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June 8, 2023



# AGENDA

- Introduction to the CTU
   Role of Trustees of Trust Funds
- 3. Fiduciary Duties
- 4. MS-9 and MS-10 Overview



# INTRODUCTION TO THE CTU

## ROLE OF THE CHARITABLE TRUSTS UNIT

The mission of the Charitable Trusts
Unit is to protect the public's interest in
the organizations and assets
committed to charitable purposes in
New Hampshire.

## ROLE OF THE CHARITABLE TRUSTS UNIT



# We protect donor intent





## ROLE OF THE CHARITABLE TRUSTS UNIT

Common law authority days thereafter. CHAIL CHAI

**Established by NH** statute in 1943

First in the nation

CHAPTER 181 the provisions of this act are hereby suspended as to licensees

hereunder during the effective dates of this act. 5. Effective Dates. This act shall take effect June 1, 1943, and be effective during the period of the present war and for

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

1. Office of the Attorney General. Amend chapter 24 of the Revised Laws by inserting after section 13 the following

#### Register of Public Trusts

13-a. Register Authorized. In addition to his common law and statutory powers the attorney general shall have the authority to prepare and maintain a register of all public trusts heretofore or hereafter established or active in the

13-b. Definition. The words "public trust" as used in this. subdivision shall mean any fiduciary relationship with respect to property arising as a result of a manifestation of an intention to create it and subjecting the person by whom the property is held to equitable duties to deal with the property for charitable or community purposes; provided, however, that such trusts managed by persons not appointed by a court shall not be considered public trusts within the meaning of

13-c. Rules and Regulations. The attorney general shall make such rules and regulations as may be reasonable or necessary to secure records and other information for the operation of the register and for the supervision, investigation and enforcement of public trusts.

13-d. Inspection of Register. The register hereby established shall be open to the inspection of any person at such reasonable times and for such legitimate purposes as the attorney general may determine, provided, however, that the CHAPTER 181

regulation provide that any inmade hereafter shall not be so

e attorney general may investigate r the purpose of determining and are administered in accordance and purposes thereof. For the tion the attorney general may ustee, fiduciary, beneficiary, ination or political agency ading an interest therein, or t the state house at such time may designate then and there of the attorney general any of whatever kind, documents or liabilities which may control of such person, institution, association, to furnish such other trust as the attorney

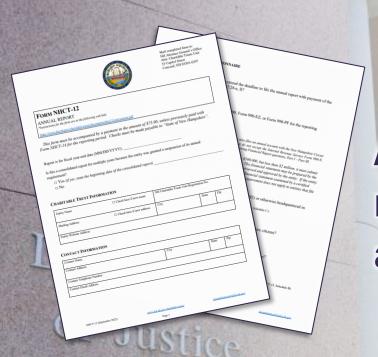
the attorney general such person, agent, association, corpothe preceding section, and place when such ame to be delivered agent, trustee, , corporation or e the date fixed

on or political and or to remain the purposes produce such locuments of furnish such be liable to covered by use of the

CHAPTER 181

Privilege. No person shall be excused m producing any book or paper in any ry by or upon any hearing before the n ordered to do so by the attorney gen Nor forefeiture; but no person shall be subjected to any penalty or forfeiture A, after claiming his privilege, he ttorney general have testified or pro-

stees of Public Trusts. Any fiduciary to equitable duties to deal with such erwise directed by the attorney gen-A report for the last preceding fiscal ing the property so held and adnd expenditures in connection there. ses of the beneficiaries thereof and / law or court order to file annually scount or report containing the inthe attorney general shall accept file such a report shall constitute attorney general shall take such Register of Probate. nish such copies of papers and cords and files in his office reattorney general may require. ait an examination of the files pose of establishing and main representatives of the send such copies or refuse such A refusal or neglect to the probate records relating ch of his official bond.



About 12,000 annual reports from registered charitable organizations

City Hall, Concord, N. H.

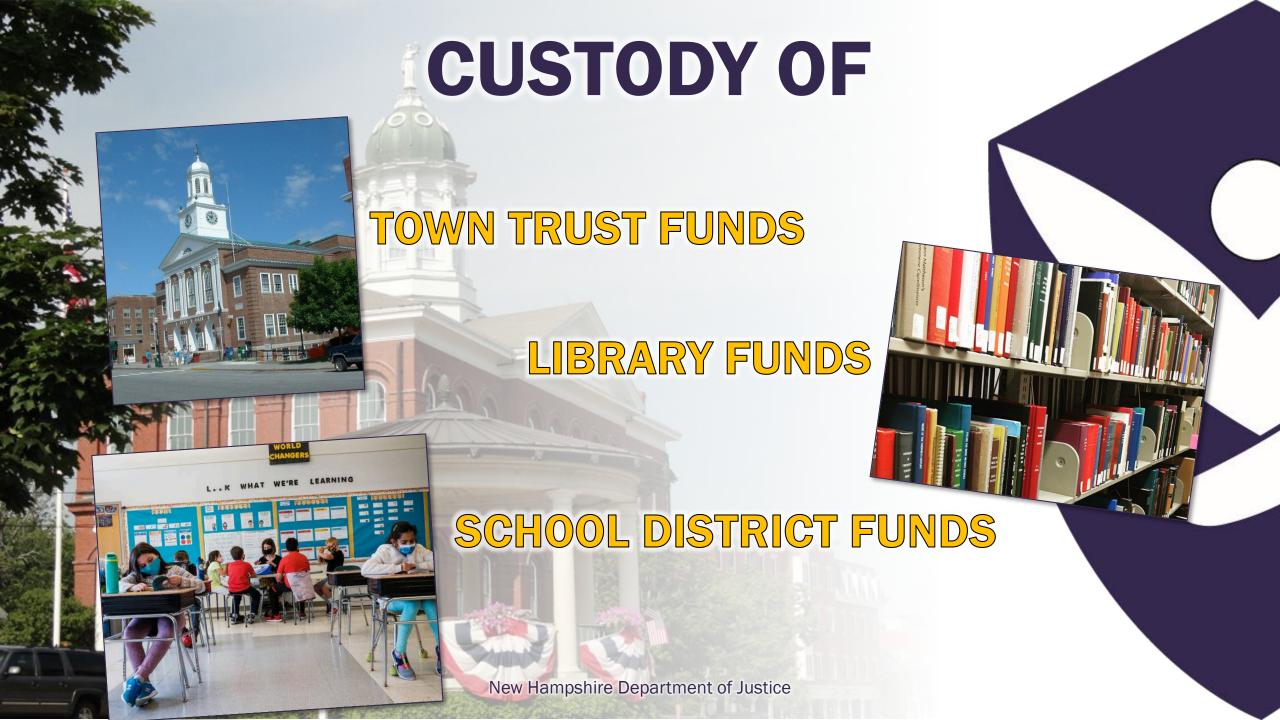
and trusts

About 255 MS-9 and MS-10 annual reports from municipalities

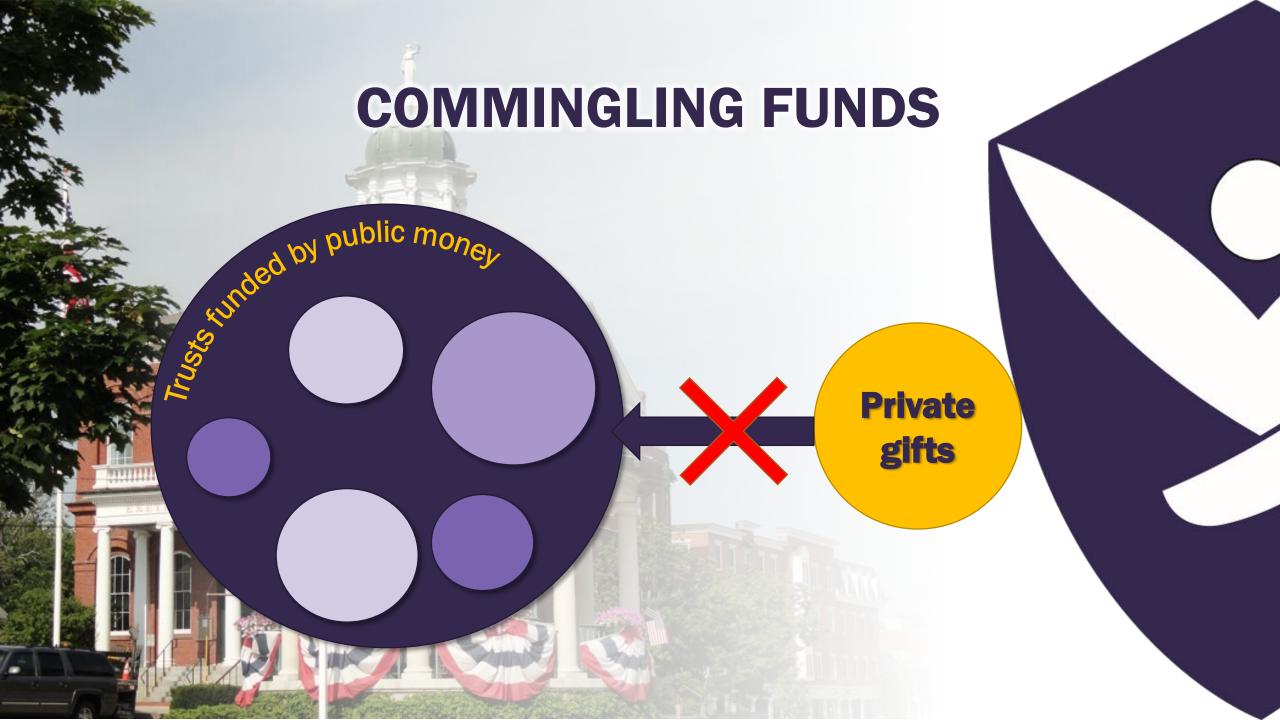


About 65 annual financial reports from municipal libraries











# FIDUCIARY DUTIES

Department
of Justice
33 Capitol Street

Duty of Loyalty

Duty of Care

Duty of Obedience







I leave the rest and residue of my estate to the town of Troy.

Unrestricted

I give, devise, and bequeath to the Town of Merrimack the sum of \$50,000 to be used for the benefit of the Fire Department

I give the to the Town of Antrim \$100,000, the income only to be used for whatever urpose the Selectmen deem appropriate.



I give \$50,000 to the City of Manchester, the income be expended restriction for the maintenance of Victory Park.



# DOCTRINE OF CY PRES



## **DOCTRINE OF DEVIATION**







# MS-9 AND MS-1 OVERVIEW

#### REPORT OF TRUST FUNDS

#### Rev 1707.11 Report MS-9, Report of Trust and Capital Reserve Funds

- Report MS-9 report of trust and capital reserve funds, shall be completed by the trustees of the trust funds and filed with the municipality, NH department of justice, and the department by providing for each trust fund;
  - (1) The creation date of the trust;
  - (2) The name of the trust fund;
  - (3) The purpose of the trust fund;
  - (4) The type of investment vehicle and the percentage of the trust invested in each investment vehicle type;
  - (5) A report of trust fund principal including:
    - a. Balance at the beginning of the year;
    - b. New funds.
    - c. Cash gains or losses on securities;
    - d. Withdrawals; and
    - e. Balance at the end of the year;
  - (6) A report of trust fund income including:
    - a. Balance at beginning of the year;
    - b. the amount of income earned during the year;
    - c. the expenditures from the fund during the year; and
    - d. Balance at the end of the year;
  - (7) The balance of principal and income at the end of the year; and
  - (8) Fair market value of the principal.





Rev 1707.11 Report MS-9, Report of Trust and Capital Reserve Funds (cont.)

- (b) Report MS-9 shall contain dated signatures of at least a majority of the trustees of trust funds to certify that the information contained in this report was taken from official records and is correct to the best of their knowledge and belief.
  - (c) Report MS-9 shall be filed by:
    - (1) March 1, if the municipality operates on a calendar year; or
    - (2) September 1, if the municipality operates on an optional fiscal year.

### NEW IMPROVEMENTS TO FORM MS=9

- Form MS-9 has been updated to align field names with proper terminology and to provide a separation of market value and book value.
- ✓ The new Form MS-9 report is easier to review and more suitable for inclusion in annual reports.
- Municipalities will need to use the new MS-9 and MS-10 forms effective July 1, 2023. These forms require online entry using the NH TTF portal through Axiomatic.
- ✓ For assistance with the NH TTF portal contact Axiomatic Support.

#### NEW FORM MS-9 - PDF VIEW



# New Hampshire Department of Revenue Administration

2023 MS-9

#### **Cemetery Funds**

Name					Purpo	se			Creation	Date	BOY Balance	Change	<b>EOY Balance</b>
ALGER E HEMPHILL			Cemetery Perpetual Care				1939		930.34	60.93	991.27		
Principal	BOY Balance 547.44	Additions 0.00	Gains/Losses 45.59	Withdrawals 0.00	EOY Balance 593.03	Income	BOY Balance 382.90	Change 29.18	EOY Balance 398.24	Market	Cost Basis 991.27	Unrealized (108.42)	EOY Value 882.85
ALMON E CLARK				Cemetery Perpetual Care			1944		1,215.01	79.56	1,294.57		
Principal	BOY Balance 711.71	Additions 0.00	Gains/Losses 59.53	Withdrawals 0.00	EOY Balance 771.24	Income	BOY Balance 503.30	Change 38.11	EOY Balance 523.33	Market	Cost Basis 1,294.57	Unrealized (141.59)	EOY Value 1,152.98
ARTHUR PERHAM			Cemetery Perpetual Care					1958		1,889.99	123.75	2,013.74	
Principal	BOY Balance 1,095.23	Additions 0.00	Gains/Losses 92.61	Withdrawals 0.00	EOY Balance 1,187.84	Income	BOY Balance 794.76	Change 59.28	EOY Balance 825.90	Market	Cost Basis 2,013.74	Unrealized (220.24)	EOY Value 1,793.50
ARTHUR POTTER Cemetery Perpetual Care			etual Care	1961		930.34	60.93	991.27					
Principal	BOY Balance 547.44	Additions 0.00	Gains/Losses 45.59	Withdrawals 0.00	EOY Balance 593.03	Income	BOY Balance 382.90	Change 29.18	EOY Balance 398.24	Market	Cost Basis 991.27	Unrealized (108.42)	EOY Value 882.85
ASHTON A HEMPHILL		Cemetery Perpetual Care					1934		930.29	60.92	991.21		
Principal	BOY Balance 547.44	Additions 0.00	Gains/Losses 45.58	Withdrawals 0.00	EOY Balance 593.02	Income	BOY Balance 382.85	Change 29.18	EOY Balance 398.19	Market	Cost Basis 991.21	Unrealized (108.41)	EOY Value 882.80
B K BARLOW Cemetery Perpetual				etual Care		1960		876.85	57.42	934.27			
Principal	BOY Balance 546.82	Additions 0.00	Gains/Losses 42.96	Withdrawals 0.00	EOY Balance 589.78	Income	BOY Balance 330.03	Change 27.50	EOY Balance 344.49	Market	Cost Basis 934.27	Unrealized (102.18)	EOY Value 832.09
BARENT C FINLEY Cemetery Perpetual Care					1952		621.34	40.67	662.01				
Principal	BOY Balance 543.82	Additions 0.00	Gains/Losses 30.44	Withdrawals 0.00	EOY Balance 574.26	Income	BOY Balance 77.52	Change 19.47	EOY Balance 87.75	Market	Cost Basis 662.01	Unrealized (72.40)	EOY Value 589.61

#### REPORT OF TRUST FUND INVESTMENTS

#### Rev 1707.12 Report MS-10, Report of Common Trust Fund Investments

- (a) Report MS-10, report of common trust fund investments, shall be completed and filed by the trustees of trust funds to report to the municipality, NH department of justice, and the department, their common trust fund investments, by providing:
  - (1) Description of investment;
  - (2) Number of shares or other units;
  - (3) Principal's
    - a. Beginning year balance;
    - b. Purchases;
    - c. Cash capital gains;
    - d. Proceeds from sales;
    - e. Gains or losses from sales; and
    - f. End of year balance;
  - (4) The following income information;
    - a. Balance at beginning of the year;
    - b. During the year;
    - c. Expended during year; and
    - d. Balance at the end of the year;
  - (5) Grand total principal and income;
  - (6) Fees and expenses for:
    - a. Professional banking assistance;
    - b. Professional brokerage assistance; or
    - c. Both; and
  - (7) Fair market value of the principal.



## REPORT OF TRUST FUND INVESTMENTS

### Rev 1707.12 Report MS-10, Report of Common Trust Fund Investments (cont.)

- (b) Report MS-10 shall contain dated signatures of at least a majority of the trustees of trust funds to certify that the information contained in this report was taken from official records and is correct to the best of their knowledge and belief.
  - (c) Report MS-10 shall be completed and filed by:
    - (1) March 1, if the municipality operates on a calendar year; or
    - (2) September 1, if the municipality operates on an optional fiscal year.

## NEW FORM MS-10 - PDF VIEW



## New Hampshire Department of Revenue Administration

2023 MS-10

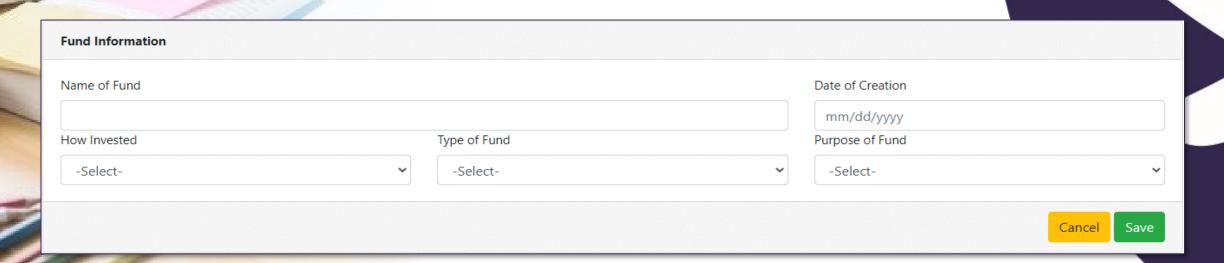
Investment Name		1	Гуре	Shares	Total EOY Balance	
Abbott Laboratories		5	Stock		0.00	\$0.00
Principal	<b>BOY Balance</b>	Purchases	Cash Cap Gains	Sale Proceeds	Sale Gain/Loss	EOY Balance
	\$958.41	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Income	<b>BOY Balance</b>			Income	Expended	EOY Balance
	\$0.00			\$0.00	\$0.00	\$0.00
Principal Only	<b>BOY Fair Value</b>		Unrealized Gains			EOY Fair Value
	\$0.00			\$0.00		\$0.00
Investment Name		1	Гуре	Shares	Total EOY Balan	
Accenture PLC		5	Stock		0.00	\$0.00
Principal	<b>BOY Balance</b>	Purchases	Cash Cap Gains	Sale Proceeds	Sale Gain/Loss	EOY Balance
	\$716.13	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Income	BOY Balance			Income	Expended	EOY Balance
	\$0.00			\$0.00	\$0.00	\$0.00
Principal Only	<b>BOY Fair Value</b>			Unrealized Gains		EOY Fair Value



#### REPORT OF TRUST FUNDS MS-9

#### **Fund Information Screen in the NH TTF Portal**

This is the first step of the Add Fund process and can also be accessed via the Edit Fund link from an existing record. All fields are required. The choices in the dropdowns are available in the handout to this presentation or on the website.



# MS-9 Fund Type (Source of Funds)

#### Capital Reserve

Expendable Funds

Trust 4

#### **Taxpayer Funds**

#### For Capital Reserve Funds

- RSA 34 and RSA 35
- Created by Warrant Articles

#### For Expendable Funds

- RSA 31:19-a
- Created by Town vote

#### **Privately Donated Funds**

#### For Gifts and Donations

- Created by **Charitable Gifts** 
  - May be expendable OR
  - Income only

, orny

# **MS-9 Purpose of Fund** (What the

fund is for)

	Common	Common
	Taxpayer	Trust
	funds	funds
Beautification	$\checkmark$	$\checkmark$
Capital Reserve	$\checkmark$	
Celebration/Old Home Day	<b>✓</b>	$\checkmark$
Cemetery Perpetual Care		<b>\</b>
Cemetery Trust (Other)		$\checkmark$
Discretionary/Benefit of the Town	<b>✓</b>	<b>\</b>
Educational Purposes		$\checkmark$
Economic Development	<b>✓</b>	
Environmental Purposes		$\checkmark$
Fire Department Donation		$\checkmark$
Flower/Flag	<b>✓</b>	<b>\</b>
Historic	<b>✓</b>	<b>V</b>
Hospital/Health Donation		$\checkmark$
Library	$\checkmark$	$\checkmark$
Literary		$\checkmark$
Maintenance and Repair	<b>✓</b>	<b>\</b>
Ministerial		$\checkmark$
Multiple Purposes		$\checkmark$
Parks/Recreation	<b>✓</b>	$\checkmark$
Police Department Donation		$\checkmark$
Police/Fire	<b>✓</b>	
Poor/Indigent	<b>✓</b>	<b>\</b>
Public Monument	V	<b>✓</b>
Religious Purposes		<b>✓</b>
Scholarship	$\checkmark$	<b>✓</b>



# MS-9 Investment Method

(How Funds are Invested)

#### Checking Account

Bank CD

Money Market CD

Savings Account

Single Investment (non-common fund)

Public Deposit Investment Pool

Common Investment

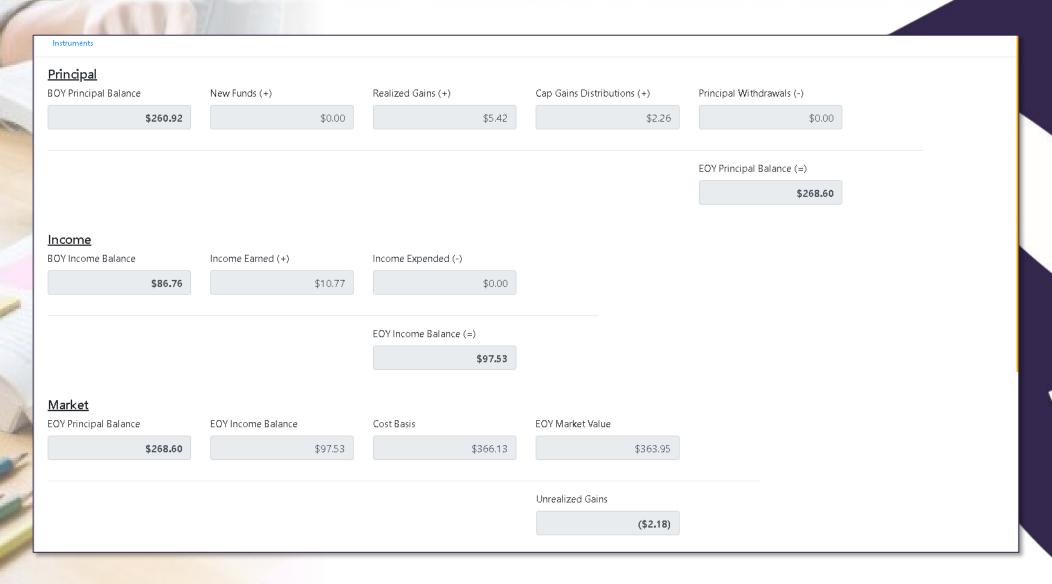
#### Municipality's Own Accounts

- In the municipality's checking account
- In a bank CD held separately from other funds
- In a money market account held separately from other funds
- In the municipality's savings account
- In any other type of non-common fund, such as an account with a mutual fund company

#### **Pooled Accounts**

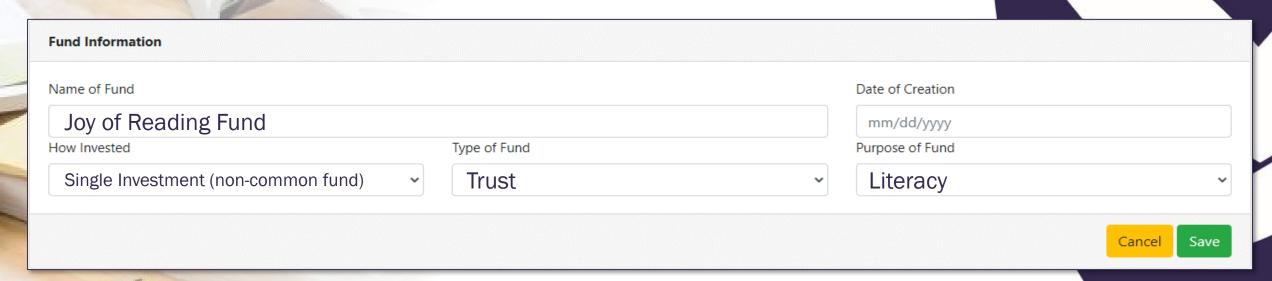
- In the PDIP
- Any funds combined for investment purposes in an account other than PDIP (can be CDs, bank accounts, money market, mutual funds, etc.

# REPORT OF TRUST FUNDS MS-9



#### **Example 1 Joy of Reading Fund**

A privately donated income-only trust fund held in its own account in several mutual funds.



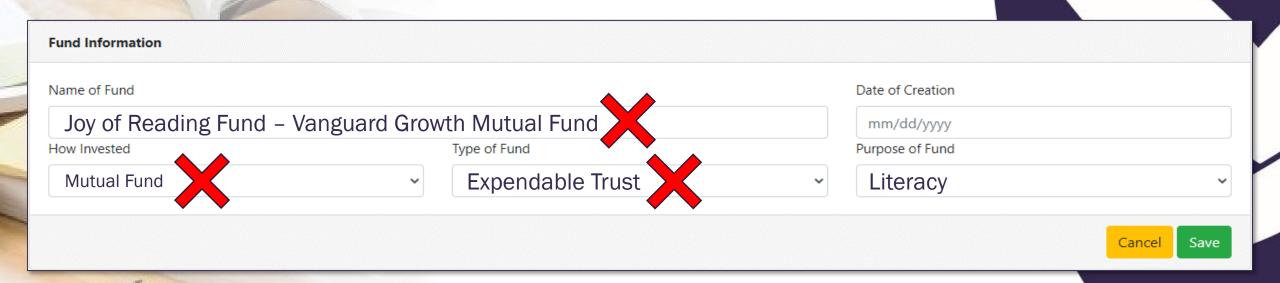
Then add Principal information (at cost basis) and Income information.

Enter Market Value, if desired.

(The form will calculate unrealized gain or loss for you)

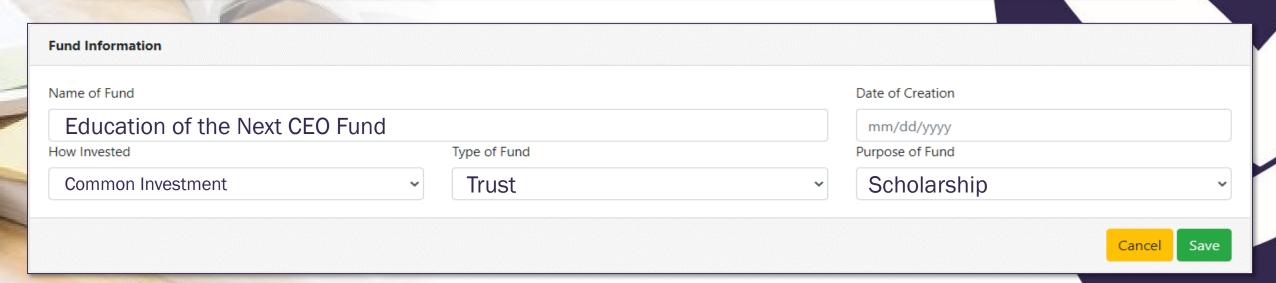
#### **Example 1 Joy of Reading Fund**

A privately donated income-only trust fund held in its own account in several mutual funds.



#### **Example 2 Education of the Next CEO Fund**

A privately donated income-only scholarship trust fund pooled in a checking account with other privately donated trust funds.



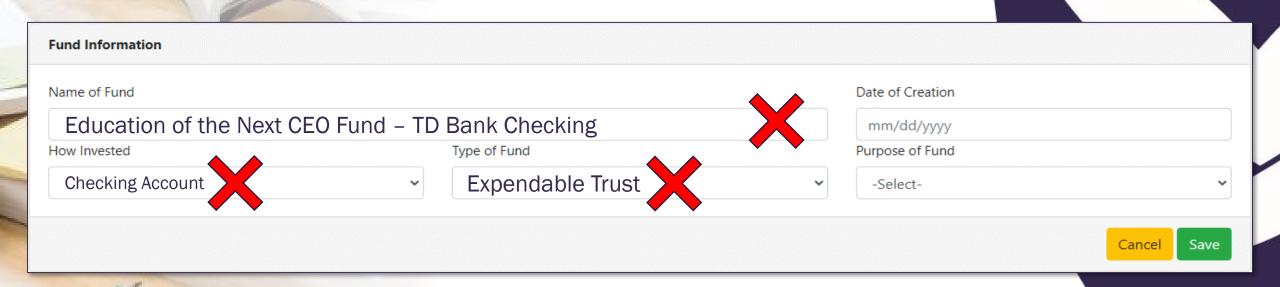
Then add Principal information (at cost basis) and Income information.

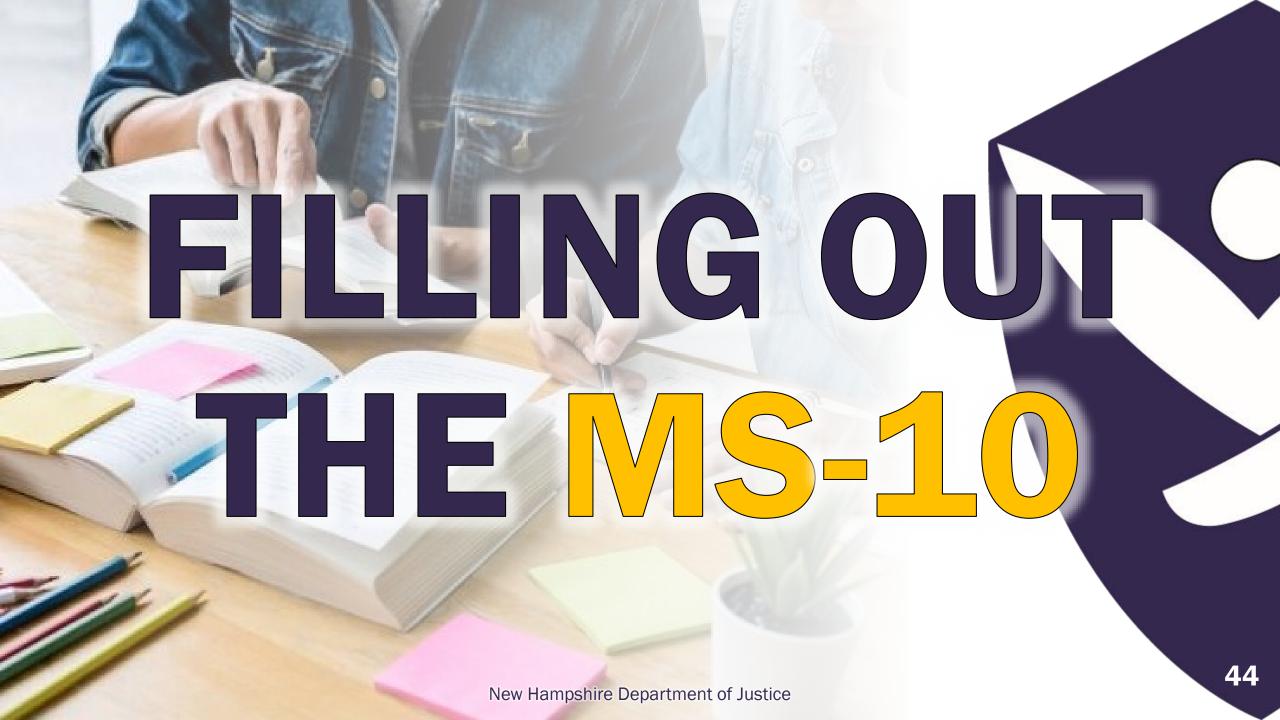
Enter Market Value, if desired.

(The form will calculate unrealized gain or loss for you.)

#### **Example 2 Education of the Next CEO Fund**

A privately donated income-only scholarship trust fund pooled in a checking account with other privately donated trust funds.





# What does "Common Investment" mean? When do you need to file an MS-10 report?

- Common Investment Any funds combined for investment purposes in an account other than PDIP
  - Includes: CDs, bank accounts, money market, mutual funds, stocks and bonds, etc.
  - Funds pooled together in one account at a bank, brokerage, or financial institution.
  - Typically pooled together:
    - Cemetery perpetual care funds
    - Privately donated trust funds
  - For any of the above choose "Common Investment" for the how invested option.
  - When pooled together but invested in the New Hampshire Public Deposit Investment Pool choose the option for "PDIP."

# **Capital Reserve funds and town created expendable trust funds**

- Can be pooled together but <u>cannot be in the same account as</u> <u>privately donated funds</u>.
- Cannot commingle taxpayer funds with privately donated funds pursuant to RSA 31:19-a 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.

#### Investment

- It is the trustees' responsibility to properly invest both public and private funds and the trustees of trust funds must adopt and file with the Attorney General an investment policy pertaining to private funds under RSA 31:25 and an investment policy pertaining to taxpayer funds under RSA 34:5 and 35:9.
- Reminder: Cannot commingle taxpayer funds with privately donated funds
- Each has a different investment and risk allowance under these RSAs.

### **Investing Privately Donated Funds**

Prudent Man Rule

RSA 31:25-b Prudent Investment Defined. –

For purposes of RSA 31:25-a, a prudent investment is one which a prudent man would purchase for his own investment having primarily in view the preservation of the principal and the amount and regularity of the income to be derived therefrom.

#### Prudent Investor Rule

#### RSA 564-B:9-902 Standard of Care; Portfolio Strategy; Risk and Return Objectives. –

- (a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.
- (b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

#### **Investing Taxpayer Funds**

#### RSA 34:5 Investment. –

The moneys in such fund shall be kept in a separate account and not intermingled with the other funds of the city. Said capital reserve fund shall be invested only by deposit in a federally insured bank authorized to accept deposits under RSA 6:8, I and I-a, in such stocks and bonds as are legal for investment by New Hampshire savings banks, or in participation units in the public deposit investment pool established pursuant to RSA 383:22, or in obligations with principal and interest fully guaranteed by the United States government.....

#### RSA 34:9 Penalty for Failure to Perform. –

Any of the above officers who shall fail to perform the duties above set forth shall be guilty of a violation for every week said failure shall continue.

Bank of America Corp Floating 4% (Library)   Bond   200.00	\$4,367.34
Bank of Nova Scotia/The 1.35% 24 Jun 2026 (Common Funds)   Bond   30,000.00	\$29,784.00
Bank of NY Mellon Corp 3.00% 2/24/25 (i) (Common Funds)   Bond   50,000.00	\$49,748.00
Bar Harbor Bank & Trust Inst Money Market (Common Funds)   Money Market   318,776.94	\$318,776.94
Berkshire Hathaway Inc (Common Funds)   Stock   112.00	\$24,542.16
Berkshire Hathaway Inc (Library)   Stock   24.00	\$5,259.04
Blackrock Inc (Common Funds)   Stock   0.00	\$0.00
Booking Holdings Inc (Common Funds)   Stock   9.00	\$21,405.37
Booking Holdings Inc (Library)   Stock   1.00	\$2,378.38
Caterpillar Financial Services Corp 2.15% 08 Nov 2024 (Common Funds)   Bond   50,000.00	\$50,066.98
	Ledger Total: \$4,953,619.8
	Leager Total. \$4,933,019.0

#### **Example 3 Cemetery Perpetual Care Funds**

All town cemetery perpetual care funds pooled together and invested in a bank money market account.



Then add Principal information (at cost basis) and Income information.

Enter Market Value, if desired.

(The form will calculate unrealized gain or loss for you.)

Note: Typically bank accounts, CDs, and Money Market Accounts have the same cost basis and market value.

### **Example 4 Common Trust Funds**

Privately donated funds pooled together and invested with List **EACH INDIVIDUAL** 

an investment professional.



Then add Principal information (at cost basis) and Income information.

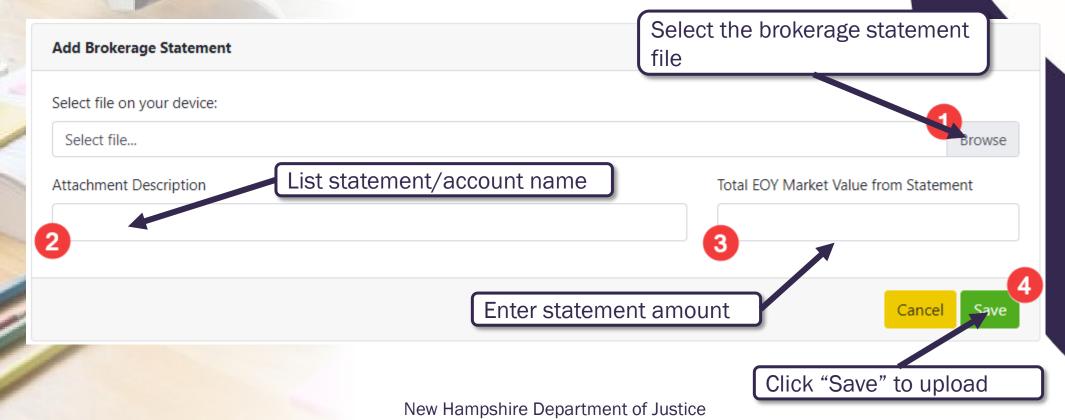
Enter Market Value, if desired.

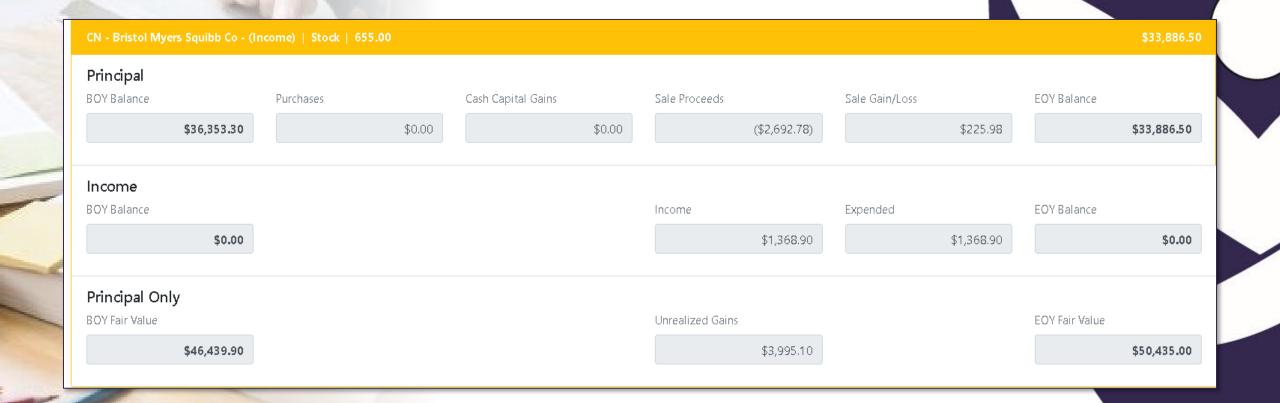
(The form will calculate unrealized gain or loss for you.)

Note: Typically bank accounts, CDs, and Money Market Accounts have the same cost basis and market value.

### **Example 5 Common Trust Funds**

Privately donated funds pooled together and invested with an investment professional.





# TOP ISSUES

- 1. Maintaining municipal trust records at the home of one of the trustees.
- 2. Failing to comply with donor restrictions (time, purpose, or both) on the purpose or administration of a fund.
- 3. Changing the purpose of a trust without court approval or donor consent.
- 4. Changing the purpose or administration of the trust based on the consent of the donor's family member/descendant.
- 5. Failing to maintain the original gift instrument.
- 6. Using perpetual care funds for the general maintenance of the cemetery.
- 7. Reporting one "cemetery fund" on the MS-9 instead of listing each perpetual care fund separately.



#### **Attorney General, Charitable Trusts**

www.doj.nh.gov/charitable-trusts

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