exercise the power without the consent of any trustee, trust
34 advisor, trust protector, or person holding an adverse interest; and

35 (5) The beneficiary has abused the discretion.

36 (d) This section does not limit the right of a beneficiary to commence a judicial
37 proceeding against a trustee, trust advisor, or trust protector for:

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- 1 (1) An abuse of discretion; or
- 2 (2) A failure to comply with a standard for distribution.
- 3 (e)(1) Upon petition by an exception creditor of a beneficiary, a court may compel a
- 4 distribution to the beneficiary to the extent that the trustee:
- 5 (A) Has abused a discretion; or
- 6 (B) Has failed to comply with a standard for distribution.
- 7 (2) For purposes of this subsection, the following definitions apply:
- 8 (A) "Exception creditor" means, with respect to a beneficiary:
- 9 (i) An individual to the extent that there is a judgment or court order against
- 10 the beneficiary for child support in this or any other state; or
- 11 (ii) A spouse or former spouse to the extent that there is a judgment or court
- 12 order against the beneficiary for basic alimony.
- 13 (B) "Basic alimony" means the portion of alimony attributable to the most basic
- 14 food, shelter, and medical needs of the spouse or former spouse if the judgment or court order
- 15 expressly specifies that portion.
- 16 (3) In compelling a distribution under this subsection, the court shall direct the
- 17 trustee to pay to the exception creditor an amount that is equitable under the circumstances, but
- 18 not more than the lesser of:
- 19 (A) The amount that is necessary to satisfy the judgment or court order for:
- 20 (i) In the case of an exception creditor described in subsection (e)(2)(A)(i),
- 21 child support; or
- 22 (ii) In the case of an exception creditor described in subsection (e)(2)(A)(ii),
- 23 basic alimony; and
- 24 (B) The maximum amount of trust property that can be distributed to or for the
- 25 benefit of the settlor from the trust.
- 26 (4) Subsection (a) shall not apply to an exception creditor.
- 27 257:20 Creditor's Claim Against a Settlor of a Revocable Trust. RSA 564-B:5-505 is repealed
- 28 and reenacted to read as follows:
- 29 564-B:5-505 Creditor's Claim Against a Settlor of a Revocable Trust.
- 30 (a) During the settlor's life, the property of a revocable trust is subject to claims of the
- 31 settlor's creditors regardless of whether the trust contains a spendthrift provision.
- 32 (b) After the settlor's death and subject to the settlor's right to direct the source from
- 33 which liabilities will be paid, the property of a trust that was revocable immediately before the
- 34 settlor's death is subject to the following claims to the extent that the settlor's probate estate is
- 35 inadequate to satisfy those claims:
- 36 (1) Claims of the settlor's creditors;
- 37 (2) Costs of administration of the settlor's estate; and

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1 (3) Expenses of the settlor's funeral and disposal of remains.

2 (c) Subsection (b) shall apply to a trust regardless of whether the trust contains a
3 spendthrift provision.

4 (d) Subsection (b) shall not apply to:

5 (1) The proceeds and any other benefits of a policy of life or endowment insurance
6 effected by a settlor, a trustee, or any other person on the settlor's life or another individual's life as
7 provided in RSA 408:2; or

8 (2) Any claim barred under RSA 564-B:5-508.

9 (e) During only the period that the power of withdrawal may be exercised, the holder of
10 a power of withdrawal shall be treated in the same manner under this section as the settlor of a
11 revocable trust to the extent of the property subject to the power of withdrawal.

12 257:21 New Sections; Creditor's Claim Against a Settlor of an Irrevocable Trust. Amend RSA
13 564-B by inserting after section 505 the following new sections:

14 564-B:5-505A Creditor's Claim Against a Settlor of an Irrevocable Trust.

15 (a) To the extent that a settlor's interest in an irrevocable trust is not subject to a
16 spendthrift provision, a creditor or assignee of the settlor may reach the maximum amount of trust
17 property that can be distributed to or for the benefit of the settlor.

18 (b) If the trust has more than one settlor, then the amount that a creditor or assignee of
19 a particular settlor may reach under subsection (a) may not exceed the settlor's interest in the
20 portion of the trust attributable to that settlor's contribution.

21 (c) A settlor may not transfer the settlor's interest in an irrevocable trust in violation of
22 a spendthrift provision.

23 (d) To the extent that a settlor's interest in an irrevocable trust is subject to a
24 spendthrift provision, a creditor or assignee of the settlor may not reach:

25 (1) The settlor's interest in the trust; or

26 (2) A distribution from the trust before its receipt by the settlor.

27 (e) Subsection (d) shall apply to any type of irrevocable trust, including:

28 (1) A charitable remainder annuity trust within the meaning of section 664(d)(1) of
29 the Internal Revenue Code;

30 (2) A charitable remainder unitrust within the meaning of section 664(d)(2) of the
31 Internal Revenue Code;

32 (3) A trust described in section 2523(e) of the Internal Revenue Code;

33 (4) A trust described in section 2523(f) of the Internal Revenue Code;

34 (5) An irrevocable special needs trust established for a disabled person as described
35 in 42 U.S.C. section 1396p(d)(4) or similar federal law governing the transfer to such a trust;

36 (6) A trust in which a trustee, trust advisor, or trust protector has a duty or a
37 discretionary power to:

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- 1 (A) Pay directly to any taxing authority any tax that is:
- 2 (i) Imposed on the trust's income or principal; and
- 3 (ii) Payable by the settlor under the law imposing the tax;
- 4 (B) Reimburse the settlor for any tax described in subsection (g)(6)(A); or
- 5 (C) Direct a trustee, trust advisor, or trust protector to take the action described
- 6 in subsection (e)(6)(A) or (e)(6)(B); and
- 7 (7) A trust in which the settlor has:
- 8 (A) The power to reacquire trust property by substituting other property of an
- 9 equivalent value; or
- 10 (B) Any power of administration within the meaning of section 675(4) of the
- 11 Internal Revenue Code.
- 12 (f) Notwithstanding RSA 545-A:9, a creditor or assignee of a settlor may not commence
- 13 a judicial proceeding with respect to the settlor's transfer of property to an irrevocable trust that
- 14 contains a spendthrift provision after the later of:
- 15 (1) Four years after the transfer is made; or
- 16 (2) If the creditor or assignee is a creditor or assignee of the settlor when the
- 17 transfer is made, one year after the creditor or assignee discovers or reasonably should have
- 18 discovered the transfer.
- 19 (g) For purposes of subsection (f) and RSA 545-A:4, a creditor or assignee of a settlor
- 20 shall prove that, with respect to the creditor or assignee, the settlor's transfer to the trust was
- 21 fraudulent.
- 22 (h) Notwithstanding any law to the contrary, a person shall not have any claim against
- 23 any of the following persons to the extent that the claim is based in any way on a settlor or other
- 24 person availing or seeking to avail himself, herself, or itself of the benefits of this section:
- 25 (1) A trustee;
- 26 (2) A trust advisor;
- 27 (3) A trust protector;
- 28 (4) A person who advised a settlor, trustee, trust advisor, or trust protector
- 29 concerning trust, the trust's formation, any transfer of property to the trust, or the application of
- 30 this section; or
- 31 (5) A person who was involved in counseling, drafting, preparing, or executing:
- 32 (A) With respect to the trust, a trust instrument; or
- 33 (B) A governing instrument of a corporation, partnership, limited partnership,
- 34 limited liability company, or other entity, the interests of which a settlor transferred to the trust.
- 35 (i) Notwithstanding any law to the contrary, a person may not commence a judicial
- 36 proceeding seeking the enforcement of a judgment entered by a court or other body having
- 37 adjudicative authority or asserting any other claim if:

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1 (1) The judgment or claim is based in any way on a settlor's transfer of property to
2 an irrevocable trust that contains a spendthrift provision; and

3 (2) With respect to the transfer, a claim of the creditor or assignee of the settlor
4 would be barred under subsection (f).

5 (j) Subsections (h) and (i) shall not affect:

6 (1) Any claim by a settlor;

7 (2) Any claim by a beneficiary against a current or former trustee, trust advisor, or
8 trust protector for a breach of trust; or

9 (3) Any claim by a trustee, trust advisor, or trust protector.

10 (k) If 2 or more transfers of property are made to a trust that contains a spendthrift
11 provision, then the following shall apply:

12 (1) For the purpose of determining whether, under this section, a creditor or other
13 person may commence a judicial proceeding with respect to a specific transfer, any subsequent
14 transfer shall be disregarded; and

15 (2) Any distribution from a trust to a settlor or other beneficiary shall be deemed to
16 have been made from:

17 (A) First, the most recent transfer to the extent of the previously undistributed
18 portion of that transfer; and

19 (B) Subsequently, each preceding transfer in reverse chronological order to the
20 extent of the previously undistributed portion of that transfer.

21 (l) A creditor or assignee of a settlor may not compel the settlor to exercise any right or
22 power that, in any fiduciary or nonfiduciary capacity, the settlor has under the terms of the trust,
23 including:

24 (1) Any power of appointment;

25 (2) Any power to direct or veto a distribution;

26 (3) Any power to reacquire trust property by substituting other property of an
27 equivalent value;

28 (4) Any power of administration within the meaning of section 675(4) of the Internal
29 Revenue Code;

30 (5) Any power to appoint or remove a trustee, trust advisor, or trust protector; or

31 (6) Any right to receive reports, notices, or other information concerning the trust
32 and its administration.

33 (m) This section shall not affect the application of:

34 (1) In the case of a trust that was revocable immediately before the settlor's death,
35 RSA 564-B:5-505(b);

36 (2) RSA 564-B:5-505(e); or

37 (3) Except as otherwise provided in this section, RSA 545-A or a similar law of

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1 another state having jurisdiction over a transfer of property.

2 (n) To the extent that a settlor's interest in an irrevocable trust is subject to a
3 spendthrift provision, the settlor's interest:

4 (1) Is not property for purposes of RSA 458:16-a, I, to the extent that:

5 (A) The settlor's interest is subject to a spendthrift provision; and

6 (B) The settlor transferred the property to the trust more than 30 days before
7 his or her marriage to the individual seeking to claim that the settlor's interest is property for
8 purposes of RSA 458:16-a, I, unless that individual expressly consented to the transfer; and

9 (2) Shall not be subject to any forced heirship, legitime, forced share, or any similar
10 heirship rights under the laws of any jurisdiction.

11 (o) A spendthrift provision is unenforceable against a claim of this state or the United
12 States to the extent that a statute of this state or federal law so provides.

13 (p) A spendthrift provision is a restriction on the transfer of the settlor's beneficial
14 interest that is enforceable under nonbankruptcy law within the meaning of 11 U.S.C. section
15 541(c)(2).

16 (q) Whether or not an irrevocable trust contains a spendthrift provision, an exception
17 creditor of the settlor may reach the trust property to the extent permitted under subsection (q)(2).

18 (1) For purposes of this subsection, the following definitions apply:

19 (A) "Exception creditor" means, with respect to a settlor:

20 (i) An individual to the extent that there is a judgment or court order
21 against the settlor for child support in this or any other state; or

22 (ii) A spouse or former spouse to the extent that there is a judgment or court
23 order against the settlor for basic alimony.

24 (B) "Basic alimony" means the portion of alimony attributable to the most basic
25 food, shelter, and medical needs of the spouse or former spouse if the judgment or court order
26 expressly specifies that portion.

27 (2) The court shall direct the trustee to pay to the exception creditor an amount that
28 is equitable under the circumstances, but not more than the lesser of:

29 (A) The amount that is necessary to satisfy the judgment or court order for:

30 (i) In the case of an exception creditor described in subsection (q)(1)(A)(i),
31 child support; or

32 (ii) In the case of an exception creditor described in subsection (q)(1)(A)(ii),
33 basic alimony; and

34 (B) The maximum amount of trust property that can be distributed to or for the
35 benefit of the settlor from the trust.

36 (3) This subsection shall not apply to any irrevocable trust described in subsection
37 (e)(1), (e)(2), (e)(3), (e)(4), or (e)(5).

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(4) Subject to subsection (q)(2), subsections (a) and (f) shall not apply to an exception creditor.

564-B:5-505B Coordination with Qualified Dispositions in Trusts.

(a) On the effective date of RSA 564-B:5-505A, RSA 564-B:5-505A shall apply to:

(1) Any transfer that:

(A) Was made before the effective date of RSA 564-B:5-505A; and

(B) Qualified as a qualified disposition within the meaning of RSA 564-D:1, VII, as in effect immediately before the effective date of RSA 564-B:5-505A; and

(2) Any trust into which, before the effective date of RSA 564-B:5-505A, there was a transfer described in subsection (a)(1).

(b) Except as otherwise permitted under RSA 564-B:5-505A, a creditor or assignee of a settlor may not avoid a transfer described in subsection (a)(1) if the creditor or assignee could not have avoided the transfer under RSA 564-D as in effect immediately before the effective date of RSA 564-B:5-505A.

(c) Except as otherwise permitted under RSA 564-B:5-505A, a creditor or assignee of a settlor may not reach any property of a trust described in subsection (a)(2) if the creditor or assignee could not have reached the property under RSA 564-D as in effect immediately before the effective date of RSA 564-B:5-505A.

257:22 Revocation or Amendment of Revocable Trust. Amend RSA 564-B:6-602(e) to read as follows:

(e) A settlor's powers with respect to *the revocation of a revocable trust, the amendment of a revocable trust, or the distribution of trust property from a revocable trust* may be exercised by an agent under a power of attorney only to the extent expressly authorized by *both* the terms of the trust ~~or~~ *and* the power *of attorney*.

(1) Any ~~such~~ revocation or amendment *of a revocable trust* by an agent under a power of attorney shall be effective only if:

(A) *The amendment or revocation is* made in ~~a signed record and~~ *substantial compliance with a method provided in the terms of the trust; or*

(B) *The amendment or revocation is made by any other method manifesting clear and convincing evidence of the agent's intent if the terms of the trust do not provide a method or do not expressly prohibit methods other than methods provided in the terms of the trust.*

(2) *Any revocation or amendment of a revocable trust by an agent under a power of attorney* shall be effective only ~~[when sent to the trustee]~~ *upon the trustee's receipt of notice of the amendment or revocation.*

(3) *A trustee, trust advisor, or trust protector is an excluded fiduciary to the extent that:*

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1 (A) *In accordance with this subsection, a settlor's agent exercises the*
2 *settlor's powers with respect to the revocation of a revocable trust, the amendment of a*
3 *revocable trust, or the distribution of trust property from a revocable trust; and*

4 (B) *The trustee, trust advisor, or trust protector acts in accordance with*
5 *the agent's exercise of the settlor's powers.*

6 257:23 Directed Trusts. Amend RSA 564-B:7-711 to read as follows:

7 564-B:7-711 *Divided Trusts and* Directed Trusts.

8 (a) *A divided trust is a trust in which the terms of the trust divide powers and*
9 *duties among 2 or more trustees, trust advisors, and trust protectors, vesting one or more*
10 *powers and duties exclusively in one or more of those persons to the exclusion of the other*
11 *persons.*

12 (b) A directed trust is trust in which, under the terms of the trust, one or more persons
13 have the power to direct an action by a trustee, trust advisor, or trust protector or the power to veto
14 or consent to any actual or proposed action by a trustee, trust advisor, or trust protector. The action
15 may relate to the investment of trust assets, distributions, or any other aspects of the trust's
16 administration.

17 (c) *A trustee is an excluded fiduciary to the extent that the terms of the trust*
18 *vest a power or duty exclusively in a trust advisor, trust protector, cotrustee, or other*
19 *person.*

20 [(b)] (d) A trustee is an excluded fiduciary to the extent that:

21 (1) under the terms of the trust, the trustee must follow the direction of a trust
22 advisor, trust protector, cotrustee, or other person; and

23 (2) the trustee acts in accordance with that direction.

24 (e) *A trust advisor or trust protector is an excluded fiduciary to the extent that*
25 *the terms of the trust vest a power or duty exclusively in a trustee, trust advisor, trust*
26 *protector, or other person.*

27 [(e)] (f) A trust advisor or trust protector is an excluded fiduciary to the extent that:

28 (1) under the terms of the trust, the trust advisor or trust protector must follow the
29 direction of a trustee, trust advisor, trust protector, or other person; and

30 (2) the trust advisor or trust protector acts in accordance with that direction.

31 257:24 Vacancy; Directed Trusts. Amend RSA 564-B:7-712 to read as follows:

32 564-B:7-712 Vacancy[;] *in a Divided Trust or* Directed [Trusts] *Trust.*

33 (a) ~~[Except as otherwise provided by the terms of the trust upon obtaining knowledge of~~
34 ~~a vacancy in the office of trust advisor, the]~~ *Unless the terms of the trust provide otherwise, a*
35 *trustee shall be vested with any [fiduciary] power or duty that [otherwise would be vested in the*
36 ~~trustee but that by]~~ *the terms of the trust [was vested] otherwise vest exclusively in[the] a trust*
37 *advisor, [until such time that a trust advisor is appointed pursuant to the terms of the trust or by a*

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~~court upon the petition of any interested person]~~ ***trust protector, or cotrustee during any time when, as the result of a vacancy in the office of trust advisor, trust protector, or cotrustee, there is no person who is vested with the power or duty.***

(b) ~~[Except as otherwise provided by the terms of the trust, upon obtaining knowledge of a vacancy in the office of trust protector, the trustee shall petition the court to fill the vacancy if the trustee determines that the terms of the trust require the vacancy to be filled.]~~ ***Unless the terms of the trust provide otherwise, a trustee may exercise without direction any power that, under the terms of the trust, the trustee otherwise may exercise only at the direction of a trust advisor, trust protector, or cotrustee during any time when, as the result of a vacancy in the office of trust advisor, trust protector, or cotrustee, there is no person who is vested with the power to direct the trustee to exercise that power.***

(c) ~~[Notwithstanding the provisions of subsection (a), a]~~ ***A trustee who is vested with a power or duty under subsection (a)*** shall not be liable ***to any person*** for failing to exercise ~~[or assume any]~~ ***that*** power or duty ~~[held by a trust advisor and conferred upon the trustee by subsection (a) for]~~ ***during*** the 60-day period ~~[immediately following]~~ ***beginning on*** the date ***on which*** the trustee obtains knowledge of ~~[such]~~ ***the*** vacancy.

(d) A trustee who may exercise a power under subsection (b) shall not be liable to any person for failing to exercise that power during the 60-day period beginning on the date on which the trustee obtains knowledge of the vacancy.

257:25 Duty of Loyalty. Amend RSA 564-B:8-802(f) to read as follows:

(f) The following transactions, if fairly priced and in accordance with the interest of the beneficiaries and the purposes of the trust, are not presumed to be affected by a conflict between the trustee's personal and fiduciary interest provided that any investment made pursuant to the transaction otherwise complies with the prudent investor rule of article 9:

(1) an investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee; ~~[provided that any investment made pursuant to the transaction otherwise complies with the prudent investor rule of Article 9 of RSA 564-B.]~~

(2) the placing of securities transactions by a trustee through a securities broker that is a part of the same company as the trustee, is owned by the trustee, or is affiliated with the trustee;

(3) any loan from the trustee or its affiliate; ***or***

(4) an investment in an insurance contract purchased from an insurance agency owned by, or affiliated with, the trustee, or any of its affiliates[;]

~~[(5) an agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee, or any of its affiliates;~~

~~(6) payment of reasonable compensation to the trustee, or any of its affiliates;~~

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~~(7) a transaction between a trust and another trust, decedent's estate, guardianship or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;~~

~~(8) a deposit of trust money in a financial institution operated by the trustee or an affiliate;~~

~~(9) a delegation and any transaction made pursuant to the delegation from a trustee to an agent that is affiliated or associated with the trustee; or~~

~~(10) an advance by the trustee of money for the protection of the trust].~~

257:26 New Paragraph; Duty of Loyalty. Amend RSA 564-B:8-802 by inserting after paragraph (i) the following new paragraph:

(j) This section does not preclude any of the following transactions to the extent that the transaction is fair to the beneficiaries:

(1) An agreement between a trustee and a beneficiary relating to the appointment of the trustee or any of its affiliates;

(2) An agreement between a trustee and a beneficiary relating to the compensation of the trustee or any of its affiliates;

(3) Payment of reasonable compensation to the trustee or any of its affiliates;

(4) A transaction between a trust and any of the following:

(A) Another trust of which the trustee is a trustee, trust advisor, or trust protector or in which a beneficiary has an interest;

(B) A decedent's estate of which the trustee is an executor or other fiduciary or in which a beneficiary has an interest;

(C) A conservatorship of which the trustee is a conservator or in which a beneficiary has an interest; or

(D) A guardianship of which the trustee is a guardian or in which a beneficiary has an interest;

(5) A deposit of trust money in a regulated financial-service institution operated by the trustee or any of its affiliates;

(6) An advance of money by the trustee or any of its affiliates for the protection of the trust;

(7) A delegation by a trustee to an agent that is affiliated or associated with the trustee; or

(8) A transaction made pursuant to a delegation by a trustee to an agent that is affiliated or associated with the trustee.

257:27 Delegation by Trustee. Amend RSA 564-B:8-807 to read as follows:

564-B:8-807 Delegation by Trustee ***to an Agent.***

(a) A trustee may delegate [duties, powers and investment and management functions] to any person, even if [such] ***that*** person is associated or affiliated with the trustee, ***any duty,***

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1 ***power, investment function, or management function*** that a prudent trustee of comparable
2 skills could properly delegate under the circumstances.

3 (b) The trustee shall exercise reasonable care, skill, and caution in:

4 (1) selecting an agent;

5 (2) establishing the scope and terms of the delegation, consistent with the purposes
6 ***of the trust*** and ***the*** terms of the trust; and

7 (3) periodically reviewing the agent's actions [~~in order to monitor~~] ***for the purpose***
8 ***of monitoring*** the agent's performance and compliance with the ***scope and*** terms of the
9 delegation.

10 [(b)] (c) In performing a delegated ***duty, power, or*** function, an agent owes a duty to
11 the trust to exercise reasonable care to comply with the ***scope and*** terms of the delegation.

12 [(e)] (d) A trustee who complies with subsection (a) ***and (b)*** is not liable to the
13 beneficiaries or to the trust for an action of the agent to whom the ***duty, power, or*** function was
14 delegated.

15 (e) ***A trustee's delegation of a duty, power, or function to an agent under a***
16 ***power of attorney shall not be valid unless the power of attorney expressly refers to the***
17 ***trustee in his, her, or its capacity as a trustee of the trust.***

18 (f) ***In the case of a trustee who is an individual, the trustee's delegation of any***
19 ***duty, power, or function to an agent under a power of attorney shall terminate upon the***
20 ***trustee's incapacity unless:***

21 (1) ***The terms of the trust provide that the delegation may remain effective***
22 ***during the trustee's incapacity; and***

23 (2) ***The power of attorney provides, that the delegation does not terminate***
24 ***upon the trustee's incapacity.***

25 [(d)] (g) By accepting a delegation of [~~powers or duties~~] ***a duty, power, or function***
26 from [~~the~~] ***a*** trustee of a trust that [~~is subject to the law of~~] ***has its principal place of***
27 ***administration in this state or subsequently changes its principal place of administration***
28 ***to*** this state, an agent [~~submits~~] ***shall be subject*** to the ***personal*** jurisdiction of the courts of this
29 state ***regarding any matter involving the trust.***

30 257:28 New Section; New Hampshire Trust Code. Amend RSA 564-B by inserting after section
31 10-1015 the following new section:

32 564-B:10-1016 Powers of Appointment.

33 (a) A power of appointment is exercised only:

34 (1) If the instrument exercising the power is valid under applicable law;

35 (2) If the terms of the instrument exercising the power:

36 (A) Manifest the powerholder's intent to exercise the power; and

37 (B) Subject to subsection (b), satisfy any requirements that the terms of the

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trust may impose on the exercise of the power; and

(3) To the extent that the appointment is a permissible exercise of the power.

(b) A powerholder's substantial compliance with a formal requirement of appointment imposed by the terms of the trust, including a requirement that the instrument exercising the power of appointment make reference or specific reference to the power, is sufficient if:

(1) The powerholder knows of and intends to exercise the power;

(2) The terms of the trust do not require strict compliance with the formal requirement of appointment imposed by the settlor; and

(3) The powerholder's manner of attempted exercise of the power does not impair a material purpose of the trust.

257:29 Trust Advisor and Trust Protector Subject to Court Jurisdiction. Amend RSA 564-B:12-1203 to read as follows:

564-B:12-1203 Trust Advisor and Trust Protector Subject to Court Jurisdiction.

(a) By accepting *an* appointment to serve as a trust advisor or trust protector *of a trust that has its principal place of administration in this state or, in accordance with the terms of the trust or applicable law, changes its principal place of administration to this state*, the trust advisor or the trust protector ~~[submits personally]~~ *shall be subject* to the *personal* jurisdiction of the courts of this state *regarding any matter involving the trust*.

(b) ~~[even if]~~ *An* investment advisory ~~[agreements]~~ *agreement* or other ~~[related agreements provide otherwise]~~ *agreement is void to the extent that it purports to limit the personal jurisdiction of the courts under subsection (a)* ~~[, and the trust advisor or trust protector may be made a party to any action or proceeding relating to a decision, action, or inaction of the trust advisor or trust protector]~~.

257:30 New Subparagraph; Limitation of Action Against a Trust Advisor or Trust Protector. Amend RSA 564-B:12-1206 by inserting after subparagraph (e) the following new paragraph:

(f) For purposes of determining whether, for purposes of this section, a trust has terminated or a beneficiary's interest in a trust has terminated, trust property excludes any claim against a trustee, trust advisor, or trust protector.

257:31 New Sections; Office of the Trust Advisor or Trust Protector. Amend RSA 564-B by inserting after section 12-1206 the following new sections:

564-B:12-1207 Office of the Trust Advisor or Trust Protector.

(a) A trust advisor or trust protector is subject to the same rules to which a sole trustee would be subject under this chapter in the same circumstances with respect to the following:

(1) Accepting or declining his, her, or its appointment;

(2) Vacancy and appointment of a successor;

(3) Resignation;

(4) Removal; and

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1 (5) Compensation.

2 (b) A trust advisor or trust protector shall not have an obligation to give bond to secure
3 performance of his, her, or its duties.

4 (c) Subject to this article 12, a trust advisor or trust protector is subject to the same
5 rules as a sole trustee would be subject under this chapter in the same circumstances with respect
6 to exoneration and indemnification.

7 564-B:12-1208 Delegation to an Agent.

8 (a) A trust advisor or trust protector may delegate to any person, even if that person is
9 associated or affiliated with the trust advisor or trust protector, any duty or power that a prudent
10 trust advisor or trust protector of comparable skills and having the same power or duty could
11 properly delegate under the circumstances.

12 (b) In delegating to an agent, a trust advisor or trust protector shall exercise reasonable
13 care, skill, and caution in:

14 (1) Selecting an agent;

15 (2) Establishing the scope and terms of the delegation, consistent with the trust's
16 purposes and the terms of the trust; and

17 (3) Periodically reviewing the agent's actions for the purpose of monitoring the
18 agent's performance and compliance with the scope and terms of the delegation.

19 (c) The exercise of a power includes the performance of any function involving that
20 power.

21 (d) A trust advisor or trust protector who complies with subsections (a) and (b) is not
22 liable to the beneficiaries or to the trust for an action of the agent to whom the power or duty was
23 delegated.

24 (e) In performing a delegated duty of power, an agent owes a duty to the trust to
25 exercise reasonable care to comply with the scope and terms of the delegation.

26 (f) A trust advisor's or trust protector's delegation of a duty, power, or function to an
27 agent under a power of attorney shall not be valid unless the power of attorney expressly refers to
28 the trust advisor or trust protector in his, her, or its capacity as a trust advisor or trust protector of
29 the trust.

30 (g) In the case of a trust advisor or trust protector who is an individual, the trust
31 advisor's or trust protector's delegation of any duty, power, or function to an agent under a power of
32 attorney shall terminate upon the trust advisor's or trust protector's incapacity unless:

33 (1) The terms of the trust provide that the delegation may remain effective during
34 the trust advisor's or trust protector's incapacity; and

35 (2) The power of attorney provide that the delegation does not terminate upon the
36 trust advisor's or trust protector's incapacity.

37 (h) By accepting a delegation of any duty or power from a trust advisor or trust

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1 protector of a trust that has its principal place of administration in this state or subsequently
2 changes its principal place of administration to this state, an agent shall be subject to the personal
3 jurisdiction of the courts of this state regarding any matter involving the trust.

4 (i) This section does not apply to the delegation of a duty or power to a trustee, trust
5 advisor, or trust protector to the extent that, under the terms of the trust, the trustee, trust advisor,
6 or trust protector is vested with the delegated duty or power.

7 564-B:12-1209 Delegation to a Trustee, Trust Advisor, or Trust Protector.

8 (a) Subject to subsection (b), a trust advisor or trust protector may delegate to any
9 trustee, trust advisor, or trust protector, even if that person is associated or affiliated with the trust
10 advisor or trust protector, any duty or power that a prudent trust advisor or trust protector of
11 comparable skills could properly delegate under the circumstances.

12 (b) A trust advisor or trust protector may not delegate any duty or power that the
13 settlor reasonably expected the trust advisor or trust protector to perform jointly with each trustee,
14 trust advisor, and trust protector who also is vested with that duty or power.

15 (c) The exercise of a power includes the performance of any function involving that
16 power.

17 (d) Unless a delegation was irrevocable, a trust advisor or trust protector may revoke a
18 delegation previously made.

19 564-B:12-1210 Employing Attorneys, Agents, and Other Persons.

20 (a) A trust advisor or trust protector shall have the power to employ any attorney or
21 other person, even if the person is affiliated or associated with the trust advisor or trust protector,
22 to advise the trust advisor or trust protector in the performance of the trust advisor's or trust
23 protector's duties.

24 (b) To the extent consistent with the scope and nature of a trust advisor's or trust
25 protector's powers and duties under the terms of the trust, the trust advisor or trust protector shall
26 have the power to employ any agent or other person, even if the person is affiliated or associated
27 with the trust advisor or trust protector, to assist the trust advisor or trust protector in the
28 performance of the trust advisor's or trust protector's duties.

29 (c) The reasonable compensation of a person whom a trust advisor or trust protector
30 employs under subsection (a) or (b) is an expense incurred in the administration of the trust.

31 257:32 New Section; New Hampshire Business Corporation Act; Trust Powers. Amend RSA
32 293-A by inserting after section 3.04 the following new section:

33 293-A:3.05 Trust Powers.

34 (a) A corporation shall have trust powers to the extent that it:

35 (1) Does not transact business with the general public; or

36 (2) Is a bank as defined in RSA 383-A:2-201(a)(3) and is authorized to engage in
37 trust business in this state under RSA 383-A, RSA 383-B, RSA 383-C, or RSA 383-D.

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(b) Trust powers include the power to act as a trustee or other fiduciary, a trust advisor as defined in RSA 564-B:1-103(27), or a trust protector as defined in RSA 564-B:1-103(28).

(c) For purposes of subsection (a)(1), a corporation does not transact business with the general public to the extent that the corporation:

(1) Qualifies as a family office under 15 U.S.C. section 80b-2(a)(11)(G); or

(2) Offers and provides its services only to persons who would qualify as family clients as defined in RSA 383-D:2-201(b)(5) if the corporation was chartered as a family trust company under RSA 383-D.

(d) For purposes of subsection (c)(2), a corporation may use any reasonable method for:

(1) Identifying a designated relative as defined in RSA 383-D:2-201(b)(2); and

(2) Selecting a method for determining family members as described in RSA 383-D:4-402(b)(2) or (c).

(e) A corporation described in subsection (a)(1) shall be exempt from RSA Title 35 and shall not be subject to the jurisdiction of the New Hampshire bank commissioner.

(f) To the extent that a corporation other than a corporation described in subsection (a)(2) transacts business with the general public, the following shall apply:

(1) Any action by the corporation shall not be void or voidable solely by reason of the corporation transacting business with the general public.

(2) Each of the corporation's directors and officers shall be personally, jointly, and severally liable for all liabilities created by the corporation transacting business with the general public, including any breach of a fiduciary duty to a member of the general public.

(3) A director's or officer's liability under subsection (f)(2) is in addition to any civil or criminal penalties imposed by applicable law.

(g) This section does not restrict the rights and remedies of any person affected by a corporation's exercise of trust powers, including the right to commence a judicial proceeding seeking:

(1) A remedy for a breach of trust under RSA 564-B:10-1001;

(2) Damages for a breach of trust under RSA 564-B:10-1002; or

(3) Damages under RSA 564-B:10-1003.

257:33 New Section; New Hampshire Limited Liability Companies; Trust Powers. Amend RSA 304-C by inserting after section 22 the following new section:

304-C:22-a Trust Powers.

(a) A limited liability company shall have trust powers to the extent that it:

(1) Does not transact business with the general public; or

(2) Is a bank as defined in RSA 383-A:2-201(a)(3) and is authorized to engage in trust business in this state under RSA 383-A, RSA 383-B, RSA 383-C, or RSA 383-D.

(b) Trust powers include the power to act as a trustee or other fiduciary, a trust advisor

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as defined in RSA 564-B:1-103(27), or a trust protector as defined in RSA 564-B:1-103(28).

(c) For purposes of subsection (a)(1), a limited liability company does not transact business with the general public to the extent that the limited liability company:

(1) Qualifies as a family office under 15 U.S.C. section 80b-2(a)(11)(G); or

(2) Offers and provides its services only to persons who would qualify as family clients as defined in RSA 383-D:2-201(b)(5) if the limited liability company was chartered as a family trust company under RSA 383-D.

(d) For purposes of subsection (c)(2), a limited liability company may use any reasonable method for:

(1) Identifying a designated relative as defined in RSA 383-D:2-201(b)(2); and

(2) Selecting a method for determining family members as described in RSA 383-D:4-402(b)(2) or (c).

(e) A limited liability company described in subsection (a)(1) shall be exempt from RSA Title 35 and shall not be subject to the jurisdiction of the New Hampshire bank commissioner.

(f) To the extent that a limited liability company other than a limited liability company described in subsection (a)(2) transacts business with the general public, the following shall apply:

(1) Any action by the limited liability company shall not be void or voidable solely by reason of the limited liability company transacting business with the general public.

(2) Each of the limited liability company's managers or, if the limited liability company is managed by its members, each of the members shall be personally, jointly, and severally liable for all liabilities created by the corporation transacting business with the general public, including any breach of a fiduciary duty to a member of the general public.

(3) A manager's or member's liability under subsection (f)(2) is in addition to any civil or criminal penalties imposed by applicable law.

(g) This section does not restrict the rights and remedies of any person affected by a limited liability company's exercise of trust powers, including the right to commence a judicial proceeding seeking:

(1) A remedy for a breach of trust under RSA 564-B:10-1001;

(2) Damages for a breach of trust under RSA 564-B:10-1002; or

(3) Damages under RSA 564-B:10-1003.

257:34 Bank Commissioner; Examination of Banks, Credit Unions, Trust Companies, and Family Trust Companies. Amend RSA 383:9-d, I to read as follows:

I. Unless an exception is granted as provided in paragraph II, the commissioner shall examine the condition and management of all **depository** banks[,] **and** credit unions[, ~~trust companies, and family trust companies,~~] every 18 months or more often when necessary in his or her judgment. ***The commissioner shall examine the condition and management of all trust companies in accordance with RSA 383-C:14-1401. The commissioner shall examine the***

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condition and management of all family trust companies in accordance with RSA 383-D:11-1101.

257:35 Bank Commissioner; Examination of Banks and Credit Unions. Amend RSA 383:9-d, III to read as follows:

III. A **depository** bank[,] **or** credit union[, ~~trust company, or family trust company~~] qualifies for examination treatment under paragraph II if:

- (a) It has consistently been given high ratings in past exams;
- (b) It is not currently subject to an enforcement proceeding or order; and
- (c) The commissioner has deemed it prudent to apply this paragraph and paragraph II.

257:36 New Paragraph; Liquidation Pledge. Amend RSA 383-C:5-503 by inserting after paragraph (b) the following new paragraph:

(c) A trust company may apply to provide a letter of credit in lieu of pledging cash or securities by filing with the commissioner an application to provide a letter of credit.

(1) In accordance with RSA 383-A:6-604, the commissioner shall make a determination as to whether the trust company qualifies to provide a letter of credit.

(2) A trust company qualifies to provide a letter of credit if:

(A) Under the terms of the letter of credit, the issuing bank unconditionally agrees to pay the liquidation pledge amount to the commissioner upon presentation of a written instrument that is signed by the commissioner and states that the commissioner has commenced the liquidation of a trust company under RSA 395;

(B) The issuing bank is:

- (i) A depository bank;
- (ii) A national bank having a branch or office in this state;
- (iii) A federal savings bank having a branch or office in this state; or
- (iv) A foreign state bank having a branch or office in this state;

(C) The letter of credit is:

- (i) Irrevocable during its term; and
- (ii) On a form prescribed by the commissioner.

(D) For purposes of securing the trust company's obligation to pay to the issuing bank any amounts that the commissioner draws against the letter of credit, the trust company or other person:

(i) Grants to the issuing bank a security interest in money or other property in an amount that is not less than 120 percent of the liquidation pledge amount;

(ii) Together with the issuing bank, executes a collateral pledge and security agreement that:

- (a) Is irrevocable during the term of the letter of credit;
- (b) Requires the pledgor to transfer to the issuing bank money or other

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property sufficient to maintain the minimum collateral amount under subsection (c)(2)(D)(i) at all times during the term of the letter of credit; and

(c) Is in a form acceptable to the commissioner; and

(E) Under the collateral pledge and security agreement or other agreement the issuing bank agrees that:

(i) If the commissioner draws against the letter of credit, then the issuing bank may claim its right of reimbursement only against the collateral in which the issuing bank has a security interest under the collateral pledge and security agreement;

(ii) Except as provided under subsection (c)(2)(E)(i), the issuing bank waives any right of reimbursement against the trust company, and the issuing bank may not claim its right of reimbursement against the liquidation estate of the trust company;

(iii) The letter of credit will be drawn in the event of a failure of the institution requiring liquidation by the commissioner; and

(iv) If, for any reason, the letter of credit is terminated, it shall immediately notify the commissioner.

(3) If the commissioner approves the trust company's application to provide a letter of credit, then the trust company shall continuously maintain the letter of credit in accordance with this subsection until it pledges cash or securities in accordance with subsection (a).

(4) The trust company shall pay any fees and expenses associated with obtaining and maintaining the letter of credit and the collateral pledge and security agreement.

257:37 New Subdivisions; Trust Company Act. Amend RSA 383-C by inserting after section 12-1202 the following new subdivisions:

Article 13

Reports and Other Filings

383-C:13-1301 Reports and Other Filings. A trust company shall file with the commissioner reports of condition as required under RSA 383-A:5-510 and copies of other documents as required under RSA 383-A:5-511.

Article 14

Examination

383-C:14-1401 Regular Examination. Subject to RSA 383-C:14-1402, the commissioner shall examine the condition and management of a trust company every 18 months.

383-C:14-1402 Exemption from Regular Examination.

(a) A trust company may apply for an exemption from one regular examination under RSA 383-C:14-1401 by filing with the commissioner an application for exemption.

(b) In accordance with RSA 383-A:6-604, the commissioner shall make a determination as to whether the trust company qualifies for a conditional exemption from examination.

(c) A trust company qualifies for a conditional exemption from examination if:

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1 (1) The commissioner has deemed the application for exemption substantially
2 complete under RSA 383-A:6-603 no sooner than 12 months and no later than 15 months after the
3 date the commissioner signs the most recent report of examination;

4 (2) The trust company has received high ratings in each of its 2 most recent prior
5 examinations;

6 (3) The trust company's composite rating in its most recent prior examination is not
7 less than its composite rating in its second most recent prior examination;

8 (4) The trust company files with the commissioner a copy of each financial audit
9 report completed within 12 months after the conclusion of its most recent examination;

10 (5) Each financial audit report filed under subsection (c)(3) is:

11 (A) Made in accordance with RSA 383-A:5-509; and

12 (B) Is unqualified; and

13 (6) The trust company is not currently subject to any formal or informal
14 enforcement proceeding or order of any regulatory authority.

15 (d) For purposes of subsection (c), the following shall apply:

16 (1) A trust company has received high ratings if the trust company received a rating
17 of 1 or 2 in each of the components used under the Uniform Interagency Trust Rating System; and

18 (2) A trust company's composite rating is its composite rating determined in
19 accordance with the Uniform Interagency Trust Rating System.

20 (e) Subject to subsection (k), a trust company that qualifies for a conditional exemption
21 from examination may be exempt from one regular examination under RSA 383-C:14-1401 if it
22 satisfies the following conditions:

23 (1) The trust company files with the commissioner a copy of a fiduciary compliance
24 audit report made in accordance with subsection (h) no sooner than 12 months and no later than 15
25 months after the date the commissioner signs the most recent report of examination;

26 (2) The trust company files with the commissioner a copy of each financial audit
27 report completed after the trust company filed its application for exemption and on or before the
28 trust company files the fiduciary compliance audit under subsection (e)(1);

29 (3) Each financial audit report filed under subsection (e)(2) is:

30 (A) Made in accordance with RSA 383-A:5-509; and

31 (B) Is unqualified; and

32 (4) The trust company is not currently subject to any formal or informal
33 enforcement proceeding or order of any regulatory authority.

34 (f) Upon receipt of the reports described in subsections (e)(1) and (e)(2), the
35 commissioner shall make a determination whether the trust company is exempt from examination
36 under subsection (e).

37 (g) If, under subsection (f), the commissioner determines that the trust company is not

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1 exempt from examination, then the commissioner shall examine the condition and management of
2 the trust company within 21 months after the conclusion of the trust company's most recent
3 examination.

4 (h) For purposes of subsection (e)(1), a fiduciary compliance audit report shall meet the
5 following requirements:

6 (1) The report includes a review of each material aspect of the following components
7 used under the Uniform Interagency Trust Rating System:

8 (A) Management;

9 (B) Operations, internal controls, and auditing;

10 (C) Compliance; and

11 (D) Asset management;

12 (2) The report conforms to applicable generally accepted auditing standards;

13 (3) The report is unqualified; and

14 (4) The report is completed no later than 3 months before the date on which the
15 trust company files it with the commissioner.

16 (i) Based on the trust company's safety and soundness, the commissioner:

17 (1) May waive the requirement under subsection (e)(1); or

18 (2) May accept any documents or other information that the commissioner deems a
19 suitable substitute for a fiduciary compliance audit report made in accordance with subsection (h).

20 (j) The commissioner shall examine the condition and management of a trust company
21 that is exempt from examination under subsection (e) no later than 36 months after the conclusion
22 of its most recent prior examination.

23 (k) The commissioner may examine the condition and management of a trust company
24 that is exempt from examination under subsection (e); at any time if, after qualifying for the
25 exemption under subsection (e);

26 (1) The trust company receives a qualified financial audit report;

27 (2) The trust company receives an unqualified financial report that contains a
28 statement identifying or otherwise disclosing a material deficiency concerning any of the following
29 components used under the Uniform Interagency Trust Rating System:

30 (A) Management;

31 (B) Operations, internal controls, and auditing;

32 (C) Earnings;

33 (D) Compliance; or

34 (E) Asset management;

35 (3) The commissioner determines that the trust company's safety and soundness
36 might have been materially impaired; or

37 (4) The trust company becomes subject to any formal or informal enforcement

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proceeding or order of any regulatory authority.

257:38 New Subparagraph; New Hampshire Family Trust Company Act; Definitions. Amend RSA 383-D:2-201 by inserting after subparagraph (b) the following new subparagraph:

(c) For purposes of RSA 383, RSA 383-A, RSA 383-C, and this chapter, “Organizations Act” means:

(1) In the case of a family trust company organized as a corporation, the Corporation Act;

(2) In the case of a family trust company organized as a limited liability company, the LLC Act; or

(3) In the case of a family trust company organized as a foundation, RSA 564-E.

257:39 Family Trust Company Act; Safety and Soundness. Amend RSA 383-D:3-302 to read as follows:

383-D:3-302 Safety and Soundness.

(a) For purposes of determining the safety or soundness of a family trust company or any act that a family trust company has taken or proposes to take, ***the following shall apply:***

(1) ***Subject to subsection (b),*** the commissioner shall consider the factors described in RSA 383-C:4-401[-];

(2) ***The commissioner shall give primary consideration to whether the family trust company poses a harm to the general public; and***

(3) ***To the extent that the family trust company does not pose a harm to the general public and subject to the requirements of this chapter, the family trust company shall have broad latitude to determine how it is organized and how it will operate its affairs.***

(b) For purposes of ~~[those factors, a]~~ ***applying the factors described in RSA 383-C:4-401 to a family trust company, the commissioner shall consider that:***

(1) ***The*** family trust company's market is serving family clients[-]; and [a]

(2) ***The*** family trust company's financial success is determined by the avoidance of net losses over multiple years.

(c) ***A family trust company poses a harm to the general public if the family trust company:***

(1) ***Transacts business with the general public;***

(2) ***Fails to establish and maintain procedures reasonably designed to assure and monitor its compliance with applicable anti-money laundering and similar laws; or***

(3) ***Engages in any other activity that the commissioner determines poses a direct, material harm to the general public.***

257:40 New Subparagraph; New Hampshire Family Trust Company Act; Family Client.

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1 Amend RSA 383-D:4-401 by inserting after subparagraph (c) the following new subparagraph:

2 (d) In the case of a family trust company that makes an election under RSA 383-D:4-
3 402(b), "family client" includes any person to whom the family trust company could provide services
4 if the family trust company qualified as a family office under 15 U.S.C. section 80b-2(a)(11)(G).

5 257:41 New Section; Family Trust Company Act; Organization and Conversion. Amend RSA
6 383-D by inserting after section 5-501 the following new section:

7 383-D:5-501A Type of Entity.

8 (a) A family trust company may be organized as:

9 (1) A corporation under the Corporation Act;

10 (2) A limited liability company under the LLC Act; or

11 (3) A foundation under RSA 564-E.

12 (b) RSA 383-A:3-303(a) shall not apply to family trust companies.

13 257:42 Family Trust Company Act; Required Capital. Amend RSA 383-D:6-602(a)-(c) to read as
14 follows:

15 (a) The minimum required capital of a family trust company is [~~\$250,000~~] **\$200,000**.
16 The commissioner may require a family trust company to maintain additional capital. From time to
17 time, the commissioner may reduce or increase the amount of additional capital that a family trust
18 company is required to maintain.

19 (b) After it obtains the authority to exercise trust powers, a family trust company shall
20 maintain an amount of capital that equals or exceeds the required capital.

21 (c) A family trust company shall not make any distribution to the extent that, upon
22 making the distribution, the family trust company's total capital would be less than the required
23 capital.

24 (d) For purposes of ~~[this]~~ subsection (c), "distribution" means a direct or indirect
25 transfer of money or other property (except an equity interest in the family trust company) to or for
26 the benefit of family trust company's equity owners in respect of any of equity interests in the
27 family trust company.

28 ~~[(e)]~~ (e) RSA 383-C:5-502(a) and (b) shall not apply to family trust companies.

29 257:43 New Section; Effects of Transacting Business with the General Public. Amend RSA 383-
30 D by inserting after section 7-703 the following new section:

31 383-D:7-704 Effects of Transacting Business with the General Public.

32 (a) Any action by a family trust company in its capacity as a trustee or other fiduciary
33 shall not be void or voidable solely by reason of the entity transacting business with the general
34 public.

35 (b) To the extent that a family trust company transacts business with the general
36 public, each of its directors and executive officers shall be personally, jointly, and severally liable for
37 all liabilities created by transacting business with the general public, including any breach of a

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1 fiduciary duty to a member of the general public.

2 (c) The directors' and officers' liability under subsection (b) is in addition to any civil or
3 criminal penalties imposed by this title or other applicable law.

4 (d) This section shall not limit the commissioner's enforcement powers under this title
5 or any other applicable law, including the power to order restitution for a violation of this title and
6 other applicable laws and each of the other powers under RSA 383:10-d.

7 257:44 Reports and Certification. Amend RSA 383-D:10-1001 to read as follows:

8 383-D:10-1001 Reports and Certification.

9 (a) In addition to filing an annual report in accordance with ~~[RSA 383-A:5-511]~~
10 ***RSA 383-A:5-510(a)***, a family trust company shall file with the commissioner an annual
11 certification certifying that the family trust company is in compliance with:

12 (1) the provisions of this chapter; and

13 (2) the conditions and limitations of all ~~[granted]~~ exemptions ***granted by the***
14 ***commissioner under RSA 383-D:7-702.***

15 (b) In its annual certification, a family trust company may change its designated
16 relative in accordance with RSA 383-D:10-1002.

17 (c) ***A family trust company's*** ~~[The]~~ annual certification is due on the same day as its
18 annual report.

19 ~~[(b)]~~ (d) A family trust company shall file quarterly reports in accordance with
20 RSA 383-A:5-510, and it shall file copies of other documents as required under RSA 383-A:5-511.

21 257:45 New Section; Exemption from Annual Audits. Amend RSA 383-D by inserting after
22 section 10-1004 the following new section:

23 383-D:10-1005 Exemption from Annual Audits.

24 (a) A family trust company may apply for an exemption from RSA 383-A:5-509 by filing
25 with the commissioner an application for exemption.

26 (b) In accordance with RSA 383-A:6-604, the commissioner shall make a determination
27 as to whether to grant to the family trust company an exemption from RSA 383-A:5-509.

28 (c) In determining whether to grant an exemption from RSA 383-A:5-509, the
29 commissioner shall consider whether:

30 (1) The family trust company can maintain its safety and soundness without a
31 financial audit;

32 (2) The cost of a financial audit would be an undue financial burden on the family
33 trust company; and

34 (3) The family trust company has established and will maintain procedures that will
35 ensure that its financial statements are accurate and complete.

36 (d) The commissioner may revoke an exemption granted under this section if he or she
37 determines that a financial audit is necessary to ensure that:

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- 1 (1) The family trust company maintains its safety and soundness; or
- 2 (2) The family trust company's financial statements are accurate and complete.
- 3 257:46 Examination; Family Trust. RSA 383-D:11-1101 is repealed and reenacted to read as
- 4 follows:
- 5 383-D:11-1101 Examination.
- 6 (a) The commissioner shall examine a family trust company every 36 months.
- 7 (b) RSA 383-C:14-1401 and RSA 383-C:14-1402 shall not apply to a family trust
- 8 company.

9 257:47 New Chapter; New Hampshire Foundation Act. Amend RSA by inserting after chapter

10 564-D the following new chapter:

CHAPTER 564-E

NEW HAMPSHIRE FOUNDATION ACT

Article 1

- 14 564-E:1-101 Short Title. This chapter may be cited as the "New Hampshire Foundation Act."
- 15 564-E:1-102 Scope. This chapter applies to foundations and foreign foundations.
- 16 564-E:1-103 Reservation of Power to Amend or Repeal. The general court has power to amend
- 17 or repeal all or part of this chapter at any time, and all persons subject to this chapter are governed
- 18 by the amendment or repeal.

Article 2

Definitions and Rules of Construction

- 21 564-E:2-201 Definitions. For purposes of this chapter, the following definitions shall apply:
- 22 (a) "Beneficiary" means a person:
- 23 (1) To whom the foundation may distribute foundation property; and
- 24 (2) The person is:
- 25 (A) Identified by name in the foundation's governing documents; or
- 26 (B) Ascertainable from the foundation's governing documents by reference to:
- 27 (i) A class; or
- 28 (ii) A relationship to another person, including an individual who may not
- 29 be living at the time of the foundation's formation or at the time members of a class are to be
- 30 determined under the foundation's governing documents.
- 31 (b) "Beneficiary's interest" means a beneficiary's interest in a foundation as defined by
- 32 the foundation's governing documents.
- 33 (c) "Breach of duty" means a breach of any duty imposed on a foundation official by this
- 34 chapter or the foundation's governing documents.
- 35 (d) "Bylaws" means the bylaws adopted under RSA 564-E:7-701, as may be amended or
- 36 restated in accordance with RSA 564-E:7-702.
- 37 (e) "Certificate of formation" means the certificate of formation as filed with the

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1 secretary of state under RSA 564-E:3-301, as may be amended in accordance with RSA 564-E:3-305
2 or restated in accordance with RSA 564-E:3-306.

3 (f) "Charitable trust" means a foundation or a portion of a foundation created for one or
4 more charitable purposes.

5 (g) "Director" means a person appointed as a director in accordance with RSA 564-E:10-
6 1005.

7 (h) "Entity" means a person other than a natural person.

8 (i) "Foreign foundation" means a foundation formed under the laws of a jurisdiction
9 other than this state.

10 (j) "Foundation" means a foundation formed under this chapter.

11 (k) "Foundation official" means each of a foundation's directors and protectors.

12 (l) "Founder" means a person who contributes property to a foundation. If more than
13 one person contributes property to a foundation, then each person is a founder of the portion of the
14 foundation property attributable to that person's contribution, except to the extent that another
15 person has the power to revoke or withdraw that portion.

16 (m) "Good faith" means, with respect to a foundation official, the observance of common
17 standards of honesty, decency, fairness, and reasonableness in accordance with the governing
18 documents, the foundation's purposes, and the beneficiaries' interests.

19 (n) "Governing document" means the foundation's certificate of formation or its bylaws.

20 (o) "Incapacity" means an individual's inability to manage property or business affairs
21 because the individual:

22 (1) Has an impairment in the ability to receive and evaluate information or make
23 or communicate decisions even with the use of technological assistance; or

24 (2) Is:

25 (A) Missing;

26 (B) Detained, including incarcerated in a penal system; or

27 (C) Outside the United States and unable to return.

28 (p) "Individual" means a natural person.

29 (q) "Jurisdiction," with respect to a geographic area, includes a state or country.

30 (r) "Person" means an individual, corporation, business trust, estate, trust, foundation,
31 partnership, limited liability company, association, joint venture, government (including a
32 governmental subdivision, agency, or instrumentality), public corporation, or any other legal or
33 commercial entity.

34 (s) "Property" means anything that may be the subject of ownership, whether real or
35 personal, legal or equitable, or any interest in anything that may be the subject of ownership.

36 (t) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's
37 qualification is determined:

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- 1 (1) Is a distributee or permissible distributee of the foundation's property;
- 2 (2) Would be a distributee or permissible distributee of the foundation's property if
- 3 the interests of the distributees described in subsection (t)(1) terminated on that date but the
- 4 termination of those interests would not cause the foundation to dissolve; or
- 5 (3) Would be a distributee or permissible distributee of the foundation's property if
- 6 the foundation dissolved on that date.
- 7 (u) "Record" means information that is inscribed on a tangible medium or that is stored
- 8 in an electronic or other medium and is retrievable in perceivable form.
- 9 (v) "Registered foreign foundation" means a foreign foundation that is registered under
- 10 RSA 564-E:21-2102.
- 11 (w) "Registrable activity" is defined in RSA 564-E:21-2101(b).
- 12 (x) "State" means a state of the United States, the District of Columbia, Puerto Rico,
- 13 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
- 14 the United States. The term "state" includes an Indian tribe or band that is recognized by federal
- 15 law or formally acknowledged by a state.
- 16 564-E:2-202 Rules of Construction.
- 17 (a) In interpreting or construing this chapter or a provision of a governing document,
- 18 the power or obligation to distribute, appoint, or direct the distribution of property to a person
- 19 includes the power to distribute, appoint, or direct the distribution of the property for the benefit of
- 20 that person.
- 21 (b) In interpreting or construing this chapter or a provision of a governing document,
- 22 the following considerations shall apply:
- 23 (1) Primary consideration shall be given to the preservation of the founder's intent
- 24 as expressed in the governing documents.
- 25 (2) Secondary consideration shall be given to the following objectives, in no order of
- 26 priority among them:
- 27 (A) The protection of the beneficiaries' interests consistent with the founder's
- 28 intent as expressed in the governing documents;
- 29 (B) The promotion of certainty concerning the foundation officials' duties,
- 30 powers, and liabilities, including the division of those duties, powers, and liabilities among the
- 31 foundation officials; and
- 32 (C) The promotion of the efficient administration of the foundation.
- 33 (c) The word "include" and any variants of that word shall be construed as words of
- 34 enlargement and shall not be construed as words of limitation or restriction.

Article 3
Formation

564-E:3-301 Formation.

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1 (a) One or more persons may act as the organizers of a foundation by filing with the
2 secretary of state the foundation's certificate of formation.

3 (b) The foundation's certificate of formation shall set forth:

4 (1) The foundation's name;

5 (2) The name of the foundation's initial registered agent in this state; and

6 (3) The address of the foundation's initial registered office in this state.

7 (c) Except to the extent that it is inconsistent with this chapter or any other applicable
8 law, the foundation's certificate of formation may include any of the following:

9 (1) The foundation's purposes;

10 (2) The name of each of the foundation's initial directors;

11 (3) If the foundation's existence will not begin upon the filing of certificate of
12 formation with the secretary of state, the effective date and time on which the foundation's
13 existence shall begin;

14 (4) If the foundation will exist only for a limited period, the date on which the
15 foundation shall terminate;

16 (5) Any provision managing or regulating the foundation's affairs;

17 (6) Any provision defining, limiting, or regulating the foundation's powers;

18 (7) Any provision defining, limiting, or regulating a foundation official's duties and
19 powers; and

20 (8) Any other matter that the organizer deems necessary or advisable.

21 (d) For purposes of subsection (c)(3), the effective date and time shall not be more than
22 90 days after the filing of the foundation's certificate of formation with the secretary of state.

23 564-E:3-302 Date of Formation.

24 (a) Unless the certificate of formation specifies a delayed effective time and date in
25 accordance with RSA 564-E:3-301(c)(3) and (d), the foundation's existence begins upon the filing of
26 its certificate of formation with the secretary of state.

27 (b) The secretary of state's acceptance for filing of the certificate of formation is
28 conclusive proof that the organizer satisfied all conditions precedent to the foundation's formation,
29 except in a judicial proceeding by this state to revoke the foundation's formation or involuntarily
30 dissolve the foundation.

31 564-E:3-303 Legal Status. A foundation is a legal entity separate from each of its founders,
32 foundation officials, and beneficiaries.

33 564-E:3-304 Pre-Formation Transactions. All persons who purport to act as or on behalf of a
34 foundation while knowing that a foundation had not been formed under this chapter are jointly and
35 severally liable for all liabilities created while acting in that manner.

36 564-E:3-305 Amendment of the Certificate of Formation.

37 (a) Unless the governing documents provide otherwise, the founder or the directors

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1 may amend a foundation's certificate of formation by filing with the secretary of state a certificate of
2 amendment.

3 (b) The certificate of amendment shall set forth:

4 (1) The foundation's name; and

5 (2) The amendment to the certificate of formation.

6 (c) A certificate of formation may be amended at any time in any respect so long as the
7 certificate of formation as amended contains only provisions that lawfully may be contained in the
8 certificate of formation at the time of making the amendment.

9 (d) Any amendment to the certificate of formation shall be effective on the date on
10 which the certificate of amendment is filed.

11 (e) If the founder retained the power to direct the directors to amend the certificate of
12 formation, then the directors shall have a duty to amend the certificate of formation in accordance
13 with the founder's directions.

14 **564-E:3-306 Restated Certificate of Formation.**

15 (a) Unless the governing documents provide otherwise, the founder or the directors
16 may restate the foundation's certificate of formation by filing with the secretary of state a restated
17 certificate of formation.

18 (b) The restated certificate of formation shall set forth:

19 (1) The foundation's name; and

20 (2) The restatement of the certificate of formation.

21 (c) The restated certificate of formation may contain one or more amendments to the
22 certificate of formation as permitted in a certificate of amendment under RSA 564-E:3-305.

23 **Article 4**

24 **Name**

25 **564-E:4-401 Name.**

26 (a) A foundation's name shall contain the word "foundation," "stichting," or the
27 abbreviation "fnd." or "stak."

28 (b) A foundation's name shall not contain language stating or implying that the
29 foundation is organized for a purpose other than that permitted by this chapter and the
30 foundation's certificate of formation.

31 (c) Except as authorized by subsections (d) and (e), a foundation's name shall be
32 distinguishable from and not the same as:

33 (1) The name of an entity incorporated, authorized, formed, or registered to
34 transact business in this state under RSA 292, RSA 293-A, RSA 293-B, RSA 294-A, RSA 301, RSA
35 301-A, RSA 304-A, RSA 304-B, RSA 304-C, RSA 305-A, RSA 383-E, RSA 349, or this chapter;

36 (2) A name reserved or registered under RSA 293-A, RSA 293-B, RSA 304-A,
37 RSA 304-B, RSA 304-C, or this chapter;

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(3) The fictitious name adopted by a foreign entity authorized to transact business in this state because its real name is unavailable;

(4) The name of an agency or instrumentality of the United States or this state or a subdivision of this state;

(5) The name of any political party recognized under RSA 652:11, unless written consent is obtained from the authorized representative of the political organization; and

(6) The name “farmers’ market” unless the foundation meets the definition of “farmers’ market” under RSA 21:34-a, V.

(d) A foundation may apply to the secretary of state for authorization to use a name that is not distinguishable from, or is the same as, one or more of the names described in subsection (c) as determined from review of the records of the secretary of state.

(e) The secretary of state shall authorize use of the name that a foundation applies to use if:

(1) In the case of a name that is not distinguishable from a name described in subsection (c), each holder of the name described in subsection (c) consents to the foundation’s use of that name;

(2) In the case of a name that is the same as a name described in subsection (c), each holder of the name described in subsection (c) consents to the foundation’s use of that name and one or more words are added to the name so that the foundation’s name is distinguishable from the name described in subsection (c);

(3) The entity that has a name described in subsection (c) consents to the foundation’s use of that name, and the entity undertakes to change its name to a name that is distinguishable from, and not the same as, the name that the foundation is applying to use; or

(4) The foundation delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the foundation’s right to use the name that the foundation applied to use in this state.

(f) Any consent under subsection (e)(1) or (e)(2) must be filed with the secretary of state.

(g) Any undertaking under subsection (e)(4) must be made in a form satisfactory to the secretary of state and must be filed with the secretary of state.

(h) A foundation may use the name, including the fictitious name, of another domestic or foreign entity that is used in this state if:

(1) The other entity is incorporated, authorized, formed, or registered to transact business in this state; and

(2) The foundation:

(A) Has merged with the other entity;

(B) Has been formed by reorganization of the other entity; or

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(C) Has acquired all or substantially all of the assets, including the name, of the other entity.

(i) This section does not:

(1) Prohibit an entity incorporated, authorized, formed, or registered to transact business in this state from using the word “foundation” or an abbreviation of that word in the entity’s name;

(2) Control the use of fictitious names; or

(3) Prohibit the owner or owners of a trade name registered under RSA 349 to form a foundation under the same name as the trade name.

564-E:4-402 Reservation of Name.

(a) A person may reserve the exclusive use of a foundation’s name by filing with the secretary of state an application to reserve the name.

(b) The application shall set forth:

(1) The applicant’s name;

(2) The applicant’s address; and

(3) The name that the applicant is applying to reserve.

(c) If the secretary of state finds that the name applied for is available, then the secretary of state shall reserve the name for the applicant’s exclusive use for a 120-day period.

(d) Once having reserved a name, the applicant may renew the reservation of the name for successive 120-day periods.

(e) The applicant may transfer the reserved name to another person by filing with the secretary of state a notice of transfer.

(f) The notice of transfer shall set forth:

(1) The reserved name;

(2) The transferor’s name;

(3) The transferee’s name; and

(4) The transferee’s address.

(g) The transfer of a reserved name under subsection (e) shall be effective upon filing the notice of transfer, and the transferee shall have the right to renew the reservation of the name in accordance with subsection (d).

Article 5

Registered Agent and Registered Office

564-E:5-501 Registered Agent.

(a) Each foundation shall continuously maintain a registered agent in this state.

(b) Each of the following persons qualifies as a registered agent:

(1) An individual who:

(A) Resides in this state; and

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(B) Has a residential or business office that is identical with the registered office;

(2) A corporation that:

(A) Is organized or authorized under RSA 292, RSA 293-A, or RSA 294-A; and

(B) Has a business office that is identical with the registered office;

(3) A limited liability company that:

(A) Is formed or authorized under RSA 304-C; and

(B) Has a business office that is identical with the registered office;

(4) A professional limited liability company that:

(A) Is formed or authorized under RSA 304-D; and

(B) Has a business office that is identical with the registered office;

(5) A limited liability partnership that:

(A) Is formed or authorized under RSA 304-A:44; and

(B) Has a business office that is identical with the registered office; or

(6) A foundation that:

(A) Is formed or authorized under this chapter; and

(B) Has a business office that is identical with the registered office.

(c) Upon ceasing to qualify as a registered agent under subsection (b), a person who is a foundation's registered agent shall file with the secretary a notice of resignation in accordance with RSA 564-E:5-503.

564-E:5-502 Registered Office.

(a) Each foundation shall continuously maintain in this state a registered office.

(b) A foundation's registered office may be the same as any of its offices in this state.

564-E:5-503 Change of the Registered Agent.

(a) A foundation may change its registered agent by filing with the secretary of state a notice of change of registered agent.

(b) The notice of change of registered agent shall set forth:

(1) The foundation's name;

(2) The street address of its current registered office;

(3) The current registered agent's name; and

(4) The successor registered agent's name.

564-E:5-504 Resignation of the Registered Agent.

(a) A foundation's registered agent may resign as registered agent by filing with the secretary of state a notice of resignation.

(b) The notice of resignation shall set forth:

(1) The foundation's name; and

(2) The registered agent's name.

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1 (c) The notice of resignation may include a statement that the registered office is also
2 discontinued.

3 (d) The secretary of state shall mail a copy of the notice of resignation to the foundation
4 at the foundation's principal office.

5 (e) The appointment of the registered agent shall terminate on the earlier of:

6 (1) Thirty-one days after filing of the notice of resignation with the secretary of
7 state; or

8 (2) Upon the appointment of a successor registered agent.

9 **564-E:5-505 Registered Agent's Change of Address.**

10 (a) If a registered agent changes its address to another place in this state, then it may
11 change the address of the registered office of any foundation for which it is a registered agent by
12 filing with the secretary of state a notice of change of address.

13 (b) The notice of change of address shall set forth:

14 (1) The foundation's name;

15 (2) The registered agent's name;

16 (3) The registered agent's new address; and

17 (4) A statement that a copy of the notice has been sent to the foundation.

18 **564-E:5-506 Change of the Registered Office.**

19 (a) A foundation may change its registered office by filing with the secretary of state a
20 notice of change of registered office.

21 (b) The notice of change of registered office shall set forth:

22 (1) The foundation's name;

23 (2) The street address of the foundation's current registered office; and

24 (3) The street address of the foundation's new registered office.

25 **564-E:5-507 Service on a Foundation.**

26 (a) A foundation's registered agent is the foundation's agent for service of process,
27 notice, or demand required or permitted by law to be served on the foundation.

28 (b) A foundation may be served by registered mail or certified mail if:

29 (1) The foundation does not have a registered agent; or

30 (2) After reasonable diligence, the foundation's registered agent cannot be served.

31 (c) Service under subsection (b) shall be effective if:

32 (1) It is correctly addressed to the foundation at the foundation's principal office;

33 (2) Postage is prepaid; and

34 (3) It is sent return receipt requested.

35 (d) Service under subsection (b) is perfected at the earliest of:

36 (1) The date on which the foundation receives the documents sent by registered
37 mail or certified mail;

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(2) If a person signs the return receipt on the foundation's behalf, the date of receipt shown on the return receipt; or

(3) Five days after its deposit for mailing with the United States Postal Service, as evidenced by the postmark.

(e) This section does not preclude other means of serving a foundation.

Article 6

Purpose

564-E:6-601 Purpose.

(a) A foundation shall have one or more purposes.

(b) Each of the purposes shall be:

(1) Lawful;

(2) Not contrary to public policy; and

(3) Possible to achieve.

(c) A foundation's purposes may include any charitable purpose and any noncharitable purpose.

Article 7

Bylaws

564-E:7-701 Bylaws.

(a) The founder, organizers, or initial directors shall adopt the foundation's initial bylaws.

(b) The foundation's bylaws shall set forth each of the foundation's purposes.

(c) Except to the extent that it is inconsistent with the certificate of formation, this chapter, or any other applicable law, the foundation's bylaws may set forth any of the following:

(1) Any provision defining, limiting, or regulating capital contributions;

(2) Any provision defining, limiting, or regulating a founder's rights, powers, and interests in the foundation;

(3) Any provision defining, limiting, or regulating the manner in which the foundation property may be applied, distributed, or accumulated;

(4) Any provision imposing obligations upon beneficiaries as a condition of any distribution or other benefit;

(5) Any provision for the revocable or irrevocable addition of one or more beneficiaries or classes of beneficiaries;

(6) Any provision for the revocable or irrevocable elimination of one or more beneficiaries or classes of beneficiaries;

(7) Any provision defining, limiting, or regulating the duties, powers, and liabilities of one or more foundation officials or classes of foundation officials;

(8) Any provision regarding the appointment, resignation, and removal of

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1 foundation officials;

2 (9) A nonjudicial dispute resolution provision in accordance with RSA 564-E:16-
3 1606;

4 (10) A no-contest provision in accordance with RSA 564-E:14-1404; and

5 (11) Any provision regarding any other matter that the founder or the board of
6 directors deems necessary or advisable.

7 564-E:7-702 Reserved Powers.

8 (a) The founder may reserve any one or more powers, rights, and interests, including
9 any of the following:

10 (1) The power to amend or restate the foundation's certificate of formation;

11 (2) The power to amend, restate, or revoke the foundation's bylaws;

12 (3) The power to appoint any one or more foundation officials;

13 (4) The power to remove any one or more foundation officials;

14 (5) The power to direct the directors to distribute some or all of the foundation's
15 property to one or more beneficiaries or in furtherance of one or more of the foundation's purposes;

16 (6) The power to direct the directors concerning the investment of the foundation
17 property;

18 (7) The right to receive distributions from the foundation; and

19 (8) The power to dissolve the foundation.

20 (b) Unless the governing documents provide otherwise, the founder retains the
21 following powers, rights, and interests:

22 (1) The power to amend or restate the foundation's certificate of formation;

23 (2) The power to amend, restate, or revoke the foundation's bylaws;

24 (3) The power to direct the directors concerning distributions of the foundation's
25 property;

26 (4) The right to receive distributions from the foundation; or

27 (5) The power to dissolve the foundation.

28 564-E:7-703 Amendment and Restatement of the Bylaws. Unless the governing documents
29 provide otherwise, the following persons may revoke, amend, or restate the bylaws:

30 (a) The founder; or

31 (b) The board of directors.

32 Article 8

33 Powers

34 564-E:8-801 General Powers.

35 (a) Unless the governing documents provide otherwise, a foundation shall have the
36 power to do all things necessary or convenient to carry out its activities and internal affairs,
37 including the capacity to sue and be sued in its own name.

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1 (b) Subject to subsection (c), the validity of an action taken by a foundation may not be
2 challenged on the ground that the foundation lacks or lacked power to act.

3 (c) A foundation's power to act may be challenged:

4 (1) In a proceeding by any of the following persons against the foundation to enjoin
5 the act:

6 (A) A founder;

7 (B) A foundation official;

8 (C) A beneficiary; or

9 (D) To the extent that the foundation is a charitable trust, the director of
10 charitable trusts;

11 (2) In a proceeding by the foundation, directly, derivatively, or through a receiver,
12 trustee, or other legal representative, against an incumbent or former foundation official, employee,
13 or agent of the foundation; or

14 (3) In a proceeding by the attorney general under RSA 564-E:20-2013(a) to dissolve
15 the foundation.

16 (d) In a judicial proceeding under subsection (c)(1)(A), the court may:

17 (1) Enjoin or set aside the act if:

18 (A) It is equitable to do so; and

19 (B) All of the affected persons are parties to the proceeding;

20 (2) Award damages for loss suffered by the foundation or another party because of
21 enjoining the unauthorized act.

22 564-E:8-802 Trust Powers.

23 (a) A foundation shall have trust powers to the extent that it:

24 (1) Does not transact business with the general public;

25 (2) Is a family trust company as defined in RSA 383-A:2-201(a)(26); or

26 (3) Is a foreign family trust company that is authorized to engage in trust business
27 in this state under RSA 383-D:13-1301.

28 (b) Trust powers include the power to act as a trustee or other fiduciary, a trust advisor
29 as defined in RSA 564-B:1-103(27), or a trust protector as defined in RSA 564-B:1-103(28).

30 (c) For purposes of subsection (a)(1), a foundation does not transact business with the
31 general public to the extent that the foundation:

32 (1) Qualifies as a family office under 15 U.S.C. section 80b-2(a)(11)(G); or

33 (2) Offers and provides its services only to persons who would qualify as family
34 clients as defined in RSA 383-D:2-201(b)(5) if the foundation was chartered as a family trust
35 company under RSA 383-D.

36 (d) For purposes of subsection (c)(2), a foundation may use any reasonable method for:

37 (1) Identifying a designated relative as defined in RSA 383-D:2-201(b)(2); and

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(2) Selecting a method for determining family members as described in RSA 383-D:4-402(b)(2) or (c).

(e) A foundation described in subsection (a)(1) shall be exempt from RSA Title 35 and shall not be subject to the jurisdiction of the New Hampshire bank commissioner.

(f) To the extent that a foundation other than a foundation described in subsection (a)(2) or (a)(3) transacts business with the general public, the following shall apply:

(1) Any action by the foundation shall not be void or voidable solely by reason of the foundation transacting business with the general public.

(2) Each of the foundation's directors shall be personally, jointly, and severally liable for all liabilities created by the foundation transacting business with the general public, including any breach of a fiduciary duty to a member of the general public.

(3) A director's liability under subsection (f)(2) is in addition to any civil or criminal penalties imposed by applicable law.

(g) This section does not restrict the rights and remedies of any person affected by a foundation's exercise of trust powers, including the right to commence a judicial proceeding seeking:

(1) A remedy for a breach of trust under RSA 564-B:10-1001;

(2) Damages for a breach of trust under RSA 564-B:10-1002; or

(3) Damages under RSA 564-B:10-1003.

Article 9

Capital

564-E:9-901 Capital.

(a) Any property may be contributed to a foundation's capital.

(b) After the initial contribution to a foundation's capital, additional contributions to a foundation's capital shall be made as follows:

(1) An additional contribution shall be made in substantial compliance with the provisions of the certificate of formation and bylaws concerning additional contributions; or

(2) If the certificate of formation and bylaws do not contain any provision concerning additional contributions, the additional contribution shall be made in accordance with the terms and conditions that the directors deem prudent, considering the foundation's purposes and the beneficiaries' interests.

(c) A founder shall not have any right, power, or interest in a foundation solely by reason of contributing property to the foundation.

Article 10

Directors

564-E:10-1001 Board of Directors.

(a) A foundation shall have a board of directors.

(b) Unless the governing documents provide otherwise, the board of directors shall

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1 have general responsibility for managing the foundation's affairs and the authority to exercise the
2 foundation's powers.

3 564-E:10-1002 Qualifications.

4 (a) The governing documents may prescribe qualifications for directors.

5 (b) Unless the governing documents provide otherwise, a director may be:

6 (1) An individual or an entity; and

7 (2) A resident of any jurisdiction and need not be a resident of this state.

8 564-E:10-1003 Number.

9 (a) A foundation shall have at least one director.

10 (b) Subject to subsection (a), the number of directors may be increased or decreased:

11 (1) In accordance with the provisions of the governing documents governing the
12 method for increasing or decreasing the number of directors; or

13 (2) By an amendment of the governing documents.

14 564-E:10-1004 Classes.

15 (a) A foundation may have one or more classes of directors.

16 (b) Each class of directors shall have the duties and powers assigned to that class
17 under the governing documents.

18 564-E:10-1005 Appointment and Term.

19 (a) The initial directors shall be appointed by:

20 (1) The organizers; or

21 (2) The founder.

22 (b) After the appointment of the initial directors, any additional or successor director
23 shall be appointed:

24 (1) In accordance with the provisions of the governing documents governing the
25 appointment of directors; or

26 (2) If the governing documents do not contain any provision for the appointment of
27 directors, by:

28 (A) The directors; or

29 (B) An amendment of the governing documents.

30 (c) Unless the governing documents provide otherwise, the duration of a director's term
31 shall be indefinite and shall terminate only upon:

32 (1) In the case of a director who is an individual, the director's death, resignation,
33 or removal; or

34 (2) In the case of a director that is an entity, the director's dissolution, resignation,
35 or removal.

36 564-E:10-1006 Resignation.

37 (a) A director may resign at any time by delivering written notice of the resignation to:

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1 (1) The other directors; and

2 (2) The persons who have the power to appoint a successor director.

3 (b) A resignation is effective upon the delivery of the notice of resignation, unless that
4 notice specifies a later effective date or an effective date determined upon the happening of an event
5 or events.

6 564-E:10-1007 Removal.

7 (a) A director may be removed in accordance with the governing documents.

8 (b) The court may remove a director if:

9 (1) The director has committed a serious breach of duty;

10 (2) Lack of cooperation among the directors substantially impairs the management
11 of the foundation's affairs;

12 (3) Because of unfitness, unwillingness, or persistent failure of the director to
13 manage the foundation effectively, the court determines that removal of the director best serves the
14 foundation's purposes and the beneficiaries' interests; or

15 (4) The court finds that:

16 (A) There has been a substantial change of circumstances or all of the
17 beneficiaries request the removal;

18 (B) The director's removal best serves the beneficiaries' interests and the
19 foundation's purposes;

20 (C) The director's removal is not inconsistent with any of the foundation's
21 material purposes; and

22 (D) One or more suitable persons are continuing to serve as directors or a
23 suitable successor director is available.

24 (c) For purposes of subsection (b)(4)(C), the removal of a person whom the founder
25 personally appointed as a director is presumptively inconsistent with one of the foundation's
26 material purposes, but that presumption may be rebutted by a preponderance of the evidence.

27 564-E:10-1008 Committees.

28 (a) Unless the governing documents provide otherwise, the directors may:

29 (1) Establish one or more committees;

30 (2) Appoint one or more directors as members of a committee;

31 (3) Remove one or more members of a committee; and

32 (4) Terminate any committee.

33 (b) To the extent specified by the directors or in the governing documents, each
34 committee may exercise the powers of the directors.

35 564-E:10-1009 Delegation.

36 (a) Unless the governing documents provide otherwise, the directors may delegate to
37 any one or more persons any duty or power that prudent directors of comparable skills and having

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1 the same power or duty could properly delegate under the circumstances.

2 (b) The directors may delegate a duty or power to a person who is associated or
3 affiliated with any of the directors to the extent permitted under RSA 564-E:11-1102.

4 (c) In delegating to an agent, the directors shall exercise reasonable care, skill, and
5 caution in:

6 (1) Selecting an agent;

7 (2) Establishing the scope and terms of the delegation, consistent with the
8 foundation's purposes and the beneficiaries' interests; and

9 (3) Periodically reviewing the agent's actions for the purpose of monitoring the
10 agent's performance and compliance with the scope and terms of the delegation.

11 (d) To the extent that the directors comply with subsections (a) and (c), the directors
12 are not liable to the foundation or the beneficiaries for an act or omission of the agent to whom the
13 power or duty was delegated.

14 (e) A director's delegation of a power or duty to an agent under a power of attorney
15 shall not be valid unless the power of attorney expressly refers to the director in his, her, or its
16 capacity as a director of the foundation.

17 (f) In the case of a director who is an individual, the director's delegation of any power
18 or duty to an agent under a power of attorney shall terminate upon the director's incapacity unless:

19 (1) The governing documents provide that the delegation may remain effective
20 during the director's incapacity; and

21 (2) The power of attorney provide that the delegation does not terminate upon the
22 director's incapacity.

23 (g) In performing a delegated duty or power, an agent owes to the foundation a duty to
24 exercise reasonable care to comply with the terms of the delegation.

25 (h) By accepting a delegation of any duty or power from a foundation's directors, an
26 agent shall be subject to the personal jurisdiction of the courts of this state regarding any matter
27 involving the foundation.

28 **564-E:10-1010 Voting.**

29 (a) Unless the governing documents provides otherwise, each director shall have one
30 vote on each matter on which the directors may vote.

31 (b) Unless the governing documents provide otherwise, each matter on which the
32 directors may vote shall be decided by vote of a majority of the directors.

33 **564-E:10-1011 Meetings.**

34 (a) The governing documents may set forth provisions relating to:

35 (1) Notice of the time, place, or purpose of any meeting at which any matter is to be
36 voted on by any directors or class of directors;

37 (2) Waiver of any notice of a meeting;

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(6) Any other matter with respect to the exercise of a right to vote.

(c) Participation in a meeting under subsection (b) shall constitute presence in person at the meeting.

Article 11

564-E:11-1101 Duty to Manage the Foundation in Good Faith. A director has a duty to manage the foundation and its property in good faith, in accordance with the terms of the governing documents, and in accordance with this chapter.

(a) Unless the governing documents provide otherwise, a director has a duty to manage the foundation and its property solely in the interests of the foundation's purposes and the beneficiaries' interests.

(1) The director discloses the transaction to the other directors reasonably in advance of the transaction; and

(c) A transaction not concerning the foundation or its property in which a director engages in the director's personal capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the foundation.

564-E:11-1104 Duty of Prudent Management.

(a) Unless the governing documents provide otherwise, a director has a duty to manage the foundation, its affairs, and its property as a prudent person would manage the foundation, its

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(b) A protector shall have any duties and powers set forth in the governing documents.

(c) Unless the governing documents provide otherwise, a protector shall have the power to commence a judicial proceeding for the purposes of:

(1) Protecting the foundation's purposes; or

(2) Enforcing the provisions of the governing documents.

564-E:12-1202 Qualifications.

(a) The governing documents may prescribe qualifications for protectors.

(b) Unless the governing documents provide otherwise, a protector may be:

(1) An individual or an entity; and

(2) A resident of any jurisdiction and need not be a resident of this state.

564-E:12-1203 Number.

(a) Unless the governing documents provide otherwise, a foundation may have one or more protectors.

(b) The number of protectors may be increased or decreased:

(1) In accordance with the provisions of the governing documents governing the method for increasing or decreasing the number of protectors; or

(2) By an amendment of the governing documents.

564-E:12-1204 Classes.

(a) A foundation may have one or more classes of protectors.

(b) Each class of protectors shall have the duties and powers assigned to that class under the governing documents.

564-E:12-1205 Appointment and Term.

(a) The initial protectors may be appointed by:

(1) The organizers; or

(2) The founder.

(b) After the appointment of the initial protectors, any additional or successor protector shall be appointed:

(1) In accordance with the provisions of the governing documents governing the appointment of protectors; or

(2) If the governing documents do not contain any provision for the appointment of protectors, by:

(A) The protectors; or

(B) The court.

(c) Unless the certificate of formation or bylaws provide otherwise, the duration of a protector's term shall be indefinite and shall terminate only upon:

(1) The protector's resignation or removal;

(2) In the case of protector who is an individual, the protector's death; or

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1 (3) In the case of a protector that is an entity, the protector's dissolution.

2 564-E:12-1206 Resignation.

3 (a) Unless the governing documents provide otherwise, a protector may resign at any
4 time by delivering written notice of the resignation to:

5 (1) Each of the other protectors; and

6 (2) The persons who have the power to appoint a successor protector.

7 (b) A protector's resignation is effective upon the delivery of the notice of resignation,
8 unless that notice specifies a later effective date or an effective date determined upon the happening
9 of an event or events.

10 564-E:12-1207 Removal.

11 (a) A protector may be removed in accordance with the governing documents.

12 (b) The court may remove a protector if:

13 (1) The protector has committed a serious breach of duty;

14 (2) Lack of cooperation among the protectors substantially impairs the
15 management of the foundation's affairs;

16 (3) Because of unfitness, unwillingness, persistent failure of the protector to
17 manage the foundation effectively, the court determines that removal of the protector best serves
18 the foundation's purposes and the beneficiaries' interests; or

19 (4) The court finds that:

20 (A) There has been a substantial change of circumstances or all of the
21 beneficiaries request the removal;

22 (B) The protector's removal best serves the foundation's purposes and the
23 beneficiaries' interests;

24 (C) The protector's removal is not inconsistent with any of the foundation's
25 material purpose; and

26 (D) One or more suitable persons are continuing to serve as protectors or a
27 suitable successor protector is available.

28 (c) For purposes of subsection (b)(4)(C), the removal of a person whom the founder
29 personally appointed as a protector is presumptively inconsistent with one of the foundation's
30 material purposes, but that presumption may be rebutted by a preponderance of the evidence.

31 564-E:12-1208 Committees.

32 (a) Unless the governing documents provide otherwise, the protectors may:

33 (1) Establish one or more committees;

34 (2) Appoint one or more protectors as members of a committee;

35 (3) Remove one or more members of a committee; and

36 (4) Terminate any committee.

37 (b) To the extent specified by the protectors or in the governing documents, each

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1 committee may exercise the powers of the protectors.

2 564-E:12-1209 Delegation.

3 (a) Unless the governing documents provide otherwise, the protectors may delegate to
4 any one or more persons any duty or power that prudent protectors of comparable skills and having
5 the same power or duty could properly delegate under the circumstances.

6 (b) The protectors may delegate a duty or power to a person who is associated or
7 affiliated with any of the protectors to the extent permitted under RSA 564-E:13-1302.

8 (c) In delegating to an agent, the protectors shall exercise reasonable care, skill, and
9 caution in:

10 (1) Selecting an agent;

11 (2) Establishing the scope and terms of the delegation, consistent with the
12 foundation's purposes and the beneficiaries' interests; and

13 (3) Periodically reviewing the agent's actions for the purpose of monitoring the
14 agent's performance and compliance with the scope and terms of the delegation.

15 (d) To the extent that the protectors comply with subsections (a) and (c), the protectors
16 are not liable to the foundation or the beneficiaries for an act or omission of the agent to whom the
17 power or duty was delegated.

18 (e) A protector's delegation of a power or duty to an agent under a power of attorney
19 shall not be valid unless the power of attorney expressly refers to the protector in his, her, or its
20 capacity as a protector of the foundation.

21 (f) In the case of a protector who is an individual, the protector's delegation of any
22 power or duty to an agent under a power of attorney shall terminate upon the protector's incapacity
23 unless:

24 (1) The governing documents provide that the delegation may remain effective
25 during the protector's incapacity; and

26 (2) The power of attorney provide that the delegation does not terminate upon the
27 protector's incapacity.

28 (g) In performing a delegated duty or power, an agent owes to the foundation a duty to
29 exercise reasonable care to comply with the terms of the delegation.

30 (h) By accepting a delegation of any duty or power from a foundation's protectors, an
31 agent shall be subject to the personal jurisdiction of the courts of this state regarding any matter
32 involving the foundation.

33 564-E:12-1210 Voting.

34 (a) Unless the governing documents provide otherwise, each protector shall have one
35 vote on each matter on which the protectors may vote.

36 (b) Unless the governing documents provide otherwise, each matter on which the
37 protectors may vote shall be decided by vote of a majority of the protectors.

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1 564-E:12-1211 Meetings.

2 (a) The governing documents may set forth provisions relating to:

3 (1) Notice of the time, place, or purpose of any meeting at which any matter is to be
4 voted on by any protectors or class of protectors;

5 (2) Waiver of any notice of a meeting;

6 (3) Action by vote without a meeting;

7 (4) Quorum requirements;

8 (5) Voting in person or by proxy; or

9 (6) Any other matter with respect to the exercise of a right to vote.

10 (b) Unless the governing documents provide otherwise, any meeting of the protectors
11 may be held by means of conference telephone or other communications equipment by means of
12 which all persons participating in the meeting can hear each other.

13 (c) Participation in a meeting under subsection (b) shall constitute presence in person
14 at the meeting.

15 564-E:12-1212 Actions by Consent. Unless the governing documents provide otherwise, the
16 protectors may take any vote without a meeting and without prior notice if the vote is recorded in a
17 writing setting forth the action so taken and is signed by all of the protectors.

18 Article 13

19 Protector's Duties

20 564-E:13-1301 Duty to Act in Good Faith. A protector has a duty to act in good faith, in
21 accordance with the provisions of the governing documents, and in accordance with this chapter.

22 564-E:13-1302 Duty of Loyalty.

23 (a) Unless the governing documents provide otherwise, a protector has a duty to
24 manage the foundation and its property solely in the interests of the foundation's purposes and the
25 beneficiaries' interests.

26 (b) Unless the governing documents provide otherwise, a transaction not concerning
27 the foundation or its property in which a protector engages in the protector's personal capacity or a
28 person affiliated, related, or similarly associated with the protector engages does not violate the
29 protector's duty under subsection (a) to the extent that:

30 (1) The protector discloses the transaction to the other protectors reasonably in
31 advance of the transaction; and

32 (2) The transaction is fair to the foundation.

33 (c) A transaction not concerning a foundation's property in which a protector engages
34 in the protector's personal capacity involves a conflict between personal and fiduciary interests if
35 the transaction concerns an opportunity properly belonging to the foundation.

36 564-E:1303 Duty of Impartiality. Unless the governing documents provide otherwise, if a
37 foundation has two or more beneficiaries, then the protector has a duty to act impartially in

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managing the foundation and its property, giving due regard to the foundation's purposes and the beneficiaries' interests.

564-E:1304 Duty to Maintain Records. Unless the governing documents provide otherwise, a protector shall keep adequate records of the protector's acts as a protector.

564-E:1305 Protector's Skills.

(a) Unless the governing documents provide otherwise, a protector who has special skills or expertise shall use those special skills or expertise.

(b) Unless the governing documents provide otherwise, a protector who is appointed as a protector in reliance upon the protector's representation that he, she, or it has special skills or expertise shall use those special skills or expertise.

Article 14

Beneficiaries

564-E:14-1401 Nature of Beneficial Interests.

(a) Subject to subsection (b), a beneficiary's interest is a mere expectancy and is not a property interest or an enforceable right.

(b) A beneficiary's interest is a property interest to the extent that:

(1) The beneficiary has a currently exercisable power to appoint the foundation's property to himself, herself, or itself without the consent of any other person; or

(2) The directors have failed to make a distribution to the beneficiary in accordance with a provision of the governing documents requiring the directors to make that distribution.

(c) For the purposes of determining a beneficiary's interest, the founder's intent as expressed in the terms of the governing documents shall be paramount.

564-E:14-1402 Representatives.

(a) Subject to subsections (b) and (c), the following shall apply:

(1) A conservator may represent and bind the conservatee.

(2) The following person may represent and bind an incompetent individual:

(A) A guardian of the incompetent individual's estate; or

(B) A guardian of the incompetent individual's person if a guardian of the incompetent individual's estate has not been appointed.

(3) An agent may represent and bind the principal to the extent that the agent has the power to represent and bind the principal in connection with the particular matter or dispute.

(4) A trustee of a trust may represent and bind the trust's beneficiaries.

(5) A personal representative of a decedent's estate may represent and bind the persons interested in the estate.

(6) An individual may represent and bind each of the individual's minor, incapacitated, or unborn children if the child is not represented by:

(A) A guardian of the estate under subsection (a)(2)(A); or

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- 1 (B) A guardian of the estate under subsection (a)(2)(B).
- 2 (7) An individual may represent and bind each of the individual's minor,
3 incapacitated, or unborn descendants if the descendant is not represented by:
- 4 (A) The descendant's parent under subsection (a)(6);
- 5 (B) A guardian of the estate under subsection (a)(2)(A); or
- 6 (C) A guardian of the estate under subsection (a)(2)(B).
- 7 (8) An individual who has a power of appointment may represent and bind each of
8 the permissible appointees if the permissible appointees include the individual, the individual's
9 creditors, the individual's estate, or the creditors of the individual's estate.
- 10 (9) A person may represent and bind any of the following persons if the
11 representative and the represented persons have substantially identical interests with respect to
12 the matter or dispute:
- 13 (A) A minor, incapacitated, or unborn individual; or
- 14 (B) A person whose identity or location is unknown and is not reasonably
15 ascertainable.
- 16 (10) Subject to section (d), a person may represent and bind any of the following
17 persons whom the person is appointed to represent in accordance with reasonable procedures under
18 the governing documents:
- 19 (A) A minor, incapacitated, or unborn individual;
- 20 (B) A person whose identity or location is unknown and is not reasonably
21 ascertainable; or
- 22 (C) A person whose interest is not adequately represented under this section.
- 23 (11) A person may represent and bind any of the following persons whom a court
24 appoints the person to represent:
- 25 (A) A minor, incapacitated, or unborn individual;
- 26 (B) A person whose identity or location is unknown and is not reasonably
27 ascertainable; or
- 28 (C) A person whose interest is not adequately represented under this section.
- 29 (b) A person may not represent another person to the extent that:
- 30 (1) There is any conflict of interest between them; or
- 31 (2) The represented person has objected to the representation.
- 32 (c) A founder shall not represent or bind a beneficiary in connection with any matter or
33 dispute involving:
- 34 (1) A modification of the governing documents; or
- 35 (2) The foundation's dissolution.
- 36 (d) For purposes of subsection (a)(10), the procedure for the appointment of a
37 representative is not reasonable if:

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1 (1) There is a conflict of interest between the person appointing the representative
2 and any interested person;

3 (2) There is a conflict of interest between the representative and any represented
4 person; or

5 (3) With respect to any matter that is the subject of the trust dispute, there is a
6 conflict of interest among the persons whom the representative is appointed to represent.

7 (e) A person who may act as another person's representative under section (a) may
8 represent and bind the represented person in connection with any matter, dispute, or judicial
9 proceeding involving the foundation.

10 (1) Notice to a representative shall have the same effect as notice to each person
11 whom the representative represents.

12 (2) A consent, release, ratification, or agreement by a representative shall have the
13 same effect as a consent, release, ratification, or agreement by each person whom the representative
14 represents.

15 564-E:14-1403 Return of Improper Distributions. A person who receives a distribution from a
16 foundation is liable to return the distribution to the extent that a court subsequently determines
17 that the person was not entitled to the distribution.

18 564-E:14-1404 Enforcement of No-Contest Provision.

19 (a) For the purposes of this section, a "no-contest provision" means a provision of the
20 governing documents that, if given effect, would reduce or eliminate a beneficiary's interest because
21 the beneficiary directly or indirectly initiates or otherwise pursues:

22 (1) Any judicial proceeding against the foundation or any of the foundation officials,
23 including any judicial proceeding:

24 (A) Contesting the validity of the foundation's formation;

25 (B) Contesting the validity of a contribution by a founder to the foundation;

26 (C) Contesting the validity of the foundation's governing documents;

27 (D) Seeking to set aside any provision of the governing documents;

28 (E) Seeking to void any action by the foundation officials; or

29 (F) Seeking to dissolve the foundation; or

30 (2) Any act that frustrates or defeats the founder's intent as expressed in the terms
31 of the governing documents.

32 (b) Subject to subsections (c) and (d), a no-contest provision shall be enforceable in
33 accordance with its express terms regardless of whether:

34 (1) The beneficiary acted in good faith or with probable cause; or

35 (2) The enforcement of the no-contest provision would result in a partial or
36 complete forfeiture of the beneficiary's interest.

37 (c) A no-contest provision shall be unenforceable to the extent that:

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- 1 (1) The court dissolves the foundation under RSA 564-E:20-2013(a); or
- 2 (2) A judicial proceeding only involved a claim against a foundation official for a
- 3 breach of duty, and the foundation official committed a breach of duty.
- 4 (d) A no-contest provision shall be unenforceable to the extent that a beneficiary
- 5 initiates, maintains, or cooperates in:
- 6 (1) Any judicial proceeding initiated by a foundation official;
- 7 (2) Any nonjudicial settlement agreement or other agreement among the
- 8 beneficiaries and any other interested persons in settlement of a dispute or resolution of any other
- 9 matter relating to the foundation;
- 10 (3) Any judicial proceeding for the interpretation or construction of a provision of
- 11 the governing instrument, including the interpretation or construction of the no-contest provision
- 12 with respect to any proposed or pending petition or motion; or
- 13 (4) To the extent that the foundation is a charitable trust, any judicial proceeding
- 14 brought by the director of charitable trusts for the interpretation or construction or interpretation of
- 15 the foundation's governing documents.

Article 15

Third Parties

16 564-E:15-1501 Liability of Foundation Officials and Beneficiaries to Third Parties.

17 (a) Subject to RSA 564-E:20-2007 and subsection (c), a foundation's debts, obligations,

18 and liabilities, whether arising in contract, tort, or otherwise, shall be solely the foundation's debts,

19 obligations, and liabilities.

20 (b) Subject to RSA 564-E:20-2007 and subsection (c), a founder, foundation official, or

21 beneficiary shall not be personally liable for any of the foundation's debts, obligations, and liabilities

22 solely by reason of being a founder, foundation official, or beneficiary.

23 (c) A founder, foundation official, or beneficiary may agree to be personally liable for

24 any or all of the foundation's debts, obligations, and liabilities.

25 564-E:15-1502 Liability of Foundation for Certain Claims Against a Founder.

26 (a) A transfer of property by a founder to the foundation shall not be void or voidable

27 solely by reason that the transfer defeats any forced heirship, legitime, forced share, or any similar

28 heirship right under the laws of a foreign jurisdiction.

29 (b) The foundation property shall not be subject to any forced heirship, legitime, forced

30 share, or any similar heirship rights against a founder, a founder's estate, or any of a founder's

31 property under the laws of any jurisdiction.

32 564-E:15-1503 Rights of a Beneficiary's Creditors and Assignees.

33 (a) Subject to subsection (c), a court may authorize a beneficiary's creditor or assignee

34 to reach the beneficiary's interest by attachment of present or future distributions to or for the

35 benefit of the beneficiary.

36

37

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(1) Attachment of distributions is the creditor's or assignee's exclusive remedy against the beneficiary's interest.

(2) The court may limit the relief under this subsection (a) as the court deems appropriate under the circumstances.

(b) Subject to subsection (c), a beneficiary's creditor or assignee may not compel the foundation to make a distribution to the beneficiary.

(c) A beneficiary's creditor or assignee may reach the beneficiary's interest to the extent that:

(1) Without the consent of any other person, the beneficiary has the power to appoint the foundation's property to:

(A) The beneficiary; or

(B) The beneficiary's creditors or assignees; or

(2) Upon the foundation's dissolution, the beneficiary would receive the foundation's property and, without the consent of any other person, the beneficiary has the power to dissolve the foundation or cause the foundation's dissolution.

(d) A beneficiary's creditor or assignee may not compel a beneficiary to exercise any right or power that, in any fiduciary or nonfiduciary capacity, the beneficiary has under the terms of the trust, including any of the following:

(1) Any power of appointment;

(2) Any power to dissolve the foundation or cause the foundation's dissolution;

(3) Any power to direct or veto a distribution;

(4) Any power to appoint or remove a foundation official; or

(5) Any right to receive reports, notices, or other information concerning the foundation and its administration.

(e) A beneficiary's interest shall not be assignable, except to the extent expressly permitted by the governing documents.

(f) A beneficiary's interest shall not be subject to any forced heirship, legitime, forced share, or any similar heirship rights under the laws of any jurisdiction.

Article 16

Dispute Resolution

564-E:16-1601 Role of Court in a Foundation's Affairs.

(a) The court may intervene in a foundation's affairs to the extent its jurisdiction is invoked by an interested person or as provided by law.

(b) A foundation shall not be subject to continuing judicial supervision unless ordered by the court.

(c) A judicial proceeding involving a foundation may relate to any matter involving the foundation's affairs, including:

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- (1) A request for instruction;
- (2) Construction of the governing documents;
- (3) A claim for breach of duty; or
- (4) A request to declare rights.

(d) Each of the following persons may commence a judicial proceeding for the purpose of enforcing the provisions of the governing documents:

- (1) A founder;
- (2) A foundation official;
- (3) A beneficiary; or
- (4) In the case of a foundation that is a charitable trust, the director of charitable

trusts.

564-E:16-1602 Jurisdiction over Foundation Officials and Beneficiaries.

(a) By accepting an appointment as a foundation official, a foundation official shall be subject to the personal jurisdiction of the courts of this state regarding any matter involving the foundation.

(b) With respect to the beneficiary's interest, a beneficiary shall be subject to the personal jurisdiction of the courts of this state regarding any matter involving the foundation.

(c) By accepting a distribution from a foundation, the recipient shall be subject to the personal jurisdiction of the courts of this state regarding any matter involving the foundation.

(d) This section does not preclude other methods of obtaining jurisdiction over a foundation official, beneficiary, or other person receiving property from the foundation.

564-E:16-1603 Subject-Matter Jurisdiction. The probate division of the circuit court shall have exclusive jurisdiction over:

- (1) The formation, termination, and management of foundations;
- (2) The interpretation, construction, and modification of governing documents; and
- (3) The appointment, removal, and surcharge of foundation officials.

564-E:16-1604 Venue. Venue for a judicial proceeding involving a foundation is in:

- (1) The county of this state in which the foundation's principal office is located; or
- (2) If the foundation does not have a principal office in this state, the county of this state in which the foundation's registered office is located.

564-E:16-1605 Confidential Information.

(a) A communication between an attorney and a client that is a foundation or a foundation official is privileged and is protected from disclosure to the same extent as a communication between an attorney and a client who is an individual acting in his or her personal capacity.

(b) The privilege is not waived by:

- (1) A fiduciary relationship between a foundation official and a beneficiary; or

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(2) The use of the foundation's property to compensate the attorney for legal services rendered to the foundation or a foundation official.

564-E:16-1606 Nonjudicial Settlement Agreement.

(a) For purposes of this section, "interested person" means each of the following persons:

(1) A founder;

(2) A trust official;

(3) A person who, under the governing documents, has the power to enforce the terms of the governing documents;

(4) If the trust is a charitable trust, the director of charitable trusts; and

(5) Any other person whose consent would be required in order to achieve a binding settlement if a court would approve the settlement.

(b) Subject to subsection (c), all of the interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a foundation.

(c) A nonjudicial settlement agreement is valid only to the extent that:

(1) It does not violate any of the foundation's material purpose; and

(2) It includes only terms and conditions that could be properly approved by a court under this chapter or other applicable law.

(d) Matters that may be resolved by a nonjudicial settlement agreement include:

(1) The interpretation or construction of the governing documents;

(2) The modification of the governing documents;

(3) The approval of a director's report or accounting;

(4) A direction to a foundation official to refrain from performing a particular act or the grant to a foundation official of any necessary or desirable power;

(5) A foundation official's appointment or resignation;

(6) The determination of a foundation official's compensation;

(7) A foundation official's liability for an action relating to the foundation; and

(8) The foundation's dissolution.

(e) Any interested person may commence a judicial proceeding requesting that the court:

(1) Approve a nonjudicial settlement agreement;

(2) Determine whether the representation under 564-E:14-1402 was adequate; and

(3) Determine whether the agreement contains terms and conditions the court could have properly approved.

564-E:16-1607 Nonjudicial Dispute Resolution.

(a) For purposes of this section, the following definitions shall apply:

(1) "Interested person" means any person who would be an interested person in a

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1 judicial proceeding to resolve a dispute.

2 (2) "Dispute" means any matter in which a court has subject-matter jurisdiction
3 under 564-E:16-1603, excluding:

4 (A) The determination of the validity of the foundation's formation;

5 (B) The determination of the validity of a contribution by a founder to the
6 foundation; and

7 (C) The determination of any of the foundation's material purposes, including a
8 determination of whether any modification, dissolution, or other action is consistent with the
9 foundation's material purposes.

10 (b) If the governing documents require the interested persons to resolve a dispute
11 exclusively by reasonable nonjudicial procedures, then those interested persons shall resolve that
12 dispute in accordance with the governing documents.

13 (c) An interested person may commence a judicial proceeding to determine whether the
14 nonjudicial procedures are reasonable.

15 (d) To the extent that a provision of the governing documents purport to prohibit an
16 interested person from commencing a judicial proceeding under subsection (c) or penalize an
17 interested person for commencing a judicial proceeding under subsection (c), that provision is void.

18 (e) Unless the director of charitable trust expressly consents to the nonjudicial
19 procedures, those procedures shall not apply to any matter in which the director of charitable trust
20 would be an interested person.

21 (f) Unless the department of health and human services expressly consents to the
22 nonjudicial procedures, those procedures shall not apply to any matter in which that department
23 would be an interested person.

24 Article 17

25 Modification

26 564-E:17-1701 Modification.

27 (a) A court may modify a foundation's certificate of formation or its bylaws if:

28 (1) All of the foundation officials consent to the modification;

29 (2) All of the beneficiaries consent to the modification;

30 (3) To the extent that the foundation is a charitable trust, the director of charitable
31 trusts consents to the modification; and

32 (4) The modification does not violate any of the foundation's material purposes.

33 (b) A court may modify a foundation's certificate of formation or its bylaws if:

34 (1) Due to circumstances that the founder did not anticipate, modification will
35 further the foundation's purposes;

36 (2) The modification is consistent with the founder's probable intent; and

37 (3) The modification does not violate any of the foundation's material purposes.

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- 1 (c) A court may modify a foundation's certificate of formation or its bylaws if:
- 2 (1) The foundation's continuation would be impractical, wasteful, or impair the
- 3 foundation's administration;
- 4 (2) The modification is consistent with the founder's intent; and
- 5 (3) The modification does not violate any of the foundation's material purposes.
- 6 (d) Any of the following persons may commence a judicial proceeding seeking
- 7 modification of a foundation's certificate of formation or its bylaws under this section:
- 8 (1) A foundation official;
- 9 (2) Unless the governing documents provide otherwise, a beneficiary; or
- 10 (3) To the extent that the foundation is a charitable trust, the director of charitable
- 11 trusts.

12 **564-E:17-1702 Reformation.**

- 13 (a) A court may reform a foundation's certificate of formation or its bylaws for purposes
- 14 of conforming the certificate of formation or the bylaws to the founder's intent if:
- 15 (1) Whether in the expression or inducement, the foundation's certificate of
- 16 formation or its bylaws were affected by a mistake of fact, a mistake of law, or both a mistake of fact
- 17 and a mistake of law; and
- 18 (2) The founder's intent is proven by clear and convincing evidence;
- 19 (3) The mistake is proven by clear and convincing evidence; and
- 20 (4) The reformation does not violate any of the foundation's material purposes.
- 21 (b) A court may reform a foundation's certificate of formation or its bylaws for purposes
- 22 of achieving the founder's tax objectives if:
- 23 (1) The reformation is consistent with the founder's intent; and
- 24 (2) The reformation does not violate any of the foundation's material purposes.
- 25 (c) A reformation under this section may be retroactive or prospective.
- 26 (d) Any of the following persons may commence a judicial proceeding seeking
- 27 reformation of a foundation's certificate of formation or its bylaws under this section:
- 28 (1) A founder;
- 29 (2) A foundation official;
- 30 (3) Unless the governing documents provide otherwise, a beneficiary; and
- 31 (4) To the extent that the foundation is a charitable trust, the director of charitable
- 32 trusts.

33 **564-E:17-1703 Cy Pres.**

- 34 (a) To the extent that a foundation is a charitable trust and one of its charitable
- 35 purposes becomes impossible, impracticable, illegal, obsolete, ineffective, or prejudicial to the public
- 36 interest to achieve, a court may apply cy pres for the following purposes:
- 37 (1) Modifying the foundation's certificate of formation or its bylaws; or

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(2) Directing the foundation to apply or distribute some or all of its property to one or more charitable purposes that:

(A) Are useful to the community;

(B) Fulfills as nearly as possible the founder's charitable intent; and

(C) Do not violate any of the foundation's material purposes; or

(3) Terminating the foundation.

(b) Any of the following persons may commence a judicial proceeding seeking the application of cy pres to a foundation under this section:

(1) A foundation official;

(2) Unless the governing documents provide otherwise, a beneficiary; and

(3) The director of charitable trusts.

Article 18

Breach of Duty

564-E:18-1801 Remedies for Breach of Duty.

(a) For purposes of remedying a breach of duty that has occurred or may occur, the court may:

(1) Compel a foundation official to perform the foundation official's duties;

(2) Enjoin a foundation official from committing a breach of duty;

(3) Compel a foundation official to redress a breach of duty by paying money, restoring property, or other means;

(4) Order a foundation official to account;

(5) Appoint a special director to take possession of the foundation's property and administer the foundation;

(6) Suspend a foundation official;

(7) Remove a director under RSA 564-E:10-1007;

(8) Remove a protector under RSA 564-E:12-1207;

(9) Reduce or deny compensation to a foundation official;

(10) Void a foundation official's act;

(11) Impose a lien or a constructive trust on the foundation's property;

(12) Trace the foundation's property wrongfully disposed of and recover the property or its proceeds; or

(13) Order any other appropriate relief.

564-E:18-1802 Damages for Breach of Duty.

(a) A foundation official who commits a breach of duty is liable to the affected beneficiaries for the greater of:

(1) The amount required to restore the value of the foundation's property and distributions to what they would have been had the breach of duty not occurred; or

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(2) the profit that the foundation official made by reason of the breach of duty.

(b) Except as otherwise provided in subsection (c) or (d), a foundation official is entitled to contribution from the other foundation officials to the extent permitted by RSA 507:7-f if more than one foundation official is liable to the beneficiaries for a breach of duty.

(c) A foundation official is not entitled to contribution if:

(1) The foundation official was substantially more at fault than another foundation officials; or

(2) The foundation official committed the breach of duty in bad faith or with reckless indifference to the foundation's purposes or the beneficiaries' interests.

(d) A foundation official who received a benefit from the breach of duty is not entitled to contribution from another foundation official to the extent of the benefit received.

564-E:18-1803 Damages in Absence of Breach of Duty.

(a) Even absent a breach of duty, a foundation official is accountable to an affected beneficiary for any profit made by the foundation official arising from the foundation's administration.

(b) Absent a breach of duty, a foundation official is not liable to a beneficiary for a loss or depreciation in the value of the foundation property or for not having made a profit.

(c) This section does not preclude the payment of reasonable compensation to a foundation official.

564-E:18-1804 Attorney's Fees and Costs. In a judicial proceeding involving a foundation's administration, the court may award costs and expenses as justice and equity may require, including reasonable attorney's fees, to any party, to be paid by another party or from the foundation that is the subject of the controversy.

564-E:18-1805 Limitation of Action Against a Foundation Official.

(a) A judicial proceeding against a foundation official for breach of duty may be commenced only within the earliest of:

(1) In the case of a claim by a beneficiary, one year after the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of duty;

(2) Except as provided in subsection (a)(3), 3 years after the earliest of:

(A) The foundation official's removal, resignation, or death;

(B) The termination of the beneficiary's interest; or

(C) The foundation's dissolution.

(D) If the act or omission was not discovered and could not reasonably have been discovered at the time of the act or omission, one year after the earlier of:

(i) The discovery of the act or omission; or

(ii) In the exercise of reasonable diligence, the date on which the act or omission should have been discovered.

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(b) A report adequately discloses the existence of a potential claim for breach of duty if it provides sufficient information so that the beneficiary or the beneficiary's representative knows of the potential claim or should have inquired into its existence.

(c) The limitation periods under this section shall not be tolled for any reason, except by a court order or a written agreement between the foundation official and the beneficiary.

564-E:18-1806 Reliance on the Governing Documents. A foundation official who acts in reasonable reliance on the foundation's governing documents is not liable to any person for a breach of duty to the extent that the breach of duty resulted from that reliance.

564-E:18-1807 Event Affecting Administration or Distribution.

(a) If the happening of an event affects the foundation's administration or a distribution from the foundation, then a foundation official who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the foundation official's lack of knowledge.

(b) An event to which subsection (a) applies includes:

- (1) Marriage;
- (2) Divorce;
- (3) The performance of educational requirements; or
- (4) Death.

564-E:18-1808 Exculpation of a Foundation Official.

(a) Subject to subsection (b), a provision of the governing documents relieving a foundation official of liability for breach of duty is enforceable except to the extent that the provision relieves the foundation official of liability for a breach of duty for:

- (1) Failing to act in good faith; or
- (2) Acting with reckless indifference to the foundation's purposes or the beneficiaries' interests.

(b) A provision of the governing documents relieving a foundation official of liability for breach of duty is unenforceable if the provision was inserted as the result of an abuse by the foundation official of a fiduciary or confidential relationship to the founder.

564-E:18-1809 Beneficiary's Consent, Release, or Ratification.

(a) Subject to subsection (b), a foundation official is not liable to a beneficiary for breach of duty if the beneficiary:

- (1) Consented to the conduct constituting the breach of duty;
- (2) Released the foundation official from liability for the breach of duty; or
- (3) Ratified the transaction constituting the breach of duty.

(b) For purposes of subsection (a), a beneficiary's consent, release, or ratification is invalid if:

- (1) In making the consent, release, or ratification, the beneficiary was induced by a

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1 foundation official's improper conduct; or

2 (2) At the time of making the consent, release, or ratification, the beneficiary did
3 not know of the beneficiary's rights or the material facts relating to the breach of duty.

4 Article 19

5 Merger

6 564-E:19-1901 Merger.

7 (a) Subject to subsections (f) and (g), one or more foundations may merge with one or
8 more foundations by filing with the secretary of state a certificate of merger.

9 (b) Subject to subsections (f) and (g), one or more foundations and one or more foreign
10 foundations may merge into a foundation that will be formed under this chapter by filing with the
11 secretary of state a certificate of merger.

12 (c) The certificate of merger shall set forth:

13 (1) The name of each foundation that is a party to the merger;

14 (2) The address of the principal office of each foundation that is a party to the
15 merger;

16 (3) If a foreign foundation is a party to the merger, the jurisdiction in which the
17 foreign foundation is formed;

18 (4) The name of the surviving foundation; and

19 (5) If the merger will not begin upon the filing of the certificate of merger with the
20 secretary of state, the date and time on which the merger shall be effective.

21 (d) In the case of a merger under subsection (b), the certificate of merger shall include a
22 certificate of formation for the surviving foundation.

23 (e) The certificate of merger may include any other matter that the parties to the
24 merger deem necessary or advisable.

25 (f) The following persons must approve a merger:

26 (1) In the case of a foundation that is a party to a merger, the foundation's directors,
27 unless the governing documents provide otherwise.

28 (2) In the case of a foreign foundation that is a party to a merger, each person who,
29 under the laws under which the foreign foundation is organized, must approve the plan of merger.

30 (g) A foundation shall not merge with or into another foundation if:

31 (1) The foundation's governing documents prohibit the merger; or

32 (2) The merger would violate any of the foundation's material purposes.

33 564-E:19-1902 Effects of Merger.

34 (a) A merger under RSA 564-E:19-1901 has the following effects:

35 (1) Each foundation and foreign foundation that is a party to the merger shall be
36 merged into a single foundation, which shall be the foundation designated as the surviving
37 foundation in the certificate of merger;

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(2) Each foundation and foreign foundation that is a party to the merger, except the surviving foundation, shall cease to exist;

(3) All title to real property and other property owned by each foundation and foreign foundation that is a party to the merger and all contractual rights possessed by each foundation and foreign foundation that is a party to the merger are vested in the surviving foundation without reversion or impairment; and

(4) All liabilities of each foundation and foreign foundation that is a party to the merger are vested in the surviving foundation.

(b) For each domestic foundation that is a party to a merger and is not the surviving foundation, a certificate of merger shall constitute a certificate of cancellation.

Article 20

Dissolution

Part A

Voluntary Dissolution

564-E:20-2001 Dissolution by Organizers or Initial Directors.

(a) If the foundation has not received its initial capital contribution, then the following persons may dissolve a foundation by filing with the secretary of state a certificate of dissolution:

(1) A majority of the organizers; or

(2) A majority of the initial directors.

(b) The certificate of dissolution shall set forth:

(1) The foundation's name;

(2) The date on which the dissolution was authorized;

(3) If a majority of organizers have authorized the dissolution, a statement that a majority of the organizers authorized the dissolution;

(4) If a majority of initial directors have authorized the dissolution, a statement that a majority of the initial directors authorized the dissolution; and

(5) A statement that the foundation has not received its initial capital contribution.

(c) A foundation's dissolution is effective upon filing the certificate of dissolution.

564-E:20-2002 Dissolution by Founder.

(a) Except as otherwise provided in the governing documents, a founder may dissolve a foundation by filing with the secretary of state a certificate of dissolution.

(b) The certificate of dissolution shall set forth:

(1) The foundation's name;

(2) The date on which the dissolution was authorized; and

(3) A statement that the founder authorized the dissolution.

(c) A foundation's dissolution is effective upon filing the certificate of dissolution.

564-E:20-2003 Dissolution by Board of Directors.

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1 (a) Except as otherwise provided in the governing documents, the board of directors
2 may dissolve a foundation by filing with the secretary of state a certificate of dissolution.

3 (b) The certificate of dissolution shall set forth:

4 (1) The foundation's name;

5 (2) The date on which the dissolution was authorized;

6 (3) A statement that the board of directors authorized the dissolution; and

7 (4) A statement that a copy of the certificate of dissolution has been sent to the
8 department of revenue.

9 (c) A foundation's dissolution is effective upon filing the certificate of dissolution.

10 564-E:20-2004 Revocation of Dissolution.

11 (a) A foundation may revoke the dissolution by filing with the secretary of state a
12 certificate of revocation of dissolution.

13 (b) The certificate of revocation of dissolution shall set forth:

14 (1) The foundation's name;

15 (2) The date on which the revocation of the dissolution was authorized;

16 (3) If a majority of organizers have authorized the revocation of the dissolution, a
17 statement that a majority of the organizers authorized the revocation of the dissolution;

18 (4) If a majority of initial directors have authorized the revocation of the dissolution,
19 a statement that a majority of the initial directors authorized the revocation of the dissolution;

20 (5) If the founder authorized the revocation of the dissolution, a statement that the
21 founder authorized the revocation of the dissolution; and

22 (6) If the board of directors authorized the revocation of the dissolution, a statement
23 that the board of directors authorized the revocation of the dissolution.

24 (c) A foundation may revoke its dissolution within 120 days of the dissolution's effective
25 date.

26 (d) The revocation of dissolution shall be authorized in the same manner as the
27 dissolution was authorized.

28 (e) The revocation of dissolution is effective upon the filing of the certificate of
29 revocation of dissolution.

30 (f) When the revocation of dissolution is effective, it relates back to and takes effect as of
31 the effective date of the dissolution and the corporation resumes carrying on its business as if
32 dissolution had never occurred.

33 564-E:20-2005 Effect of Dissolution.

34 (a) A dissolved foundation continues its existence as a legal entity but may not engage
35 in any activities except to the extent necessary or appropriate to wind up its affairs, including:

36 (1) Collecting its property;

37 (2) Disposing of its property that will not be distributed in kind to its beneficiaries

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1 or in furtherance of its purposes;

2 (3) Discharging or making provision for discharging its liabilities; and

3 (4) Distributing its remaining property to its beneficiaries or in furtherance of its
4 purposes in accordance with the governing documents.

5 (b) A foundation's dissolution does not:

6 (1) Transfer title to the foundation's property;

7 (2) Subject its directors to duties different from those prescribed in article 11;

8 (3) Subject its protectors to duties different from those prescribed in article 13;

9 (4) Change the provisions for appointment, resignation, or removal of the
10 foundation officials;

11 (5) Change the provisions for amending its governing documents;

12 (6) Prevent commencement of a judicial proceeding by or against the foundation in
13 the foundation's name;

14 (7) Abate or suspend a judicial proceeding pending by or against the foundation on
15 the dissolution's effective date; or

16 (8) Terminate the authority of the foundation's registered agent.

17 **564-E:20-2006 Known Claims Against Dissolved Foundation.**

18 (a) A dissolved foundation may dispose of a known claimant's claim against the
19 dissolved foundation by delivering to the claimant a written notice of the dissolution at any time
20 after the dissolution's effective date.

21 (b) The notice of dissolution shall set forth:

22 (1) A description of the information that must be included in a claim;

23 (2) A mailing address where a claim may be sent;

24 (3) The deadline by which the dissolved foundation must receive the claim; and

25 (4) A statement that the claim will be barred if not received by the deadline.

26 (c) For purposes of subsection (b)(3), the deadline may not be fewer than 90 days from
27 the date on which the dissolved foundation delivers the notice of dissolution to the claimant.

28 (d) If the dissolved foundation delivers to a claimant a notice of dissolution in
29 accordance with subsection (a), then the claimant's claim against a dissolved foundation shall be
30 barred unless:

31 (1) The claimant delivers a notice of the claim to the dissolved foundation on or
32 before the deadline set forth in the notice of dissolution; and

33 (2) The claimant commences a judicial proceeding to enforce the claim against the
34 dissolved foundation within 90 days after the deadline set forth in the notice of dissolution.

35 (e) For purposes of this section, "claim" does not include a contingent liability or a claim
36 based on an event occurring after the effective date of dissolution.

37 **564-E:20-2007 Other Claims Against Dissolved Foundation.**

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1 (a) A dissolved foundation may publish notice of its dissolution and request that
2 persons with claims against the dissolved foundation present them in accordance with the notice.

3 (b) The notice shall be published one time in a newspaper of general circulation in:

4 (1) The county in which the dissolved foundation's principal office in this state is
5 located; or

6 (2) If the dissolved foundation does not have a principal office in this state, the
7 county in which its registered office is located.

8 (c) The notice shall set forth:

9 (1) A description of the information that must be included in a claim;

10 (2) A mailing address where the claim may be sent; and

11 (3) A statement that a claim against the dissolved foundation will be barred unless
12 a judicial proceeding to enforce the claim is commenced within three years after the publication of
13 the notice.

14 (d) If a dissolved foundation publishes a newspaper notice in accordance with
15 subsection (a), then a claimant's claim against the dissolved foundation shall be barred unless:

16 (1) The claimant was entitled to receive notice under RSA 564-E:20-2006;

17 (2) The claimant commences a judicial proceeding to enforce the claim against the
18 dissolved foundation within three years after the publication date of the newspaper notice; or

19 (3) The claim is contingent or based on an event occurring after the effective date of
20 the foundation's dissolution.

21 (e) A claim that is not barred by RSA 564-E:20-2006(d) or subsection (d) may be
22 enforced against:

23 (1) To the extent of its undistributed assets, the dissolved foundation; or

24 (2) To the extent that a person has received a distribution in liquidation of the
25 dissolved foundation and subject to subsection (f), the person who received the distribution.

26 (f) The total liability of a person against whom a claim is enforceable under subsection
27 (e)(2) shall not exceed the lesser of:

28 (1) The person's pro-rata share of the claim; and

29 (2) The total amount of property that the person received as distributions in
30 liquidation of the dissolved foundation.

31 564-E:20-2008 Director Duties.

32 (a) A director of a dissolved foundation shall have the following duties:

33 (1) A duty to cause the dissolved foundation to discharge its liabilities or make
34 reasonable provision for discharging its liabilities; and

35 (2) A duty to cause the dissolved foundation to distribute its remaining property in
36 accordance with the governing documents.

37 (b) A director of a dissolved foundation that has disposed of claims under RSA 564-

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1 E:20-2006 or RSA 564-E:20-2007 shall not be liable for breach of subsection (a) to the extent that the
2 claim against the dissolved foundation is barred or satisfied under RSA 564-E:20-2006 or RSA 564-
3 E:20-2007.

4 Part B

5 Administrative Dissolution

6 564-E:20-2009 Administrative Dissolution.

7 (a) The secretary of state may administratively dissolve a foundation if:

8 (1) For 2 consecutive years, the foundation does not pay the annual fee or any
9 penalty imposed by this chapter or other law within 60 days after the fee or penalty is due;

10 (2) For 2 consecutive years, the foundation does not file its annual report with the
11 secretary of state within 60 days after the annual report is due;

12 (3) For a period of 60 days or more, the foundation does not have a registered agent
13 or a registered office;

14 (4) The foundation fails to file with the secretary of state:

15 (A) A notice of a change of its registered agent within 60 days after the change;

16 (B) A notice of a change of its registered office within 60 days after the change;

17 (C) A notice of its registered agent's resignation within 60 days after the
18 resignation; or

19 (D) A notice of the discontinuance of its registered office within 60 days after
20 the discontinuance; or

21 (5) The period of foundation's duration stated in its certificate of formation expires.

22 (b) The secretary of state may dissolve a foundation under subsection (a) by sending
23 the following documents to the foundation at the foundation's registered office:

24 (1) A notice of administrative dissolution; and

25 (2) An application for reinstatement.

26 (c) The notice of administrative dissolution shall set forth:

27 (1) The grounds for dissolution; and

28 (2) The effective date of dissolution.

29 564-E:20-2010 Effects of Administrative Dissolution.

30 (a) A foundation that is administratively dissolved continues its existence as a legal
31 entity but may not engage in any activities except to the extent necessary or appropriate to wind up
32 its affairs in accordance with RSA 564-E:20-2005 to RSA 564-E:20-2008.

33 (b) A foundation's administrative dissolution does not terminate the authority of the
34 foundation's registered agent.

35 (c) For a period of 120 days after the date of mailing of a notice of administrative
36 dissolution under RSA 564-E:20-2009(b) and subject to subsection (d), the secretary of state shall
37 not permit any person to use or reserve:

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1 (1) A name that is the same as or similar to the name of a foundation that was
2 administratively dissolved under RSA 564-E:20-2009; or

3 (2) A trade name registered by the limited liability company under RSA 349.

4 (d) The secretary of state may permit a person to use or reserve a name described in
5 subsection (c)(1) or (c)(2) if the dissolved foundation consents to the use or reservation of that name.

6 564-E:20-2011 Reinstatement after Administrative Dissolution.

7 (a) For a period of three years after the effective date of its dissolution, a foundation
8 that has been administratively dissolved under RSA 564-E:20-2009 may apply to the secretary of
9 state for reinstatement.

10 (b) The application for reinstatement shall include:

11 (1) The foundation's name;

12 (2) The effective date of the foundation's dissolution;

13 (3) A statement that each of the grounds for the foundation's dissolution did not
14 exist or has been eliminated; and

15 (4) A statement that the foundation's name or proposed name satisfies the
16 requirements of RSA 564-E:4-401.

17 (c) The secretary of state may cancel the administrative dissolution if:

18 (1) The secretary of state determines that the notice contains the information
19 required under subsection (b);

20 (2) The information contained in the application is correct in all material respects;

21 and

22 (3) The foundation's name or proposed name is available for registration.

23 (d) The secretary of state cancels an administrative dissolution by:

24 (1) Cancelling the notice of administrative dissolution;

25 (2) Sending to the foundation at its principal office a notice of reinstatement.

26 (e) The notice of reinstatement shall set forth:

27 (1) The secretary of state's determination under subsection (c);

28 (2) If the application for reinstatement includes a change of the foundation's name,
29 the change of the foundation's name; and

30 (3) The effective date of reinstatement.

31 (f) A foundation's reinstatement shall have the following effects:

32 (1) The notice of reinstatement shall have the effect of an amendment of the
33 foundation's certificate of formation;

34 (2) The reinstatement shall relate back to the effective date of the foundation's
35 administrative dissolution;

36 (3) The foundation may resume engaging in activities in this state as if the
37 administrative dissolution had never occurred; and

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(4) All of the foundation's otherwise legally valid actions during the period if its dissolution shall be legally valid.

564-E:20-2012 Appeal from Denial of Reinstatement.

(a) If the secretary of state denies a foundation's application for reinstatement following administrative dissolution, then the secretary of state shall send to the foundation written notice of denial.

(b) The notice of denial shall set forth each of the secretary of state's reasons for denial.

(c) The secretary of state shall send the notice of denial to the foundation at the foundation's principal address.

(d) The foundation may appeal the denial of reinstatement by filing a petition for reinstatement with the court located in:

(1) The county in which the foundation's principal office in this state is located; or

(2) If the foundation does not have a principal office in this state, the county in which the foundation's registered office is located.

(e) The foundation's petition for reinstatement shall include:

(1) A copy of the secretary of state's certificate of dissolution;

(2) The foundation's application for reinstatement; and

(3) The secretary of state's notice of denial.

(f) The foundation may commence the appeal under subsection (d) only within 30 days after the date of the notice of denial.

(g) The court may summarily order the secretary of state to reinstate the dissolved corporation or may take other action that the court considers appropriate.

(h) The court's final decision may be appealed as in other civil proceedings.

Part C

Judicial Dissolution

564-E:20-2013 Judicial Dissolution.

(a) A court may dissolve a foundation if:

(1) The foundation procured its certificate of formation through fraud, duress, or undue influence;

(2) The foundation's purposes are not lawful or are contrary to the public policy of this state;

(3) The foundation has exceeded or abused its lawful authority under this chapter;

(4) The foundation has carried on, conducted, or transacted its affairs in a persistently fraudulent or illegal manner; or

(5) The foundation has abused its power contrary to the public policy of this state.

(b) A court may dissolve a foundation if:

(1) All of the foundation officials consent to the termination;

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- 1 (2) All of the beneficiaries consent to the termination;
- 2 (3) To the extent that the foundation is a charitable trust, the director of charitable
- 3 trusts consents to the dissolution; and
- 4 (4) The dissolution does not violate any of the foundation's material purposes.
- 5 (c) A court may dissolve a foundation if:
- 6 (1) Because of circumstances that the founder did not anticipate, the dissolution will
- 7 further the foundation's purposes; and
- 8 (2) The dissolution does not violate any of the foundation's material purposes.
- 9 (d) Any of the following persons may commence a judicial proceeding seeking the
- 10 foundation's dissolution under this section:
- 11 (1) A foundation official;
- 12 (2) A beneficiary unless the governing documents prohibit the beneficiary from
- 13 commencing a judicial proceeding seeking the foundation's dissolution;
- 14 (3) To the extent that the foundation is a charitable trust, the director of charitable
- 15 trusts; and
- 16 (4) With respect to a dissolution under subsection (a), the attorney general.

Article 21

Foreign Foundations

19 564-E:21-2101 Activities in this State.

- 20 (a) A foreign foundation shall not engage in any registrable activity in this state until it
- 21 registers with the secretary of state.
- 22 (b) A registrable activity includes any activity that, if conducted by a foreign
- 23 corporation, would constitute the corporation's transacting business in this state.
- 24 (c) Activities that are not registrable activities include:
- 25 (1) Maintaining, defending, or settling any judicial proceeding;
- 26 (2) Holding meetings of the board of directors or carrying on other activities
- 27 concerning the foundation's internal affairs;
- 28 (3) Maintaining one or more bank accounts;
- 29 (4) Creating or acquiring indebtedness, mortgages, and security interests in real or
- 30 personal property;
- 31 (5) Securing or collecting debts or enforcing mortgages and security interests in
- 32 property securing the debts;
- 33 (6) Without more, owning any real or personal property located in this state;
- 34 (7) Conducting an isolated transaction that:
- 35 (A) Is completed within 30 days; and
- 36 (B) Is not a single transaction in the course of repeated transactions of a like
- 37 nature;

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- 1 (8) Transacting any activity in interstate commerce; and
2 (9) Any activity that, if conducted by a foreign corporation, would not constitute the
3 corporation's transacting business in this state.

4 564-E:21-2102 Registration.

- 5 (a) A foreign foundation may register with the secretary of state by filing with the
6 secretary of state a certificate of registration.

- 7 (b) The certificate of registration shall set forth:

- 8 (1) The foreign foundation's name or, if its name is unavailable for use in this state,
9 a name that satisfies the requirements of RSA 564-E:4-401;

- 10 (2) The name and usual business address of each of the foundation's directors;

- 11 (3) The name of the jurisdiction under the laws of which the foundation is
12 organized;

- 13 (4) The foundation's date of formation;

- 14 (5) The foundation's period of duration;

- 15 (6) The street address of the foundation's principal office;

- 16 (7) The name of the foundation's initial registered agent in this state; and

- 17 (8) The address of the foundation's initial registered office in this state.

- 18 (c) The certificate of registration may set forth any other matter that the foreign
19 foundation deems necessary or advisable.

20 564-E:21-2103 Amended Registration.

- 21 (a) Subject to subsection (c), a foreign foundation may amend its certificate of
22 registration by filing an amended certificate of registration with the secretary of state.

- 23 (b) An amended certificate of registration shall set forth:

- 24 (1) The foreign foundation's name or, if its name is unavailable for use in this state
25 or does not satisfy the requirements of RSA 564-E:4-401, a name that satisfies the requirements of
26 RSA 564-E:4-401; and

- 27 (2) The amendment to the certificate of registration.

- 28 (c) A certificate of registration may be amended at any time in any respect so long as
29 the amended certificate of registration contains only provisions that lawfully may be contained in
30 the certificate of registration at the time of making the amendment.

31 564-E:21-2104 Restated Certificate of Registration.

- 32 (a) A foreign foundation may restate its certificate of formation by filing with the
33 secretary of state a restated certificate of registration.

- 34 (b) The restated certificate of registration shall set forth:

- 35 (1) The foundation's name; and

- 36 (2) The restatement of the certificate of registration.

- 37 (c) The restated certificate of formation may contain one or more amendments to the

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1 certificate of registration as permitted in a certificate of amendment under RSA 564-E:21-2103.

2 **564-E:21-2105 Effect of Registration.**

3 (a) Subject to RSA 564-E:21-2116, a foreign foundation's registration under RSA 564-
4 E:21-2102 authorizes the foreign foundation to engage in any registrable activity in this state.

5 (b) A registered foreign foundation:

6 (1) Has the same rights and privileges as a domestic foundation; and

7 (2) Except as otherwise provided in this chapter, the same duties, restrictions,
8 penalties, and liabilities now or later imposed on a foundation of like character.

9 (c) This chapter does not authorize this state to regulate the organization or internal
10 affairs of a registered foreign foundation.

11 **564-E:21-2106 Effect of Engaging in Registrable Activities Without Registration.**

12 (a) A foreign foundation engaging in a registrable activity in this state may not
13 maintain any judicial proceeding in this state until it has registered and has paid all fees for the
14 period during which it engaged in registrable activities in this state while unregistered.

15 (b) A foreign foundation's failure to register does not:

16 (1) Impair the validity of any of the foreign foundation's acts;

17 (2) Impair the validity of any contract to which the foreign foundation is a party;

18 (3) Impair the rights of any other party to a contract to which the foreign
19 foundation also is a party, including the right to maintain a judicial proceeding regarding any
20 matter involving the contract; or

21 (4) Prevent the foreign foundation from defending any judicial proceeding in any
22 court in this state.

23 (c) A foreign foundation's directors, officers, managers, other officeholders, employees,
24 and agents are not liable for the foreign foundation's obligations solely by reason of the foreign
25 foundation having engaged in registrable activities in this state without registration.

26 (d) A foreign foundation engaging in a registrable activity shall be liable to the state for
27 the years or parts of the year during which it engaged in registrable activities in this state without
28 registration in an amount equal to:

29 (1) All fees that would have been imposed under this chapter on that foreign
30 foundation had it duly registered; and

31 (2) All penalties imposed by this chapter.

32 (e) The attorney general may commence judicial proceedings to recover all amounts due
33 to this state under this section.

34 **564-E:21-2107 Registered Agent.**

35 (a) Each foreign foundation shall continuously maintain a registered agent in this state.

36 (b) A registered agent may be any of the persons described in RSA 564-E:5-501(b).

37 **564-E:21-2108 Registered Office.**

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- 1 (a) Each foreign foundation shall continuously maintain in this state a registered office.
2 (b) A foreign foundation's registered office may be the same as any of its offices in this
3 state.

4 564-E:21-2109 Change of the Registered Agent.

- 5 (a) A foreign foundation may change its registered agent by filing with the secretary of
6 state a notice of change of registered agent.

- 7 (b) The notice of change of registered agent shall set forth the information described in
8 RSA 564-E:5-504(b).

- 9 (c) For purposes of subsection (b), the foreign foundation's name is the name under
10 which the foreign foundation registered in accordance with RSA 564-E:4-401.

11 564-E:21-2110 Resignation of the Registered Agent.

- 12 (a) A foreign foundation's registered agent may resign as registered agent by filing with
13 the secretary of state a notice of resignation.

- 14 (b) The notice of resignation may include a statement that the foreign foundation's
15 registered office in this state is discontinued.

- 16 (c) The secretary of state shall send a copy of the notice of registration to the foreign
17 foundation at the foreign foundation's principal office.

- 18 (d) The registered agent's appointment shall terminate on the earlier of:

- 19 (1) Thirty-one days after the filing of the notice of resignation with the secretary of
20 state; or

- 21 (2) The date of the appointment of a successor registered agent.

- 22 564-E:21-2111 Registered Agent's Change of Address. If a registered agent changes its address
23 to another place in this state, then the registered agent may change the address of the registered
24 office of any foreign foundation for which it is a registered agent by filing a statement in accordance
25 with RSA 564-E:5-504.

26 564-E:21-2112 Change of the Registered Office.

- 27 (a) A foreign foundation may change its registered office by filing with the secretary of
28 state a notice of change of registered office.

- 29 (b) The notice of change of registered office shall set forth the information described in
30 RSA 564-E:5-505(b).

- 31 (c) For purposes of subsection (b), the foreign foundation's name is the name under
32 which the foreign foundation registered in accordance with RSA 564-E:4-401.

33 564-E:21-2113 Service on a Foundation.

- 34 (a) A foreign foundation's registered agent is the foundation's agent for service of
35 process, notice, or demand required or permitted by law to be served on the foreign foundation.

- 36 (b) A foreign foundation may be served by registered mail or certified mail, return
37 receipt requested, addressed to the foreign foundation at its principal office if:

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- 1 (1) The foreign foundation does not have a registered agent; or
- 2 (2) With reasonable due diligence, the foreign foundation's registered agent cannot
- 3 be served.
- 4 (c) Service is perfected under subsection (b) at the earliest of:
- 5 (1) The date the foreign foundation receives the documents sent by registered mail
- 6 or certified mail;
- 7 (2) The date shown on the return receipt if the return receipt is signed on the
- 8 foreign foundation's behalf; or
- 9 (3) Five days after the documents are deposited in the United States Postal Service
- 10 for mailing by registered mail or certified mail, as evidenced by the postmark.
- 11 (d) This section does not preclude other means of serving a foreign foundation.
- 12 564-E:21-2114 Voluntary Cancellations of Registration.
- 13 (a) A registered foreign foundation may cancel its registration by filing with the
- 14 secretary of state a certificate of cancellation.
- 15 (b) The certificate of cancellation shall set forth:
- 16 (1) The foreign foundation's name;
- 17 (2) The name of the jurisdiction in which the foundation is organized;
- 18 (3) A statement that the foreign foundation is not engaging in any registrable
- 19 activity in this state;
- 20 (4) A statement that the foreign foundation revokes the authority of its registered
- 21 agent to accept service on the foreign foundation's behalf;
- 22 (5) A statement that the foreign foundation discontinues its registered office;
- 23 (6) A statement that the foreign foundation appoints the secretary of state as its
- 24 agent for service of process in any proceeding based on a cause of action arising while the foreign
- 25 foundation was registered in this state;
- 26 (7) A mailing address to which the secretary of state may mail a copy of any process
- 27 served on the secretary of state under subsection (b)(6); and
- 28 (8) A statement by which the foreign foundation commits to notify the secretary of
- 29 state in the future of any change in its mailing address.
- 30 (c) The cancellation of the foreign foundation's registration is effective upon filing the
- 31 certificate of cancellation.
- 32 (d) After the cancellation of the foreign foundation's registration is effective, service of
- 33 process on the secretary of state under this section is service on the foreign corporation.
- 34 (e) Upon receipt of service on a foreign foundation under this section, the secretary of
- 35 state shall mail a copy of the service of process to the foreign corporation at the mailing address set
- 36 forth under subsection (b)(7) or updated in accordance with subsection (b)(8).
- 37 564-E:21-2115 Automatic Cancellation upon Certain Mergers. Upon merging into a foundation,

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1 a foreign foundation's registration automatically is cancelled effective upon the filing of the
2 certificate of merger.

3 564-E:21-2116 Administration Cancellation.

4 (a) The secretary of state may administratively cancel a foreign foundation's
5 registration if:

6 (1) For 2 consecutive years, the foreign foundation does not pay the annual fee, late
7 filing fee, or any penalty imposed by this chapter or other law within 60 days after the fee or
8 penalty is due;

9 (2) For 2 consecutive years, the foreign foundation does not file its annual report
10 with the secretary of state within 60 days after the annual report is due;

11 (3) For a period of 60 days or more, the foreign foundation does not have a
12 registered agent or a registered office;

13 (4) Within 60 days any of the following events, the foreign foundation fails to file
14 with the secretary of state the requisite notice of the event:

15 (A) A change of its registered agent;

16 (B) A change of its registered office;

17 (C) A registered agent's resignation; or

18 (D) The discontinuance of its registered office.

19 (5) The period of foreign foundation's duration stated in its certificate of registration
20 expires.

21 (6) The foreign foundation files with the secretary of state any report or other
22 document that:

23 (A) Is required or permitted to be filed under this chapter;

24 (B) Contains a misrepresentation of any material matter; or

25 (7) The secretary of state receives a duly authenticated certificate from the
26 secretary of state or other official having custody of the foundation's records in the jurisdiction in
27 which the foreign foundation is organized stating that the foreign foundation has been dissolved or
28 has ceased to exist as the result of a merger.

29 (b) The secretary of state may administratively dissolve a foreign foundation under
30 subsection (a) by sending the following documents to the foreign foundation at the foreign
31 foundation's principal office:

32 (1) A notice of dissolution; and

33 (2) An application for reinstatement.

34 (c) The notice of dissolution shall set forth:

35 (1) The grounds for dissolution; and

36 (2) The effective date of dissolution.

37 (d) The cancellation of the foreign foundation's registration is effective on the date of

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1 the notice of dissolution.

2 564-E:21-2117 Effects of Administrative Cancellation.

3 (a) A foreign foundation's authority to engage in registrable activities in this state shall
4 cease on the effective date of the administrative cancellation of the foreign foundation's registration.

5 (b) The administrative cancellation of a foreign foundation's registration shall not
6 terminate the authority of the foreign foundation's registered agent.

7 564-E:21-2118 Appeal from Administrative Cancellation.

8 (a) A foreign foundation may appeal the administrative cancellation of its registration
9 to the probate division of the circuit court for the sixth circuit within 30 days after cancellation.

10 (b) The foreign foundation appeals by:

11 (1) Petitioning the court to set aside the cancellation; and

12 (2) Attaching to its petition copies of:

13 (A) The foreign foundation's certificate of registration; and

14 (B) The secretary of state's notice of administrative cancellation.

15 (b) The court may summarily order the secretary of state to reinstate the foreign
16 foundation's registration or may take any other action the court considers appropriate.

17 (c) The court's final decision may be appealed as in other civil proceedings.

18 564-E:21-2119 Domestication.

19 (a) A foreign foundation may domesticate as a foundation formed under this chapter by
20 filing with the secretary of state a certificate of domestication.

21 (b) The certificate of domestication shall set forth:

22 (1) The foreign foundation's name or, if its name is unavailable for use in this state,
23 a name that satisfies the requirements of RSA 564-E:4-401;

24 (2) The name and usual business address of each of the foreign foundation's
25 directors;

26 (3) The name of the jurisdiction under the laws of which the foreign foundation was
27 originally formed;

28 (4) The foreign foundation's original date of formation;

29 (5) If the foreign foundation's domestication will not be effective upon the filing of
30 certificate of domestication with the secretary of state, the effective date and time on which the
31 foreign foundation's domestication shall begin;

32 (6) The name of the foreign foundation's initial registered agent in this state; and

33 (7) The address of the foreign foundation's initial registered office in this state.

34 (c) The certificate of domestication may set forth any other matter that the foreign
35 foundation deems necessary or advisable.

36 (d) For purposes of subsection (b)(5), the effective date and time shall not be more than
37 90 days after the filing of the foreign foundation's certificate of domestication with the secretary of

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1 state.

2 564-E:21-2120 Date of Domestication.

3 (a) A foreign foundation's domestication shall be effective upon:

4 (1) If certificate of domestication does not specify a delayed effective time and date
5 in accordance with RSA 564-E:21-2120(b)(5) and (c), the filing of the certificate of domestication; or

6 (2) If certificate of domestication specifies a delayed effective time and date in
7 accordance with RSA 564-E:21-2120(b)(5) and (c), the effective time and date specified in the
8 certificate of domestication.

9 (b) The secretary of state's acceptance for filing of the certificate of domestication is
10 conclusive proof that the foundation satisfied all conditions precedent to the foundation's
11 domestication, except in a judicial proceeding by this state to revoke the foundation's domestication
12 or involuntarily dissolve the foundation.

13 564-E:21-2121 Effects of Domestication.

14 (a) Upon its domestication, a foreign foundation shall be:

15 (1) Domesticated as foundation; and

16 (2) Subject to this chapter in the same manner as a foundation originally formed
17 under this chapter.

18 (b) Notwithstanding the effective date of the domestication or this chapter, a
19 domesticated foundation's existence shall be deemed to have commenced on the date that its
20 existence commenced in the jurisdiction in which it was originally formed.

21 (c) All title to real property and other property owned by a foundation before its
22 domestication and all contractual rights possessed by a foundation before its domestication shall
23 remain vested in the foundation without reversion or impairment.

24 (d) Domestication shall not affect:

25 (1) Any obligations or liabilities that a foundation incurred before its domestication;

26 (2) The personal liability of any person for any of the obligations or liabilities
27 described in subsection (b)(1); or

28 (3) The laws applicable to a foundation before the filing of its certificate of
29 formation.

30 Article 22

31 Reports and Other Filings

32 564-E:22-2201 Annual Reports.

33 (a) Each foundation and each registered foreign foundation shall file with the secretary
34 of state an annual report.

35 (b) In the case of a foundation, an annual report shall set forth:

36 (1) The foundation's name;

37 (2) The address of the foundation's principal office;

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- 1 (3) The foundation's registered agent;
- 2 (4) The foundation's registered office; and
- 3 (5) The name and business address of each of the foundation's directors.
- 4 (c) In the case of a registered foreign foundation, an annual report shall set forth:
- 5 (1) The foundation's name;
- 6 (2) The jurisdiction in which the foundation is formed;
- 7 (3) The address of the foundation's principal office;
- 8 (4) The foundation's registered agent;
- 9 (5) The foundation's registered office; and
- 10 (6) The name and business address of each of the foundation's directors.
- 11 (d) On its annual report, a foundation or a registered foreign foundation shall report
- 12 information that is accurate as of January 1 of the year in which the annual report is due.
- 13 (e) A foundation's annual reports are due:
- 14 (1) Subject to subsection (e)(2), a foundation shall file its initial annual report on or
- 15 before April 1 of the year following the calendar year in which the foundation was formed.
- 16 (2) If the foundation was formed during the month of December, then the
- 17 foundation shall file its initial annual report on or before April 1 of the second year following the
- 18 calendar year in which the foundation was formed.
- 19 (3) In each calendar year after the year in which its initial annual report is due, the
- 20 foundation shall file an annual report on or before April 1 of that year.
- 21 (f) A foreign foundation's annual reports are due:
- 22 (1) Subject to subsection (f)(2), a registered foreign foundation shall file its initial
- 23 annual report on or before April 1 of the year following the calendar year in which the foundation
- 24 was formed.
- 25 (2) If the foreign foundation registered during the month of December, then the
- 26 registered foreign foundation shall file its initial annual report on or before April 1 of the second
- 27 year following the calendar year in which the foreign foundation was registered.
- 28 (3) In each calendar year after the year in which its initial annual report is due, the
- 29 foreign foundation shall file an annual report on or before April 1 of that year.
- 30 (g) If an annual report of a foundation or a registered foreign foundation does not
- 31 contain the information required by this section, then the secretary of state shall promptly send to
- 32 the foundation or the registered foreign foundation:
- 33 (1) A notice describing the deficiencies in the annual report; and
- 34 (2) The annual report that fails to contain the information required by this section.
- 35 (h) If a foundation or a registered foreign foundation files a corrected annual report
- 36 within 30 days after the date of notice under subsection (g)(1), then the annual report will be
- 37 deemed timely filed.

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1 (i) In addition to the annual report fee, a foundation that fails to file its annual report
2 on or before the due date under RSA 564-E:22-2201(e) or a registered foreign foundation that fails to
3 file its annual report on or before the due date under RSA 564-E:22-2201(f) shall pay the late filing
4 fee under RSA 564-E:22-2205(a)(19).

5 564-E:22-2202 Correcting Filed Document.

6 (a) Subject to subsection (b), a foundation or foreign foundation may correct a document
7 described in subsection (c) by filing with the secretary of state a certificate of correction.

8 (b) A foundation or foreign foundation may file a certificate of correction only within
9 one year of the filing of the document described in subsection (c).

10 (c) A document filed with the secretary of state may be corrected if:

11 (1) The document contains an inaccuracy; or

12 (2) The document was defectively executed, attested, sealed, verified, or
13 acknowledged.

14 (d) The certificate of correction shall set forth:

15 (1) A statement identifying the document to be corrected;

16 (2) The filing date of the document to be corrected;

17 (3) A description of the inaccuracy or defect to be corrected; and

18 (4) A statement correcting the inaccuracy or defect.

19 (e) The certificate of correction may include a copy of the document to be corrected.

20 (f) A certificate of correction is effective on:

21 (1) Except as provided in subsection (f)(2), the effective date of the document that
22 the certificate of correction corrects; and

23 (2) With respect to any person relying on the uncorrected document and adversely
24 affected by the correction, the date on which the certificate of correction is filed.

25 564-E:22-2203 Penalty for Filing False Document.

26 (a) A person commits an offense by:

27 (1) Filing with the secretary of state a document that the person knows is false in
28 any material respect; or

29 (2) Signing a document that the person knows is false in any material respect with
30 intent that the document be delivered to the secretary of state for filing.

31 (b) An offense under this section is a misdemeanor.

32 564-E:22-2204 Collections and Payments of Fees.

33 (a) The secretary of state shall collect all fees required under this chapter and, subject
34 to subsection (b), shall pay those fees to the state treasurer to be deposited in the general fund as
35 unrestricted revenue.

36 (b) The state treasurer shall pay amounts to the secretary of state as follows:

37 (1) The state treasurer shall pay the expenses of administering this chapter out of

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any money in the treasury not otherwise appropriated until the fees collected under this chapter have been received by the state treasurer.

(2) After the fees collected under this chapter have been received by the state treasurer, the state treasurer shall pay the expenses of administering this chapter out of the fees collected under this chapter and shall reimburse the treasury for previous expenses paid by the state treasurer.

(c) The governor is authorized to draw a warrant for the sums authorized by this section out of any money in the treasury not otherwise appropriated.

564-E:22-2205 Fees.

(a) The secretary of state shall collect the following fees for:

(1) Certificate of formation	\$100
(2) Certificate of amendment	\$35
(3) Restated certificate of formation	\$35
(4) Application to reserve name	\$15
(5) Notice of transfer of reserved name	\$15
(6) Notice of change of registered agent	\$15
(7) Notice of resignation of registered agent	\$15
(8) Notice of registered agent's change of address	\$15
(9) Notice of change of registered office	\$15
(10) Certificate of merger	\$35
(11) Certificate of dissolution	\$35
(12) Certificate of revocation of dissolution	\$35
(13) Certificate of registration	\$100
(14) Amended certificate of registration	\$35
(15) Restated certificate of registration	\$35
(16) Certificate of cancellation	\$35
(17) Application for reinstatement	\$135
(18) Certificate of domestication	\$100
(19) Annual report	\$100
(20) Late filing fee	\$50
(21) Certificate of correction	\$35

(b) The secretary of state shall collect a fee of \$25 each time process is served on the secretary of state under this chapter. The party to a judicial proceeding causing service of process is entitled to recover this fee as costs if that party prevails in the judicial proceeding.

(c) The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a foundation or foreign foundation:

- (1) \$1 a page for copying; and

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(2) \$5 for the certificate.

Article 23

Miscellaneous Provisions

564-E:23-2301 Director of Charitable Trusts. With respect to a foundation that is a charitable trust, this chapter shall not limit the authority of the director of charitable trusts as otherwise provided by statute or common law.

564-E:23-2302 Department of Health and Human Services. This chapter shall not limit the authority of the department of health and human services as otherwise provided by statute or common law.

564-E:23-2303 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, then the invalidity shall not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application. To that end, the provisions of this chapter are severable.

257:48 Income from Trusts. Amend RSA 77:10 to read as follows:

77:10 Income From Trusts **and Foundations**. Interest and dividend income received by ~~[estates held by trustees]~~ **trusts and foundations** treated as grantor trusts under section 671 of the United States Internal Revenue Code shall be included in the return of their grantor, to the extent that the grantor is an inhabitant or resident of this state. Income reported by, and taxed federally as interest or dividends to, a trust **or foundation** beneficiary who is an individual inhabitant or resident of this state with respect to distributions from a trust **or foundation** that is not treated as a grantor trust under section 671 of the United States Internal Revenue Code shall be included as interest or dividends in the return of such beneficiary and subject to taxation in accordance with the provisions of this chapter.

257:49 Definitions; Business Organization. Amend RSA 77-A:1, I to read as follows:

I. "Business organization" means any enterprise, whether corporation, partnership, limited liability company, proprietorship, association, business trust, real estate trust or other form of organization; organized for gain or profit, carrying on any business activity within the state, except such enterprises as are expressly made exempt from income taxation under the United States Internal Revenue Code as defined in RSA 77-A:1, XX. Each enterprise under this definition shall be subject to taxation under RSA 77-A:2 as a separate entity, unless specifically authorized by this chapter to be treated otherwise, such as, but not limited to, combined reporting. Trusts **or foundations** treated as grantor trusts under section 671 of the United States Internal Revenue Code shall be included in the return of their owners, and such owners shall be subject to the tax thereon to the extent such owners would be considered a business organization hereunder notwithstanding the existence of the trust **or foundation**. The use of consolidated returns as defined in the United States Internal Revenue Code as defined in RSA 77-A:1, XX is not permitted. Notwithstanding any other provision of this paragraph, an enterprise shall not be characterized as

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a business organization and shall be excluded from taxation at the entity level if it elects to be treated as a qualified investment company as defined in RSA 77-A:1, XXI. A partnership, limited liability company, estate, trust, **or foundation** except grantor trusts pursuant to section 671 of the United States Internal Revenue Code, "S" corporation, real estate investment trust, or any other such entity, other than an organization electing to be treated as a qualified investment company as defined in RSA 77-A:1, XXI whose net income is reportable by the true owners either directly or indirectly shall be subject to tax at the entity level, and no part of such earnings or loss shall be included in the calculation of the gross business profits of the owners of such entity.

257:50 Definitions; Business Enterprise. Amend RSA 77-E:1, III to read as follows:

III. "Business enterprise" means any profit or nonprofit enterprise or organization, whether corporation, partnership, limited liability company, proprietorship, association, trust, **foundation**, business trust, real estate trust or other form of organization engaged in or carrying on any business activity within this state, except such enterprises as are expressly made exempt from income taxation under section 501(c)(3) of the United States Internal Revenue Code to the extent such enterprise does not engage in any business activity constituting unrelated business activity as defined by section 513 of the United States Internal Revenue Code. Each business enterprise under this definition shall be subject to the tax imposed under RSA 77-E as a separate entity except that trusts **and foundations** treated as grantor trusts under section 671 of the United States Internal Revenue Code shall be included in the return of their owners, and such owners shall be subject to the tax thereon to the extent any such owners would be considered a business enterprise hereunder notwithstanding the existence of the trust **or foundation**. The use of consolidated returns as defined in the United States Internal Revenue Code or of combined reporting is not permitted. Notwithstanding any other provision of this paragraph, an enterprise shall not be characterized as a business enterprise and shall be excluded from taxation at the entity level if it is a qualified investment company as defined in RSA 77-E:1, XIV.

257:51 Voluntary Corporations and Associations; Name. Amend RSA 292:3, II(a) and (b) to read as follows:

(a) The name of an entity incorporated, authorized, formed, or registered to do business in this state under RSA 292, RSA 293-A, RSA 293-B, RSA 294-A, RSA 301, RSA 301-A, RSA 304-A, RSA 304-B, RSA 304-C, RSA 305-A, ~~or~~ RSA 349, **or RSA 564-E**.

(b) A name reserved under RSA 293-A, RSA 293-B, RSA 304-A, RSA 304-B, RSA 304-C, **or RSA 564-E**.

257:52 New Hampshire Business Corporations Act; Name Corporate Name. Amend RSA 293-A:4.01(b)(1) and (b)(2) to read as follows:

(1) the name of an entity incorporated, authorized, formed, or registered to transact business in this state under RSA 292, RSA 293-A, RSA 293-B, RSA 294-A, RSA 301, RSA 301-A, RSA 304-A, RSA 304-B, RSA 304-C, RSA 305-A, ~~or~~ RSA 349, **or RSA 564-E**;

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(2) a name reserved or registered under RSA 293-A, RSA 293-B, RSA 304-A, RSA 304-B, ~~or~~ RSA 304-C, **or RSA 564-E**;

257:53 Treatment of New Hampshire Investment Trusts; Use of Names Regulated. Amend RSA 293-B:17, I(b)(1) and (2) to read as follows:

(1) The name of an entity incorporated, authorized, formed, or registered to do business in this state under RSA 292, RSA 293-A, RSA 293-B, RSA 294-A, RSA 301, RSA 301-A, RSA 304-A, RSA 304-B, RSA 304-C, RSA 305-A, ~~or~~ RSA 349, **or RSA 564-E**.

(2) A name reserved under RSA 293-A, RSA 293-B, RSA 304-A, RSA 304-B, ~~or~~ RSA 304-C, **and RSA 564-E**.

257:54 Professional Corporations; Corporate Name. Amend RSA 294-A:7, III(a)(1) and (2) to read as follows:

(1) The name of an entity incorporated, authorized, formed, or registered to do business in this state under RSA 292, RSA 293-A, RSA 293-B, RSA 294-A, RSA 301, RSA 301-A, RSA 304-A, RSA 304-B, RSA 304-C, RSA 305-A, ~~or~~ RSA 349, **or RSA 564-E**.

(2) A name reserved under RSA 293-A, RSA 293-B, RSA 304-A, RSA 304-B, ~~or~~ RSA 304-C, **or RSA 564-E**.

257:55 Cooperative Marketing and Rural Electrification Associations; Use of Name Regulated. Amend RSA 301:43-a, II(a) and (b) to read as follows:

(a) The name of an entity incorporated, authorized, formed, or registered to do business in this state under RSA 292, RSA 293-A, RSA 293-B, RSA 294-A, RSA 301, RSA 301-A, RSA 304-A, RSA 304-B, RSA 304-C, RSA 305-A, ~~or~~ RSA 349, **or RSA 564-E**.

(b) A name reserved under RSA 293-A, RSA 293-B, RSA 304-A, RSA 304-B, ~~or~~ RSA 304-C, **or RSA 564-E**.

257:56 Uniform Partnership Act; Registered Limited Liability Partnership; Name of Registered Limited Liability Partnership. Amend RSA 304-A:45, II(a) and (b) to read as follows:

(a) The name of an entity incorporated, authorized, formed, or registered to do business in this state under RSA 292, RSA 293-A, RSA 293-B, RSA 294-A, RSA 301, RSA 301-A, RSA 304-A, RSA 304-B, RSA 304-C, RSA 305-A, ~~or~~ RSA 349, **or RSA 564-E**.

(b) A name reserved under RSA 293-A, RSA 293-B, RSA 304-A, RSA 304-B, ~~or~~ RSA 304-C, **or RSA 564-E**.

257:57 Uniform Limited Partnership Act; Name. Amend RSA 304-B:2, III(a) and (b) to read as follows:

(a) The name of an entity incorporated, authorized, formed, or registered to do business in this state under RSA 292, RSA 293-A, RSA 293-B, RSA 294-A, RSA 301, RSA 301-A, RSA 304-A, RSA 304-B, RSA 304-C, RSA 305-A, ~~or~~ RSA 349 **or RSA 564-E**.

(b) A name reserved under RSA 293-A, RSA 293-B, RSA 304-A, RSA 304-B, ~~or~~ RSA 304-C **or RSA 564-E**.

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1 257:58 Trade Names; Registration; Generally. Amend RSA 349:1, IV(a)(1) and (2) to read as
2 follows:

3 (1) The name of an entity incorporated, authorized, formed, or registered to do
4 business in this state under RSA 292, RSA 293-A, RSA 293-B, RSA 294-A, RSA 301, RSA 301-A,
5 RSA 304-A, RSA 304-B, RSA 304-C, RSA 305-A, ~~or~~ RSA 349, **or RSA 564-E**.

6 (2) A name reserved under RSA 293-A, RSA 293-B, RSA 304-A, RSA 304-B, ~~or~~
7 RSA 304-C, **or RSA 564-E**.

8 257:59 Repeal. The following are hereby repealed:

9 I. RSA 383-D:11-1102, relative to audits in lieu of examination.

10 II. RSA 564-B:5-503, relative to exceptions to a spendthrift provision.

11 III. RSA 564-D, relative to qualified dispositions in trusts.

12 257:60 Contingent Renumbering. If SB 230-FN of the 2017 regular legislative session becomes
13 law, then RSA 564-E as inserted by section 47 of this act, and the references to RSA 564-E in RSA
14 292:3, II(a)-(b), RSA 293-A:4.01(b)(1) and (2), RSA 293-B:17, I(b)(1)-(2), RSA 294-A:7, III(a)(1)-(2),
15 RSA 301:43-a, II(a)-(b), RSA 304-A:45, II(a)-(b), RSA 304-B:2, III(a)-(b), and RSA 349:1, IV(a)(1)-(2),
16 as inserted respectively by sections 51-58 of this act, shall be renumbered as RSA 564-F.

17 257:61 Contingency. If SB 86 of the 2017 regular legislative session becomes law, sections 44,
18 46, and paragraph I of section 59 of this act shall take effect one minute after the effective date of
19 SB 86.

20 257:62 Effective Date.

21 I. Sections 2, 3, 4, 5, 7, 8, 10, 11, 13, 14, 15, 16, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 40,
22 and 43 of this act shall take effect upon its passage.

23 II. Sections 38, 41, and 47 through 58 of this act shall take effect October 1, 2017.

24 III. Sections 44, 46, and paragraph I of section 59 of this act shall take effect as provided in
25 section 61 of this act.

26 IV. The remainder of this act shall take effect 60 days after its passage.

Approved: July 18, 2017

Effective Date:

I. Sections 2, 3, 4, 5, 7, 8, 10, 11, 13, 14, 15, 16, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 40, and 43
shall take effect July 18, 2017.

II. Sections 38, 41, and 47 through 58 shall take effect October 1, 2017.

III. Sections 44, 46, and paragraph I of section 59 shall take effect as provided in section 61.

IV. The remainder shall take effect September 16, 2017

