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**Best Practices for Creating and Administering
Self-Settled
“Qualified Disposition Trusts” (“QDTs”)**

*Leveraging the Legal Framework of a Favorable
State Such as New Hampshire*

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New Hampshire Revised Statute Annotated RSA 564-D is captioned the “Qualified Disposition in Trust Act” (the “Act”). The Act allows for the creation and administration of creditor-safe “spendthrift” QDTs, also known as “self-settled trusts”, for both New Hampshire resident and non-resident settlors, provided that certain requirements are satisfied. Most other states’ laws do not recognize the efficacy of a spendthrift restriction on a settlor’s discretionary interest in a self-settled trust. Those laws will generally allow the settlor’s creditors to attach that interest to the extent of the QDT’s trustee’s discretion to distribute QDT property to the settlor.

Although the Act requires minimal ties to New Hampshire to support the enforcement of a QDT’s spendthrift restriction, there are many reasons why it may be prudent to make sure that more is done than the minimum so that the trust has its “situs” in New Hampshire. For example, a QDT with its situs in New Hampshire is less likely to become subject to the jurisdiction of the courts in other states that do not have statutes like the Act, and can be governed by New Hampshire law with respect to issues of validity and other matters. Under general conflicts of law principles, the enforceability of a spendthrift clause is determined under the law of the situs (called in New Hampshire the trust’s “principal place of administration”). See Restatement (Second) of Conflicts of Law § 273; Bogert, Trusts and Trustees § 293; Scott, On Trusts §§ 626-628. The three most important factors New Hampshire and other courts will look to in determining the situs of an *inter vivos* trust (all QDTs and *inter vivos* trusts) are the intention of the settlor, the domicile of the trustee, and the place in which the trust is administered. Lewis v. Hanson, 128 A.2d 819 (Del. 1957), aff’d sub nom., Hanson v. Denckla, 357 U.S. 235, reh’g denied, 358 U.S. 858 (1958); see also Wilmington Trust Co. v. Sloan, 54 A.2d 544, 549 (Del. Ch. 1947).

The following provides a non-exclusive list of some of the factors that may be considered by a New Hampshire or another state's court in determining the place in which a trust is administered and should be considered as best practices to help support the Act's application to a self-settled QDT created in New Hampshire by a non-resident settlor:

1. Where the QDT document is executed and the QDT is funded -- ideally, a non-resident settlor will execute the trust in New Hampshire, perhaps at the offices of the New Hampshire "qualified" resident trustee;
2. Location of the QDT's bank accounts and any tangible personal property -- best to be maintained and kept at the offices of the New Hampshire resident trustee;
3. Where QDT's records are maintained -- ditto;
4. Location of the QDT's trustee's office -- best if the resident qualified trustee has no offices outside of New Hampshire or a state with similar statutes such as South Dakota, and if it does, administers the QDT exclusively from its New Hampshire offices;
5. Where trust reviews, investment decisions, and trust account transactions occur -- best to be conducted in New Hampshire;
6. Location from which the QDT's accountings, reports, and other communications with the settlor, beneficiaries, and unrelated third parties originate -- ditto;
7. Where trust officers conduct their administration activities -- ditto;
8. Where the trust accountings, reports, and other communications with the settlor, beneficiaries, and unrelated third parties are prepared -- ditto;
9. Where documents relating to the QDT are executed on behalf of the trust -- ditto;

10. Where QDT income and contributions are received and from which trust expenditures and distributions are disbursed -- ditto;
11. Where trust officer meetings are held -- ditto;
12. Location of documents evidencing ownership of the QDT's property - ditto;
13. Office to which and resident trust officers to whom QDT account inquiries are directed -- ditto;
14. Where tax reports are prepared and tax compliance reviews and audits are performed -- ditto;
15. Where trustee's QDT committee meetings and reviews occur -- ditto; and
16. Location of the QDT's outside advisers (accountants, lawyers, brokers, trust advisors and protectors and other professionals) and co-trustees -- in New Hampshire (although this can be somewhat less important).

If challenged, a QDT having at least a preponderance, or in a best case all, of the foregoing exclusively New Hampshire contacts and activities will have the best chance of supporting the application of the Act and any given QDT's spendthrift restrictions on creditor attachments.