

**TRUSTEES OF TRUST FUNDS**

**WHAT YOU NEED TO KNOW!**

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## INTRODUCTION

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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

9 years of experience in municipal advocacy,  
research and accounting

Currently contracted with 34 towns and cities and 2  
libraries within the state.

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# CAPITAL RESERVE FUNDS

## TITLE III TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

### CHAPTER 34 CAPITAL RESERVE FUNDS FOR CITIES

#### Section 34:1

**34:1 Establishment of Reserves Authorized. –**

Any city may raise and appropriate money as provided by RSA 34:2, from any source other than money given to the city for charitable purposes, for the establishment of a capital reserve fund for the financing of all or part of the cost of:

- I. The construction, reconstruction, or acquisition of a specific capital improvement, or the acquisition of a specific item or of specific items of equipment;
- II. The construction, reconstruction, or acquisition of a type of capital improvement or the acquisition of a type of equipment;
- III. A reappraisal by appraisers of the department of revenue administration or such other appraisers, appraisal firms or corporations approved by the commissioner of revenue administration, of the real estate in such city for tax assessment purposes;
- IV. The acquisition of land;
- V. The acquisition of a tax map of such city;
- VI. Municipal and regional transportation improvement projects including engineering, right-of-way acquisition and construction costs of transportation facilities, and for operating and capital costs for public transportation; or
- VII. The repayment of bonded debt issued for the purpose specified in the fund, in conformance with existing Internal Revenue Service rules.

**Source.** 1949, 181:1. RSA 34:1. 1973, 51:1. 1977, 588:45. 1985, 285:1, eff. Aug. 10, 1985. 1998, 4:2, eff. May 17, 1998. 2000, 224:2, eff. July 31, 2000. 2007, 178:1, eff. Aug. 17, 2007.

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# CAPITAL RESERVE FUNDS

## TITLE III TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES Chapter 35 CAPITAL RESERVE FUNDS OF COUNTIES, TOWNS, DISTRICTS, AND WATER DEPARTMENTS

#### Section 35:1

**35:1 Establishment of Reserves Authorized. –**

Any town, school district, village district, or county, as provided by RSA 35:3 may raise and appropriate money for the establishment of a capital reserve fund for the financing of all or part of the cost of:

- I. The construction, reconstruction or acquisition of a specific capital improvement, or the acquisition of a specific item or specific items of equipment; or
- II. The construction, reconstruction, or acquisition of a type of capital improvement or the acquisition of a type of equipment; or
- III. A reappraisal by appraisers of the department of revenue administration or such other appraisers, appraisal firms or corporations approved by the commissioner of revenue administration, of the real estate in such town for tax assessment purposes; or
- III-a. The acquisition of land; or
- IV. The acquisition of a tax map of said town; or
- V. Extraordinary legal fees and expenses related to present or foreseeable litigation involving the town or its officers and employees; or
- VI. Municipal and regional transportation improvement projects including engineering, right-of-way acquisition and construction costs of transportation facilities, and for operating and capital costs for public transportation.

**Source.** 1943, 160:1. RSA 35:1. 1973, 51:2. 1983, 42:2. 1985, 285:2, eff. Aug. 10, 1985. 1998, 4:3, eff. May 17, 1998.

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# EXPENDABLE TRUST FUNDS

## TITLE III TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

### CHAPTER 31 POWERS AND DUTIES OF TOWNS

#### Trust Funds

##### Section 31:19-a

###### **31:19-a Trust Funds Created by Towns. –**

I. A town may at any annual or special meeting grant and vote such sums of money as it deems necessary to create trust funds for the maintenance and operation of the town; and any other public purpose that is not foreign to the town's institution or incompatible with the objects of its organization. The town may appoint agents to expend any funds in the trust for the purposes of the trust. An annual accounting and report of the activities of the trust shall be presented to the selectmen and published in the annual report.

II. Trust funds created pursuant to this section shall be revocable by majority vote of the legal voters present and voting at any annual meeting, unless the vote creating the trust expressly provides that the trust shall be irrevocable, and upon revocation the trustees of trust funds holding the account for said trust shall pay all the moneys in such fund to the town treasurer.

III. Notwithstanding any other provision of this chapter, any trust fund created under this section shall be subject to the same provisions concerning custody, investment, expenditure, change of purpose, and audit as are reserve funds established under RSA 34:1, 34:1-a, 35:1 or 35:1-c. The legal validity of such a fund properly established shall not be affected by its designation as a "trust," "reserve," "capital reserve," or any other designation.

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.

V. A trust fund created under the provisions of this section that is established for the purpose of maintaining health insurance funds for the benefit of employees and retired employees of any town shall be exempt from the provisions of RSA 35:8 or 34:4, and, when so established, the town may name its own trustees who may expend any funds in the trust for the payment of health claims or health insurance premiums for the benefit of any employees or retired employees of the town. An annual accounting and report of the activities of the trust shall be presented to the selectmen and published in the annual report.

**Source.** 1983, 264:2. 1991, 231:1. 1993, 176:1. 2. 1995, 20:2, 3, eff. June 11, 1995. 1998, 44:1, eff. July 4, 1998.

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# TRUST FUNDS

## TITLE III TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

### CHAPTER 31 POWERS AND DUTIES OF TOWNS

#### Trust Funds

##### Section 31:19

###### **31:19 In General. –**

I. Towns may take and hold in trust gifts, legacies, and devises made to them for the establishment, maintenance, and care of libraries, reading-rooms, schools, and other educational facilities, parks, cemeteries, and burial lots, the planting and care of shade and ornamental trees upon their highways and other public places, and for any other public purpose that is not foreign to their institution or incompatible with the objects of their organization.

II. Towns may authorize the board of selectmen, or town council if there is one, to accept such trusts without further action by the town.

III. Such authority to accept shall continue in effect for one year from the date of town meeting or action by the town council. The authority to accept trusts may be granted for an indefinite period, in which case the warrant article or vote granting such authority shall use the words, "indefinitely" or "until rescinded" or similar language.

**Source.** GL 49:7; 50:3. PS 40:5. 1901, 83:1. 1907, 70:1. PL 42:18. 1941, 43:1. RL 51:19. RSA 31:19. 1995, 137:1, eff. May 24, 1995.

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# FUND - PROCEDURES



## DOCUMENTATION FOR CAPITAL RESERVE FUNDS

- You will want to have a copy of the full warrant article with any amendments that received the majority vote at the annual or special meeting.
- You will want to have a copy of any warrant articles that later add an agent to expend, change the purpose or close the fund.



## DOCUMENTATION FOR TRUST FUNDS

- You will want to have a copy of the will, bequest, trust instrument and/or letter from the donor. You will also want a copy of the application for any scholarships so that you have all pertinent instructions for distributions.
- You will want to maintain a good working relationship with your Cemetery and Library Trustees.



## ACCEPTANCE OF TRUST FUNDS

- Make certain that you are aware of the designation of the money you are receiving. For example, a current year deposit into an income only restricted scholarship fund can be an income deposit, not principal, if the donor designates it.
- If a deposit is for an existing perpetual care plot, do not create an additional line on the MS-9 to report it, add it as a principal deposit to the original perpetual care line.

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# FUND - PROCEDURES



## NON-LEGAL ACTIONS FOR TRUST FUNDS

- If a trust fund is no longer viable and the original donor is still alive have a conversation about:
  - removing income only restrictions.
  - expanding qualifying conditions for scholarships.
  - Providing a final distribution and closing the fund.



## DEPOSIT PROCESSING FOR CAPITAL RESERVE FUNDS

- You will want to maintain a good working relationship with your town administrator or finance director.
- The town administrator or finance director is responsible for turning over funds:
  - from the fund balance, within 10 days of the vote.
  - For calendar year municipalities, by December 15<sup>th</sup> of the year of the vote.
  - For fiscal year municipalities, by June 15<sup>th</sup> of the fiscal year for which the money is appropriated.



## DEPOSIT PROCESSING FOR TRUST FUNDS

- Make certain that you are aware of the designation of the money you are receiving. For example, a current year deposit into an income only restricted scholarship fund can be an income deposit, not principal, if the donor designates it.
- If a deposit is for an existing perpetual care plot, do not create an additional line on the MS-9 to report it, add it as a principal deposit to the original perpetual care line.

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# FUND - PROCEDURES



## DISTRIBUTION PROCESSING FOR CAPITAL RESERVE FUNDS

- You will want to make sure that you have thorough back up documentation substantiating the amount being requested for distribution.
- Excess distributions cannot be returned to Capital Reserve Funds without a warrant article to do so.



## DISTRIBUTION PROCESSING FOR TRUST FUNDS

- When distributing income from perpetual care lots for annual maintenance you can not take income from one plot to pay for another.
- The Charitable Trust Unit expects that the Trustees will work with their Cemetery Trustees to calculate a per plot cost for annual maintenance. All calculations that are practical, logical and reasonable can be used. There is no exact calculation provided.



## DISTRIBUTION PROCESSING FOR TRUST FUNDS

- Review your trust document instructions and make sure that you are honoring their distribution requests such as:
  - Distributed all annual accumulated income at year end.
  - Distribute 85% of the annual income and reclassify 15% as principal.

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# FUND - PROCEDURES



## REPORTING FOR ALL FUNDS TYPES

- Use the fund name exactly as assigned in the warrant article language or trust indenture when filing your MS-9 report. Do not use a shortened format or variation of the fund name.



## HOUSEKEEPING FOR CAPITAL RESERVE FUNDS

- When a fund carries a \$0.00 or inconsequential balance from one year to the next contact the appropriate official(s) to see if the fund is still needed and whether future warrant articles are expected to appropriate additional funds.
- If a fund is no longer needed speak with your town administrator or finance director about placing a warrant article on the ballot to close the fund.




## CEMETERY CARE


- Consider and discuss with your Cemetery Trustees whether your municipality would like to eliminate future perpetual care plots and instead utilize a Cemetery Maintenance Expendable Trust Fund.
- Warrant article language is provided in a separate handout.


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# FUND - PROCEDURES

  
**NOTES**


  
**NOTES**


  
**NOTES**


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# EXAMPLES OF CAPITAL RESERVE FUNDS

  
**FIRE DEPARTMENT**  
Fire Department SCBA  
Fire Department Radios  
Fire Truck

  
**POLICE DEPARTMENT**  
Police Department Vehicle  
Police Department Facility  
Police Equipment

  
**HIGHWAY DEPARTMENT**  
Heavy Highway Equipment  
Town Bridges  
Town Roads

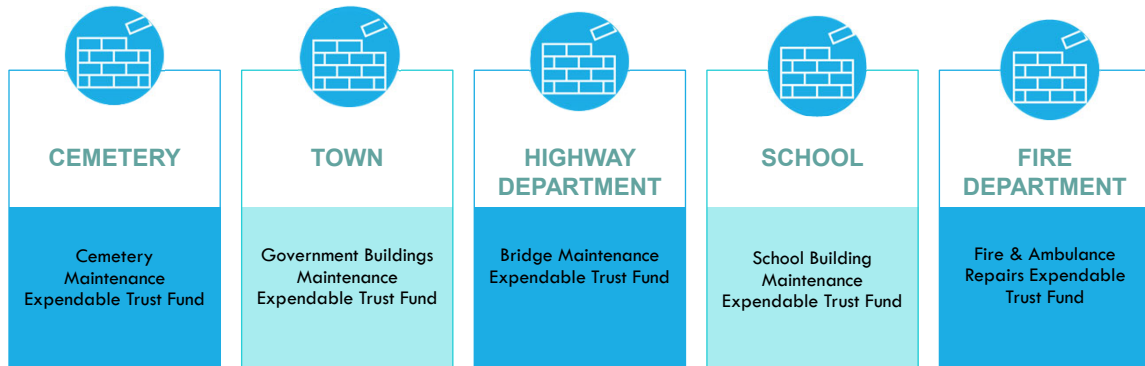
  
**SCHOOL**  
Special Education  
Technology  
Building & Improvement

  
**PARK & RECREATION**  
Grounds  
Mosquito Spraying  
Recreation Building

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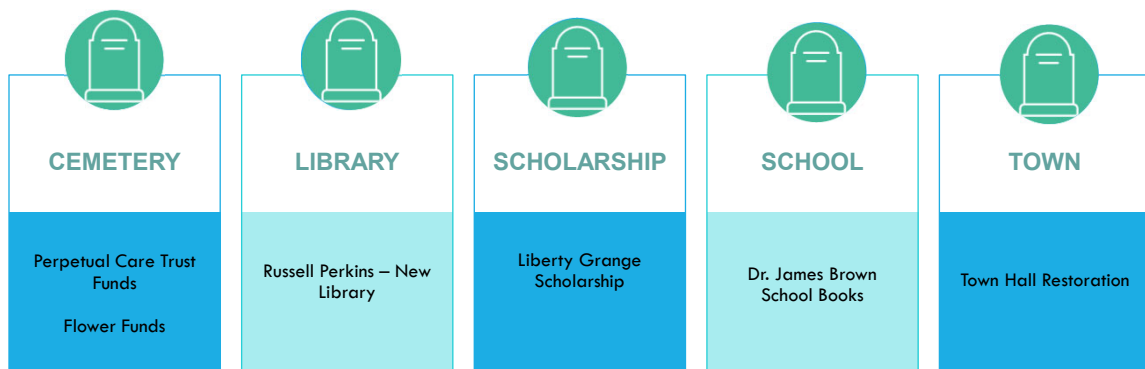
## EXAMPLES OF EXPENDABLE TRUST FUNDS



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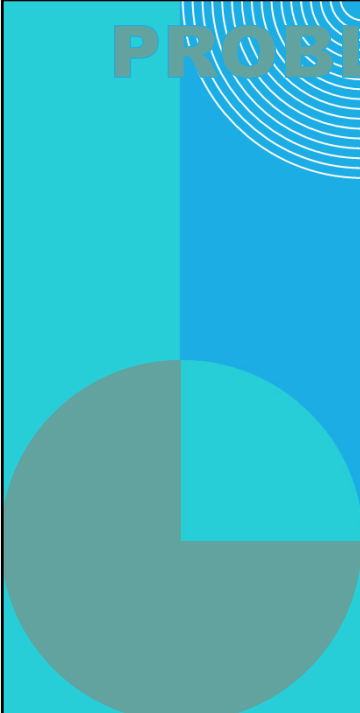
## EXAMPLES OF TRUST FUNDS



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# PROBLEM FUNDS

## Petition For Instruction

Used to obtain an advisory opinion from the courts on whether the trustees can expend funds for a specified purpose.

## Non-Judicial Settlement Agreement

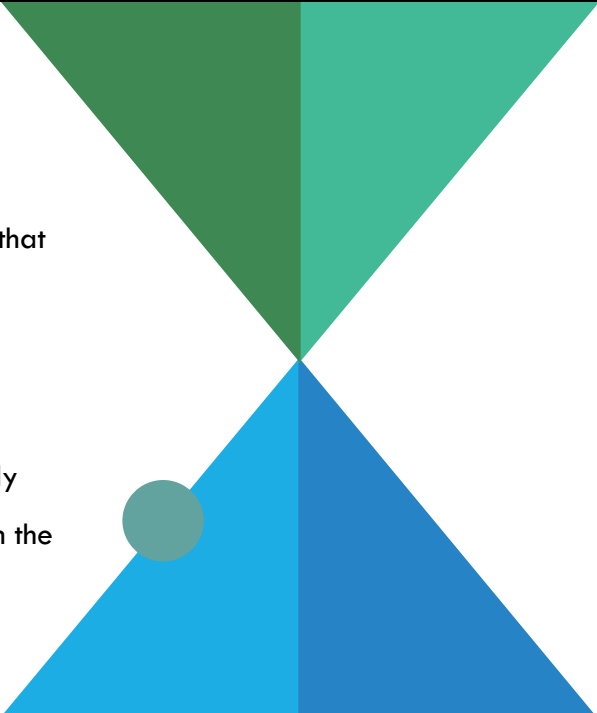
Used to change the intent of a trust fund with permission from the Charitable Trust Unit when the donor is no longer alive.

## Petition for Cy Pre

Used to free up accumulated income of perpetual care plots for general cemetery maintenance.

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## Q&A

- Is there something I have not covered that you would like to discuss?
- Does your municipality have a unique situation?
- Don't be afraid to ask, more than likely what you are thinking, someone else in the room is too!

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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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