GUIDEBOOK FOR NEW HAMPSHIRE CHARITABLE ORGANIZATIONS

Fifth Edition

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Office of the Attorney General

Charitable Trusts Unit

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To New Hampshire's Nonprofit Community:

Every day, New Hampshire's charitable organizations express the heart and soul of our state. They reveal the richness of our communities, engaging in a variety of endeavors spanning the arts, religion, health, human services, education, conservation, recreation, and animal care. For almost 400 years, charitable organizations have formed the core of New Hampshire's common experience, our civil society. They are neither government nor business, but rather represent the diverse interests of citizens coming together to serve the common good.

New Hampshire is home to well over 5,600 charitable organizations that rely on the talents, skills, and efforts of dedicated volunteers. While serving as a volunteer board member presents many challenges, service on a board also can be very rewarding. Board service offers directors the opportunities to build upon their lifelong passions and to help shape and improve the quality of life in their communities.

New Hampshire needs a thriving nonprofit sector, and its success depends upon the work of people willing to serve these organizations. Our Charitable Trusts Unit recognizes the important work of charities and their dedicated volunteers, and in addition to exercising our enforcement responsibilities, we offer resources and education to assist charities in their work. We hope that this Guidebook will provide useful information to those individuals who generously volunteer their time to assume leadership roles within charitable organizations.

Sincerely,

Thomas J. Donovan
Director of Charitable Trusts

Diane Murphy Quinlan
Assistant Director of
Charitable Trusts

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INTRODUCTION

The authority of the Attorney General relating to the oversight of charitable trusts originates from English common law when Queen Elizabeth I adopted the Statute of Charitable Uses in 1601. But in 1943, New Hampshire became the first state in the nation to enact a law establishing an office within the Department of Justice that is wholly dedicated to the oversight of charitable trusts and charitable organizations. Today, the Charitable Trusts Unit of the New Hampshire Department of Justice exercises all of the common law and statutory rights, duties, and powers of the Attorney General in supervising and enforcing charitable trusts.

Since the office was established, the Charitable Trusts Unit has collaborated with nonprofit organizations, legislative and community leaders, corporate trustees, accountants, and fundraisers, among others, to develop forms, resources, and programs to assist charitable trusts in fulfilling their responsibilities under the law. The first edition of this Guidebook was a result of one such collaborative effort.

This Guidebook is intended to serve as a quick reference tool for directors, trustees, officers, and executive directors of New Hampshire charitable organizations. It describes in brief terms the legal duties of directors and the common challenges encountered in governing nonprofits. It seeks to promote best practices for leaders of charities. It is not intended to be a complete summary of the laws governing charitable organizations in New Hampshire or a substitute for legal advice.

Additional resources, including forms, articles, and other documents of interest to New Hampshire charitable organizations, are available on our website.

For answers to any questions regarding charitable organizations, please contact the Charitable Trusts Unit.

Charitable Trusts Unit • Office of the Attorney General
33 Capitol Street • Concord, NH 03301
603-271-3591 charitabletrusts2@doj.nh.gov
www.doj.nh.gov/charitable-trusts

THE GOVERNING BODY OF A CHARITABLE ORGANIZATION

ROLE OF THE GOVERNING BODY

The governing body of a charitable organization has overall responsibility for its governance and the protection of its charitable assets. The title of the governing body may vary with the legal structure of the organization: trustees (trust), board (unincorporated association) or board of directors (voluntary [nonprofit] corporation). This Guidebook will use the terms "board" to refer to the entire governing body and "director" to refer to an individual member of that governing body.

In practice, this means:

- All members of the board of directors are responsible for the welfare of the charitable organization. Each director has a duty to participate actively in the governance of the organization and ensure that he or she is well informed about the organization's activities and financial condition.
- The board is responsible for meeting regularly and maintaining records of all meeting minutes, reports, and approved budgets. Recordkeeping should be a priority, and any action authorized or opposed by the board should be carefully documented.
- The board hires, sets compensation and benefits, evaluates, and if necessary, fires the executive director of the organization. It is important to note that the board oversees management—management does not oversee board members.
- The board should take action immediately if the executive director—or any other director, for that matter—violates his or her duties to the organization.

THE BOARD MUST BE DIVERSE

New Hampshire law provides as follows: "In the interest of encouraging diversity of discussion, connection with the public, and public confidence, the board of directors of a charitable nonprofit *corporation* shall have *at least 5 voting members, who are not of the same immediate family or related by blood or marriage*. . . . The provisions of this section may be waived with the approval of the director of charitable trusts after application for such waiver." RSA 292:6-a (emphasis added).

In practice, this means:

- The board has a duty to recruit and orient new directors. The nominating process should actively seek out individuals whose commitment, skills, life experience, perspective, or other characteristics will best serve the organization and its needs.
- While commitment to the organization's mission is a prerequisite in recruiting new directors, the board should also consider the board's cultural, demographic, and geographic makeup, representation from the organization's field of service, and inclusion of a variety of skills.
- Financial skills are among the most important qualities for a diverse board. It is therefore important that the board recruit directors with business and accounting expertise.

- Term limits for directors can be an effective way to ensure board vitality. Designating a board member as an "honorary" director or director *emeritus* may be appropriate where the organization could benefit from the experience and expertise of a director whose term expired. If a board does not have term limits, directors should be reviewed periodically to confirm that they remain actively engaged and suitable for continued service on the board.

DUTIES OF DIRECTORS

Individuals serving on boards of charitable organizations owe certain legal duties to the organization in light of its purpose. Some of the more important duties of board members are the fiduciary duties of care, loyalty, and obedience. While directors do not manage the day-to-day activities of an organization, they serve as stewards of the organization and of assets devoted to charitable purposes, and they must act carefully, in good faith, and in the best interests of the organization.

The **duty of care** means directors must act reasonably (i.e., with the care an ordinarily prudent person in a like position would exercise under similar circumstances) and in good faith and make informed decisions based on what the directors believe are in the best interests of the organization. The board is responsible for overseeing the work of the executive director and ensuring the charity is faithfully carrying out its charitable purpose without extravagance or waste.

The **duty of loyalty** means directors must act with undivided loyalty and in the best interests of the organization and not seek to derive personal gain from its programs or transactions. Acts of self-dealing violate the fiduciary duty of loyalty.

The **duty of obedience** means directors must ensure that the organization carries out its mission and purpose as set forth in its governing documents (articles of agreement, articles of association, charter, constitution, or trust), that the organization honor restrictions that donors place on their gifts, and that the organization complies with applicable laws.

FULFILLING THE DUTY OF CARE

BE ACTIVE AND WELL-INFORMED

Directors must meet regularly as a board and actively participate in board meetings. They should understand the organization's mission and prepare for each meeting so that they can contribute meaningfully to the discussion.

In practice, this means:

- Directors must attend board and committee meetings. They must ensure that prior to each meeting, they receive an agenda and detailed information about matters that will be discussed and decided at the meeting.

- Directors must carefully read all documents and other materials provided before board meetings. They must be prepared to ask questions, make comments, and otherwise be engaged in board discussions. They must understand how well the organization is functioning, keeping in mind the organization's mission and goals.

- Before voting, directors must understand the reasons for and consequences of the particular course of action. They are entitled to reasonable access to internal materials and must request additional information if it is needed in order to make an informed judgment. If needed to make an informed decision, the board collectively may retain at the organization's expense outside legal counsel or other consultants.

- Directors must make decisions based on their own judgment and not based *solely* on the recommendation or vote of the executive director or other directors. They must dissent from actions that appear inappropriate or are contrary to the organization's mission.

- Directors must ensure that minutes are maintained of all board and committee meetings. They must review the minutes to ensure the contents of the meetings, including all votes, were properly recorded and must request changes if there are errors in the minutes or if statements in the minutes require clarification.

- Directors must actively participate in strategic planning activities that assess operations and plan for the future.

BE FISCALLY PRUDENT

Charitable organizations most often fail because of a lack of funding or improper use of funds. Directors should insist that the organization operates in a fiscally sound manner and complies with internal controls to keep it solvent.

In practice, this means:

- Directors must ensure that the organization has effective internal controls; that is, written policies and procedures designed to protect the charity from error, fraud, and embezzlement. For example, internal controls may include separating tasks involving finances, requiring monthly reconciliations of bank statements, restricting credit and debit card usage, and limiting cash transactions.

- Directors must ensure that a realistic annual budget is developed and approved by the board. The annual budget should be developed well in advance so that the entire board can be involved in its review and approval before the beginning of the fiscal year.

- Prior to each regular board meeting, directors should receive a financial report. The content of the report may depend upon the size of the organization but should include timely and accurate income and expense statements, balance sheets, and budget status reports. Boards should consider the value of creating a finance committee to study and make improvements to financial reports.

- Directors should obtain confirmation from management or the treasurer that all required filings (such as the IRS Form 990 and the annual report to the Charitable Trusts Unit) are up-to-date.

- Directors should carefully review year-end financial statements and any audits. They should meet annually as a board with the organization's accountant, if one is retained.

- Directors should ensure that the organization separately accounts for all donor-restricted funds. (See the discussion below for other obligations with respect to donor-restricted funds.)

SELECT, SUPERVISE, AND REASONABLY COMPENSATE A QUALIFIED EXECUTIVE DIRECTOR

The board is responsible for selecting a qualified executive director, establishing the executive director's compensation, annually reviewing the executive director's performance, and if necessary, disciplining the executive director, including terminating the executive director's employment. The board has these important responsibilities even if the executive director "founded" the organization.

Directors may not know that the IRS requires that charities disclose on their Forms 990 compensation paid to: directors and officers (including executive directors); the five highest paid employees who earn at least $100,000 in total compensation; and all "key employees" with total compensation of more than $150,000. Directors should be aware that this compensation information is publicly available. The IRS may penalize organizations that pay excessive compensation to employees. Under federal law, directors who knowingly approve excessive compensation and benefits for certain employees also may be personally liable for penalties.

In practice, this means:

- Every director should know the total compensation paid to the executive director. Even if there is a formal compensation committee that recommends a specific salary, each director nevertheless is responsible for reviewing and approving the compensation package and for ensuring that the compensation package is appropriate. The New Hampshire Center for Nonprofits and industry groups publish surveys and analyses relating to charity executive compensation. Such surveys can serve as a guide for decision making but do not relieve a board of the responsibility to make prudent executive compensation decisions.

- Directors must be able to justify the salary of an executive director to donors, users of its services, and the public at large. The board should be ready to explain the executive director's salary should it appear in the local newspaper.

- Directors should be involved in the selection and performance review of the executive director. Directors should ensure that the executive director has the appropriate skills, education, and experience to carry out the responsibilities of the job, as the position evolves. This might mean that directors must make the difficult decision to terminate a long-term executive director or founder of the organization if a new executive director with different skills and experience is in the best interests of the organization.

- Directors should not become involved in day-to-day management decisions. The role of the directors is to govern: approve major policies, make major strategic decisions, choose the executive director, and oversee the performance of the executive director. The role of management, on the other hand, is to "manage:" make major operational decisions, establish operational policies, hire and supervise staff, keep the board informed, and make recommendations to the board.

FULFILLING THE DUTY OF LOYALTY

Directors have a duty to act in the best interest of the charity and to refrain from acting to the organization's detriment. This duty encompasses both transactions with the organization and the use of the organization's confidential information for personal financial gain. Prior to joining the board, a director should disclose any personal or business relationship that actually or potentially conflicts with this duty of undivided loyalty. If a director has a personal or business interest in a transaction presented to the board, he or she must disclose the conflict of interest, remove himself or herself from any board discussion, and refrain from voting on the matter. Boards should circulate questionnaires to members at the start of each year to document existing or potential conflicts of interest.

UNDERSTAND AND COMPLY WITH PECUNIARY BENEFIT TRANSACTION LAWS

While most of the duties of a director have been developed as general principles over hundreds of years, New Hampshire has developed specific rules for handling certain conflicts of interest, specifically, "pecuniary benefit transactions." Pursuant to RSA 7:19-a, I, a "pecuniary benefit transaction" means a transaction with a charitable trust in which a director, officer, or trustee of the charitable trust has a financial interest, whether direct or indirect. An indirect financial interest arises when a transaction involves a person or entity of which a director or a member of the immediate family of a director, is a proprietor, partner, employee, or officer.

The following is a summary of this important law, which pertains to conflicts of interest involving directors of most New Hampshire-based charitable organizations. *See* RSA 7:19-a; RSA 292:6-a.

1. **Under no circumstances should a charitable organization do the following:**
   - Lend money or property to a director;
   - Sell, purchase or lease (for more than five years) real estate from or to a director without prior court approval; or
   - Engage in transactions that are unfair or impair the charity's ability to perform its mission.

2. **Transactions between the organization and a director, the director's immediate family member, or the director's employer or business may be permitted under certain circumstances:**

   Transactions with a value of $500 or less.
   If the total value of a director's transactions with the organization is $500 or less in a fiscal year, and the transactions are in the charity's best interests, the transactions are permitted.

   Transactions with a value of more than $500.
   If the total value of the transactions with the organization exceeds $500 in a fiscal year:
   - The transaction must involve goods or services purchased or benefits provided in the ordinary course of the organization's business for a reasonable or discounted price;
   - The material facts of the transaction must be disclosed to the board, and the interested director may not take part in either the discussion or vote on the transaction;
   - A two-thirds majority of *disinterested* board members (equal to at least a quorum of the entire board) must find that the transaction is in the charity's best interest and vote in favor of the transaction (note that "disinterested" board members are those without either a direct or indirect financial interest in a transaction with the charity during that fiscal year);

- The board must maintain written minutes regarding the discussion and vote, including who was present; and
- The charity must maintain a list of all pecuniary benefit transactions and must annually report each such transaction to the Director of Charitable Trusts, including the names of those to whom the benefit accrued and the amount of the benefit, on Schedule C of Form NHCT-12.

<u>Transactions with a value of more than $5,000.</u>
If the total value of a director's transactions with the organization exceeds $5,000 in a fiscal year:

- The organization must comply with the foregoing requirements for transactions with a value of in excess of $500 in a fiscal year;
- The organization must notify the Director of Charitable Trusts *before* consummating the transactions; and
- The organization must publish a notice of the transactions in a local newspaper for each fiscal year in which such transactions exceed $5,000.

<u>ESTABLISH CONFLICT OF INTEREST POLICIES</u>

New Hampshire law requires that charitable organizations adopt policies pertaining to pecuniary benefit transactions and conflicts of interest. RSA 7:19-a, IV. These policies may become part of the organization's bylaws. Because organizations differ in size, mission and complexity, no single conflict of interest policy is suitable for all. Sample conflict of interest policies are available in the Instructions for the Application for Registration Form NHCT-11 posted on the Charitable Trusts Unit's website: www.doj.nh.gov/charitable-trusts.

FULFILLING THE DUTY OF OBEDIENCE

<u>ENSURE THAT THE ORGANIZATION FULFILLS ITS MISSION</u>

A charitable organization's activities must always advance the charity's purpose as articulated in its governing documents.

In practice, this means:

- Every director should be able to articulate the charity's mission and be mindful of the mission in every decision that the director makes.

- The organization's assets should not be devoted to or used for a different purpose, even if that purpose is charitable and crucial. For example, a dog rescue organization should not be donating its funds to a foreign hurricane relief charity.

- While an organization may be able to expand its purpose (e.g., enlarge the mission from dog rescue to dog and cat rescue) by amending its governing documents, court approval may be required for a transformational change in purpose (e.g., from a youth sports organization to a grant-making organization or from a school to a museum).

<u>ENSURE THAT THE ORGANIZATION COMPLIES WITH ALL APPLICABLE LAWS</u>

Directors must ensure that the charitable organization complies with all laws applicable to the organization, including any licensing laws, state regulations, and reporting laws.

In practice, this means:

- Directors must have a basic understanding of the local, state, and federal laws applicable to the organization.

- Directors should ensure that the organization timely complies with its reporting obligations, including the following:

  Internal Revenue Service: All organizations exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code must file a Form 990, Form 990-EZ, Form 990-PF, or Form 990-N (as applicable) within 4 ½ months after the close of the organization's fiscal year. Failure to make the timely filing could result in penalties and/or loss of the tax exemption.

  NH Secretary of State: All nonprofit corporations established under New Hampshire law must file a Nonprofit Report every 5 years (years ending in 0 or 5). Failure to file the Nonprofit Report on or before December 31 will result in administrative dissolution.

  Charitable Trusts Unit: All charitable organizations that are New Hampshire-based or otherwise engage in any fundraising or other operations in New Hampshire are required to register and file annual reports with the Charitable Trusts Unit of the Attorney General's office. Form NHCT-11 (Registration) and Form NHCT-12 (Annual Report) can be found on the forms page of the Charitable Trusts Unit website: www.doj.nh.gov/charitable-trusts. Organizations and directors that fail to comply with the obligations to register and/or file annual reports can be subject to, among other things, civil penalties of up to $10,000 per violation.

ENSURE THAT THE ORGANIZATION COMPLIES WITH ANY DONOR RESTRICTIONS

Directors have a duty to ensure that the organization complies with any restrictions placed on funds received from donors or from government grants. Funds may be restricted by the donor as to purpose (e.g., for a scholarship), time (e.g., to be retained permanently), or both. If the organization is fortunate to have a permanent endowment (i.e., funds given to an organization with restrictions on spending so that the funds must be invested and the income used perpetually to further its mission), the board must comply with the donor's spending restrictions. When the gift instrument expresses only a general restriction such as "spend income only" or "preserve the principal," the organization must comply with the Uniform Prudent Management of Institutional Funds Act ("UPMIFA") with respect to spending. RSA 292-B.

In practice, this means:

- Directors must ensure that any donor restrictions on gifts are understood and honored. They must refrain from using restricted funds for a purpose other than the purpose for which the funds were donated. If the original purpose of the gift is obsolete, illegal, impracticable, or impossible to achieve, the board should obtain legal advice about obtaining court approval for a change in purpose.

- Directors must ensure that the organization refrains from excessive spending from endowment funds, even if the organization has a need to cover operating deficits.

- If an organization raises funds for a specific purpose (e.g., to construct a building), the directors must ensure that the money raised is dedicated for that purpose. If the project cannot be completed, the money must be returned to the donor; the donor must agree in writing that the contribution can be redirected to another purpose; or a court must approve the redirection of the funds.

STATUTORY IMMUNITY FOR DIRECTORS

New Hampshire law provides that no unpaid director or officer of a charitable organization may be held liable for personal injuries or property damage for acts committed in good faith and in furtherance of the organization's charitable goals. RSA 508:16. That immunity, however, is not absolute: directors may still be liable for intentional, reckless, or grossly negligent conduct. Regardless, organizations should consider obtaining director and officer liability insurance to cover the cost of hiring legal counsel and defending against such claims.

The articles of agreement of a nonprofit corporation may limit the organization's ability to seek damages from its own directors, so long as the director acted in good faith and did not violate the duty of loyalty. RSA 292:2, V-a.

Organizations may also elect to indemnify (i.e., pay the expenses of) directors who face third party claims due to their board service. Again, indemnification cannot apply to situations where the director did not act in good faith or where the director violated the duty of loyalty.

ORGANIZATIONS WITH MEMBERSHIP RIGHTS

The articles of agreement of some charitable corporations create classes of members who hold certain powers, such as the power to elect directors. While this structure may result in more democratic governance, the structure adds complexity. For example, RSA 292:6-b provides that members of charitable organizations have no voting rights, except as specifically provided in the articles of agreement or bylaws. The statute also provides that each individual board member and each member of a voluntary corporation entitled to vote shall be entitled to no more than one vote.

Many charitable organizations refer to donors and friends as "members" who enjoy certain benefits, such as participation in special events, reduced admission fees, or free newsletters. But unless the organization's articles of agreement empower these friends and donors as legal members, labeling them "members" gives them no legal authority.

FUNDRAISING

Most charitable organizations engage in some form of fundraising to sustain their important work. There are a number of considerations, including New Hampshire laws, that apply to charitable fundraising. For example:

- Organizations that use non-employee paid solicitors to seek contributions must file a solicitation notice with the Charitable Trusts Unit before starting their campaigns. RSA 7:28-c, IV. Paid solicitors separately must register and file reports with the Charitable Trusts Unit. Directors should be aware of any paid solicitation arrangements, the reputation of the solicitation firm selected, and the percentage of contributions that the solicitor keeps. Donors increasingly are wary of contributing to campaigns when the paid solicitor pockets a substantial portion of the donated funds.

- Businesses often seek to partner with charitable organizations to help themselves, as well as the charity. New Hampshire law requires that charitable organizations notify the Charitable Trusts Unit using Form NHCT-22 regarding any charitable sales promotions conducted by a business. A promotion may be a fixed amount or percentage of each sale or a percentage of profits earned. For instance, a business may advertise that "five percent of each sale this weekend will be donated to x charity." The relationship between the business and charity is known as a "commercial co-venture." New Hampshire law requires that the parties to a commercial co-venture enter into a written agreement setting forth the terms. RSA 7:28-d. While such "commercial co-venture" relationships have the potential to help the charity increase its resources and name recognition, before entering into such a relationship, the organization should first assess whether the business is well-regarded in the community and whether the business's image would detract from the organization's mission. For instance, it may be inappropriate for an alcohol recovery charity to engage in a fundraising partnership with a winery.

- Increasingly, charitable organizations participate in online giving. There are advantages to online solicitation and giving, including costs lower than with paid solicitors and access to more potential donors. Opportunities range from the addition of a "Donate" button on a charity's website to participation in peer-to-peer fundraising campaigns using social media platforms to receipt of donations from large internet giving platforms such as Amazon Smiles or PayPal. However, charities should exercise caution. Does the organization consent to use of its name? How long does it take to receive the donation? Is donor information forwarded to the charity? What fees are involved?

- Bingo, raffles, and charitable gaming are available only to charitable organizations that have been in existence for more than two years. Raffles require a permit from the municipality. Bingo and other charitable gaming activities require permits from the New Hampshire Lottery Commission (www.nhlottery.com). *See* RSA 287-A, 287-D, and 287-E.

- Door-to-door solicitation may be regulated in some communities.

FREQUENTLY ASKED QUESTIONS

1. What is a charity?

Under New Hampshire law, charities include private foundations, many voluntary corporations and unincorporated associations, many testamentary and inter vivos trusts, town trust funds, library trust funds, and any other entity soliciting funds for a charitable purpose, whether or not they are exempt under section 501(c)(3) of the Internal Revenue Code. Charitable purposes are very broadly defined and include, but are not limited to: relief of poverty; advancement of education or religion; promotion of health; science; sports; and other purposes beneficial to the community. Charitable entities receive special privileges, including tax-exemption, in recognition of the public benefit they provide.

2. What is a nonprofit?

Any organization not organized as a for-profit business is considered to be a nonprofit. While some nonprofits are charities, some are not. Examples of nonprofits that are not charities include trade associations or business leagues like chambers of commerce; fraternal groups like the Masons or Elks; veterans groups like the American Legion; or co-operatives like credit unions.

3. What is 501(c)(3) status?

501(c)(3) refers to a subsection of the Internal Revenue Code. It describes a class of nonprofit organizations that are generally referred to as charities. Recognition as a §501(c)(3) organization bestows a unique advantage: donors to a §501(c)(3) may deduct their contribution from their federal income tax. Along with other types of recognized nonprofits, §501(c)(3) organizations in most cases do not pay any tax on their income. §501(c)(3) status may lead to other advantages, including eligibility to receive certain grants and exemption from the local property tax.

4. What is a charitable gift annuity?

A charitable organization may issue a private annuity to an individual donor. The donor transfers cash or property to the charity in exchange for fixed annuity payments during his or her lifetime, usually based on the income produced by the cash or property. The remaining value of the annuity at the time of the donor's death is retained by the organization as a charitable donation. Organizations that offer charitable gift annuities must report that activity to the Charitable Trusts Unit on Form NHCT-15 or Schedule D to Form NHCT-12. *See* RSA 403-E:3.

5. What are "internal controls"?

Internal controls are procedures an organization implements to prevent fraud, theft, error, or mismanagement. Internal controls may include, among other things, budgeting procedures, segregation of duties, procedure manuals, and two-signature requirements on checks written in excess of a certain amount. While an annual audit can be an effective safeguard against mismanagement, good internal controls combined with an active and engaged board are critical to preventing fraud and theft.

6. What financial transactions between a director, officer, or trustee and a charitable organization are EXEMPT from the regulation of "pecuniary benefit transactions"?

(1) Transactions with an aggregate annual value of $500 or less;
(2) Reasonable compensation for services of an executive director;
(3) Expenses incurred in connection with official duties of a director;
(4) A benefit provided to a director or member of his or her immediate family if:
    (A) The benefits are provided as part of programs available to members of the general public; and
    (B) The organization has adopted written eligibility criteria; and
    (C) The director or family member meets all of the eligibility criteria for receiving such benefit;
(5) A continuing transaction entered into between the organization and an entity before the person with a financial interest became a director of the organization; and
(6) Compensation of directors who are employed as medical or nursing staff of a hospital, or who are employed as faculty or staff of an educational institution, to the extent those employees do not comprise more than 25 percent of the board.

7. Does filing with the New Hampshire Secretary of State satisfy the requirement to register with the Charitable Trusts Unit?

No. Incorporation with the New Hampshire Secretary of State's office does not constitute registration with the Charitable Trusts Unit. Likewise, filing Nonprofit Reports with the New Hampshire Secretary of State's office does not satisfy the requirement to file annual reports with the

Charitable Trusts Unit. The Secretary of State's website is www.sos.nh.gov; the Charitable Trusts Unit website is www.doj.nh.gov/charitable-trusts.

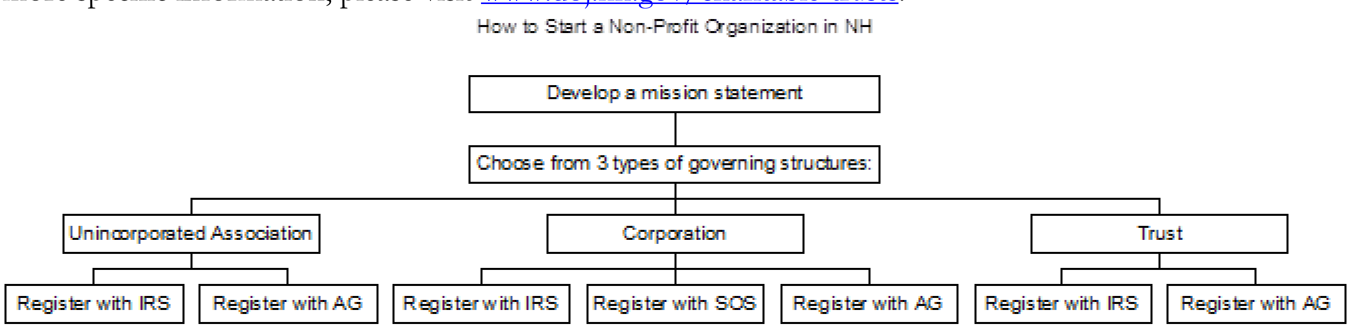
9. Are religious organizations required to register and file annual reports with the Charitable Trusts Unit?

Pursuant to RSA 7:19, "religious organizations" are not required to register or file annual reports with the Charitable Trusts Unit. The term "religious organization" means houses of worship and their integrated auxiliaries. Normally, the Charitable Trusts Unit will rely on the type of exemption described in the Letter of Determination issued by the IRS with respect to the organization's §501(c)(3) classification.

If the IRS grants a "church" exemption from its Form 990 filing requirements, the Charitable Trusts Unit will automatically grant the same exemption. Otherwise, the organization should register and file annual reports with the Charitable Trusts Unit. If the organization questions whether it is entitled to an exemption, it should submit with the Charitable Trusts Unit a request for pre-registration review on Form NHCT-10.

10. How do I start a charity?

Below is a simplified chart illustrating how to start a nonprofit organization in New Hampshire. For more specific information, please visit www.doj.nh.gov/charitable-trusts.



11. What is the IRS Form 990?

The Forms 990/990-EZ/990-PF are IRS informational returns used by tax-exempt organizations to report annual financial and management data relating to the organization. Most of the information on the completed form is publicly available. Organizations with less than $50,000 in revenue are only required to file with the IRS a Form 990-N electronic notice. For further information, visit www.irs.gov. While Forms 990/990-EZ/990-PF provide the financial information needed as part of the Charitable Trusts Unit Annual Report, Form 990-N does not. Form 990-N filers must submit that financial information by completing Schedule A of Form NHCT-12.

12. After registering with the Charitable Trusts Unit, what other reports must the charity file with the Charitable Trusts Unit?

Annual Reports (NHCT-12): Charitable organizations must annually file Form NHCT-12 with the Charitable Trusts Unit within 4 and ½ months of their fiscal year end. The NHCT-12 includes several schedules that require that the organization submit, among other things, a financial report, a governing board list, and a conflict of interest and governance report. Private foundations and non-New Hampshire-based organizations are not required to include a conflict of interest and governance report as part of their annual report.

Below is a quick reference guide to required annual financial filings for the Charitable Trusts Unit:

Financial Reports

Organization Revenue/Type	*What to file*
Private Foundations Only	990-PF
Less than $50,000 revenue	NHCT-12, Schedule A [Note: also file Form 990N (e-postcard) with the IRS]
$50,000 to $500,000 revenue	Form 990 or 990-EZ
$500,000 to $1,000,000 revenue	Financial statement in compliance with GAAP plus Form 990
More than $1,000,000 revenue	Audited financial statement plus Form 990

Additional Filings:

Health care organizations must perform a community needs assessment at least every five years and file a community benefits report (NHCT-31) on an annual basis. RSA 7:32-c-32-*l*. Organizations that issue charitable gift annuities must also file Form NHCT-15 or Schedule D to Form NHCT-12.

13. How do I dissolve a charity?

A New Hampshire charitable organization that decides to wind up its operations must take certain steps to dissolve and distribute any remaining assets.

The basic steps are as follows:

1. Vote to dissolve made by a quorum of the board and, if required by the bylaws, the corporation's membership.
2. If there are funds available, pay all outstanding debts and obligations.
3. If a corporation, file a Statement of Dissolution with the Secretary of State. This form is available on the Secretary of State's website: www.sos.nh.gov.
4. Submit to the Charitable Trusts Unit a final Form NHCT-12, including Schedule E setting forth the organization's charitable assets and the name of the charitable organization that will receive the assets.

Note: If the organization holds any restricted funds, the organization should contact the Director of Charitable Trusts before dissolving and distributing the assets.

14. Under what circumstances can we access endowment funds without court approval?

Under certain, narrow sets of circumstances, a charitable organization may be able to access an endowment fund in order to pay operating expenses or address an unexpected shortfall without the approval of a court.

- *Procedure in the gift instrument:* The gift instrument itself may include a procedure that a charitable organization might follow in order to release a spending restriction imposed by the donor.

- *Board-restricted funds:* If the fund and its attendant restrictions were originally established by a charity's board of directors from unrestricted funds, the board may modify the restrictions.
- *Donor consent:* The living donor (not a family member) of the fund may consent in writing to release or modify spending restrictions; such a release or modification, however, would not permit the fund to be used for a purpose other than the charity's charitable purpose. RSA 292-B:6, I.
- *Spending increase:* A charity's board could increase (somewhat) the endowment fund spending with the potential for downward adjustments in later years subject to the board's fiduciary duties as set forth in UPMIFA. In doing so, the charity must still preserve the purchasing power of its endowment and respect the wishes of fund donors. RSA 292-B:4. The board must also comply with state law requirements regarding notice to the Director of Charitable Trusts.
- *Relatively small, older funds:* Charities may release or modify restrictions on funds with a total value of less than $25,000 that were established more than 25 years ago, so long as the organization notifies the attorney general 60 days in advance and spends the money in a manner consistent with the purposes articulated in the gift instrument. RSA 292-B:6, IV.

15. Does my charitable organization need to register and file annual reports if the organization has a fiscal sponsor?

It depends on whether the charity has a separate identity from the fiscal sponsor. While fiscal sponsorship arrangements can vary, generally, a fiscal sponsor is a nonprofit with tax exempt status under section 501(c)(3) of the Internal Revenue Code that provides fiduciary oversight, financial management, and other administrative services either to provide "back office" support to a small charitable endeavor or to help build the capacity of a charitable project during its start-up phase and before it is recognized as tax exempt. One of the responsibilities of a fiscal sponsor is to receive charitable donations designated for the sponsored project and then spend funds for or grant funds to that project. The donations are reported as revenue on the fiscal sponsor's annual information return (e.g., IRS Form 990).

If a charity is simply a program of a fiscal sponsor with no separate identity, and the fiscal sponsor is registered with the Charitable Trusts Unit, the charity is not required to separately register and submit annual reports. However, the charity must separately register and file annual reports with the Charitable Trusts Unit if the charity has filed articles of agreement with the New Hampshire Secretary of State, or is an unincorporated association, or has obtained its own federal Employer Identification Number, or if the Internal Revenue Service has issued a determination letter recognizing the charity as tax exempt.

Please note that in any event, the charity should enter into a written agreement with the fiscal sponsor that outlines the responsibilities of the parties.

RESOURCES

NH Office of the Attorney General, Charitable Trusts Unit
33 Capitol Street
Concord, NH 03301
(603) 271-3591
charitabletrusts2@doj.nh.gov
www.doj.nh.gov/charitable-trusts

NH Secretary of State, Corporation Division
Mailing address: 107 North Main Street Physical address: 25 Capitol Street, 3rd Floor
Concord, N.H. 03301
(603) 271-3246
www.sos.nh.gov

NH STATUTORY REQUIREMENTS FOR NONPROFIT ORGANIZATIONS:

- Registration with Director of Charitable Trusts – RSA 7:19 through 7:32-*l*
- Annual report filed with Director of Charitable Trusts – RSA 7:28
- Voluntary corporation articles of agreement recorded with Secretary of State – RSA 292:1 – 5
- Renewal of charter of voluntary corporation every fifth year (2015, 2020, etc.) – RSA 292:25
- Required minimum of five independent directors – RSA 292:6-a
- Conflict of interest requirements – RSA 7:19-a
- Investment and spending policy for endowments - Uniform Prudent Management of Institutional Funds Act – RSA 292-B
- Community health needs assessments and community benefits plans required for health care organizations – RSA 7:32-c – 32-*l*
- Professional fundraisers, fundraising counsel, and charitable sales promotions – RSA 7:28-b, 7:28-c, and 7:28-d
- Raffles, charitable gaming, bingo and lucky 7 – RSA 287-A, 287-D and 287-E
- Charitable gift annuities – RSA 403-E

USEFUL WEBSITES:

www.nh.gov
Links to all state agencies, laws and rules, legislative and judicial branches of government.

www.irs.gov
Information on federal tax laws relating to charitable organizations.

www.boardsource.org
A national organization dedicated to building effective nonprofit governing boards.

www.guidestar.org
Access to all IRS Form 990s in searchable format. (Registration required.)

NH Center for
NONPROFITS

www.nhnonprofits.org
The New Hampshire Center for Nonprofits provides resources and advocacy for charitable organizations statewide. Its website publishes information on workshops, upcoming events, job postings, and other matters of interest to New Hampshire nonprofits. Members also have access to NonprofitNext, a web-based resource center with hundreds of customized resources.

www.charitynavigator.org
Provides data on larger charitable organizations and rates their effectiveness. Geared to potential donors.

NEW HAMPSHIRE
CHARITABLE FOUNDATION

www.nhcf.org
The New Hampshire Charitable Foundation is a charitable organization that distributes funds to nonprofits throughout the state. It awards more than $50 million in grants and scholarships annually. The Foundation employs experts in various subject areas and staff assigned to eight regions around the state.

TEN BASIC RESPONSIBILITIES OF NONPROFIT BOARDS

1. **Determine mission and purpose.** It is the board's responsibility to create and review a statement of mission and purpose that articulates the organization's goals, means, and primary constituents served.
2. **Select the chief executive.** Boards must reach consensus on the chief executive's responsibilities and undertake a careful search to find the most qualified individual for the position.
3. **Support and evaluate the chief executive.** The board should ensure that the chief executive has the moral and professional support he or she needs to further the goals of the organization.
4. **Ensure effective planning.** Boards must actively participate in an overall planning process and assist in implementing and monitoring the plan's goals.
5. **Monitor, and strengthen programs and services.** The board's responsibility is to determine which programs are consistent with the organization's mission and monitor their effectiveness.
6. **Ensure adequate financial resources.** One of the board's foremost responsibilities is to secure adequate resources for the organization to fulfill its mission.
7. **Protect assets and provide proper financial oversight.** The board must assist in developing the annual budget and ensuring that proper financial controls are in place.
8. **Build and sustain a competent board.** All boards have a responsibility to articulate prerequisites for candidates, orient new members, and periodically and comprehensively evaluate their own performance.
9. **Ensure legal and ethical integrity.** The board is ultimately responsible for adherence to legal standards and ethical norms.
10. **Enhance the organization's public standing.** The board should clearly articulate the organization's mission, accomplishments, and goals to the public and garner support from the community.

BoardSource®
Empowering Boards. Inspiring Leadership.

Charitable organizations express the heart and soul of New Hampshire communities. Serving as a director, officer, trustee or executive director is hard work, but can also be very rewarding. This Guidebook will help you to understand your responsibilities and thereby make your service more worthwhile.

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