



What are some best practices for New Hampshire charities?

BEST PRACTICES

- ✓ Regular meetings
- ✓ Terms for board members and term limits
- ✓ Annual evaluations of board meetings and members
- ✓ Written protocols for meetings and minutes
- ✓ Review financials including Forms 990 as a board
- ✓ All board members, management, staff should be able to articulate mission
- ✓ Board members should undergo training re: fiduciary responsibilities
- ✓ Engaging board meetings
- ✓ Volunteer application, job description, policies

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First, hold regular meetings at least 4 times per year. Schedule the meetings well in advance (for example, the first Tuesday of the month), so that board members can reserve the times on their calendars.

Terms and term limits for board members. Term limits means that the charity can benefit from new ideas and perspectives, which are needed to carry out the charity's mission in the long-term. Typical terms are 3 years, and typical term limits are 2 3-year terms. Some bylaws allow board members to return after taking a year off.

Annually evaluate board meetings and members. If a member of the board is not contributing, meet with the board member to find out why. Perhaps improvements can be made to the meetings to encourage more participation or a change in the day or the time of the meeting to accommodate the board members. If the board member does not have the time or the interest, consider replacing the board member. The NH Center for Nonprofits has a great deal of resources for boards, and we encourage New Hampshire charities to consider becoming a member. One resource available to members of the NH Center for Nonprofits is a board member survey, the results of which may help you to enhance meetings and governance practices.

Establish written protocols for meetings and board meeting minutes. This becomes

standard practice for whoever serves as officers,

As a board, review the monthly financials, the financial audit (if any), and the Form 990 filed by the charity. The financials are not the sole responsibility of the treasurer, the executive director, or the CPA—the financials are the responsibilities of all of the board members. Also—remember that the CPA who completes the financial audit or IRS forms do so based on the information available to the CPA. The CPA may not know the identifies of the current board members or know whether the board members review the Form 990 before its filed. Board members need to review the Forms and audited financials to ensure that they are accurate. Board members must take special care to review the audited financials to ensure that any concerns raised by the CPA are addressed.

All board members should be able to articulate the mission of the charity. Remember—the charity is purpose-oriented, and board members must be mindful of the purpose in every decision that the board makes. Add the purpose to the top of every agenda or take time during the annual meeting to reiterate the organization’s purpose.

Board members should undergo training regarding their fiduciary responsibilities, like the training we are presenting now.

Hold engaging board meetings! Board meetings should involve the input of all members. Some of the best and most interesting meetings are those with respectful conflict. The best part of the meeting should not take place in the parking lot outside the meeting or offline.

Consider developing a volunteer application for board members, a job description for board members, and policies, including policies that set forth the expectations of board members

NEW DIRECTORS SHOULD RECEIVE

- ✓ New board member orientation
- ✓ Tour of facilities
- ✓ Introduction to staff
- ✓ Board Member Manual
 - ✓ Mission statement
 - ✓ Articles of Agreement
 - ✓ Bylaws
 - ✓ Board contact list
 - ✓ Conflict of interest and other policies or protocols

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New Board members should receive:

- An orientation during which board members learn what is expected of them as board members. For example, are they expected to make financial contributions to the charity? How many meetings are they expected to attend? Are they expected to serve on committees and attend fundraisers?
- Board members should have a tour of the facilities and meet any staff or volunteers
- Board members should receive a manual that contains:
 - The Mission Statement
 - The governing documents, including the articles of agreement or constitution and bylaws
 - A list of the board members and their contact information
 - The conflict of interest and pecuniary benefit transaction policies and any other policies.
- Some charities use an online board portal that contains all of the foregoing documents as well as agendas, board meeting minutes, and up to date financials. These online board portals can be very helpful to board members.



Although the board has many important responsibilities, the good news is that there is some limited immunity available for unpaid board members.

BOARD IMMUNITY

RSA 508:16

Directors and Officers who serve without compensation are not liable for damages for bodily injury, personal injury, or property damage, provided that they acted in good faith without willful or wanton negligence in the course of activities consistent with the charitable purposes of the organization.

Consider D&O coverage

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Under RSA 508:16, directors and officers who serve without compensation are not liable for damages for bodily injury, personal injury, or property damage, provided that they have acted in good faith, without willful or wanton negligence, in the course of activities consistent with the charitable purposes of the organization.

Note that this statute does not apply to paid board members.

That said, the board should consider purchasing directors and officers liability insurance coverage to cover attorneys' fees and costs of litigation in the event that a lawsuit is filed against board members.

VOLUNTEER IMMUNITY

RSA 508:17

Volunteers are immune **IF:**

- ✓ the organization has a record of the volunteer
- ✓ the volunteer was acting within the scope of his/her service
- ✓ the volunteer did not act with willful, wanton or grossly negligent misconduct

Does *not* apply to transportation or premises

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Volunteer immunity is also available to volunteers of the charity under RSA 508:17, but only if:

- The charity has a written record of the volunteer;
- The volunteer was acting within the scope of his or her volunteer service; and
- The volunteer did not act with willful, wanton, or grossly negligent conduct.

Keep in mind that this limited immunity does not apply to transportation or premises liability because of the availability of auto and property insurance coverage.

- Thus, before you allow volunteers to drive for the charity, ensure that they have auto insurance coverage.
- And before you allow volunteers to host meetings at their home, ensure that they have property insurance coverage.

TOP 10 ISSUES

1. Failure to submit current forms
2. Failure to ensure at least 5 board members unrelated by blood or marriage
3. Failure to submit timely, complete, accurate annual reports
4. Failure to disclose pecuniary benefit (conflict of interest) transactions
5. Failure to ensure that bylaws are up to date and comply with NH law
6. Failure to abide by the organization's purpose as stated in the articles of agreement
7. Failure to select engaged and capable people to serve as directors
8. Failure to hold regular meetings of the board of directors
9. Failure of staff to keep the board informed
10. Failure of board to institute effective internal controls

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The following are the top 10 problems that we find with charities. These are in no particular order:

1. Failure to submit current forms—be sure that the forms that you are submitting to our office are the ones on the New Hampshire Attorney General's website and that they are dated September 2022 or after. If you submit your forms online, do so from our website.
2. Failure to ensure that the NH charitable corporation has at least 5 board members unrelated by blood or marriage and that all board members are identified on the annual report with their contact information.
3. Failure to submit timely, complete, and accurate annual reports
4. Failure to comply with NH law pertaining to pecuniary benefit transactions
5. Failure to ensure that bylaws are up to date and comply with NH law.
6. Failure to abide by the organization's purpose as stated in the articles of agreement. For example, a charity that supports veterans should not use its charitable assets to donate to hurricane relief in Cuba, even if it is a very worthy cause.

7. Failure to select engaged and capable people to serve as directors—the board should not be comprised only of the friends of one of the founders who do not question the positions or decisions that the founder makes.
8. Failure to hold regular meetings of the board of directors. In order to ensure that they are informed and fulfill their fiduciary responsibilities, board members must meet at least 4 times per year as a board. A so-called meeting through email is not sufficient, as there cannot be a robust or open discussion among a quorum of board members.
9. Failure of staff to keep the board informed
10. Failure of board to institute effective internal controls. We often see situations where the president and the treasurer are related to one another and provide the only oversight over the financials or the executive director signs checks to himself or herself. There needs to be another layer of oversight from a board member (not a subordinate).

RESOURCES FOR NONPROFITS

- ✓ www.nhnonprofits.org
Nonprofit checklist, workshop announcements, employment opportunities, etc.
- ✓ www.boardsource.org
A national organization dedicated to building effective nonprofit boards
- ✓ www.guidestar.org
Scanned images of all 990s and 990PFs filed with the IRS
- ✓ www.stayexempt.irs.gov
Resources tailored specifically for 501(c)(3) organizations with tips and tips to keep tax-exempt
- ✓ <https://www.stayexempt.irs.gov/home/resource-library/virtual-small-mid-size-tax-exempt-organization-workshop>
IRS Tax Exempt Organization Workshop

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There are a number of great resources available to charitable nonprofits, and they are listed on this slide.

The first is the website of the New Hampshire Center for Nonprofits which has some very helpful resources, particularly for its members. All charitable nonprofits should consider joining.

Board source is a national website that has some great information.

In addition, the IRS has developed some great online training for charitable nonprofits, including a “how to stay exempt” workshop.

FURTHER INFORMATION

Attorney General, Charitable Trusts

www.doj.nh.gov/charitable-trusts

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For additional information, check out the resources available on our website, including online training sessions and a Guidebook for New Hampshire Charitable Organizations: www.doj.nh.gov/charitable-trusts.

For questions, feel free to contact our office by email at CharitableTrustsUnit@doj.nh.gov or by phone at 603-271-3591.

We hope that the information we shared during this program was helpful to you, and we thank you for your attention.