

HB 88-FN - AS INTRODUCED

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 Paragraph; Community Property Trust Transfer Exemption. Amend RSA 78-B:2 by
2 inserting after paragraph XXV the following new paragraph:

3 XXVI. To an otherwise taxable transfer to a community property trust established under
4 RSA 564-B:13.

5 2 New Article; Article 13 Community Property Trusts. Amend RSA 564-B by inserting after
6 article 12 the following new article:

7 Article 13 Community Property Trusts

8 564-B:13-1301 Short Title. This article shall be known as the "New Hampshire Community
9 Property Trust Act of 2026."

10 564-B:13-1302 Definitions. As used in this article:

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

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

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

16 (d) "Dissolution" means either:

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

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

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

22 (f) "Qualified trustee" means either:

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

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

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

27 564-B:13-1303 Qualifications. An arrangement is a community property trust if one or both
28 spouses transfer property to a trust, that:

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

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

5 (c) Is signed by both spouses; and

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

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

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

23 564-B:13-1305 Community Property; Enforcement of Trust; Right to Manage Property.

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

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

28 (c) All property owned by a community property trust will be community property
29 during marriage.

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

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

34 564-B:13-1306 Satisfaction of Obligations.

35 (a) An obligation incurred by only one spouse before or during marriage may be satisfied
36 from that spouse's one-half share of a community property trust.

1 (b) An obligation incurred by both spouses during marriage may be satisfied from a
2 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 3 Effective Date. This act shall take effect January 1, 2026.

**HB 88-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT establishing community property trusts.

FISCAL IMPACT: This bill does not provide funding, nor does it authorize new positions.

Estimated State Impact				
	FY 2025	FY 2026	FY 2027	FY 2028
Revenue	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
<i>Revenue Fund(s)</i>	General Fund, Education Trust Fund			
Expenditures*	\$0	\$0	\$0	\$0
<i>Funding Source(s)</i>	None			
Appropriations*	\$0	\$0	\$0	\$0
<i>Funding Source(s)</i>	None			

***Expenditure = Cost of bill**

***Appropriation = Authorized funding to cover cost of bill**

METHODOLOGY:

This bill allows community property trusts to be formed in New Hampshire and establishes an exemption to the real estate transfer tax for property transferred to a community property trust. To the extent such property transfers would otherwise be taxable, there would be an indeterminable decrease in real estate transfer tax revenue deposited into the State's general and education trust funds. The impact on these revenues is indeterminable because the number of transfers to community property trust cannot be predicted.

AGENCIES CONTACTED:

None