



## Understanding Library Friends and Foundations

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## Outside Money

- Very few libraries receive appropriations from taxpayers which are adequate to fund all their programs
- Sometimes a library may be fortunate enough to have private donations and bequests that help to provide these “extra” services
- If not the Library Trustees may want to consider the formation of a separate 501(c)(3) nonprofit charitable organization to raise extra money

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## Friends vs. Foundations

- Traditionally the type of nonprofit organization created to benefit a library depends upon the amount of money needed to be raised
  - Friends groups raise modest amounts of money for specific library services – purchase of passes to museums, magazine subscriptions, etc.
  - Foundations raise large amounts of money for endowments, capital campaigns, etc.

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### Which One?

- In making its decision the Library Trustees should consider the following:
  - What will these outside funds purchase that we do not have now?
  - Are we considering a capital campaign or major fundraising event in the next 3-5 years?
  - Will the creation of an outside funding source effect our ability to have an adequate budget passed by the town?

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### Creating a Friends Group

- Incorporated or unincorporated?
  - Incorporated – Secretary of State
  - Unincorporated – Constitution
- Bylaws
- Application to the IRS
  - IRS form 1023
  - IRS form 1023EZ
- Register with Attorney General

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### Does the Friends group have members? See RSA 292:6-b

- I. A voluntary corporation may have one or more classes of members or may have no members. In the absence of a provision in its articles or bylaws providing for members, a voluntary corporation has no members.

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### Membership Organizations (cont.)

- II. If a voluntary corporation has no members, an action for which there is no specific provision of this chapter applicable to a voluntary corporation without members and that would otherwise require approval of the members requires only the approval of the board of directors.

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### Membership Organizations (cont.)

- III. Members are of one class unless the articles establish, or authorize the bylaws to establish, more than one class. Members shall have no voting rights, except as specifically provided in the articles or bylaws. The articles or bylaws may fix the term of membership.

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### Membership Organizations (cont.)

- IV. Notwithstanding any provision of the articles or bylaws to the contrary, each individual board member and each member of a voluntary corporation entitled to vote shall be entitled to no more than one vote.

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### Officers and Directors

- Make sure the individuals who will be the officers and directors have the same goals and objectives as the library
- If the Friends and the Library Trustees do not agree on how the Friends' money should be spent there can be problems

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### 501(c)(3)

- Section 501(c)(3) of the Internal Revenue Code describes the purposes for which nonprofit, charitable status will be granted.
- There are, however, two types of 501(c)(3) organizations:
  - **Public charities**
  - **Private Foundations**

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### Public Charities

- Must meet the IRS "public support" test:
  - **At least 1/3 of annual revenue must come from outside the organization: gifts, bequests, donations, grants, etc.**
- Friends of the Library groups are generally classified as public charities

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### Private Foundations

- At least 1/3 of annual revenue is “self generated” from endowment funds and investments.
- New library foundations are generally granted public charity status initially and may be reclassified as private foundations by the IRS at a later date

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### Differences in Administration

- Public charities may receive and retain as much money as the board deems to be prudent or necessary and will not incur federal taxes or penalties as a result
- Private foundations are bound by the “5% rule” and must distribute at least 5% of the fair market of the foundation each year.
- Private foundations may be subject to a 2% excise tax on their investments

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### Creating a Foundation

- **Foundations are nonprofit organizations not subject to the right-to-know law**
- **In deciding whether to authorize the formation of a foundation there are several points to consider:**
  - Who should be on the board of directors?
  - Is there a potential to adversely affect the amount appropriated to the library if the foundation is successful?
  - How will requests from the library for funding be handled?

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### Creating a Foundation

- 1. Draft the mission statement. Example:
  - ***To increase and improve educational and cultural activities in the Town of X through the continued support, growth, and development of the resources, services, and facilities of the X public library. Such support to be in addition to that derived through the normal budgetary process.***

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### Creating a Foundation

- 2. Determine governing structure:
  - **Corporation**
  - **Unincorporated Association**
  - **Trust**

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### Tax Issues

- 3. Apply for tax exempt status from the IRS on form 1023:
  - <http://www.irs.gov/pub/irs-pdf/f1023.pdf>
- Friends groups can use the 1023EZ
- Apply for employer identification number (EIN) on IRS form SS#4:
  - <http://www.irs.gov/businesses/small/article/0,,id=102767,00.html>
  - **An EIN may be obtained on-line**

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### Obtaining Tax Exempt Status from the IRS

- Complete the IRS form 1023 (application for tax exempt status) and the IRS form SS#4 (application for tax identification number)
- Register with the Attorney General, Charitable Trusts Unit
  - <http://www.doj.nh.gov/charitable-trusts/documents/nhct-1-application.pdf>

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### IRS Form 1023

- Essential information necessary to complete the form:
  - **For the Internal Revenue Service (the IRS) to recognize an organization's exemption, the organization must be organized as a trust, a corporation, or an association.**
  - **Does the organization have an exempt purpose?**

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### IRS Form 1023

- **Part I: Identification of Applicant questions**
- **Part II: Organizational Structure**
- **Part III: Required provisions in your organizational documents**
- **Part IV: Narrative description of your activities**
- **Part V: Compensation and Other Financial Arrangements With Your Officers, Directors, Trustees, Employees and Independent Contractors**

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### IRS form 1023

- **Part VI: Your Members and Other Individuals and Organizations That Receive Benefits From You**
- **Part VII: Your History**
- **Part VIII: Your Specific Activities**
- **Part IX: Financial Data including three-year budget**
- **Part X: Public Charity Status**

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### IRS Form 1023

- **Part XI: User Fee Information**
  - **If your average annual gross receipts have exceeded or will exceed \$10,000 annually over a 4-year period, you must submit payment of \$750.**
  - **If your gross receipts have not exceeded or will not exceed \$10,000 annually over a 4-year period, the required user fee payment is \$300.**

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### BYLAW BASICS

For Friends groups and Foundations

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### What are bylaws?

- Bylaws are considered a legal document second in importance only to the organization's Articles of Incorporation or Constitution
- Bylaws dictates how the organization is governed.
- Failure by a board to follow the stipulations outlined in the bylaws can have severe consequences that may result in litigation

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### Keep your bylaws current

- Consider establishing a bylaw committee to review the bylaws no less than every two years
- If changes need to be made make sure the board follows the proper procedure for amending the bylaws
- Always include the **date** of the latest amendment at the end of the document

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### Standard bylaw provisions including N.H. specific requirements

- Name (**make sure you renew your charter with the Secretary of State in 2020**)
- Mission or Purpose
- Board of Directors
  - **REMEMBER, RSA 292:6-a: all nonprofit corporations to have a board of directors composed of at least five independent directors not related by blood or marriage. This law is designed to promote diversity on boards and to prevent conflicts of interest.**

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### Standard bylaw provisions (cont.)

- Board role and size (at lease five)
- Terms (important to discuss whether or not there should be term limits)
  - each director shall hold office until the expiration of the term and until his successor has been elected or appointed and qualified.
- Meetings (when and where including annual meeting)
- Means of participation in meetings (Skype? Speaker phone? Virtual meetings?)
- Notice of Meetings (snail mail only? Or can notice be given electronically?)

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#### Sample Language – Electronic Meetings

**Electronic Meetings.** Meetings of the Board of Directors may be held through the use of a conference telephone or similar communications equipment such as email, instant messaging or similar communication so long as all members participating in such meeting can communicate with one another at the time of such meeting. Participation in such a meeting constitutes presence in person at such meeting. Each person participating in the meeting shall sign the minutes thereof, which may be in counterparts. Approval of said meeting may be accomplished via email or fax.

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#### Sample Language – Electronic Voting

**Action Without Meeting.** Any action required or permitted to be taken by the board of directors at a regular meeting may be taken without a meeting if a majority of the board members consent in writing to such action. Action without a meeting shall be included in the minutes of the organization and shall record any votes or actions taken. Any action or vote taken shall be effective upon the receipt of the written consent of the number of board members required for approval of the action under consideration.

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### Standard bylaw provisions (cont.)

- Election of board members – **how and when? Do board members serve until their successors are appointed or elected?**
- Quorum? **What number of directors/members constitutes a quorum?**
- Duties of Officers
  - President
  - Vice-President
  - Secretary
  - Treasurer

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### Standard bylaw provisions (cont.)

- Vacancies – **what is the procedure for filling a vacant officer or director position? And by whom?**
- Resignation, termination, or absence – **consider whether or not to have the ability to remove officers and/or directors for cause. What are the reasons? How is removal accomplished? Due process considerations.**

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### Standard bylaw provisions (cont.)

- Special meetings – **called by whom and for what purpose?**
- Committee structure – **are there standing committees (audit, nomination, executive)? How are members to the committees selected and by whom?**
- Process for amending bylaws must be included

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### Other Provisions

- Whistleblower Policy
- Document maintenance and destruction policy
- Specific powers that directors can only exercise upon supermajority votes of the directors – **purchase or sale of real estate, hiring and firing decisions, etc.**
- Qualifications of board members – **are background checks required?**

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### Gift Policies

- Objects accepted by the \_\_\_\_\_ charity belong to the organization for as long as it may exist. The charity retains the right to trade, sell, or dispose of any object donated to it. Should the charity dissolve, the disposition of any objects owned by the charity will be determined at that time.

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### Membership organization provisions

- **Members are of one class unless the articles establish, or authorize the **bylaws** to establish, more than one class.**
- **Members shall have no voting rights, except as specifically provided in the articles or **bylaws**.**
- **The articles or **bylaws** may fix the term of membership.**

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Membership organizations  
(continued)

- **Notwithstanding any provision of the articles or **bylaws** to the contrary, each individual board member and each member of a voluntary corporation entitled to vote shall be entitled to no more than one vote.**

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Conflict of Interest requirement

- RSA 7:19-a requires nonprofit organizations to adopt a conflict of interest policy and to affirm the policy on an annual basis.

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Robert's Rules of Order

- *"We have said it before and we will say it again: Most organizations should avoid Robert's Rule of Order like the plague. There is nothing wrong with Robert's Rules of Order when adopted by the right organization for the right reasons. The right organization is a parliamentary or legislative body, not your typical nonprofit charity."*
  - Jack Siegel [A Desktop Guide for Nonprofit Directors, Officers, and Advisers, Avoiding Trouble while Doing Good](#)

**Used with permission from Jack Siegel**

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**Should we adopt Robert's Rules in our bylaws?**

- There is no law mandating that nonprofits must make decisions using Robert's Rules but organizations often make the decision to use the Rules.
- If you decide to adopt Robert's Rules of Order it is important to understand what that means – perhaps appoint a Parliamentarian

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**Tips**

- Make sure the **bylaws** are tightly worded and not open to conflicting interpretations
- Review the **bylaws** on a periodic basis and eliminate or amend any outdated or obsolete provisions
- Make sure all new board members receive a copy of the **bylaws** and encourage the members to read them.

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**Board Meetings and Minutes: Does not have to be a verbatim transcript**

Charities must maintain minutes of all Board meetings to document:

- Who was present.
- Existence of quorum.
- Issues discussed.
- Votes taken/decisions made.

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**Board Meetings and Minutes**  
(cont'd)

**Executive Session - Purpose:**  
The Board may decide to discuss certain issues that are confidential and sensitive in nature in "Executive Session." This can be a healthy tool for encouraging Board discussion.

Typical topics include legal issues, CEO performance review/compensation, or lay-offs. The session may or may not include the CEO.

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**Board Meetings and Minutes**  
(cont'd)

**Executive Session (cont'd)**  
All Board members are entitled to be present, and to have access to the minutes from Executive Session meetings.

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**Board Meetings and Minutes**  
(cont'd)

**Executive Committee**  
The bylaws may assign certain rights and duties to the Executive Committee.  
The Executive Committee reports its activities to the full board  
The full Board may then ratify the Committee's decisions at next Board meeting.

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### Board Minutes (cont'd)

**Summary:**

- Board deliberations and votes must be documented and retained.
- Every Board member has the right to review all minutes, including Executive Session and Executive Committee meeting minutes.
- *Board meeting minutes for Friends and Foundations are not public documents.*

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### Types of Gifts: Additional Considerations

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### What is meant by the term “Endowment”?

- *Permanently restricted:*  
A donor-imposed restriction that stipulates that resources be maintained permanently but permits the organization to use or expend part or all of the income (or other economic benefits) derived from the donated assets.

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### Example

- I give the sum of \$100,000 to X Public Library Foundation, the income to be used to purchase computer equipment.”
  - **The principal amount must be held in tact, only the income may be expended and then only for the purchase of computer equipment.**

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### Unrestricted Gifts

- May be expended in their entirety according to the language of the donation.
  - “I hereby give to the X Public Library Foundation the sum of \$5,000 for its general purposes.”

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### Please Note. . .

- A change in the Financial Accounting Rules from the Financial Accounting Standards Board (FASB) eliminated the “temporarily restricted” category of gifts and assets effective January 1, 2018.

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**Can unrestricted gifts become restricted?**

- **Library Trustees and Boards of Directors of nonprofit organizations will sometimes want to gather together the unrestricted gifts received by the entity to create an “endowment fund” to provide for future needs.**
- **It is important to note the donee organization cannot place additional restrictions on a gift; successors in these positions are not bound by the actions of their predecessors and may remove the restriction.**

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**Resources for Nonprofits**

- [www.nhnonprofits.org](http://www.nhnonprofits.org) – Nonprofit checklist, workshop announcements, employment opportunities, etc.
- [www.nonprofitrisk.org/about/about.htm](http://www.nonprofitrisk.org/about/about.htm) - Nonprofit Risk Management website
- [www.boardsource.org](http://www.boardsource.org) – a national organization dedicated to building effective nonprofit Boards
- [www.guidestar.org](http://www.guidestar.org) – scanned images of all 990s and 990PFs filed with the IRS

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**Contacting the Attorney General**

**Department of the Attorney General  
Charitable Trusts Unit  
33 Capitol Street  
Concord, NH 03301-6397  
Phone: 603-271-3591  
E-mail: [audrey.blodgett@doj.nh.gov](mailto:audrey.blodgett@doj.nh.gov)**



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