NEW HAMPSHIRE CREDITOR PROTECTION TRUSTS: A BRIEF PRACTICAL GUIDE FOR NEW HAMPSHIRE LAWYERS

When in 2008 New Hampshire enacted the Qualified Dispositions in Trust Act ("New Hampshire Act"), it joined a small group of states that allow transferors to establish self-settled asset protection trusts.[1] Pitfalls abound for the unwary practitioner. Practitioners involved in funding and forming these trusts—generally trusts and estates attorneys—confront the often unfamiliar terrain of debtor creditor law. Attorneys assisting clients in this area need to be aware that creditors may seek to avoid transfers to New Hampshire asset protection trusts (1) through the Uniform Fraudulent Transfer Act, (2) through the Bankruptcy Code, or (3) by a creditor assertion that the instrument is defective under the New Hampshire Act. Accordingly, attorneys who prepare New Hampshire Act trusts must take great care (1) to ensure that clients are solvent, (2) that the client's asset protection goals will not be frustrated by a court finding that the assets in the trust are subject to creditor recovery because the settlor's intent was to "hinder, delay, or defraud" present or foreseeable future creditors, and (3) that the trust instrument itself scrupulously complies with the technical requirements of the New Hampshire Act.

This article identifies common risks that confront New Hampshire practitioners in establishing and funding New Hampshire asset protection trusts. It also gives practical guidance to help practitioners address these risks. In particular, the article highlights ways an attorney can gather and document information about a client's financial condition and creditor profile to demonstrate that the client was solvent when the asset protection trust was formed and funded. The primary goal of this solvency analysis is to document that the asset protection trust was not undertaken to evade existing creditors, and therefore that the assets within the trust should remain beyond the reach of the settlor's future creditors. New Hampshire practitioners advising and assisting clients in establishing and funding asset protection trusts who adhere to the steps outlined in this article will (1) better serve the settlor's goal of legally shielding assets and (2) better protect themselves from future litigation by creditors of the client who may seek to embroil the attorney in the debtor-creditor dispute on the theory that the attorney knowingly facilitated a fraudulent transfer.

A. <u>NEW HAMPSHIRE ACT REQUIREMENTS</u>

The first, but certainly not the only, prerequisite to the establishment of an effective asset protection trust is strict adherence to the explicit requirements of the New Hampshire Act. If any statutorily required element is missing in the trust instrument, the trust may fail to provide asset protection.

Section 18 of the New Hampshire Act requires that a trust (1) appoint at least one qualified trustee, (2) expressly incorporate the law of New Hampshire as the governing law of the trust, (3) be irrevocable, and (4) contain a spendthrift clause.[2] Either a New Hampshire resident other than the transferor or a chartered bank or trust company having a place of business in New Hampshire may act as the qualified trustee. Non-qualified trustees may serve alongside the qualified trustee but lack the power to make discretionary distributions to the transferor.[3]

The trust may also designate one or more trust advisors. The trust instrument may confer upon trust advisors any of the powers enumerated under the Uniform Trust Code, including the power to remove and appoint qualified trustees or other trust advisors and to direct, approve, or veto distributions.[4] A trust advisor need not meet the above-enumerated requirements of a qualified trustee. In fact, the settlor may serve as a trust advisor. In contrast to the broad powers afforded to other trust advisors, the New Hampshire Act limits the scope of authority that may be retained by a settlor serving as trust advisor to vetoing distributions and consenting to trustee action in investing trust assets.[5]

The New Hampshire Act allows the transferor to maintain a limited degree of control over administration of the trust in several other important ways. Whether or not the transferor serves as a trust advisor, the transferor may veto distributions. The trust may also empower the transferor to replace a trustee or trust advisor with an unrelated, non-subordinate party. Finally, the transferor may wield a special testamentary power of appointment. The retention of any of these powers by the transferor does not render the trust revocable under the New Hampshire Act.[6] The vigilant practitioner will counsel clients carefully regarding which powers he may wish to retain, and then draft the trust instrument to reflect those wishes. Given the flexibility afforded by the New Hampshire Act, there is no one-size-fits all trust instrument. The practitioner should take full advantage of the New Hampshire Act to shape the trust to fit the client's specifications.

The New Hampshire Act extends to trusts formed in other states, including states that do not provide for self-settled asset protection trusts. Trusts created in another state may become subject to the New Hampshire Act if they are transferred to New Hampshire.[7] These foreign trusts need not be governed by New Hampshire law.[8] However, they must meet all of the other requirements of the New Hampshire Act. The qualified disposition is deemed to have been made at the time of the original transfer into the trust rather than the subsequent transfer to New Hampshire.[9]

In addition, the Rule Against Perpetuities does not limit the duration of the trust provided the trust expressly states that (1) it does not apply and (2) the trustee enjoys power for a period beyond the perpetuities period.[10]

1. NEW HAMPSHIRE ACT DISTRIBUTIONS TO THE SETTLOR

Settlors may retain certain types of interests in assets transferred to New Hampshire Act trusts even though those assets have been placed beyond the reach of the settlor's creditors. First, the settlor may retain the right to trust income. The settlor may also receive distributions of principal. Such distributions may come in the form of a set amount specified in the trust instrument that does not exceed five percent of the value of the trust assets. Alternatively, the settlor may retain the right to distributions of principal either (1) in the trustee's sole discretion or (2) according to an ascertainable standard—e.g., health, education, maintenance, and support. Distributions of income or principal to pay income taxes on trust income may be made at the discretion of the qualified trustee or a trust advisor. The transferor may receive general income as well as income or principal from a charitable remainder unitrust or charitable remainder annuity trust. Finally, the transferor may retain an interest in a qualified personal residence trust or annuity.[11]

The alert practitioner will have noted that the New Hampshire Act provides substantial latitude for the settlor of an asset protection trust to retain power over the corpus of the trust. It is worth considering that many of the rights that such a settlor may retain would cause the corpus of the trust to be included in a decedent's gross estate for federal estate tax purposes.[12] Practitioners, therefore, must recognize two things: (1) the New Hampshire Act's liability shield against creditors can be preserved despite the settlor's retention of powers that would cause inclusion for federal and state tax purposes and (2) the estate tax implications of any trust created with such retained powers. In short, there is substantial divergence between federal estate tax law and New Hampshire asset protection law, creating both planning pitfalls and opportunities.

Although there is scant case law to provide guidance in this area, attorneys may wish to lower the risk of successful creditor attack by drafting the trust instrument in ways that limit distributions. First, discretionary distributions may be less susceptible to attack. Second, it is possible—likely, even—that discretionary distributions to a group of beneficiaries, rather than to an individual, where the trustee has the authority to sprinkle, spray, and accumulate, will strengthen the trust against creditor attack. Finally, if the trust is silent as to preference among the group of beneficiaries, this also may prove to be an effective litigation deterrent.[13] In short, more conservative drafting of the trust's distribution terms may fortify the liability shield. The drafter, therefore, would be wise not to automatically include the most expansive distribution standards allowed under the New Hampshire Act. A liberal distribution standard may in fact undercut the fundamental purpose of the trust: i.e., creditor protection.

2. <u>CREDITOR CLAIMS ALLOWED UNDER THE NEW HAMPSHIRE ACT</u>

New Hampshire's legislature carved out exceptions to the creditor protection afforded under the New Hampshire Act for several types of claims. These special claims will, however, only avoid transfers to the extent necessary to satisfy the debt and fees allowed by the court.[14] The New Hampshire Act exempts:

i) tort claims for injury suffered before the date of the qualified disposition;

ii) claims for support or alimony by the tranferor's spouse or former spouse who was married to the transferor at or before the date of the qualified disposition;

iii) claims for child support payments; and

iv) fraudulent transfers under the Uniform Fraudulent Transfer Act ("<u>UFTA</u>").[15]

Attorneys must take care to inform clients that New Hampshire Act trusts may only be used to defeat prospective claims and certainly cannot be used to position for advantage in any pending or prospective divorce or family law proceeding. Practitioners must also caution clients that, regardless of how well-crafted and closely tailored to the statute the trust instrument may be, any transfers of assets into the asset protection trust will be to no avail and may potentially be unwound by creditors if such transfers fall afoul of the New Hampshire UFTA.

The UFTA applies to any property concealed or removed to "hinder, delay, or defraud" creditors. The UFTA provides a non-exhaustive list of "badges of fraud" that a court may consider. Among other factors, the list includes transfers to family members or business partners, the retention of possession or control by the transferor, a pending suit at the time of the disposition, or the transfer of substantially all of the transferor's assets. The limitations period of the UFTA depends on the type of claim. Claims based on actual fraudulent intent must be brought within the later of four years from the transfer or one year after the creditor reasonably should have discovered the transfer. Where the transferor was insolvent or the transfer rendered the transferor insolvent, the limitations period is four years. Creditors also have four years to bring claims that arise after the qualified disposition. Finally, creditors have just one year to avoid transfers made for antecedent debts to a family member or business partner who knew or should have known that the transferor was insolvent.[16]

B. SOLVENCY ANALYSIS

Only individuals who are solvent may establish New Hampshire Act trusts. Any evidence suggesting that the client was insolvent could lead a court to find the transaction to be a fraudulent conveyance. In the most extreme circumstances, attorneys or financial planners who try to shield the assets of an insolvent client may be found liable for helping clients defraud creditors.[17] Thus, before drafting an asset protection trust, the attorney must perform a rigorous solvency analysis with an eye toward creating a creditor protection plan. If the asset protection trust is later the subject of bankruptcy litigation, a record of this due diligence will help to counter any arguments that the trust purposed to evade creditors.

Solvency for the purposes of the New Hampshire Act differs from the traditional accounting conception. The attorney should start with a complete list of the transferor's assets, and then make a series of deductions to ensure that sufficient unprotected assets remain to satisfy creditors. The first subtraction is for all current debts owed by the transferor. The second deduction includes all liabilities, claims, contingent liabilities, threats, guarantees, pending lawsuits, and reasonably foreseeable claims against the client. The last step is to deduct all client assets that are already protected from creditors.[18] In New Hampshire, these protections include retirement plans, social security, a $100,000 homestead exemption, and a variety of smaller exemptions for personal property.[19]

At an absolute minimum, the trust must leave sufficient reserves to satisfy all obligations to present creditors and potential subsequent creditors. To further protect the trust from future claims, "nest egg" planning sets aside a surplus pool of unprotected net worth that is available to pay any unknown future creditors.[20] It is essential to document the screening procedure, the creditor protection plan, and any additional due diligence.[21] The record established by these measures helps to establish that the creation of the asset protection trust did not constitute a fraudulent transfer.

C. BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") specifically targeted any "self-settled trust or similar device." It contains an amendment that supports the conclusion that New Hampshire Act trusts are protected under section 541(c)(2) of the Bankruptcy Code. Such trusts are therefore excluded from bankruptcy estates.[22]

The Bankruptcy Code as amended by the BAPCPA also allows a bankruptcy trustee to avoid transfers from the previous ten years if they were made with the actual intent to evade creditors.[23] As such, the provision mirrors the fraudulent intent language of the Uniform Fraudulent Transfer Act, but creates a much longer look-back period. A bankruptcy case in Alaska, a state with an asset protection trust statute similar to the New Hampshire Act, shows how creditors may establish actual intent to defraud.

1. <u>IN RE THOMAS MORTENSEN</u>

The U.S. Bankruptcy Court in Alaska recently dealt with the first challenge to a self-settled asset protection trust. *In Re Thomas Mortensen* sheds light on how the BAPCPA applies to domestic asset protection trusts.[24] Mortensen, an Alaska resident, had transferred real property located in Alaska to an Alaskan asset protection trust. He filed for Chapter 7 bankruptcy protection four years later. The bankruptcy trustee sought to avoid the transfer on the grounds that (1) Mortensen was insolvent when he created the trust and (2) the intent underlying the transfer was to "hinder, delay, and defraud present and future creditors."[25] The court ultimately avoided the transfer even though Mortensen was solvent when he established the trust and the four-year statute of limitations under the Alaska's fraudulent transfer act had passed.

Mortensen highlights the danger of failing to take into account both state and federal law when forming a self-settled asset protection trust. Whether or not the trust was a fraudulent conveyance under Alaska law, Mortensen filed for bankruptcy after the four-year statute of limitations had passed.[26] The Bankruptcy Code, however, provides a "look back" period of ten years if each of the following four conditions is met:

A) such transfer was made to a self-settled trust or similar device;

B) such transfer was by the debtor;

C) the debtor is a beneficiary of such trust or similar device; and

D) the debtor made such transfer with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made, indebted.[27]

The case ultimately turned on whether the trust was established with the intent to evade creditors. The court looked to the language of the trust to assess Mortensen's actual intent. The trust's express purpose to "maximize the protection of the trust estate or estates from the claims of creditors" provided convincing evidence of fraudulent intent.[28] While Alaska state law does not recognize a settlor's "express intention" as evidence of intent to defraud, the Bankruptcy Court found this expression of intent to be decisive.[29] The court reasoned that it was appropriate to consider Mortensen's intent because it was applying a portion of the Bankruptcy Code designed to close the self-settled trust "loophole."[30]

The court also considered evidence of Mortensen's admissions of debt and financial instability in an earlier child support proceeding and routine failure to pay debts as they came due. Taken together, these "badges of fraud" persuaded the court that Mortensen had created the trust to avoid exposure to creditors rather than for valid estate planning purposes.[31] Whether or not a client is solvent under state law, it is necessary to determine whether any evidence suggests that the client intends to defraud creditors or, at the very least, is financially unstable.

2. EFFECT OF MORTENSEN AND BAPCPA ON NEW HAMPSHIRE ACT TRUSTS

Mortensen shows the importance of meticulous drafting and a rigorous solvency analysis. It does not, however, invalidate state asset protection statutes such as the New Hampshire Act. The court had evidence of Mortensen's actual intent to keep assets from creditors as well as his failure to pay his creditors. It was these egregious "badges of fraud," rather than the trust instrument per se, that led the bankruptcy judge to invalidate the transfer and accept the creditor's claim. In particular, practitioners should exercise caution with regard to sweeping language indicating that the purpose of the trust is to maximize protection from creditors. The case also makes clear that, in bankruptcy proceedings, BAPCPA section 548(e)(1) preempts conflicting state law.[32] Lawyers must alert clients—both at the inception of the trust and certainly prior to any bankruptcy filing—that the ten-year BAPCPA look back period rather than the four-year period under New Hampshire's fraudulent transfer statute will apply to any subsequent bankruptcy filing. As a result, the relative generosity of New Hampshire's asset protection trust and fraudulent conveyance statutes do not preclude creditors from reaching assets under section 548(e) of the BAPCPA in the event of a bankruptcy filing.

D. FOREIGN JUDGMENTS AND NEW HAMPSHIRE ACT TRUSTS

A valid New Hampshire Act trust is still vulnerable where creditors try to avoid transfers in the court of another state, especially one that does not allow self-settled asset protection trusts. If creditors do sue to avoid the assets placed in a New Hampshire Act trust, it is of course preferable that a New Hampshire court applying New Hampshire law decide the case. A local court familiar with the New Hampshire Act is more likely to decide cases in a consistent, predictable manner.

New Hampshire law is also comparatively favorable. For example, it precludes creditor suits against trustees, trust advisors or anyone involved in the preparation of a trust under the New Hampshire Act.[33] This contrasts even with other trust-friendly jurisdictions that provide for asset protection trusts. Delaware, one of the first states to allow for self-settled creditor protection trusts, allows such suits against these individuals if they acted in bad faith.[34]

The Full Faith and Credit Clause is relevant where a creditor seeks a judgment against a New Hampshire asset protection trust in another state or tries to enforce such a judgment in New

Hampshire. In order for a creditor to obtain a judgment from a foreign court against the beneficiary and trustee of a New Hampshire asset protection trust, that court must first determine that it has jurisdiction. In *Hanson v. Denckla*, the United States Supreme Court held that Delaware, the location of the disputed asset protection trust, was not compelled to give full faith and credit to the judgment of a Florida court that lacked jurisdiction over the trustee.[35] A defendant must purposefully avail himself of the privilege of conducting activities in a forum state for that forum state to have jurisdiction.

Even if the foreign court has jurisdiction over the asset protection trust, that court must take into account where the transferor intended that the trust be administered.[36] But the court of another state, particularly one that has not adopted a self-settled asset protection statute, may determine that the New Hampshire law so offends its public policy that it will instead apply its own law.[37] The New Hampshire Act actually requires a choice of law clause specifying that New Hampshire law will govern any dispute arising from the trust. In addition to satisfying the choice of law requirement of the New Hampshire Act, trusts should also designate New Hampshire as the forum of choice for any disputes concerning the trust.[38]

There are several ways to reduce the risk of a foreign court applying foreign law to a New Hampshire Act trust. For one, the trust can avoid trustees with presences in other states. This would include trustees and trust advisors domiciled in another state, or large corporations that conduct business in multiple states. It might also be wise not to appoint trustees located in states that do not have self-settled asset protection trust statutes. These measures reduce the risk of a trust being attacked in an unfriendly jurisdiction. Of course, in some cases, the risk of litigation in a foreign jurisdiction is unavoidable. For example, the beneficiary might not be a New Hampshire resident or the assets targeted by creditors could be located in another state.

Jurisdictional and choice of law issues are less likely to come into play where (1) the settlor is a New Hampshire resident, (2) the trustee is a New Hampshire resident (i.e., one of two ways to meet the test of being a "qualified trustee" under the New Hampshire Act), (3) the assets in the trust are located in New Hampshire, and (4) the terms of the trust instrument expressly provide that New Hampshire law applies and that any actions pertaining to the trust are to be conducted in New Hampshire courts. This final factor, as a matter of drafting, is within the practitioner's control, and should be carefully addressed in the preparation of the trust instrument. The other variables may lie beyond the lawyer's control. If any such factor is less favorable than the purely New Hampshire hypothetical presented above, the jurisdictional and choice of law factors may emerge as issues. If that happens, the results will be uncertain. It is important for the practitioner to warn clients of the risks associated with jurisdictional and choice of law matters, particularly if any aspect of the transaction is based outside of New Hampshire.

E. THOSE WHO PREPARE AND ADMINISTER TRUSTS

Courts have allowed creditors to sue attorneys who helped to prepare asset protection trusts in a few recent cases. For example, the Third Circuit allowed a creditor to pursue a claim for damages against a law firm that helped the transferor conceal his assets.[39] The New Hampshire Act, however, does not allow creditors and those seeking to enforce judgment from proceeding against a trustee, trust adviser, or any person involved in counseling, drafting, preparing, executing, or funding a trust under the New Hampshire Act.[40] In addition, the New Hampshire Uniform Fraudulent Transfer Act does not provide for a cause of action against one who aids and abets a fraudulent transaction.[41] Nevertheless, since the New Hampshire Supreme Court has recognized aiding and abetting liability in civil cases, the issue of aiding and abetting liability remains a gray area.[42]

It is possible that the court of another state might determine that it has jurisdiction over a New Hampshire trust and choose to apply its own law. The foreign court would have this option if it concluded that the New Hampshire Act was sufficiently contrary to its public policy interest. To provide another layer of protection against potential litigation, attorneys who devise domestic asset protection trusts should be sure to follow a rigorous screening procedure. This procedure would incorporate the solvency analysis and due diligence outlined above.

An additional lesson to draw from *Mortensen* is that the trustees and trust advisors named in a domestic protection trust may be dragged into subsequent litigation. Mortensen named his mother as a trustee and his brother a trust advisor. Both were eventually named as defendants in the case. Practitioners should consider this risk before agreeing to serve as trustees.

F. CONCLUSION

Despite the inherent limitations and risks discussed above, the New Hampshire Act is a valuable mechanism for transferors to retain an interest in their assets while enjoying creditor protection. Perhaps the most important step in setting up a New Hampshire Act trust is performing the solvency analysis and due diligence necessary to verify that transfers do not constitute fraudulent conveyances. These measures reduce the risk that future creditors will be able to avoid transfers under the Bankruptcy Code or Uniform Fraudulent Transfer Act. Above all, careful drafting and conscientious client counseling regarding the limitations of New Hampshire Act trusts are also essential. As a final note, asset protection trusts are often discussed, as part of the estate planning process, between a client and an estate planning attorney. Many of the issues presented with respect to asset protection trusts, however, invoke areas of the law having to do with creditor litigation, fraudulent transfers, and bankruptcy. For these reasons, when preparing asset protection trusts under the New Hampshire Act, trust and estate attorneys should certainly familiarize themselves with some of the debtor-creditor issues outlined above, and may wish to consider affiliating with experienced creditors' rights attorneys, and vice versa. Assisting clients effectively with respect to asset protection trusts under the New Hampshire Act requires input from both trust law and creditor law.

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[1] A self-settled asset protection trust is a trust established in a limited number of states (New Hampshire being one) in which, (1) trust assets are shielded from the settlor's creditors but nevertheless (2) the settlor retains a beneficial interest in the income generated within the trust and has access (or may have access) to trust principal or income. This article focuses exclusively on (1) *domestic* asset protection trusts that are (2) formed under NH RSA Ch. 564-D. It does not explore offshore asset protection trusts or the laws of any of the other states with asset protection trust statutes.

[2] A spendthrift provision is a specific statement in a trust instrument intended to shield trust assets from creditors. Under the New Hampshire Uniform Trust Code: "[a] creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary." N.H. Rev. Stat. Ann. § 564-B:5-502(c). The Uniform Trust Code provides for certain exceptions to the spendthrift rules for claims involving, among other things, family law and obligations of the trust itself. N.H. Rev. Stat. Ann. § 564-B:5-503.

[3] *Id.* § 564-D:7. N.H. Rev. Stat. Ann. § 564-B:5-502(c).

[4] The philosophy underlying the use of a trust advisor or trust protector is to provide a check and balance to the trustee, to provide additional advice and counsel to the trustee, to appoint a successor trustee, and generally to provide additional stability and continuity for the trust.

[5] *Id.* § 564-D:5.

[6] *Id.* § 564-D:2.

[7] *Id.* § 564-D:11.

[8] *Id.* § 564-D:2(IV).

[9] *Id.* § 564-D:11.

[10] *Id.* § 564-D:24.

[11] *Id.* § 564-D:2.

[12] *See* Internal Revenue Code, 26 U.S.C. Part III, Sections 2031, et seq.

[13] Frederick Tansell & Douglas Osborne, Asset Protection Trusts & Agreements 134 (ALI-ABA, 2011).

[14] N.H. Rev. Stat. Ann. § 564-D:16.

[15] *Id.* § 564-D:16.

[16] N.H. Rev. Stat. Ann. § 545-A.

[17] *Morganroth & Morganroth v. Norris, McLaughlin & Marcus, P.C.*, 331 F.3d 406 (3d Cir. 2003).

[18] *Id.* at 123.

[19] N.H. Rev. Stat. Ann. § 480:1. Practitioners run the risk that assets valued for solvency analysis purposes will prove adequate but, in the real world of potentially distressed asset liquidation for satisfaction of a judgment, will prove inadequate. We consider such a risk to be largely unforeseeable. Assets may change value in myriad ways that render their future value unascertainable. For example, they may appreciate, depreciate, suffer waste or change value.

[20] Some creditors' rights attorneys may view all such transfers and dispositions in trust as intrinsically designed to hinder creditors and to defeat recovery on valid creditor claims. Such policy musings are beyond the scope of this article. The fact remains that the New Hampshire Act provides that such trusts, if properly structured, give legally cognizable creditor protection against claims arising after the disposition of the trust.

[21] Insurance coverage against risks may also form an important part of the analysis.

[22] David G. Shaftel & David H. Bundy, *Impact of New Bankruptcy Provision on Domestic Asset Protection Trusts*, EST. PLAN., July 2005, 28-30.
[23] 11 USC §548(e)(1)
[24] *Battley v. Mortensen*, Adv. D. Alaska. No. A09-90036-DMD (May 26, 2011).
[25] *Id.* at 10, 13.
[26] *Id.* at 10.
[27] 11 U.S.C. § 548(e)(1).
[28] *Mortensen* at 15.
[29] Alaska Statutes § 34.40.110(b)(1).
[30] *Mortensen* at 16.
[31] *Id.* at 19.
[32] *Id.* at 16, 19.
[33] N.H. Rev. Stat. Ann. § 564-D:12.
[34] Del. Code tit. 12, § 3573(d).
[35] 357 U.S. 235, 78 S. Ct. 1228, 2 L. Ed. 2d 1283.
[36] Restatement (Second) Conflict of Laws § 273 (1971).
[37] With regard to trusts, *see, e.g.*, *In re Portnoy*, 201 B.R. 685 (Bankr. S.D.N.Y. 1996).
[38] A choice of forum clause is advisable even though it will not necessarily bind creditors who are not parties to the trust instrument.
[39] *Morganroth & Morganroth v. Norris, McLaughlin & Marcus, P.C.*, 331 F.3d 406 (3d Cir. 2003).
[40] N.H. Rev. Stat. Ann. §§ 564-D:12, 564-D:13.
[41] N.H. Rev. Stat. Ann. § 545-A:4.
[42] *Plante v. Engel*, 124 N.H. 213, 217 (1983) (an individual to be liable under a conspiracy theory for combining with another to interfere with the custodial rights of a parent).