

OFFICE OF THE NEW HAMPSHIRE ATTORNEY GENERAL  
CHARITABLE TRUSTS UNIT

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**STARTING A CHARITY IN NEW HAMPSHIRE**  
**OVERVIEW**

If you are planning to create a new charity, keep these things in mind:

- Charitable organizations can be formed in furtherance of any charitable purpose. These purposes include education, health, religion, conservation, human services, the arts, youth sports, and animal welfare. The organization must be formed to benefit all or a subset of the general public, and not to benefit specific individuals.
- Charitable organizations have ongoing reporting responsibilities. Will you and your group still have the capacity and the passion to meet those responsibilities in future years? If not, consider teaming up with an existing charity that has a mission similar to your project.
- In addition to filing the Application for Registration (Form NHCT-11) with the Charitable Trusts Unit (CTU), you likely will need to file forms with the Secretary of State (if you will be a New Hampshire corporation) and the Internal Revenue Service (IRS) (if you plan to seek tax deductible donations).
- Before you file Form NHCT-11, you must have already formed your entity using the appropriate documents to become either a nonprofit corporation, an express trust or an unincorporated association.
- You need not apply to the IRS for classification as a tax exempt organization in order to submit Form NHCT-11. Still, if you plan to seek IRS tax exempt status, we recommend that you obtain that classification or at least file the applicable form with the IRS before you submit Form NHCT-11.
- For further information, consult [Starting a Nonprofit](#), a set of resources from the NH Center for Nonprofits. Also, read our [Guidebook for New Hampshire Charitable Organizations](#). If you have additional questions, contact the CTU at [charitabletrusts2@doj.nh.gov](mailto:charitabletrusts2@doj.nh.gov) or at 603-271-3591.

## Choice of Entity

There are three types of entities available for new charitable organizations. They are:

- **Nonprofit Corporation.** Most charities are incorporated under the nonprofit 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](#). Also, while the Secretary of State does not require the filing of corporate bylaws, the CTU does require them for registration. Therefore completion of bylaws is an important part of the creation of a nonprofit corporation. Note that a non-New Hampshire corporation seeking to register with the CTU likely should also register as a foreign nonprofit corporation by completing Form FNP-1 with the [Secretary of State](#).

- **Trust.** A trust can be established by a trust instrument or provisions in a will. They are known as express trusts. In addition, a trust may be formed by court order, including a divorce decree. They are known as resulting trusts. Trusts formed in New Hampshire are governed by the New Hampshire Trust Code, RSA Chapter 564-B. No filing with the Secretary of State is required for New Hampshire trusts, but trusts created by will (testamentary trusts) must file periodic accountings with the New Hampshire Circuit Court, Probate Division.

- **Unincorporated Association.** Entities that are neither trusts nor corporations are known as unincorporated associations. Some fraternal and other groups may be organized in this manner. While no filing with the Secretary of State is required for New Hampshire unincorporated associations, the CTU requires for registration a written constitution or charter that describes a specific charitable mission and that gives the entity sufficient guidance for its ongoing operation.

## Tax Exemption

The CTU does not give tax exempt status to charitable organizations. That is handled by other governmental entities.

- The IRS determines the federal tax status of an organization. While extremely small organizations have the option to self-declare their status, most organizations seek an official determination. To do so, the organization must file one of the following forms with the IRS seeking recognition of exemption: (1) Form 1023 or 1023-EZ for public charity or private foundation status under Internal Revenue Code Section 501(c)(3) or (2) Form 1024 or 1024-A for another tax exempt status under Section 501(c). [These forms may be filed electronically.](#)
- Town or city assessors in New Hampshire determine whether a charitable organization is entitled to a real estate tax exemption, in accordance with RSA Chapter 72:23-c. Organizations must file [Form BTLA A-9](#) with the municipality each year by April 15.

## Important Terms

There is not one single form that is right to create a charitable organization. As stated above, the organization may be a nonprofit corporation, a trust, or an unincorporated association. The NH Center for Nonprofits offers some [sample documents](#). Still, internet forms may not be suitable for your needs. The CTU recommends that you get professional advice from a lawyer or an accountant familiar with New Hampshire law applicable to charities. Here are some things to consider if you are thinking of forming a New Hampshire entity:

- For New Hampshire charitable corporations, the statement of purpose in the articles of agreement should describe at least one purpose that reflects the organization's charitable mission, not just a generic charitable purpose.
- New Hampshire charitable corporations must have at least five directors who are not related by blood or marriage. RSA 292:6-a. The bylaws must require at least that number of directors.
- The bylaws should state the selection method and the terms of directors and officers, as well as any term limits.

New Hampshire entities (except for IRS Form 990-PF filers) must have a conflict of interest policy, which preferably appears in the bylaws. Here are two samples:

*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.*

*or*

*(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.*

New Hampshire charitable corporations must include a dissolution provision in the articles of agreement. If another organization is named to receive the assets in the event of its dissolution, the receiving organization should have a similar purpose. It should also be tax-exempt under Section 501(c)(3). If the receiving organization operates in New Hampshire, it will need to be registered with the CTU. Here is sample language:

*Upon the dissolution of the corporation, its assets shall be distributed to XYZ Charity, if it still exists, or to one or more charitable organizations for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code.*