

State of New Hampshire Municipal and Property Division Trust Fund Administration

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TRUST FUND ADMINISTRATION

This presentation is intended for informational purposes only, and is not a substitute for seeking professional advice or for reviewing the applicable laws and rules. This presentation represents some positions of the Department on the limited issues discussed herein, based on the law in effect at the time of the presentation and Department interpretation thereof, as well as the opinions and conclusions of its presenter.

For the current status of any tax law, practitioners and taxpayers should consult the source documents (i.e., Revised Statutes Annotated, Rules, Case Law, Session Laws, etc.) for independent verification.

CAPITAL RESERVE FUNDS (CRFs)

&

**EXPENDABLE TRUST FUNDS
(ETFs)**

WHAT ARE RESERVE FUNDS?

- “Saving accounts” for future expenditures
- Where to find the statutes?
 - RSA 35, Capital Reserve Funds for Counties, Towns, Village Districts and Water Departments
 - RSA 34, Capital Reserve Funds for Cities
 - RSA 31:19-a, Trust Funds for Towns
 - RSA 198:20-c, Expendable Trust Funds for Schools

PURPOSES

What can CRFs/ETFs be used for?

- Specific capital improvement or item of equipment
 - Examples: Maple Road Bridge or Police Cruiser
- Type of capital improvement or item of equipment
 - Examples: Town Bridge Repairs or Police Vehicles

RSA 35:1 CRF PURPOSES

- Reappraisal or revaluation
- Land acquisition
- Tax maps
- Extraordinary legal fees
- Municipal and regional transportation projects
- Debt service payment (specific project defined)
- RSA 35:1-a, Optional fiscal year
- RSA 35:1-b, Special education

RSA 31:19-a TRUST FUNDS

RSA 31:19-a, I thru III, Expendable Trust Funds

- Maintenance and operation of the town, or any other distinctly stated public purpose
- Agents to expend
- Examples: Computer software, Fuel expenses

RSA 31:19-a, IV thru V, Private Trust Funds

- Privately donated gifts, legacies, and devises
- Invested and accounted for separately
- Cannot be comingled with other gifts or tax dollars

PURPOSE

- Voters know what the funds will be used for
- Reasonable latitude for governing body
- Range of purposes:
 - “Police Department CRF” may not be specific enough
 - “2010 dark blue 4-door Crown Victoria cruiser with 8-cylinder engine and Michelin all-season tires CRF” is too specific
 - “Police Department Vehicle CRF” is suggested

POTENTIAL PROBLEMS

- Purpose may be too vague
- Vague purposes present potential conflict regarding proper expenditures
- Vague Examples:
 - Benefits ETF
 - Capital Improvement CRF
 - Vehicles CRF
- Conflict Example: Does Capital Improvement include all town facilities, just vehicles, or other items?

RSA 35:5 PAYMENTS INTO FUND

- Any source other than money given for charitable purposes
- Sum certain (specific) amounts required
- Charitable donations cannot be placed directly into a Capital Reserve or Expendable Trust Fund
 - May accept donation as unanticipated revenue into the general fund
 - Following year, place article on warrant to add to fund

CUSTODY

- Who holds the money?
 - Trustees of Trust Funds
 - RSA 35:2 Schools
 - RSA 35:10 Town/City
 - Village District and Water Department within town
 - County Treasurer holds county funds
- Regional Schools
 - Designation of which town's Trustees have custody is made by school district voters
- Village Districts
 - Located in multiple towns; district voters determine which town's Trustees shall hold funds

HOW & WHEN ARE CRFs/ETFs CREATED?

- At an annual or special meeting
- Proper warning on posted warrant
- Special warrant article
 - Cannot be appropriate into CRF/ETF in operating budget article

WARRANT ARTICLE ESTABLISHING A CRF

To see if the town will vote to establish a {**Title**} Capital Reserve Fund under the provisions of RSA 35:1 for {**Purpose**}, and to raise and appropriate the sum of {**Amount**} to be placed in said fund. Further, to name the {**Officials**} as agents to expend from said fund (*Optional*). {**Recommendations**} (Majority vote required)

WARRANT ARTICLE ESTABLISHING AN ETF

To see if the town will vote to establish a {**Title**} Expendable Trust Fund under the provisions of RSA 31:19-a for {**Purpose**}, and to raise and appropriate the sum of {**Amount**} to be placed in said fund. Further, to name the {**Officials**} as agents to expend from said fund (*Optional*). {**Recommendations**} (Majority vote required)

RSA 32:3, VI SPECIAL ARTICLE

- Must be an article with an appropriation, AND
- By petition, OR
- Involving bonds or notes, OR
- Money appropriated into or expended from a separate fund such as CRF/ETF, OR
- Article designated in warrant by governing body as non-lapsing or non-transferable

WHY SPECIAL?

- Money can only be used for that specific purpose
- Cannot be transferred
- Requires recommendations

WHEN DO TRUSTEES RECEIVE THE MONEY?

- If from the unassigned fund balance, within 10 days of vote, per RSA 35:11
- If from taxes or other source, RSA 35:12 states:
 - If a calendar year municipality, by December 15 of the year of the vote
 - If an optional fiscal year municipality, by June 15 of the fiscal year for which the money is appropriated
 - For auditing purposes deposits and expenditures should be done in advance of year-end closing

RSA 35:15 EXPENDITURES FROM CRFs/ETFs

- By town meeting vote or by agents
- Lease/Purchase per RSA 35:15, III:
 - Lease contains no escape clause (requires 2/3 or 3/5 ballot vote),
or
 - Lease has escape clause, but final payment
- Land Acquisition– Agents not allowed unless RSA 41:14-a,
Authority for Board of Selectmen to acquire or sell land has been
adopted
- Professional Banking or Brokerage Assistance –
 - Expenses for CRFs, if RSA 35:9-a, II has been adopted
 - Expenses for Expendable and Private Trust Funds, if RSA 31:38-
a, III has been adopted

WHEN SHOULD TRUSTEES RELEASE MONEY?

- Upon presentation of invoice, or
- Before purchase, by request from agents with supporting documentation

Reminder: Be sure to create an audit trail. Do not net out additions and expenses.

OBSOLETE CRFs/ETFs

- Change of Purpose requires a 2/3 vote per RSA 35:16
- Renaming of agents is required when purpose is changed
- Discontinue CRF/ETF by warrant article
 - RSA 35:3 Town and Village Districts
 - RSA 198:20-c, IV Schools
 - When vote occurs and fund is discontinued the money is transferred to the general fund

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AGENTS

35:15 Expenditures. –

- I. Persons holding said capital reserve funds in trust, as provided in this chapter, shall hold the same until such time as the town, district or county shall have voted to withdraw funds from such capital reserve fund **or shall have named agents of the town, district or county to carry out the objects designated** by the town, district or county, in the manner prescribed by RSA 35:3.

- II. (b) If agents have been named according to RSA 35:15, then **no further vote is required to disburse funds** following the initial vote which ratified the financing agreement.

- V. In all cases, expenditures from a capital reserve fund shall be made only for or in connection with the purposes for which said fund was established or as amended as provided in RSA 35:16.

CUSTODIANS

35:10 Trustees of Funds. – The trustees of trust funds of a town or city shall have custody of any capital reserve of a town, district or water departments therein, the trustees of trust funds as provided in RSA 35:2 shall have custody of such capital reserve of a school district, and the county treasurer of a county shall have custody of any capital reserve of his county.

WARRANT ARTICLE DISCONTINUING A CRF/ETF

To see if the municipality will vote to discontinue the **{Name of Capital Reserve or Expendable Trust Fund}** created in **{Year}**. Said funds, with accumulated interest to date of withdrawal, are to be transferred to the municipality's general fund.
(Majority vote required).

CONTACT INFORMATION

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QUESTIONS?

