

CHARITABLE TRUSTS UNIT

NH DEPARTMENT OF JUSTICE

New Hampshire Library Trustees Association Conference

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AGENDA

- Introduction to the CTU
- Trust Funds, Creation, Acceptance, and Custody
- Fiduciary Duties
- Restrictions, Modification, or Termination
- Reporting

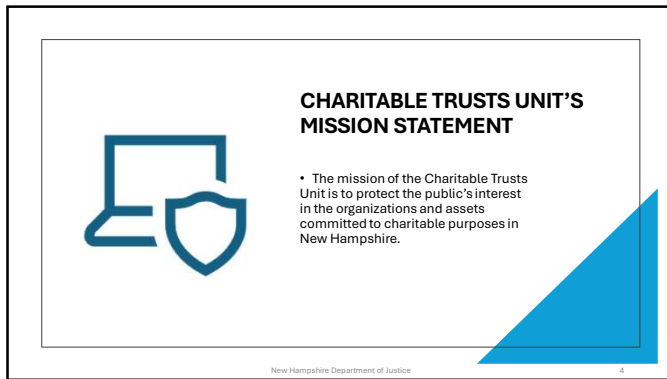
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INTRODUCTION TO THE CHARITABLE TRUSTS UNIT

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CHARITABLE TRUSTS UNIT'S MISSION STATEMENT

- The mission of the Charitable Trusts Unit is to protect the public's interest in the organizations and assets committed to charitable purposes in New Hampshire.

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Role of the Charitable Trusts Unit

- Education
- Registration
- Enforcement

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We protect donor intent

- INVESTIGATION
- LITIGATION

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Statistics


- About 12,500 annual reports from registered charitable organizations and trusts
- About 262 MS-9 and MS-10 annual reports from municipalities
- About 134 annual financial reports from municipal libraries



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CHARITABLE TRUST FUNDS



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NEW HAMPSHIRE TRUST CODE RSA 564-B

"Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in RSA 564-B:4-405(a).

564-B:4-405 Charitable Purposes; Enforcement. –
 (a) A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to the community.

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Acceptance
of Gifts


- General municipal authority
- Cemetery perpetual care funds
- Gifts to library
- School/village district gifts
- Conservation commissions
- Heritage commissions


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Custody of

Town Trust Funds

Library Funds

School District Funds

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DISTRIBUTIONS

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RSA 202-A:4-C

LIBRARY FUNDS

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202-A:12-a Trust Fund Annual Reports

Of the 134 Libraries listed with CTU

•	2023	report received	13
•	2024	report received	50 with 22 exempt
•	2025	received so far	29 with 25 exempt



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FIDUCIARY DUTIES OF BOARD OF DIRECTORS

Loyalty

Care

Obedience

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Trust Instrument

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Donor Restrictions

I leave the rest and residue of my estate to the Troy Public Library.

Unrestricted

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Donor Restrictions

I give, devise, and bequeath to the Town of Merrimack the sum of \$50,000 to be used for the benefit of the Town Library.

Purpose Restriction

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Donor Restrictions

I give the to the Antrim Public Library \$100,000, **the income only** to be used for whatever purpose the Library Trustees deem appropriate.

Time Restriction

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Donor Restrictions

I give \$50,000 to the City of Manchester, the **income** to be expended for the **maintenance of the Library.**

Time AND Purpose Restriction

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CHANGING A RESTRICTION

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Doctrine of Cy Pres

- *Cy pres* is an equitable doctrine applied by the courts to modify the charitable purpose of a charitable trust in appropriate circumstances so that the charitable trust does not fail. The term "cy pres" comes from the French phrase "cy pres comme possible" or "as near as possible."
- Under the doctrine of *cy pres*, when the purpose of a charitable trust **has become impossible, illegal, or impracticable to carry out or when applying assets for the trust's original purpose has become wasteful**, the court will direct application of the assets or an appropriate portion of the assets to charitable purposes that reasonably approximate the original purposes. *Restatement (Third) of Trusts* § 67. Both the Probate Court and the Superior Court have the authority to apply the *cy pres* doctrine.

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DOCTRINE OF DEVIATION

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Other Changes

- Modification/Termination
- Nonjudicial Settlement Agreement



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REPORTING
REQUIREMENTS

202-A:12 ANNUAL REPORTS

- Applies to all Public Libraries

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CHAPTER 202-A
PUBLIC LIBRARIES

Section 202-A:12(a)

Holding funds in trust shall report to the office of the attorney general,

Annually at the conclusion of each fiscal year,

The information required by RSA 202-A:12(a) through (d).

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PUBLIC LIBRARIES

Section 202-A:12(a) through (d)

- all receipts from whatever sources,
- all expenditures,
- all property in the trustees' care and custody, including a statement and explanation of any unexpended balance of money they may have,
- and any bequests or donations they may have received and are holding in behalf of the town, with such recommendations in reference to the same as they may deem necessary for the town to consider.

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Scenario 1

I, Lydia McPherson leave \$30,000 to the Applegate Public Library, the income to be used for the purchase of updated encyclopedias for use only in the library. Many years after Lydia passed, her children meet with the library trustees. They are concerned that no one uses these periodicals any longer with the ability of the internet. They would like the trustees to use these funds for children's early learning books instead.

Questions:
 What type of trust instrument was this fund created from?
 What are the restrictions on this fund?
 With the consent of Lydia's children, can the trustees make these changes to the library fund?

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Scenario 2

Trust fund established by the fundraising efforts of the parents of the kids in a children's program. Funds are to be used for a celebrity reading program, where a famous author comes in to read to the children. The fund currently has \$1,000 in the fund. The library has not been able to find a children's author willing to participate in the program for some time now. The children of the parents that did this fundraising effort are all grown at this point and those parents no longer regularly visit the library. The trustees would like to use the funds for celebrity adult authors to come in to do a book reading.

Questions:
 What type of trust instrument was this fund created from?
 What are the restrictions on this fund?
 Can the library change this to adult authors or vote to close the fund using the remaining funds for the children's story time program?

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TOP ISSUES

Not maintaining trust records, individually with balances, at the library or at the Town. It is important to know balances, especially for income only funds, in order for agents to know how much they have available to expend.

Failing to comply with donor restrictions (time, purpose, or both) on the purpose or administration of a fund.

Changing the purpose of a trust without court approval or donor consent.

Changing the purpose or administration of the trust based on the consent of the donor's family member/descendant. Family members are not considered the donor and do not have the ability to change the wishes of the donor even if they suggest that "it would have been the wishes of the family member".


Failing to maintain the original gift instrument at the library and/or the town offices. It is important to know how the trustees may spend the funds.

Failing to Report to the AG's office - CIU. Trustees are required to report annually on these funds under RSA 202-A:12-a and may submit the same report that they provide to the town for inclusion in the town's annual report to its citizens.

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MT0 I think this slide could be shortened potentially
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