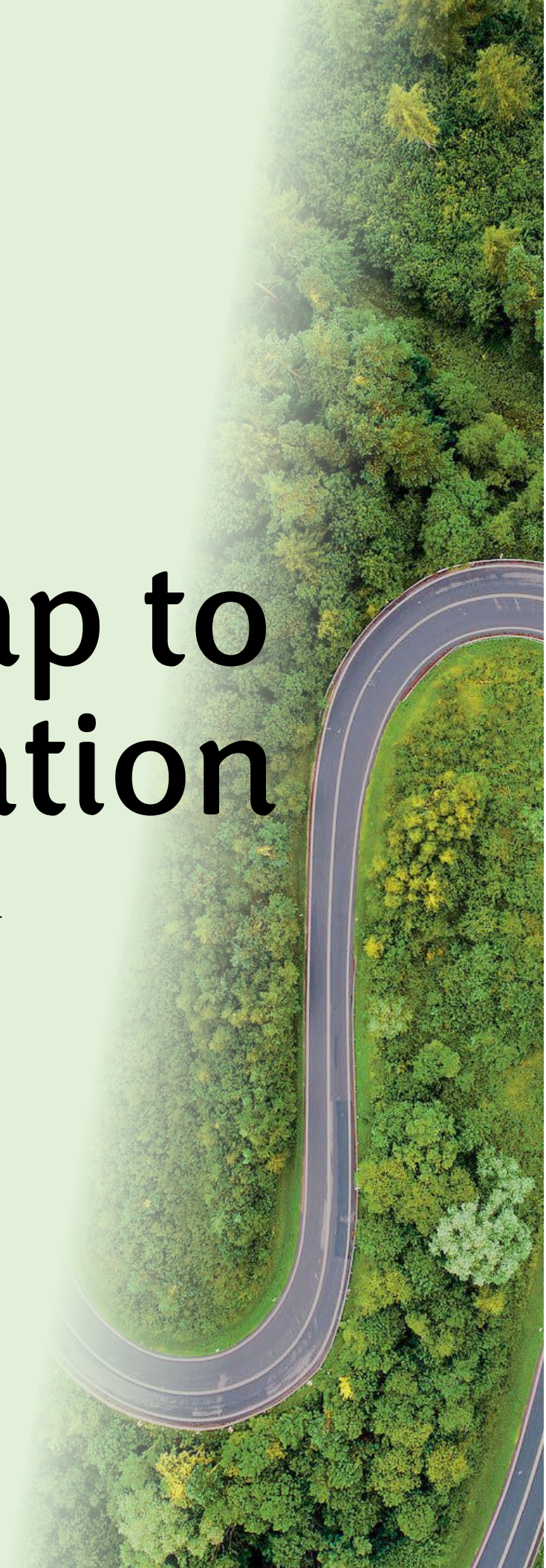




**CHARITABLE
TRUSTS UNIT**
NH DEPARTMENT OF JUSTICE

Roadmap to Registration

A guidebook for New Hampshire-based
charitable organizations



NEW HAMPSHIRE DEPARTMENT OF JUSTICE

CHARITABLE TRUSTS UNIT

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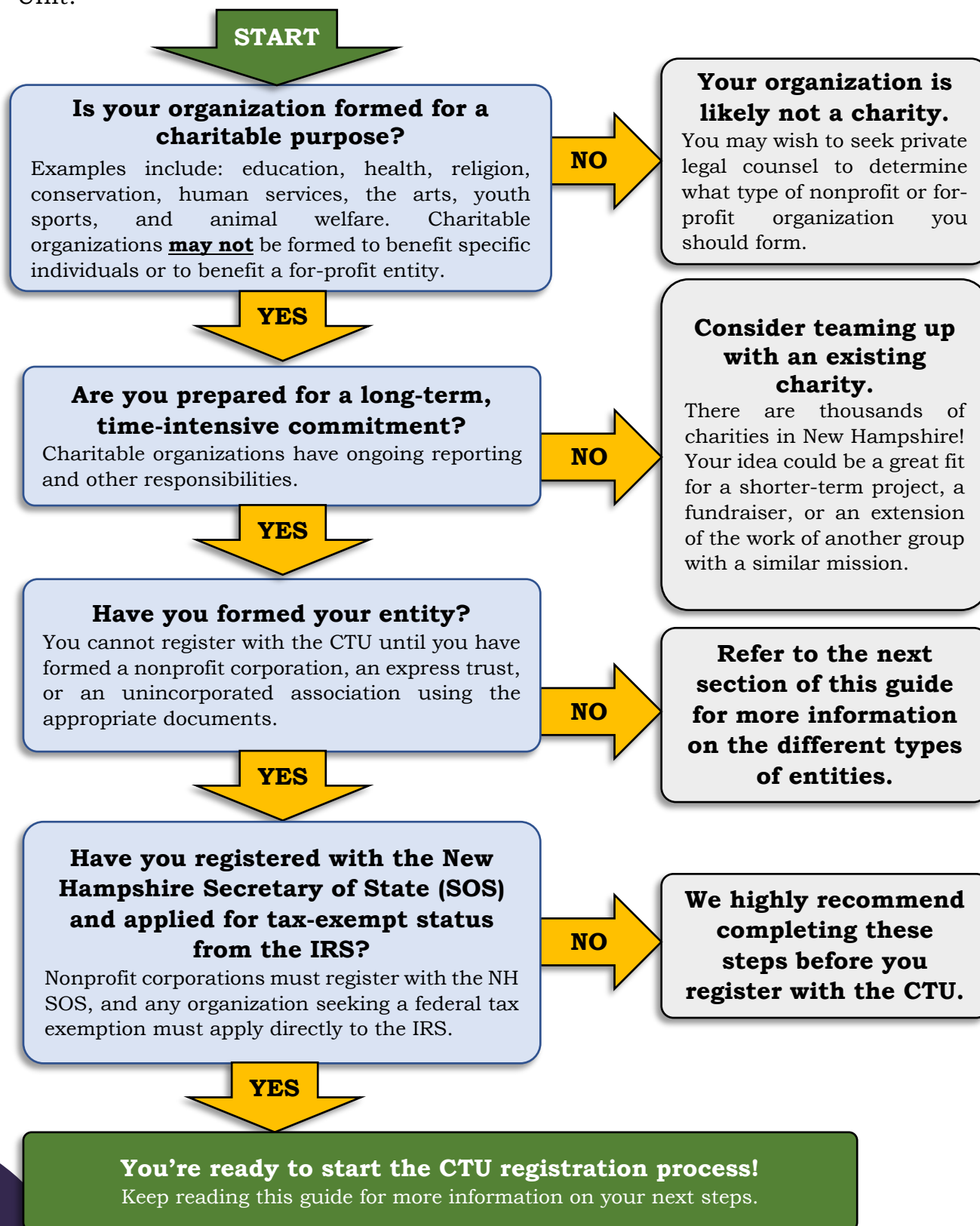
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Before You Begin

Are you ready to register with the New Hampshire Charitable Trusts Unit?



Select the Form of Your Entity

There are three forms that **new** charitable organizations can take.



Tip

Most NH charities are corporations, so that is the focus of this guidebook.

Nonprofit Corporation

These charities are incorporated under the voluntary corporation laws of the State of New Hampshire ([RSA Chapter 292](#)) or under the nonprofit corporation laws of another state. New Hampshire entities must file their Articles of Agreement by completing Form NP-1 and filing it with the [Secretary of State](#).

Trust

A trust can be established by a trust instrument or provisions in a will. Such trusts are known as “express trusts.” In addition, a trust may be formed by court order. Trusts formed in New Hampshire are governed by the NH Trust Code, [RSA Chapter 564-B](#). No filing with the Secretary of State is required for NH trusts. Most trusts created by will must file periodic accountings with the NH Circuit Court, Probate Division.

Unincorporated Association

An unincorporated association is an association of persons that is neither an express trust nor a corporation. Some fraternal and other groups may be organized in this manner. No filing with the Secretary of State is required for NH unincorporated associations. The CTU requires that such entities have a written constitution or charter that describes a specific charitable mission.



Forming a new entity takes a lot of work!

If you want to try out your charitable activity before committing to creating a new entity, you have some options:

✓ **Volunteer with an existing charity**

There are over **5,000** charities registered in NH. You can probably find a nearby charity that does work similar to the work you want to do. Also consider volunteering on a charity’s board to learn what it takes to run an organization.

✓ **Set up a fiscal sponsorship with an existing charity**

Consider working with an established charity to run a program or event that is consistent with that charity’s mission. “Fiscal sponsorship” arrangements where the project is housed within a charity and has no separate legal existence do not require separate registration with the NH Secretary of State, the IRS, or the CTU. A fiscal sponsorship can be a great way to pilot a new charity.

Know Your Regulators

Generally, NH-based charitable corporations are regulated by **at least three** government agencies. Obligations to each of these three agencies are described in greater detail in later sections of this guidebook.



The Internal Revenue Service (IRS)

The IRS is the federal agency that determines whether an entity is exempt from federal income tax. Typically, charities are exempt under Section 501(c)(3) of the Internal Revenue Code. Charities, other than churches and governmental charities, must annually file an information return with the IRS.



The NH Secretary of State (SOS)

To establish a nonprofit corporation in New Hampshire (also called a “voluntary corporation” under RSA Chapter 292), a charity must file Articles of Agreement with the SOS on the Form NP-1. Thereafter, the charity must file a nonprofit report every 5 years in years ending in 0 or 5.



The NH Charitable Trusts Unit (CTU)

The CTU’s role is to protect the public interest in assets and organizations committed to charitable purposes in NH. All charitable trusts must register with the CTU by filing Form NHCT-11. Thereafter, the charity must file an annual report with the CTU on Form NHCT-12.

Some types of charities are regulated by other agencies as well. For example, charter schools are regulated by the [NH Department of Education](#), many types of social service organizations are regulated by the [NH Department of Health and Human Services](#), continuing care retirement communities are regulated by the [NH Department of Insurance](#), and many charities involving animals, such as animal rescues, are regulated by the [NH Department of Agriculture](#). **Before starting a charity, be sure you know what your entity’s registration, licensing, and other legal requirements will be.**

Assemble a Board of Directors

NH charitable nonprofit corporations must be governed by a board of directors. There are specific statutory requirements for the board under [RSA 292:6-a](#).

Requirement 1: A diverse board.

The board of a charitable nonprofit should not be limited to the founder's close friends or people who will unconditionally agree with the founder. Board members should bring various skills, experiences, and ideas to the table. Board meetings should involve lively discussion and respectful disagreement.

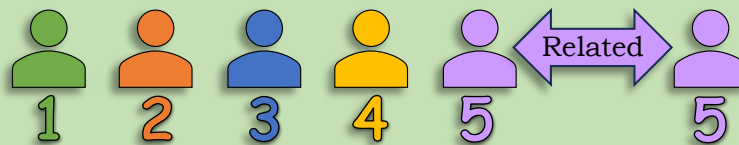
RSA 292:6-a

Board of Directors of Charitable Nonprofit Corporations.

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. No employee of a charitable nonprofit corporation shall hold the position of chairperson or presiding officer of the board....

Requirement 2: At least 5 unrelated board members.

You cannot incorporate your charity or register with the CTU unless you have at least 5 board members who are unrelated to each other. It is possible to have relatives serve on a board of directors, but those relatives will not count toward the 5-member minimum.



Requirement 3: Presiding Officer who is not an employee.

A charity must serve a public charitable purpose and not benefit its founder or the founder's friends, family, and businesses. Although a charity may employ staff and have a paid executive director or CEO, that person may not serve as the presiding officer of the board. The volunteer board oversees and supervises any executive director or CEO and ensures that the charity's assets are devoted to its charitable purpose.

Incorporate as a Charity

Incorporate as a charitable nonprofit corporation by filing [Form NP-1](#) with the NH Secretary of State. Pay special attention to these sections. The CTU cannot register your entity if you make any of these common errors.

Print Reset State of New Hampshire

Recording fee: \$25.00
Use black print or type.

Form NP-1
RSA 292:2

ARTICLES OF AGREEMENT
OF
A NEW HAMPSHIRE NONPROFIT CORPORATION

THE UNDERSIGNED, being persons of lawful age, associate under the provisions of the New Hampshire Revised Statutes Annotated, Chapter 292 by the following articles:

FIRST: The name of the corporation shall be _____

SECOND: The object/purpose for which this corporation is established is:

THIRD: The provisions for establishing membership and participation in the corporation are:

Charitable Purpose

Under New Hampshire law, a charity must have a **specific** charitable purpose.

Examples:

- ✓ The corporation is established to provide food and clothing for people experiencing homelessness.
- ✓ The corporation is established to operate a shelter for rescue animals.
- ✓ The corporation is established to provide educational opportunities for underprivileged children.
- ✗ The corporation is established to serve exclusively charitable purposes.
- ✗ The corporation is established to operate in accordance with Section 501(c)(3) of the Internal Revenue Code.

Dissolution Provision

Upon dissolution, the charity's assets must be distributed to a 501(c)(3) organization or a government entity. The assets may not be distributed to one or more individuals.

Examples:

- ✓ The assets of the corporation will be distributed to an entity exempt from federal taxation under Section 501(c)(3) of the internal revenue code.
- ✓ The assets of the corporation will be distributed to the town of Rockingham.
- ✓ The assets of the corporation will be distributed to Save the Forests, Inc., or another charitable organization with a similar purpose.
- ✗ The assets of the corporation will be distributed to the members of the board of directors.

Membership

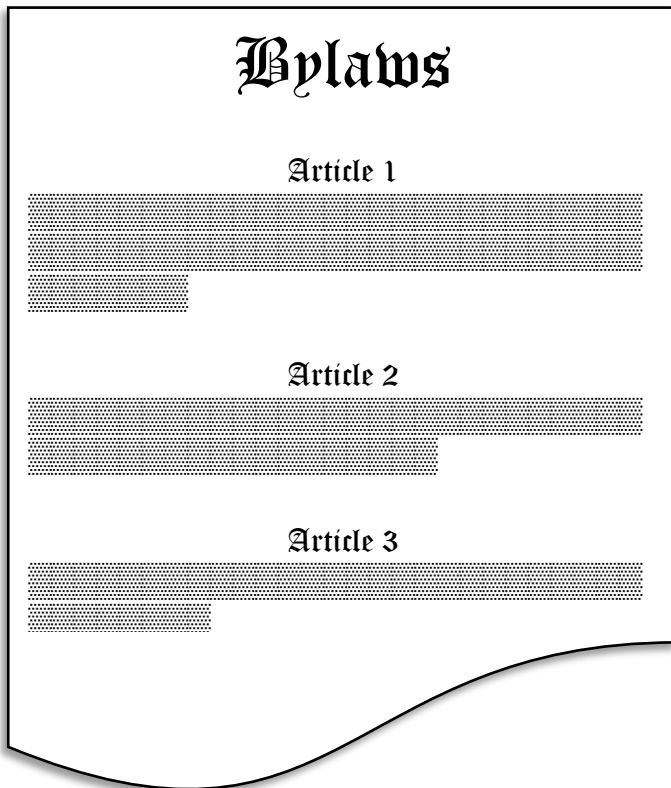
Voluntary corporations are not required to have members, and many are operated only by the board of directors. Corporations that have a class of members with rights (such as to elect the board, approve budgets, amend bylaws) should have a system in place to keep track of members. The CTU takes the position that the founder cannot serve as a sole member as it **violates the spirit of NH laws intended to ensure diversity and public confidence**. See also RSA 292:6, RSA 292:6-a, and RSA 292:10-a.

FOURTH: The provisions for disposition of the corporate assets in the event of dissolution of the corporation including the prioritization of rights of shareholders and members to corporate assets are:

FIFTH: The New Hampshire principal address at which the business of this corporation is to be carried on is

Draft Your Governing Documents

Bylaws are important documents for charitable corporations and unincorporated associations that set forth how the board will govern. The bylaws may include the conflict of interest and pecuniary benefit transaction policy required by New Hampshire law.



Caution

Many Bylaws found on the Internet that purport to be for New Hampshire corporations are inconsistent with New Hampshire law.

Common Bylaw Issues:

The CTU will not register a corporation if its bylaws have any of the following issues:

- ✗ Bylaws allow for fewer than 5 unrelated board members.
- ✗ Bylaws name a particular person as a lifetime board member or officer.
- ✗ Bylaws allow for a paid presiding officer.
- ✗ Bylaws refer to the “New Hampshire Nonprofit Corporation Act” (no such act exists).
- ✗ Bylaws are inconsistent with the organization’s Articles of Agreement.
- ✗ Bylaws include a conflict-of-interest provision that is inconsistent with NH law.

Other Considerations for Bylaws:

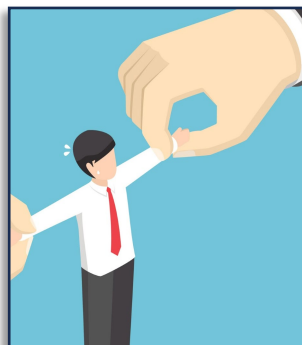
Although not legal requirements, consider the following best practices:

- ✓ Seek professional advice from a lawyer familiar with New Hampshire law applicable to charities.
- ✓ Include the selection method and terms of directors and officers.
- ✓ Consider term limits for directors and officers to encourage fresh ideas.
- ✓ Avoid “Robert’s Rules of Order”—these rules are much more complicated than most charities realize or need.
- ✓ Avoid language requiring annual audited financial statements, unless your organization is large enough to need (and afford) a CPA to conduct an audit.



Draft Conflict of Interest Policy that Complies with NH Law

A **Conflict-of-Interest Policy** for a New Hampshire-based charitable organization must specify how a charity will deal with conflicts of interest and pecuniary benefit transactions. A charity must operate to benefit a public charitable purpose and not to benefit private individuals. A director's duty of loyalty to a charity's mission is tested when there is a conflict of interest between the charity's mission and the director's private interests. The CTU will not register a New Hampshire-based charitable organization until it submits a conflict of interest policy that addresses pecuniary benefit transactions.



Legal Requirements:

New Hampshire law requires that “[e]very charitable trust shall adopt policies pertaining to pecuniary benefit transactions and conflicts of interest.” [RSA 7:19-a, IV](#).

A Pecuniary Benefit Transaction (“PBT”) is a kind of conflict-of-interest transaction for which there are specific requirements under New Hampshire law. Our [Guidebook for New Hampshire Charitable Nonprofit Organizations](#) explains PBTs in detail.

Here are two samples of language on conflicts of interest that address pecuniary benefit transactions under New Hampshire law:

Sample 1

Any possible conflict of interest on the part of any member of the board, officer, or employee of the corporation, shall be disclosed in writing to the board and made a matter of record through an annual procedure and also when the interest involves a specific issue before the board. Where the transaction involving a board member, trustee or officer exceeds five hundred dollars (\$500) but is less than five thousand dollars (\$5,000) in a fiscal year, a two-thirds vote of the disinterested directors is required. Where the transaction involved exceeds five thousand dollars (\$5,000) in a fiscal year, then a two-thirds vote of the disinterested directors and publication in the required newspaper is required. The minutes of the meeting shall reflect that a disclosure was made, the abstention from voting, and the actual vote itself. Every new member of the board will be advised of this policy upon entering the duties of his or her office, and shall sign a statement acknowledging, understanding of and agreement to this policy. The board will comply with all requirements of New Hampshire law in this area and the New Hampshire requirements are incorporated into and made a part of this policy statement.

Sample 2

(a) Each director, prior to taking his position on the board, and all present directors shall submit in writing to the chair of the board a list of all businesses or other organizations of which he is an officer, director, trustee, member, owner (either as a sole proprietor or partner), shareholder, employee or agent, with which the corporation has, or might reasonably in the future enter into, a relationship or a transaction in which the director would have conflicting interests. The chair of the board shall become familiar with the statements of all directors in order to guide his/her conduct should a conflict arise.

(b) At such time as any matter comes before the board in such a way as to give rise to a conflict of interest, the affected director shall make known the potential conflict, whether disclosed by his written statement or not, and after answering any questions that might be asked, shall withdraw from the meeting for so long as the matter shall continue under discussion. Should the matter be brought to a vote, neither the affected director nor any other director with a pecuniary benefit transaction with the corporation during that year shall vote on the matter.

(c) The board will comply with all the requirements of New Hampshire law where conflicts of interest are involved, including but not limited to the requirements of a two-thirds vote where the financial benefit to the director or trustee is between \$500 and \$5,000 in a fiscal year, and to the requirement of a two-thirds vote and publication in the required newspaper where the financial benefit exceeds \$5,000 in a fiscal year. The New Hampshire statutory requirements are incorporated into and made a part of this conflict policy.

Apply to the IRS for an Employer Identification Number and for Tax-Exempt Status

To obtain an Employer Identification Number (EIN), apply online via the [IRS website](#). You need an EIN before you can register with the CTU and get a bank account for your organization.

To receive tax-exempt status from the IRS, you must submit a [Form 1023](#) or [Form 1023-EZ](#). The IRS provides instructions on completing the [Form 1023](#) and [Form 1023-EZ](#). Filling out the form incorrectly may result in your organization receiving an incorrect determination. It is recommended that before you submit the forms, you consult a professional, such as an attorney or accountant familiar with IRS tax-exempt applications.

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Employer Identification Number:
DLN:
Contact Person: 31126
Contact Telephone Number:

Accounting Period Ending:
March 31
Public Charity Status:
170 (b) (1) (A) (vi)
Form 990 Required:
Yes
Effective Date of Exemption:
July 13, 2007
Contribution Deductibility:
Yes
Advance Ruling Ending Date:
March 31, 2012
Addendum Applies:
No

Dear Applicant:

We are pleased to inform you that upon review of your application for tax exempt status we have determined that you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Contributions to you are deductible under section 170 of the Code. You are also qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055 or 2522 of the Code. Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent files.

Organizations exempt under section 501(c)(3) of the Code are further classified as either public charities or private foundations. During your advance ruling period, you will be treated as a public charity. Your advance ruling period begins with the effective date of your exemption and ends with advance ruling ending date shown in the heading of the letter.

Shortly before the end of your advance ruling period, we will send you Form 8734, Support Schedule for Advance Ruling Period. You will have 90 days after the end of your advance ruling period to return the completed form. We will then notify you, in writing, about your public charity status.

Please see enclosed Publication 421-PC, Compliance Guide for 501(c)(3) Public Charities, for some helpful information about your responsibilities as an exempt organization.

Letter 1045 (DO/CO)

When you receive your determination letter, confirm whether you have been designated as a **Public Charity** or **Private Foundation**. Most charities are **Public Charities**. **Private Foundations** are subject to various operating restrictions and excise taxes for failure to comply.

If you believe you were determined to be a **Private Foundation** in error, contact the IRS to correct the error.

Keep a copy of your determination letter!

You will need to submit a copy to the CTU and may need it for donations or grants.

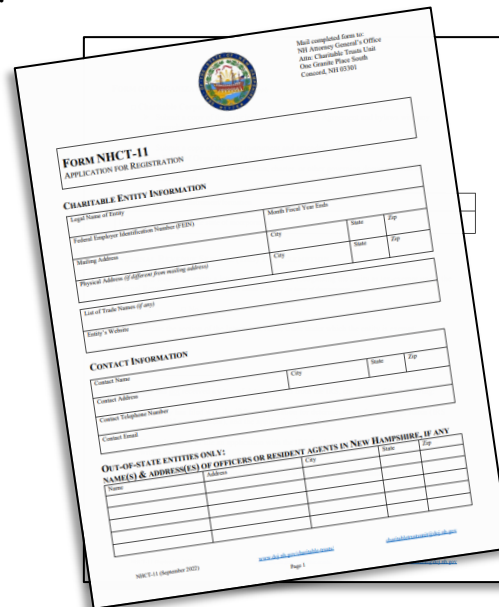
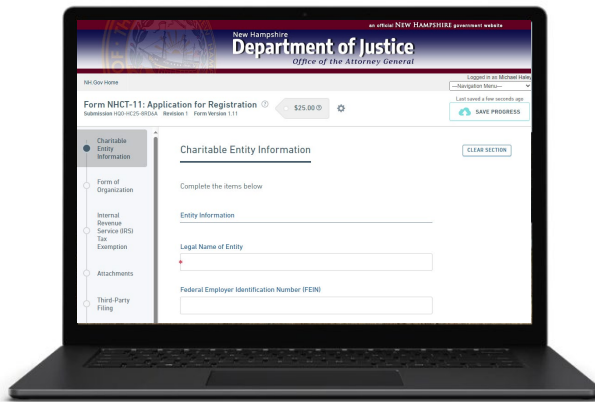
Register with the Charitable Trusts Unit

Under New Hampshire law, charitable trusts must register with the Charitable Trusts Unit **within 6 months** after any part of the trust's income or principal is authorized or required to be expended for a charitable purpose. [RSA 7:28, I](#); [Jus 402.03\(a\)](#).

To register with the CTU, you will need:

1. Completed NHCT-11 Application for Registration Form

The form is available [online](#) or on [paper](#).



NOTE: Form NHCT-11 must be signed by the presiding officer or treasurer of the board of directors. Form NHCT-11 may not be signed by an executive director or other paid employee of a NH-based charity. The form may be signed by a third-party filer only if accompanied by a [Form NHCT-50](#) signed in ink.

2. \$25 Fee

The fee is required by [RSA 7:28-a, I](#) and cannot be waived. Payments are accepted by credit card and e-check (for online submission) and check (for paper submission).

4. Copies of compliant governing documents

Refer to this guidebook's section on [governing documents](#) and consider consulting with an attorney to ensure that the organization's governing documents are compliant with NH law. In particular, note requirements for the charity's conflict-of-interest and pecuniary benefit transaction policies and the charity's dissolution provision.

5. The charity's determination letter from the IRS

Refer to this guidebook's section on [IRS tax exemption](#) for more information. If you are in the process of seeking a tax exemption but have not yet received your determination letter, you may indicate that on your application form.

6. A complete governing board list

NH-based charities must provide home addresses, email addresses, and telephone numbers for all board members. This information is not subject to public disclosure by the CTU. Refer to this guidebook's section on [board composition](#). The CTU will not register NH charitable corporations with fewer than 5 board members, unrelated by blood or marriage.

3. One of the following to confirm that the charity's assets are held by the charity and not by an individual:

The entity's most recent bank statement

The entity's most recent IRS Form 990, Form 990-PF, or Form 990-EZ

The image shows a bank statement for a non-profit checking account. The statement is dated 08/31/2016. It includes contact information for the bank, a section for managing accounts, and a summary of accounts. The account type is NON-PROFIT CHECKING. The statement also shows a table for overdraft and returned item fees, with a total of \$0.00 for both.

OR

The image shows the front page of IRS Form 990, Return of Organization Exempt From Income Tax. The form is for the year 2012. It includes sections for identifying the organization, providing contact information, and reporting various types of income and expenses. The form is partially filled out with information.

If neither exist, a written explanation as to where the charity's financial assets are held.

Stay Up-to-Date with Required Filings

Most charities must file periodic reports with at least these three regulators:



The Internal Revenue Service (IRS)

Charities must file the IRS Form 990, Form 990-PF, Form 990-EZ, or Form 990-N annually. The form is due 4½ months after the end of the charity's fiscal year. Charities may request a 6-month extension of this deadline. Failure to file for 3 consecutive years results in **automatic revocation** of the charity's tax-exempt status



The NH Secretary of State (SOS)

After incorporating, charitable corporations must file a nonprofit report every 5 years in years ending in 0 or 5 (e.g., 2025, 2030, 2035). If a charity does not file a nonprofit report by December 31 of the reporting year, the charity will be **administratively dissolved**.



The NH Charitable Trusts Unit (CTU)

Charities must file an annual report with the CTU on Form NHCT-12. The form is due 4½ months after the end of the charity's fiscal year. Charities may request a 6-month extension of this deadline. Charities that are 6 or more months late in filing are automatically placed in "**not in good standing**" status on the CTU's list of registered charities and may be subject to the penalties prescribed by [RSA 7:28-f](#).

Reference

Keep this sheet as a handy reference:

Charity Name:	
Charitable Purpose(s):	
Date of incorporation or establishment:	
EIN:	
CTU Reg. No.:	
Annual deadline to file IRS Form 990 (or request extension):	
Annual deadline to file CTU Form NHCT-12 (or request extension):	
Next deadline to renew registration with NH Secretary of State:	

Refer to the website of the Charitable Trusts Unit for more information on operating a charity, including guidance documents and training materials for board members and executives.



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