

**TRUSTEES OF TRUST FUNDS**

**WHAT DO I DO NOW!**

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## INTRODUCTION

Linda Lambert, Tax & Accounting Specialist at Three Bearings Fiduciary Advisors, Inc.

Bachelor of Science degree in Accounting from Southern New Hampshire University and an Associate in Science Degree in Paralegal Studies from New Hampshire Technical Institute.

10 years of experience in municipal advocacy, research and accounting.

Currently contracted with 35 towns and cities and 2 libraries within the state.

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## KNOW WHAT YOU HAVE

You are going to want to:

- Research
- Locate
- Retain Backup Documentation

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## RESEARCH

You may find in starting your new role as Trustee of Trust Funds that you do not have historical files on the establishment of the funds that you oversee.

It is in your best interest to research each of your funds so that you can be certain that you are performing your Duties of Loyalty, of Care, to Manage, and of Obedience.

There are a number of resources that you can use to locate documentation.

- Town Office Staff
- Cemetery Trustees
- Library Trustees
- Town Historical Society
- Department of Revenue
- Charitable Trust Unit
- Probate Courts
- NH Division of Archives and Records Management

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## LOCATE

Once you have completed your research you may find that you are not able to simply print it from your computer or save it to a shared file exchange. You may need to schedule a visit at one of the resource options listed on the previous slide. You will need to request that photocopies be made, or digital reproductions be sent electronically to you.

If you incur any costs in collecting this documentation you can submit a request for reimbursement pursuant to, NH RSA 31:24 Trustees; Expenses. The expense of trustees or the trustee provided for in RSA 31:23 shall be charged as incidental town charges.

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## RETAIN

Now that you have researched your funds and located the documentation that substantiates them, you now need to retain this information.

We have all heard stories of trustees being refused the release of documents from an individual; of the documents being destroyed in a fire because they were being stored in a home; lost in a flood that occurred at the Town Hall; or even that there are no documents because the information is in the brain of a trustee who has been in their position for 40 years!!!

Take this step for yourselves and for the trustees who will come after you. Request permission for a designated space to save paper copies of your files at the Town Hall. Ask about what safety and preservation protocols are in place.

Scan paper files and download electronic copies and put them in a shared file exchange that all trustees have access to.

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## MAKE YOUR WORK MANAGEABLE

You are going to need to clean up your books & MS-9 Reports:

- Methods for Capital Reserve/ Expendable Trust Funds and Trust Funds are different

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## CAPITAL RESERVE & EXPENDABLE TRUST FUNDS

Do they have a \$0.00 balance?

- Leave open for future contributions.
- Create a warrant article to close the fund.

Do they have a small balance?

- Create a warrant article to close the fund.
- NH RSA 35:16-a states that a vote is required to close a fund and that the trustees are required to turn over monies remaining in the fund to the Treasurer of the Town, District or County.

Should the balance of the fund be returned to the Town's General Fund?

- As stated above, the remaining balance of a fund that is closed must be returned to the Treasurer of the Town, District or County.
- In some instances, a new fund is created by warrant in the same year as the closure of another. The warrant establishing the new fund can state that it will be funded with monies from the General Fund that came from the closure of the other fund.

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## CAPITAL RESERVE & EXPENDABLE TRUST FUNDS

Have they been reported on the MS-9 for years and not been used?

- Communicate with the Town Administrator or Finance Director and Board of Selectmen.
- Communicate with other interested parties, such as the Fire Department, Police Department, Conservation Commission, Recreation Department, Cemetery Trustees, Library Trustees and School Boards.

Do they need to have the purpose altered/changed?

- Create a warrant article to change the fund's purpose with the assistance of the board or committee that has the greatest insights on the future usage of the fund.
- NH RSA 35:16 states that a 2/3rds vote of all voters present at an annual Town meeting is required to change the purpose.

Are there agents to expend established?

- Create a warrant article to establish agents to expend.
  - Examples are Board of Selectmen, School Board, Cemetery Trustees, Library Trustees, Chief of Police, Fire Chief.

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## TRUST FUNDS

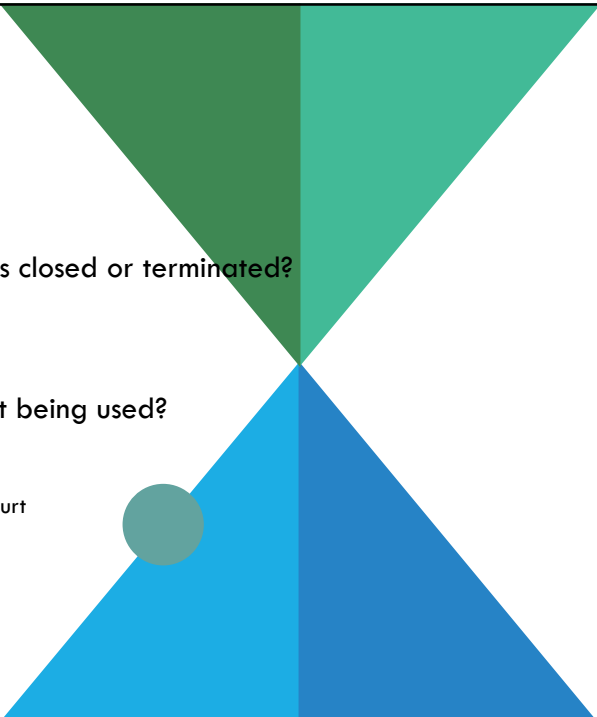
Do they have a \$0.00 balance?

- Leave open for future contributions
- Close out based upon carrying out the donor's intent

Do they carry a small balance?

- Non-viable funds
  - If the donor is still alive, you can request that they amend their original trust document.
  - If the donor is not alive, you will need to submit a Non-Judicial Settlement Agreement with the Charitable Trust Unit.

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## TRUST FUNDS

Where will the balance of this fund go, if it is closed or terminated?

- Final distribution to customary recipient
- General Scholarship Trust Fund

Are the funds remaining on the MS-9 and not being used?

- Communicate with beneficiaries
- Lack of documentation
  - File a Petition for Instruction with the Probate Court
- Fund purpose is discriminatory

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## DEAL WITH YOUR PROBLEMS

Why is it always the cemetery's fault?

- Reporting Perpetual Care as a lump sum not by individual plot
- Perpetual care be gone!
- Flower & Flag Funds
- Axiomatic Fund Set Up
- Cy Pres Petition

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## REPORTING PERPETUAL CARE AS A LUMP SUM NOT BY INDIVIDUAL PLOT

Be proactive and contact the Charitable Trust Unit to determine a satisfactory way to correct your MS-9 report.

Do not mistakenly think your MS-9 has been accepted every year with the perpetual care “rolled up,” so it is not going to be an issue in the future.

The Charitable Trust Unit will discover the error and will require you to correct it.

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## PERPETUAL CARE BE GONE!

I want to stress the point that I am discussing doing away with FUTURE perpetual care funds, not existing.

Discuss, with your Cemetery Trustees, establishing a 31:19-a General Cemetery Maintenance Expendable Trust Fund. This fund would be for future plot sale revenues, it is fully expendable and can be used for the maintenance and care of all Town owned cemeteries.

The creation of this fund eliminates the future need to report plot purchases individually, existing perpetual care plots would remain reported individually.

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## FLOWER & FLAG FUNDS

The request to place flowers and/or flags on a grave within the deed language or other trust document is a valid trust that must be honored into perpetuity.

Make certain that your Cemetery Trustees are placing flowers and/or flags on the plots that require them and that they are submitting a request for reimbursement to you from those same plots.

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## AXIOMATIC FUND SET UP

When reporting a General Cemetery Maintenance Expendable Trust Fund in your Axiomatic account, make certain to report:

- The “Type of Fund” as Expendable Trust (RSA 31:19-a) not Capital Reserve (RSA 34/35) or Trust.
- The “Purpose of Fund” as Capital Reserve (Other) not Cemetery Trust (Other) or Cemetery Perpetual Care.

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## CY PRES PETITION

If you find that your perpetual care funds have sufficient excess accumulated income to maintain their plots now and into the foreseeable future, you can petition the Probate Court to let the Cemetery Trustees take the excess accumulated income and place it in a separate fund to be used for a specific purpose. It is common to see the purpose stated as for the general care, capital improvements to or expansion of Town owned cemeteries.

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## SUMMARY

Myself and the staff at Three Bearings Fiduciary Advisors, Inc. pride ourselves on our service focused, trusted relationships with each trustee in our towns and cities, the municipal officials they work with, and the Charitable Trust Unit, NH Department of Revenue and Axiomatic.

We focus on staying up to date on what is happening in the Trustee of Trust Funds world, we continuously gain knowledge and in turn share that with our clients. We actively participate in trainings offered by the NH Municipal Association and research and development opportunities offered by Axiomatic.

We welcome your questions on investment management, bookkeeping, reporting assistance and research needs. If you feel that your municipality would benefit from a meeting with our office, please see me after the presentations are completed or use my contact information in the materials provided.

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## THANK YOU

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