

HB 88-FN - AS AMENDED BY THE HOUSE

20Mar2025... 0706h

2025 SESSION

25-0118

07/06

HOUSE BILL

88-FN

AN ACT

establishing community property trusts.

SPONSORS:

Rep. D. McGuire, Merr. 14; Rep. Hunt, Ches. 14; Rep. Lynn, Rock. 17; Rep. Ammon, Hills. 42

COMMITTEE:

Judiciary

ANALYSIS

This bill allows community property trusts to be formed in New Hampshire.

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears ~~[in brackets and struckthrough.]~~

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Five

AN ACT establishing community property trusts.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Article; Article 13 Community Property Trusts. Amend RSA 564-B by inserting after
2 article 12 the following new article:

3 Article 13 Community Property Trusts

4 564-B:13-1301 Short Title. This article shall be known as the "New Hampshire Community
5 Property Trust Act of 2026."

6 564-B:13-1302 Definitions. As used in this article:

7 (a) "Community property" means property owned by a community property trust during
8 the marriage of the settlor spouses.

9 (b) "Community property trust" means an express trust that complies with RSA 564-
10 B:13-1303.

11 (c) "Decree" means a judgment or other order of a court.

12 (d) "Dissolution" means either:

13 (1) Termination of a marriage by a decree of dissolution, divorce, annulment or
14 declaration of invalidity; or

15 (2) Entry of a decree of legal separation maintenance.

16 (e) "During marriage" means a period that begins at marriage and ends at dissolution or
17 immediately after the death of a spouse.

18 (f) "Qualified trustee" means either:

19 (1) A natural person who is a resident of this state; or

20 (2) A company authorized to act as a fiduciary in this state.

21 (g) "Settlor spouses" means a married couple that establishes a community property
22 trust.

23 564-B:13-1303 Qualifications. An arrangement is a community property trust if one or both
24 spouses transfer property to a trust, that:

25 (a) Expressly declares that the trust is a New Hampshire community property trust;

26 (b) Has at least one trustee who is a qualified trustee whose powers include, or are
27 limited to, maintaining records for the trust on an exclusive or a nonexclusive basis and preparing or
28 arranging for the preparation of, on an exclusive or a nonexclusive basis, any income tax returns
29 that must be filed by the trust. Both spouses or either spouse may be a trustee;

30 (c) Is signed by both spouses; and

31 (d) Contains the following language in capital letters at the beginning of the trust:

1 THE CONSEQUENCES OF THIS TRUST MAY BE VERY EXTENSIVE, INCLUDING, BUT NOT
2 LIMITED TO, YOUR RIGHTS WITH YOUR SPOUSE BOTH DURING THE COURSE OF YOUR
3 MARRIAGE AND AT THE TIME OF A DIVORCE. ACCORDINGLY, THIS AGREEMENT
4 SHOULD ONLY BE SIGNED AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY
5 QUESTIONS ABOUT THIS AGREEMENT, YOU SHOULD SEEK COMPETENT ADVICE.

6 564-B:13-1304 Items to be Agreed Upon; Amendment or Revocation of Trust. In the agreement
7 establishing a community property trust, spouses may agree on: the rights and obligations in the
8 property transferred to the trust, notwithstanding when and where the property is acquired or
9 located; the management and control of the property transferred to the trust; the disposition of the
10 property transferred to the trust on dissolution, death, or the occurrence or nonoccurrence of another
11 event; the choice of law governing the interpretation of the trust; and any other matter that affects
12 the property transferred to the trust and does not violate public policy or a statute imposing a
13 criminal penalty. Either spouse may amend a community property trust regarding the disposition of
14 that spouse's one-half share of the community property in the occurrence of such spouse's death.
15 Except as provided in this subparagraph, a community property trust may not be amended or
16 revoked unless the agreement itself provides for amendment or revocation.

17 564-B:13-1305 Community Property; Enforcement of Trust; Right to Manage Property.

18 (a) Whether or not both, one, or neither is domiciled in this state, spouses may
19 transmute any or all of their property to community property by transferring property to a
20 community property trust.

21 (b) A community property trust is enforceable without consideration.

22 (c) All property owned by a community property trust will be community property
23 during marriage.

24 (d) The right to manage and control property that is transferred to a community
25 property trust is determined by the terms of the trust.

26 (e) When property is distributed from a community property trust, it shall no longer
27 constitute community property.

28 564-B:13-1306 Satisfaction of Obligations.

29 (a) The transfer of property into a community property trust shall not impair, limit, or
30 dilute the rights of creditors or lienholders to enforce an obligation against such property. Any
31 secured interest in property transferred into a community property trust, whether arising by
32 mortgage or other secured interest, shall remain in full force and effect.

33 (b) An obligation incurred by only one spouse before or during marriage may be satisfied
34 from that spouse's one-half share of a community property trust and such other assets of the spouse
35 not in the community property trust. This provision shall not limit the rights of creditors under
36 paragraph (a).

1 (c) An obligation incurred by both spouses during or before marriage may be satisfied
2 from a community property trust of the spouses.

3 564-B:13-1307 Death of Spouse; Distribution of Assets. Upon the death of a spouse, one-half of
4 the aggregate value of the property owned by a community property trust established by the spouses
5 reflects the share of the surviving spouse and the other one-half reflects the share of the decedent.
6 Unless provided otherwise in the trust agreement, the trustee has the power to distribute assets of
7 the trust in divided or undivided interests and to adjust resulting differences in valuation. A
8 distribution in kind may be made on the basis of a non pro rata division of the aggregate value of the
9 trust assets, on the basis of a pro rata division of each individual asset, or by using both methods.

10 564-B:13-1308 Dissolution of Marriage; Termination of Trust. Upon the dissolution of the
11 marriage of the settlor spouses, the community property trust shall terminate and the trustee shall
12 distribute one-half of the trust assets to each spouse, with each spouse receiving one-half of each
13 asset, unless otherwise agreed to in writing by both spouses.

14 2 Effective Date. This act shall take effect January 1, 2026.

LBA
25-0118
3/25/25

HB 88-FN- FISCAL NOTE
AS AMENDED BY THE HOUSE (AMENDMENT #2025-0706h)

AN ACT establishing community property trusts.

FISCAL IMPACT:

The Office of Legislative Budget Assistant states this bill, as amended, has no fiscal impact on state, county and local expenditures or revenue.

AGENCIES CONTACTED:

None