



**CHARITABLE TRUSTS UNIT**  
NH DEPARTMENT OF JUSTICE

# Donor-Restricted Trust Funds Case Study Workshop

**Michael R. Haley, Esq.**  
Director of Charitable Trusts

**Amy J. Nichols, CPA**  
Financial Investigator

June 13, 2024

1

1

## AGENDA

- 1. Brief Intro to the CTU**
- 2. Fiduciary Duties of Trustees**
- 3. MS-9 Terms and Fund Types**
  1. New Reporting for Cemetery Perpetual Care Funds
  2. Case Studies
- 4. MS-10 Overview**
  1. Meths for Investing
  2. Investment Policy
  3. Case studies

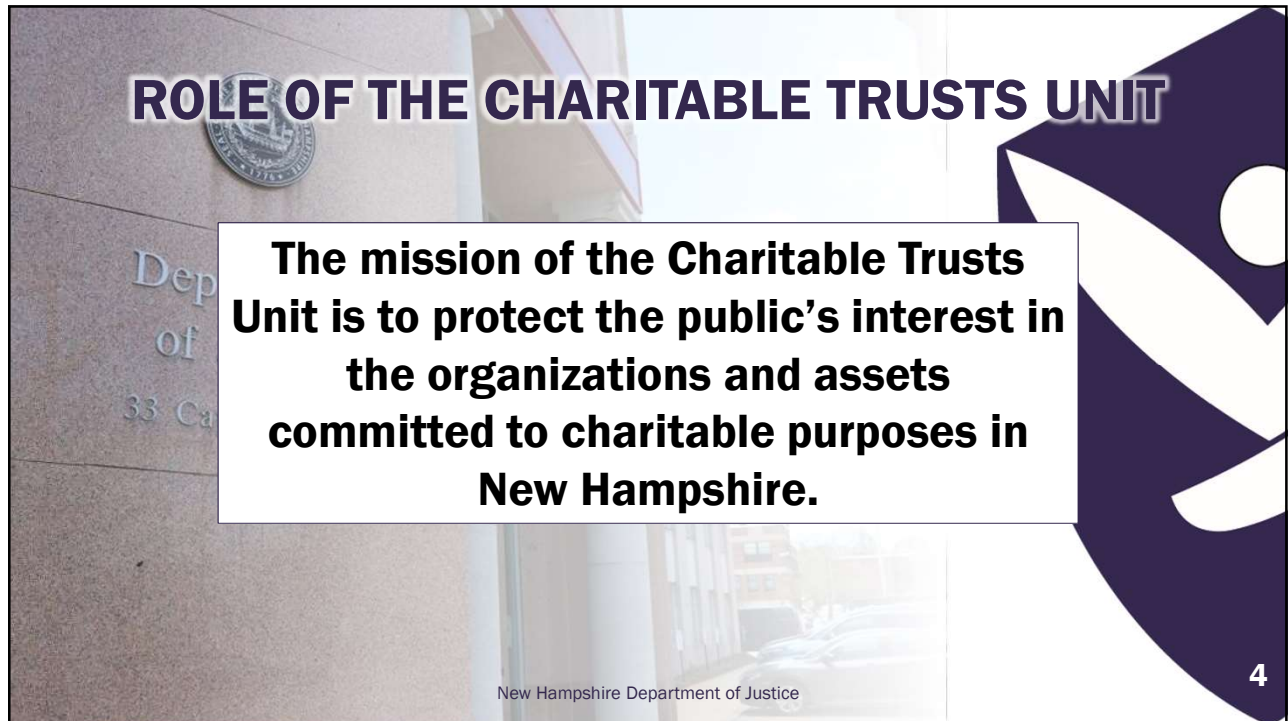
New Hampshire Department of Justice

2

2



3



4

# ROLE OF THE CHARITABLE TRUSTS UNIT

Registration

Education

Enforcement

New Hampshire Department of Justice

5

5

# We protect donor intent

Investigation

Litigation

New Hampshire Department of Justice

6

6

## WHAT IS A TRUST?

“[A]ny fiduciary relationship with respect to property arising under the law of this state or of another jurisdiction as a result of a manifestation of intention to create it, and subjecting the person by whom the property is held to fiduciary duties to deal with the property within this state for any charitable, nonprofit, educational, or community purpose.” RSA 7:21, II(a).



Tom Shatz

7

## WHAT IS A TRUST?



8

# ROLE OF TRUSTEES OF TRUST FUNDS

New Hampshire Department of Justice

9

9

## CUSTODY OF

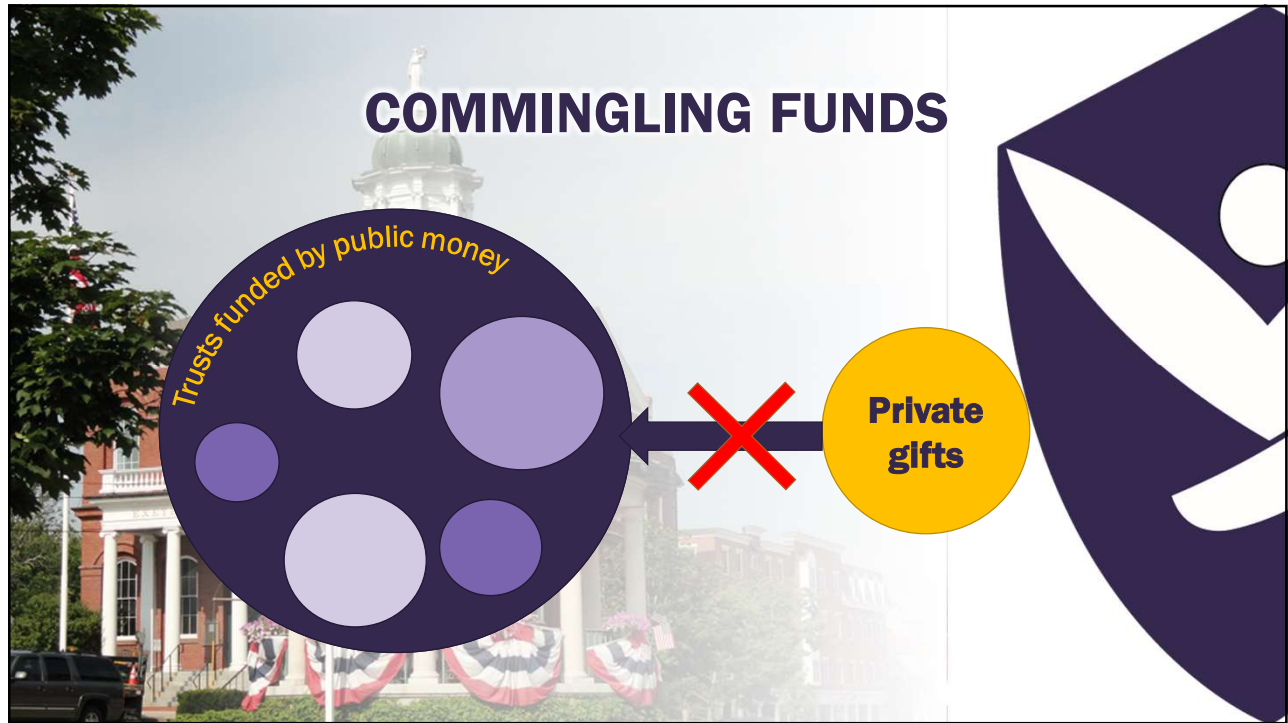
### TOWN TRUST FUNDS

### LIBRARY FUNDS

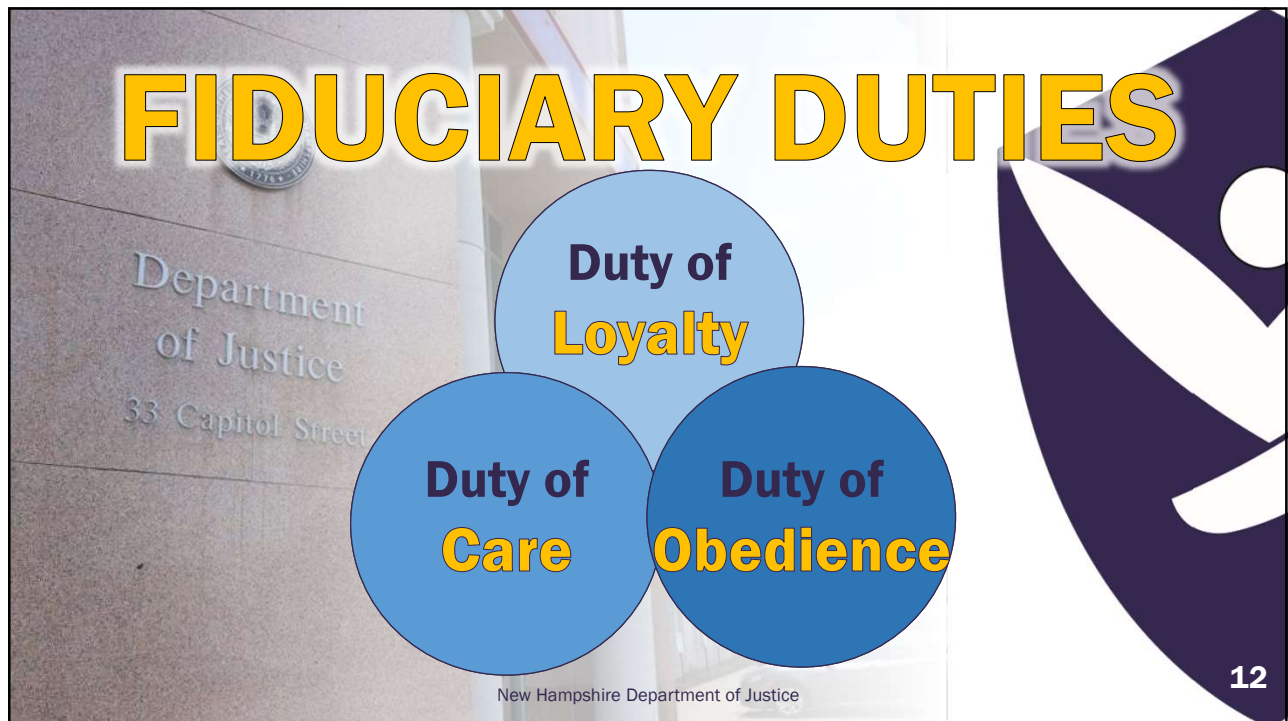
### SCHOOL DISTRICT FUNDS

New Hampshire Department of Justice

10



11



12

# DONOR RESTRICTIONS

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

**Unrestricted**

13

# 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 **Fire Department**

**Purpose restriction**

14

# DONOR RESTRICTIONS

I give the to the Town of Antrim \$100,000, the **income only** to be used for whatever **purpose** the Selectmen deem appropriate.

**Time restriction**

15

# DONOR RESTRICTIONS

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

**Time restriction**

**Purpose restriction**

16





# **WHAT COUNTS AS A “GIFT INSTRUMENT”?**

**AND DOES A GIFT INSTRUMENT NEED TO BE  
WRITTEN BY A LAWYER?**

## **WORKSHOP ACTIVITY 1**

17

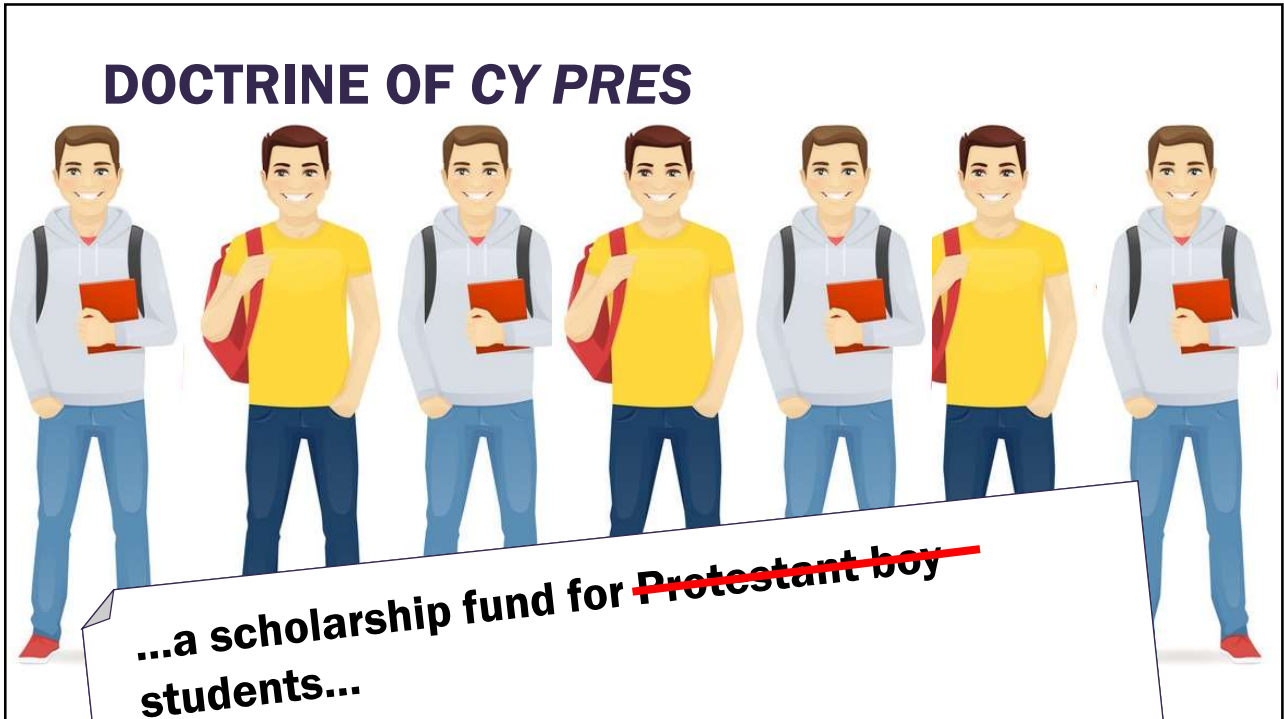


# **CHANGING A RESTRICTION**

18



19



20



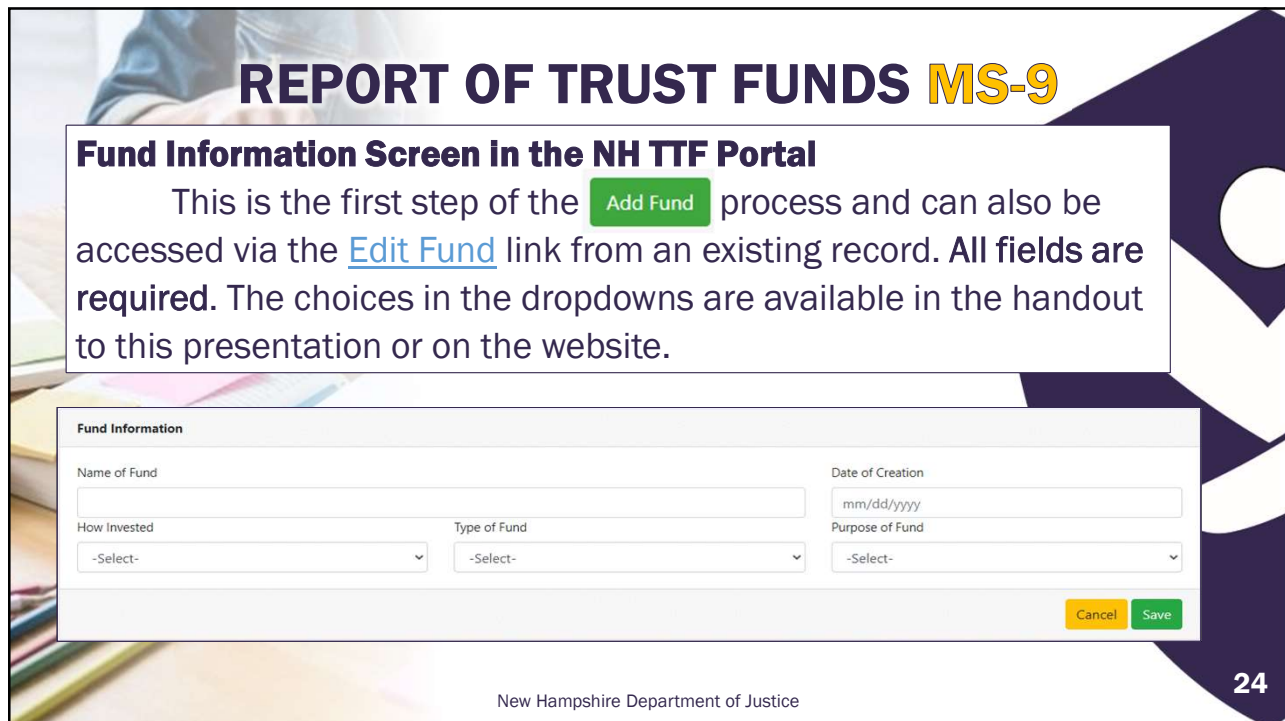
21



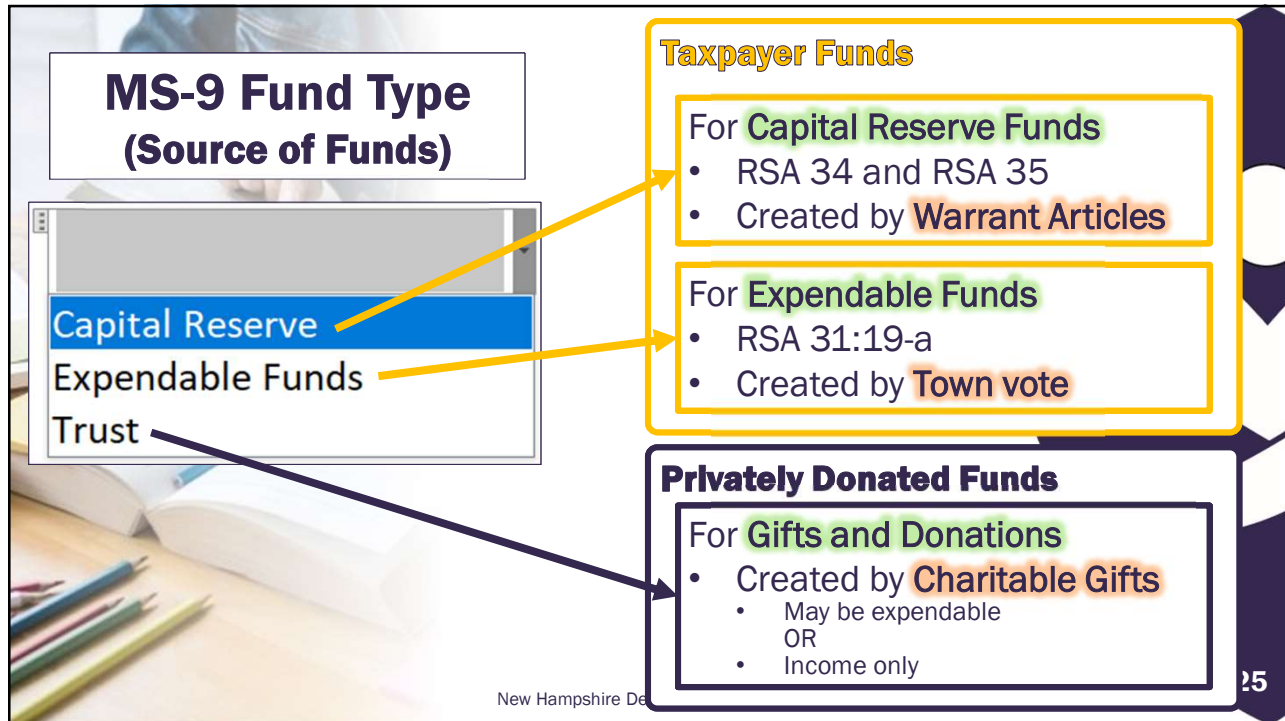
22



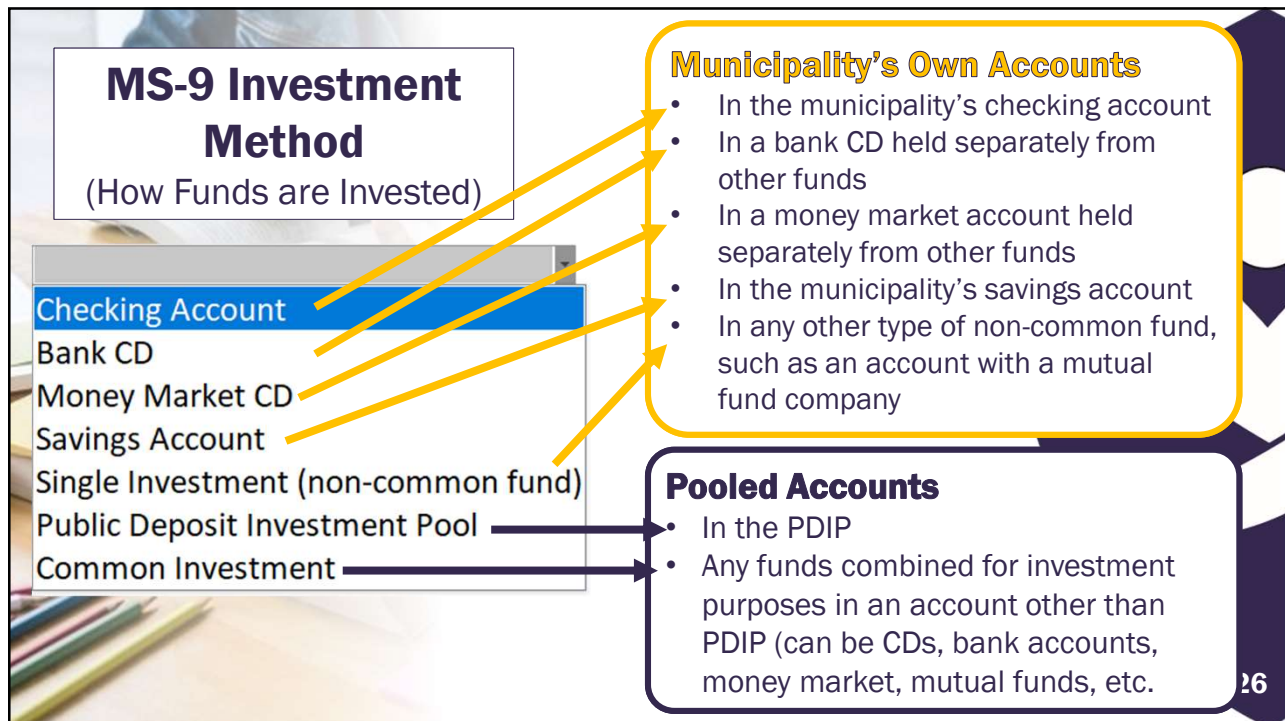
23



24



25



26

## Cemetery Perpetual Care: New Reporting

- Two Options
  1. Individually on the MS9 report (old way)
  2. Attach the Spreadsheet the trustees use
    - a. To spread the income and expense
    - b. To track the individuals

Use the Blue Instruments Button to attach the file

Trust   First Burial Yard C4   Cemetery Perpetual Care				
Trust   Plummer C6   Cemetery Perpetual Care				
Instruments				
Principal				
BOY Principal Balance	New Funds (+)	Realized Gains (+)	Cap Gains Distributions (+)	Principal Withdrawals (-)
\$18,180.02	\$0.00	\$0.00	\$0.00	\$0.00

New Hampshire Department of Justice

27

27

# YOUR TURN

New Hampshire Department of Justice

28

28

# WORKSHOP ACTIVITY 2

## McPherson Scholarship Fund

1. Can the trustees change the fund to a scholarship for nursing students since all of Lydia's heirs have agreed to the change? Why or why not?
2. What process would be required to change the fund?
3. Since Lydia was a nurse, is changing the fund to award scholarships for nursing students likely to be approved? Why or why not?
4. Can the trustees award the \$3,000 scholarship to Victoria? Why or why not?
5. Are there any other issues you see here?

New Hampshire Department of Justice

29

29

# WORKSHOP ACTIVITY 3

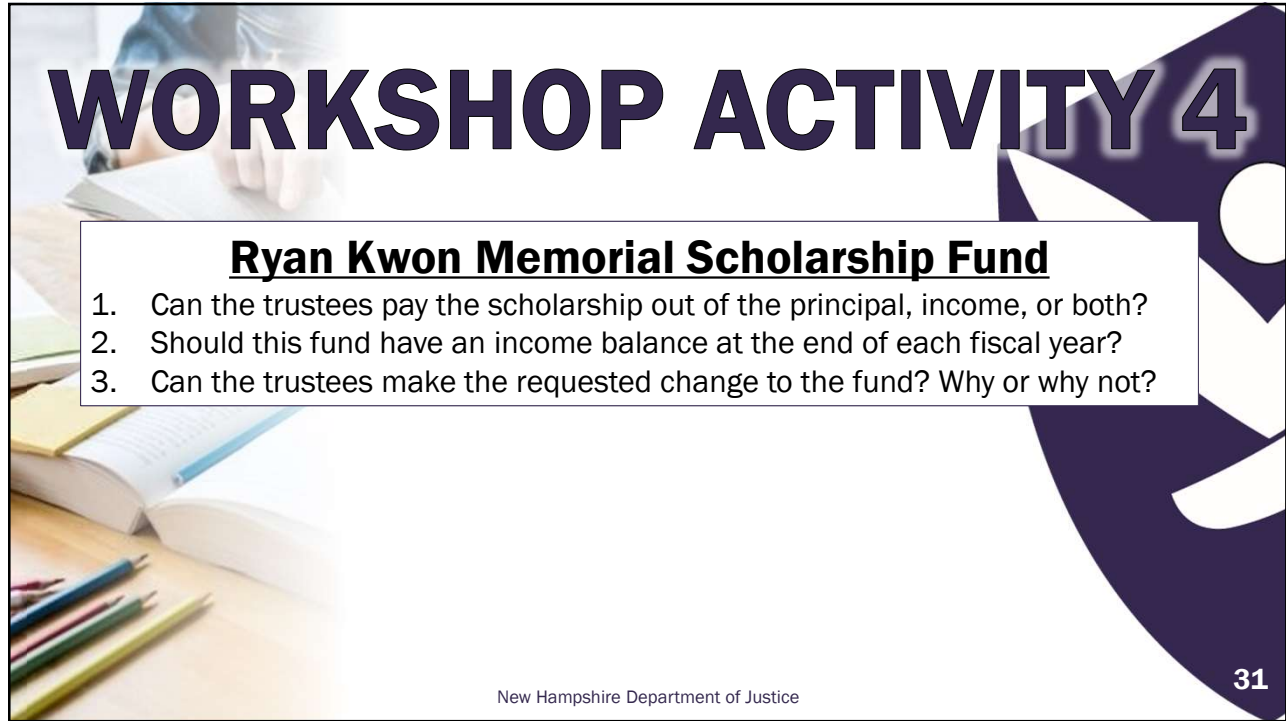
## Young Women Leaders in Athletics

1. Should the trustees accept this fund?
2. Should the selectboard accept this fund?
3. What options might you suggest to Ms. Henderson?

New Hampshire Department of Justice

30

30

A slide titled "WORKSHOP ACTIVITY 4" with a background image of a person reading a book. A white box in the center contains the title "Ryan Kwon Memorial Scholarship Fund" and three numbered questions. The slide number "31" is in the bottom right corner, and "New Hampshire Department of Justice" is at the bottom center.

# WORKSHOP ACTIVITY 4

**Ryan Kwon Memorial Scholarship Fund**

1. Can the trustees pay the scholarship out of the principal, income, or both?
2. Should this fund have an income balance at the end of each fiscal year?
3. Can the trustees make the requested change to the fund? Why or why not?

31

New Hampshire Department of Justice

31

A slide titled "MS-10 INVESTMENTS" with a background image of a person reading a book. The text "MS-10" is in yellow and "INVESTMENTS" is in blue. The slide number "32" is in the bottom right corner, and "New Hampshire Department of Justice" is at the bottom center.

# MS-10 INVESTMENTS

32

New Hampshire Department of Justice

32



# REPORT OF TRUST FUND INVESTMENTS

Rev 1707.06 Report MS-10, Report of Trust Fund Investments.

(a) The MS-10, "Report of Fund Investments," shall be completed and submitted utilizing the Trustee of Trust Fund Portal at [www.nhttf.org](http://www.nhttf.org).

**Currently this is for all funds held in common only.**

(b) The MS-10 shall include the trust fund investments and shall be certified by the majority of the trustees of the trust funds and submitted on or before March 1 if the municipality operates on a calendar year or by September 1 if the municipality operates on an optional fiscal year.

**What does "Common Investment" mean?**

Derived from Volume XLII Number 49, Filed December 8, 2022, Proposed by #13489, Effective 11/15/2022, Expires 11/15/2032 (see Revision Note at chapter heading for Rev 1700)

New Hampshire Department of Justice

33

33

# REPORT OF COMMON INVESTMENTS MS-10

## Who needs to file an MS-10 report?

- Common Investment - Any funds combined for investment purposes in an account *other than PDIP*
  - Includes: CDs, bank accounts, money market, mutual funds, stocks and bonds, etc.
  - Funds pooled together in one account at a bank, brokerage, or financial institution.
  - Typically pooled together:
    - Cemetery perpetual care funds
    - Privately donated trust funds
  - For any of the above choose "Common Investment" for the how invested option.
  - When pooled together but invested in the New Hampshire Public Deposit Investment Pool choose the option for "PDIP."

New Hampshire Department of Justice

34

34

### MS-9 Investment Method

(How Funds are Invested)

- Checking Account
- Bank CD
- Money Market CD
- Savings Account
- Single Investment (non-common fund)
- Public Deposit Investment Pool
- Common Investment

#### Municipality's Own Accounts

- In the municipality's checking account
- In a bank CD held separately from other funds
- In a money market account held separately from other funds
- In the municipality's savings account
- In any other type of non-common fund, such as an account with a mutual fund company

#### Pooled Accounts

- In the PDIP
- Any funds combined for investment purposes in an account other than PDIP (can be CDs, bank accounts, money market, mutual funds, etc.)

35

## HOW TO INVEST

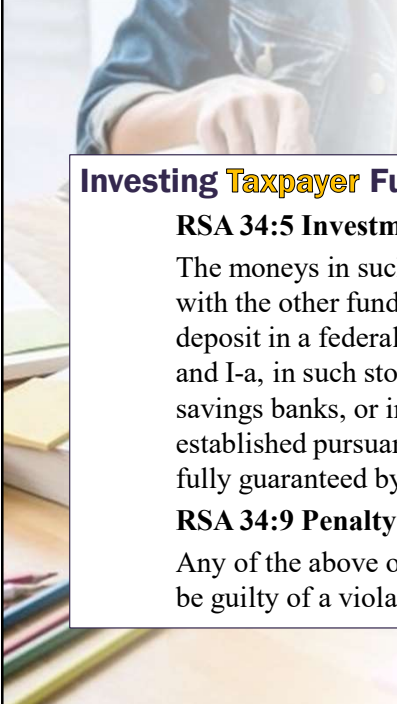
### Capital Reserve funds and town created expendable trust funds

- Can be pooled together but cannot be in the same account as privately donated funds.
- Cannot commingle taxpayer funds with privately donated funds pursuant to **RSA 31:19-a IV.**

The local legislative body may authorize the acceptance of privately donated gifts, legacies, and devises to be utilized for the same purposes as a trust fund created under this section; provided, however, that such gifts, legacies, or devises **shall be invested and accounted for separately from, and not commingled with, amounts appropriated under paragraph I,** and shall be subject to the custody and investment provisions applicable to trust funds accepted under RSA 31:19.

New Hampshire Department of Justice

36



## HOW TO INVEST

### Investing **Taxpayer Funds**

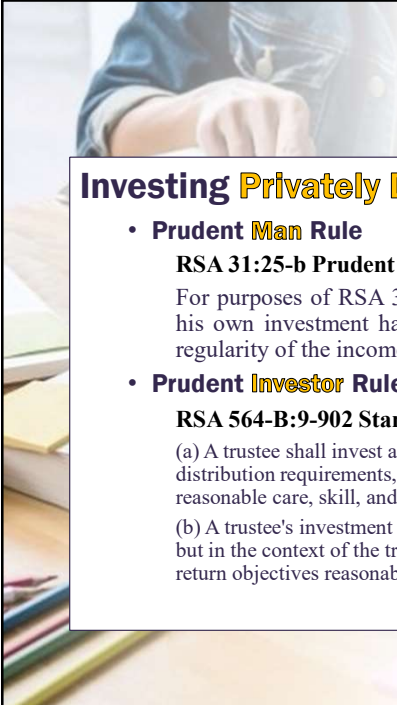
**RSA 34:5 Investment.** –  
The moneys in such fund shall be kept in a separate account and not intermingled with the other funds of the city. Said capital reserve fund shall be invested only by deposit in a federally insured bank authorized to accept deposits under RSA 6:8, I and I-a, in such stocks and bonds as are legal for investment by New Hampshire savings banks, or in participation units in the public deposit investment pool established pursuant to RSA 383:22, or in obligations with principal and interest fully guaranteed by the United States government.....

**RSA 34:9 Penalty for Failure to Perform.** –  
Any of the above officers who shall fail to perform the duties above set forth shall be guilty of a violation for every week said failure shall continue.

37

New Hampshire Department of Justice

37



## HOW TO INVEST

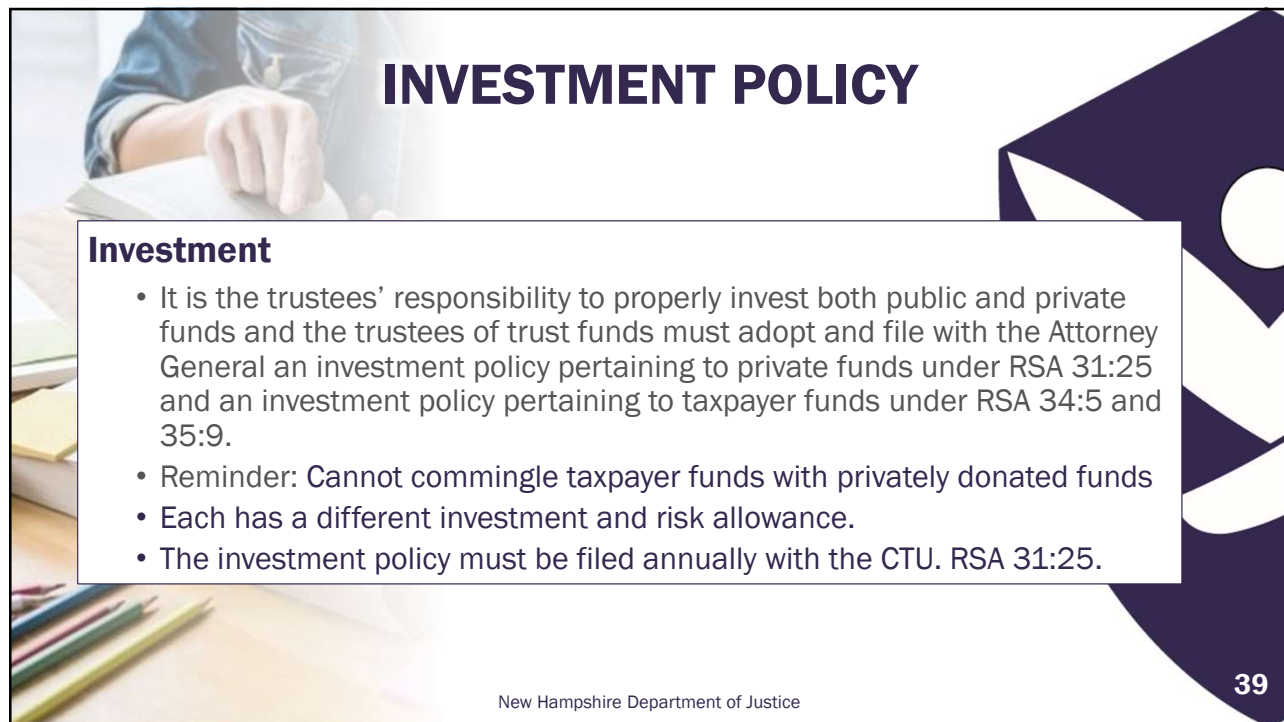
### Investing **Privately Donated Funds**

- **Prudent **Man** Rule**  
**RSA 31:25-b Prudent Investment Defined.** –  
For purposes of RSA 31:25-a, a prudent investment is one which a prudent man would purchase for his own investment having primarily in view the preservation of the principal and the amount and regularity of the income to be derived therefrom.
- **Prudent **Investor** Rule**  
**RSA 564-B:9-902 Standard of Care; Portfolio Strategy; Risk and Return Objectives.** –  
(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.  
(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

38

New Hampshire Department of Justice

38



**INVESTMENT POLICY**

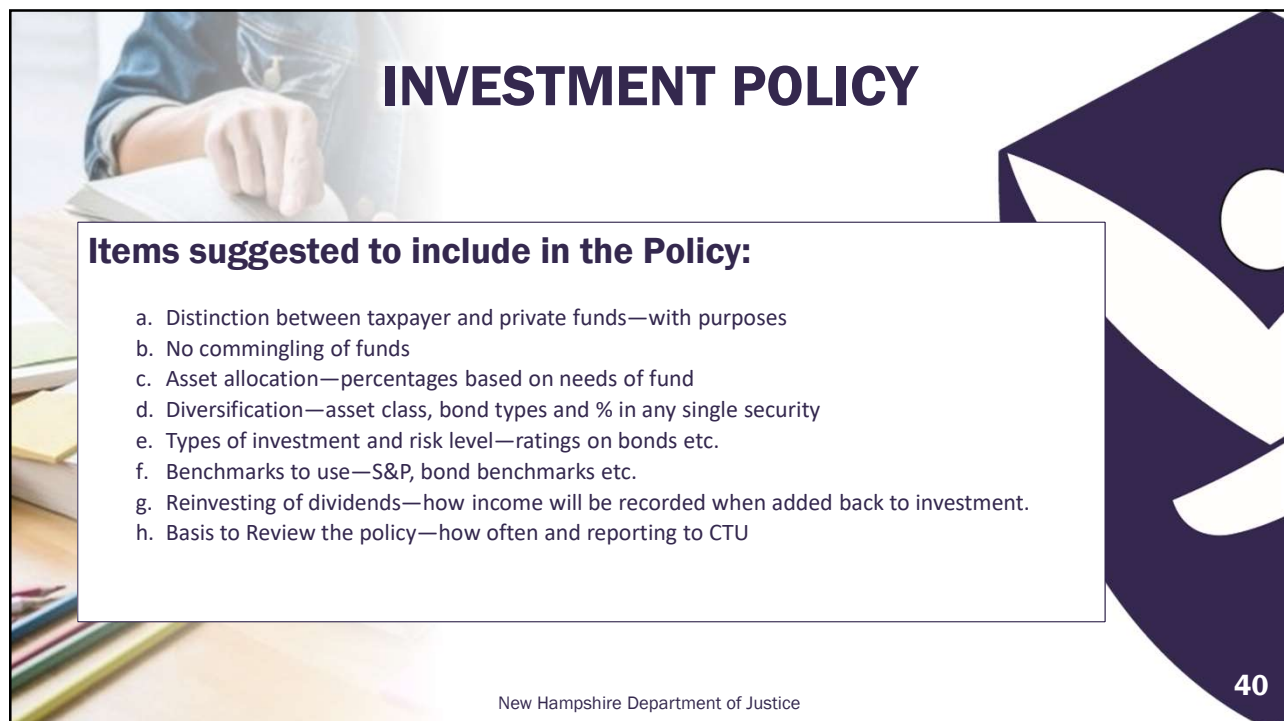
**Investment**

- It is the trustees' responsibility to properly invest both public and private funds and the trustees of trust funds must adopt and file with the Attorney General an investment policy pertaining to private funds under RSA 31:25 and an investment policy pertaining to taxpayer funds under RSA 34:5 and 35:9.
- Reminder: Cannot commingle taxpayer funds with privately donated funds
- Each has a different investment and risk allowance.
- The investment policy must be filed annually with the CTU. RSA 31:25.

New Hampshire Department of Justice

39

39



**INVESTMENT POLICY**


**Items suggested to include in the Policy:**

- a. Distinction between taxpayer and private funds—with purposes
- b. No commingling of funds
- c. Asset allocation—percentages based on needs of fund
- d. Diversification—asset class, bond types and % in any single security
- e. Types of investment and risk level—ratings on bonds etc.
- f. Benchmarks to use—S&P, bond benchmarks etc.
- g. Reinvesting of dividends—how income will be recorded when added back to investment.
- h. Basis to Review the policy—how often and reporting to CTU

New Hampshire Department of Justice

40

40

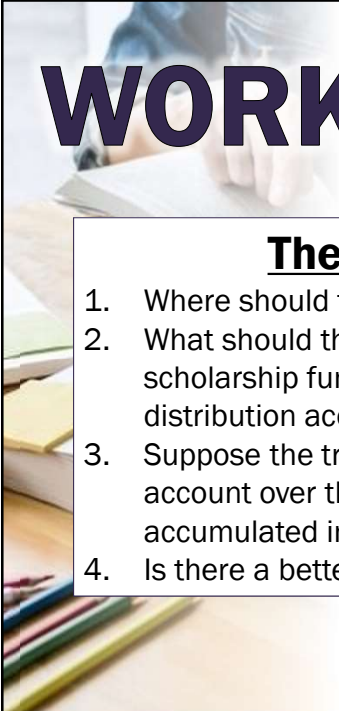


# YOUR TURN

New Hampshire Department of Justice

41

41



# WORKSHOP ACTIVITY 5

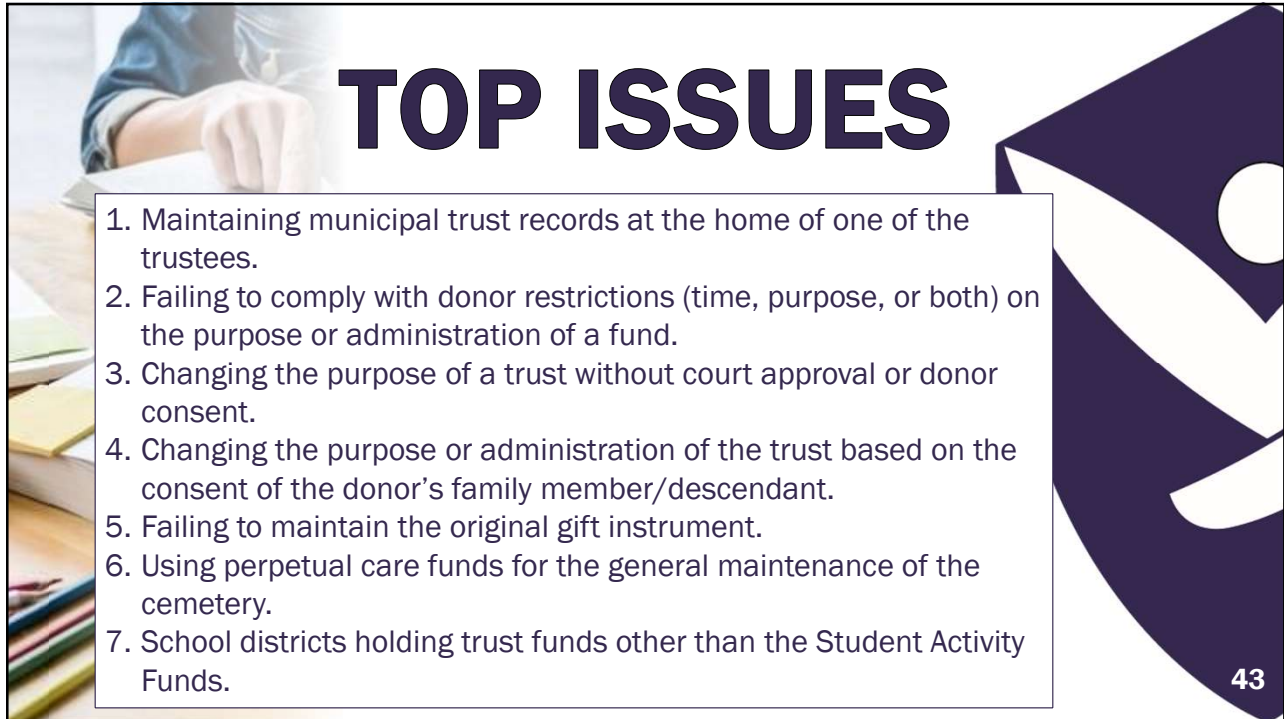
## The Distribution Checking Account

1. Where should the trustees put the unused portion of Briana's scholarship?
2. What should the trustees do with the income that was generated by Briana's scholarship funds in the three years since they moved her award to the distribution account?
3. Suppose the trustees had moved several different scholarships to this account over the past three years. What should they do with the accumulated income?
4. Is there a better way to handle all of this?

New Hampshire Department of Justice

42

42



# TOP ISSUES

1. Maintaining municipal trust records at the home of one of the trustees.
2. Failing to comply with donor restrictions (time, purpose, or both) on the purpose or administration of a fund.
3. Changing the purpose of a trust without court approval or donor consent.
4. Changing the purpose or administration of the trust based on the consent of the donor's family member/descendant.
5. Failing to maintain the original gift instrument.
6. Using perpetual care funds for the general maintenance of the cemetery.
7. School districts holding trust funds other than the Student Activity Funds.

43

43



## FURTHER INFORMATION



# CHARITABLE TRUSTS UNIT

NH DEPARTMENT OF JUSTICE

**Attorney General, Charitable Trusts**  
[www.doj.nh.gov/charitable-trusts](http://www.doj.nh.gov/charitable-trusts)

**Michael R. Haley**  
Director of Charitable Trusts

**Amy J. Nichols**  
Financial Investigator

[CharitableTrustsUnit@doj.nh.gov](mailto:CharitableTrustsUnit@doj.nh.gov)

**603-271-3591**

New Hampshire Department of Justice

44

44