



CHARITABLE TRUSTS UNIT

NH DEPARTMENT OF JUSTICE

Board Training for New Hampshire Charitable Nonprofit Organizations

Diane M. Quinlan
Director of Charitable Trusts

Michael R. Haley
Assistant Director of Charitable Trusts

1

Thank you for participating in this training session for members of boards of directors of New Hampshire charitable nonprofit organizations.

My name is Diane Quinlan, and I serve as the Director of Charitable Trusts. Presenting with me is Michael Haley, who serves as the Assistant Director of Charitable Trusts.

We are pleased to be here to provide you with information that we hope will be helpful to you in navigating the laws and rules that apply to charitable organizations in New Hampshire.

I wish to start by thanking you for taking the time to participate in this training. We recognize that many of you are volunteers who became involved in a charity in order to serve your community and help to meet a community need. We are grateful for your service and for your desire to learn more about the laws and rules that apply to charities in our state.

Over the course of the next hour, we will define a charity and will discuss the state and federal agencies that regulate New Hampshire charities, the roles and responsibilities of board members, best practices, and resources available to charities.

WHAT IS A CHARITABLE ORGANIZATION?



Any person or entity determined by the IRS to be tax exempt under section 501(c)(3) of the Internal Revenue Code



Any entity that is or holds itself out to be established for any benevolent, philanthropic, patriotic, educational, humane, scientific, public health, environmental conservation, civic, or other charitable purpose.



Any entity that employs a charitable appeal as the basis for any solicitation or an appeal that suggests that there is a charitable purpose to any solicitation.

New Hampshire Department of Justice

2

New Hampshire law pertaining to charitable trusts defines a charitable organization subject to NH laws as:

- Any person or entity determined by the IRS to be tax exempt under section 501(c)(3) of the Internal Revenue;
- Any entity that is or holds itself out to be established for any benevolent, philanthropic, patriotic, educational, humane, scientific, public health, environmental conservation, civic, or other charitable purpose; and
- Any entity that employs a charitable appeal as the basis for any solicitation or an appeal that suggests that there is a charitable purpose to any solicitation

PURPOSE-ORIENTED

Primary mission of a charity is to serve a *public* purpose

Cannot be organized to benefit private shareholders or individuals (i.e., earnings cannot benefit private shareholders or individuals)

New Hampshire Department of Justice

3

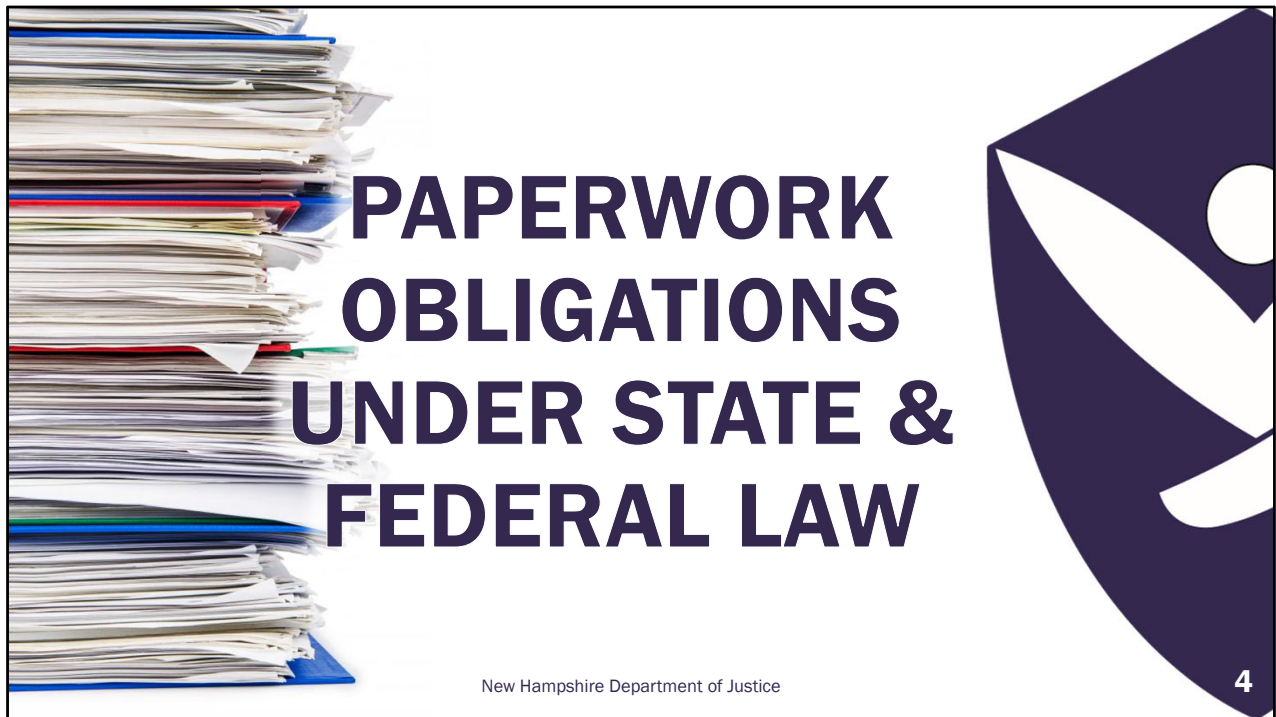
In general, a charity is a legal entity with exclusively charitable purposes established for the benefit of indefinite beneficiaries and prohibited from impermissible private benefit.

That is, a charity is purpose-oriented, and its primary mission is to serve a public purpose. It cannot be organized to benefit private individuals.

Thus, a fundraiser to support the Smith family whose home burned down is not a charitable appeal because there are definite beneficiaries. But a fundraiser for families whose homes burned down has a public purpose with indefinite beneficiaries and therefore is considered to be a charitable appeal.

It is important to remember that when a charity is formed, its founder or founders have no ownership in it. A charity is governed by the members of its board of directors to serve a public purpose.

- Charities should not be formed by owners of businesses to diversify their portfolios and use the assets to benefit them, their family, their friends, or their businesses.
- Likewise, a charity should not be formed to provide scholarships or grants to the founder's for-profit business.



New Hampshire charitable corporations are regulated by at least 3 government agencies.

Some charities are also regulated by other state and federal agencies.

For example, charter schools are regulated by the Department of Education; certain social service agencies are regulated by the Department of Health and Human Services, and continuing care communities are regulated by the Department of Insurance.



[IRS.gov/charities-and-nonprofits](https://www.irs.gov/charities-and-nonprofits)

- ✓ Request for 501(c)(3) determination (Form 1023)
- ✓ Financial Report
 - ✓ Due 4 ½ months after fiscal year end
- ✓ Form 990 or Form 990-EZ
- ✓ Form 990-N (e-postcard) if < \$50,000/year revenue
- ✓ Failure to File—lose status

New Hampshire Department of Justice

5

The first agency that regulates charities is the Internal Revenue Service.

To be recognized as exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code, organizations file with the IRS a Form 1023 or a Form 1023-EZ.

- The IRS then issues a Letter of Determination.
- If the organization is recognized as exempt under section 501(c)(3) of the Internal Revenue Code, the Letter of Determination will indicate whether the organization is a “public charity” or a “private foundation.”

The organization then must file an information return with the IRS 4 ½ months after the close of the organization’s fiscal year. Thus, if the end of the fiscal year is December 31, the return is due to be filed with the IRS before May 15.

- If the organization is small (less than \$50,000 in annual revenue), the organization can file a Form 990-N (an e-postcard).
- If the organization is medium (less than \$200,000 in gross receipts or less than \$500,000 in assets), the organization can file a Form 990-EZ.
- All others must file a Form 990 or, in the case of a private foundation, must file a Form 990-PF.


What happens if the organization fails to file the Form 990-N, Form 990-EZ, Form 990, or Form 990-PF? After 3 years of failure to file, the IRS automatically revokes the organization's tax-exempt status.


What does this mean?

- It means that donations may not be tax deductible;
- The organization may be required to pay taxes;
- The organization may not be eligible for certain grants; and
- The organization may be required to pay a fine or penalty.

If the organization loses its tax exempt status, it may be able to restore it. Contact the IRS right away if the organization loses its tax exempt status.

If you wonder whether the IRS has automatically revoked your organization's tax exempt status, check's Tax-Exempt Organization Search on the IRS website.



 **New Hampshire
Secretary of State**

sos.nh.gov

- ✓ Nonprofit Creation
- ✓ Amendments to Articles of Agreement
- ✓ Trade Name
- ✓ Nonprofit Report
 - ✓ Due every 5 years (2020, 2025, ...)
- ✓ Failure to File—Dissolution
- ✓ Notice of Change of Address

New Hampshire Department of Justice

6

If your organization is a New Hampshire nonprofit corporation, your organization also has an obligation to make certain filings with the New Hampshire Secretary of State’s office.

To establish the organization as a corporation, the organization must file articles of agreement with the NH Secretary of State. The articles of agreement set forth, among other things, the organization’s purpose. Our office takes the position that the purpose has to be specific—it is not acceptable to say that the purpose is a “charitable purpose.” The articles of agreement also contain indemnification, membership, and dissolution provisions.

If your organization changes its purpose or otherwise amends its articles of agreement, the organization must file its amendments with the Secretary of State’s office. For example, if your organization expands its purpose from a greyhound rescue to a dog rescue, you simply file an amendment with the Secretary of State’s office. However, a significant change in purpose (for example, from a greyhound rescue to a summer camp for children) would require court approval. That is because the organization has an obligation to honor donor intent—if donations are made to support greyhounds, the board cannot simply decide to apply those donations or other charitable assets to a new purpose without court approval.

Organizations may also file trade name applications with the Secretary of State's office whether or not the organization is a corporation.

Importantly, every 5 years ending in 0 or 5, NH nonprofit corporations must file with the Secretary of State's office a Nonprofit Report to renew their charters. It is a very simple online form that only needs to be filed every 5 years ending in 0 or 5 (for example, 2025, 2030, 2035). You have from January 1 of that year until December 31 to file it. If you do not file during the year, the corporation is administratively dissolved. This means that the corporation

- can lose its right to its name,
- can lose its ability to receive gifts, donations, grants, and bequests, and
- can lose any liability protection the corporate status offers.

It is possible to revive the corporation's charter, but the corporation should immediately take steps to address this by contacting the Secretary of State's office.

If you are not sure about the status of the corporation with the Secretary of State, check the Secretary of State's website and its business name look-up feature.

OBLIGATIONS TO THE CHARITABLE TRUSTS UNIT

New Hampshire Department of Justice

7

The third agency that regulates New Hampshire charitable organizations is the Attorney General's office.

The role of the Attorney General is to protect the public's interest in charitable organizations and assets committed to charitable purposes in or state.

In 1943, the New Hampshire Legislature codified the common law role of the Attorney General and established an office solely dedicated to the supervision, oversight, and enforcement of charitable trusts and charitable organizations in New Hampshire. That office is the Charitable Trusts Unit.

The Charitable Trusts Unit of the Attorney General's office carries out its responsibilities through:

- Registration and annual reporting. Over 12,000 charities are registered with the Charitable Trusts Unit, over 5,400 of which are New Hampshire-based. They all need to register with the office and then file annual reports which we will discuss in a minute.
- Education. Our office offers education to charities through webinars like this one, resources posted to our website, and meetings or calls with board members and their executives.
- Enforcement. We would rather educate than regulate, but we recognize our important

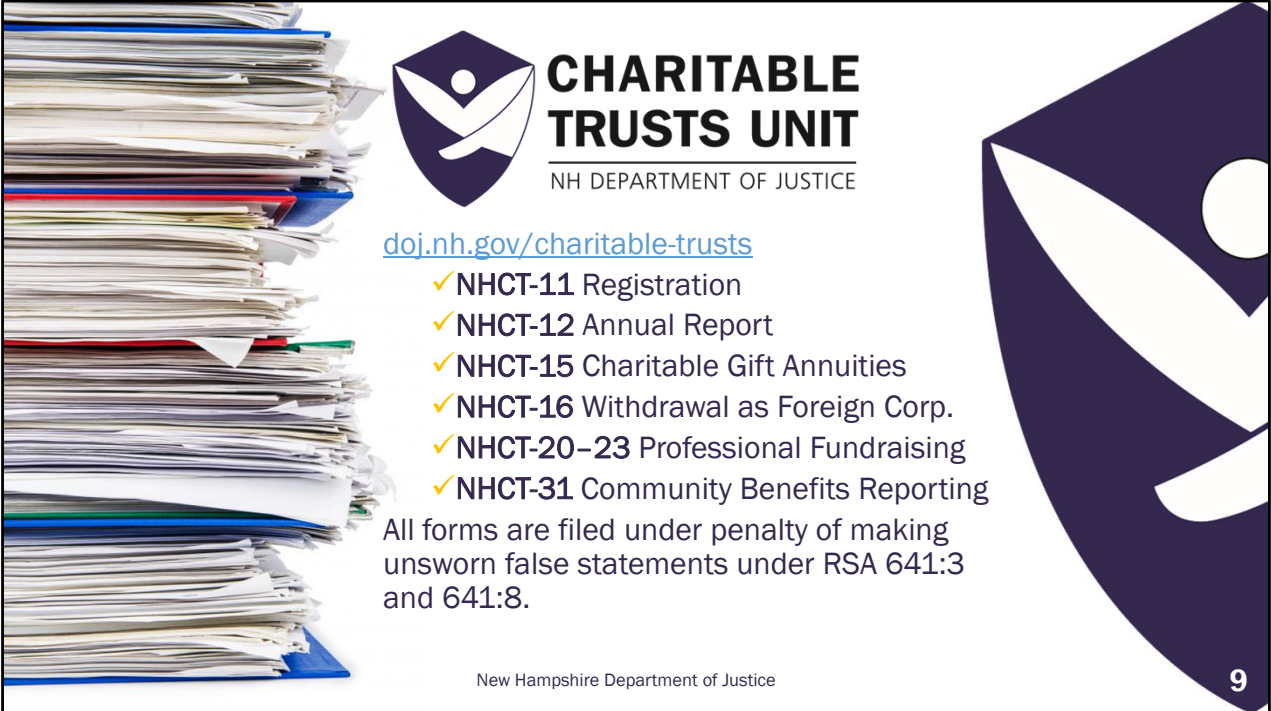
responsibility to enforce the laws applicable to charities so that members of the public can trust the integrity of the charities to which they donate. As a result, we do take enforcement action when necessary.




In October 2022, the Attorney General adopted administrative rules pertaining to charitable organizations. These rules are available both on the Attorney General’s website and the website of the General Court.

The rules answer many questions that you may have about, among other things, filing requirements, how to obtain an extension of time, and whether the organization is eligible for an exemption or waiver.

With the adoption of the rules, the Attorney General adopted all new forms. Thus, the forms that you submit to our office ought to have a date of September 2022 or later.



 **CHARITABLE TRUSTS UNIT**
NH DEPARTMENT OF JUSTICE

doj.nh.gov/charitable-trusts

- ✓ NHCT-11 Registration
- ✓ NHCT-12 Annual Report
- ✓ NHCT-15 Charitable Gift Annuities
- ✓ NHCT-16 Withdrawal as Foreign Corp.
- ✓ NHCT-20–23 Professional Fundraising
- ✓ NHCT-31 Community Benefits Reporting

All forms are filed under penalty of making unsworn false statements under RSA 641:3 and 641:8.

New Hampshire Department of Justice

9

Our forms are all available on our website, and we encourage you to submit only the forms you find on the Attorney General’s website. Unfortunately, there are some websites that purport to offer New Hampshire forms, but they are either very outdated forms or they do not reflect New Hampshire forms at all.

Remember—the form must be dated September 2022 or later.

We will discuss the registration and annual report form in a minute but note that there are a number of other forms on our website, including forms for professional fundraisers and for health care charitable trusts to file their community benefits plans.

Keep in mind that when you file forms with our office, you certify that the information on the forms is correct, subject to the penalty of making unsworn false statements.

REGISTRATION: FORM NHCT-11

- ✓ Articles of Agreement
- ✓ Bylaws
- ✓ Conflict of Interest/Pecuniary Benefit Transaction Policy
- ✓ Members of Board of Directors
- ✓ Status with the IRS
- ✓ Bank account

New Hampshire Department of Justice

10

The first interaction with our office likely would be through registration.

All charitable organizations and organizations that hold themselves out as charities must register with the Charitable Trusts Unit by filing a Form NHCT-11, either on paper or online.

You must include with your registration your governing documents (for example, the articles of agreement and bylaws, constitution, or articles of association), the conflict of interest and pecuniary benefit transaction policies, a list of the members of the board of directors with contact information, the organization's status with the Internal Revenue Service (for example, whether it was determined to be tax exempt under section 501(c)(3) of the Internal Revenue Code), and bank account information. We seek bank account information because we want to ensure that the assets of the charity are held in the name of the charity and not in an individual's bank account.

ANNUAL REPORT: **FORM NHCT-12**

- ✓ **Financial Disclosure forms**
Schedule A or Form 990 or Form 990 EZ
 - If revenues exceed \$500,000, GAAP Financial Statement
 - If revenues exceed \$2,000,000, audited financials
- ✓ **List of board members**
Schedule B
- ✓ **Pecuniary Benefit Transaction and Governance Disclosure**
Schedule C
- ✓ **Due 4 ½ months after close of the organization's fiscal year**
- ✓ **Can request an extension online**
Form NHCT-14

New Hampshire Department of Justice

11

After the organization is registered, it is required to file annual reports with our office on the Form NHCT-12.

The annual report form must be filed 4 ½ months after the organization's fiscal year end—this is the same time that the organization's Form 990 must be filed with the Internal Revenue Service.

If your organization seeks a 6 month filing extension from the IRS, you may wish to also seek a 6 month extension with our office. If you want an extension with our office, you must file a Form NHCT-14 before the date that the annual report is due.

The Annual report consists of the following:

- Financial disclosure forms: if the organization files a Form 990-EZ, 990-PF, or Form 990 with the IRS, it can simply file that form with the Charitable Trusts Unit. If it is a small organization and files a Form 990-N, the organization must file a Form NHCT-12 Schedule A with our office. That is because the Form 990-N does not provide our office with much information at all about the status of the organization's finances. The Schedule A is a much simpler form than the Forms 990 but provides us with information our office needs.
 - If the organization has revenues in the year that exceed \$500,000, the

organization must submit with the Form NHCT-12 financial statements prepared in accordance with Generally Accepted Accounting Principles. The statements do not need to be completed by a CPA.

- If the organization is very fortunate and has revenues that exceed \$2 million, the organization is required to submit to our office audited financial statements that must be prepared by a certified public accountant.
- The annual report also includes a list of the board members of the organization with contact information. The contact information, including email addresses, is very important to us, as we often try to reach members of the board of directors.
- Schedule C of the annual report form requires that the charity provide certain information about governance, like the number of board meetings, and about pecuniary benefit transactions, a special type of conflict of interest that Michael will discuss.
- If the charity offers charitable gift annuities, it must submit a Schedule D regarding charitable gift annuities
- If the charity is withdrawing its registration because it is dissolving, for example, it must also complete a Schedule D.
- Form NHCT-12 and all of the schedules can be submitted online or on paper. Both the online and paper versions, as well as instructions on how to complete the annual report form, can be found on our website.

CONSEQUENCES OF NONCOMPLIANCE

- ✓ Listed as Not in Good Standing
- ✓ Suspension or Revocation
- ✓ Attorneys' fees and costs of investigation
- ✓ Litigation costs
- ✓ Civil penalties of up to \$10,000 per violation

New Hampshire Department of Justice

12

What happens if you fail to file your annual report on time or fail to file a complete and accurate annual report?

The charity could be listed as “not in good standing” on the Attorney General’s website. Our website contains a list of all registered charities, the addresses, when the next annual report is due, and whether the organization is in good standing with our office. Grant makers and donors often look at this list to determine eligibility for grants or donations. If you do not know if your organization is in good standing with our office, check the list on our website.

In addition to listing the organization as “not in good standing,” if an organization fails to register or file its annual report, our office can seek additional remedies against charities and their fiduciaries, including:

- Suspension or revocation of registration
- An injunction
- Attorneys’ fees and costs of investigation and litigation
- And civil penalties of up to \$10,000 per statutory violation

As mentioned, we would rather educate than regulate, but if a charity fails to comply with

the law, particularly if our office contacts the charity, and the charity continues to ignore the statutory requirements, our office may be compelled to take some enforcement action.