

OFFICE OF THE NEW HAMPSHIRE ATTORNEY GENERAL
CHARITABLE TRUSTS UNIT

33 Capitol Street
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www.doj.nh.gov/charitable-trusts

APPLICATION FOR REGISTRATION INSTRUCTIONS
Form NHCT-11

Before You Begin

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 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, read the [Guidebook for New Hampshire Charitable Organizations](#). If you have further questions, contact the CTU at 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 should also register as 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. Forms available on the internet may not be suitable for the entity you wish to create. The CTU recommends that you get professional advice from a lawyer or an accountant familiar with New Hampshire laws 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:

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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 taxexempt 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.

Form NHCT-11 Specific Instructions

How to File

- Form NHCT-11, Application for Registration, may be filed either electronically or on a fillable paper form. Both are available on the [CTU website](#). If using the paper form, please type or print legibly. Do not use script.
- Either the electronic or the paper form must be filed together with the \$25 registration fee. Checks accompanying the paper form must be made payable to “State of New Hampshire”.

Basic Information

LEGAL NAME OF ENTITY: Fill in the legal name of the entity **EXACTLY** as it appears on its governing document (e.g., articles of agreement, trust instrument, legislative charter, or constitution).

FEDERAL EMPLOYER I.D. #: Insert the number. The IRS assigns federal employer identification numbers to entities. New organizations may obtain an EIN by submitting [IRS Form SS-4](#).

CONTACT NAME: Identify an individual who will serve as the main contact for the organization with the CTU (e.g., the chair of the governing board, the executive director, a trustee, an attorney, or other advisor).

MONTH FISCAL YEAR ENDS: Insert the organization’s fiscal year-end month. It is determined by the organization, not the CTU. The month selected (December 31 or otherwise) should be one that is convenient and suitable for your organization’s activities. The due date for filing the entity’s annual report (Form NHCT 12) is based upon the fiscal year end date.

MAILING ADDRESS: Provide the organization’s mailing address where the CTU can send correspondence. This is not the same as the address of an agent or a third party filer. ***If the address of the organization changes, promptly notify the CTU.***

WEBSITE ADDRESS: Provide the website address for the entity (if any).

TELEPHONE NUMBER OF CONTACT: Provide the telephone number of the Contact individual for the organization with the CTU. This should be a telephone number where the contact can be reached between the hours of 8:00 am and 5:00 pm on weekdays.

EMAIL ADDRESS OF CONTACT: Provide the email address of the Contact individual for the organization with the CTU.

LIST TRADE NAMES (IF ANY): List any and all trade names of the entity, including for example, any trade names used by the organization for fundraising.

RESIDENT AGENT: Non-New Hampshire nonprofit corporations may, but are not required to, have a resident agent an office within the State. If so, provide the resident agent's name and address.

Form of Entity

FORM OF ENTITY: Indicate the form of the entity (corporation, trust, or unincorporated association). If a corporation, indicate the state of incorporation.

ATTACHMENTS: Attach the articles of agreement with any amendments along with the current bylaws (if a corporation); attach the trust instrument, will or court decree with any amendments (if a trust); or attach the constitution or charter with any amendments (if an unincorporated association).

IRS Tax Exemption

TAX STATUS: If the entity has received a determination letter from the IRS that the organization is exempt from taxation, provide the applicable Internal Revenue Code section. For example, the IRS may have determined that the entity is exempt under Section 501(c)(3) of the Internal Revenue Code. If so, check off or insert "3" where indicated on the form. If the entity has a pending application filed with the IRS for determination that it is exempt from taxation, so indicate. If the entity has neither received nor applied for tax exempt status, indicate whether or not it plans to do so within the next year.

ATTACHMENTS: Attach a copy of any letter of determination from the IRS as to tax exempt status.

Additional Information

GOVERNING BOARD MEMBERS: Use either Schedule A to Form NHCT-11 or an equivalent spread sheet to submit the required information concerning the entity's governing board (i.e. directors, trustees, etc.). For entities that are not based in New Hampshire, only the names and titles of governing board members are required. For entities that are based in New Hampshire, provide names, titles (i.e. president, treasurer, etc.), home street (not post office box) addresses, daytime telephone numbers, and email addresses. Note that the street address, telephone number, and email address are not subject to public disclosure.

Please note that RSA 292:6-a, requires that the board of directors of New Hampshire charitable corporations must be comprised of 5 or more voting members, and at least 5 of them may not be related to one another by blood or marriage.

PROOF OF BANK ACCOUNT: Provide a copy of the entity's most recent bank statement showing the name of the account holder and account number. If the entity does not yet have a bank account, provide an explanation, along with documentation of any assets of the entity. As an alternative, for entities in existence for more than one year, submit a copy of the most recently

filed IRS Form 990, 990-EZ, or 990-PF. If none of the foregoing exist, attach an explanation of where the entity's financial assets are held.

CONFLICT OF INTEREST POLICY: Indicate on the line provided where in the governing documents the conflict of interest policy appears or attach the policy if separate. All New Hampshire based charitable organizations (except for IRS Form 990-PF filers) must adopt a policy pertaining to conflict of interests. RSA 7:19-a. See above for sample policies.

PECUNIARY BENEFIT TRANSACTION POLICY: Indicate on the line provided where in the governing documents the pecuniary benefit transaction policy appears or attach the policy if separate. All New Hampshire based charitable organizations (except for IRS Form 990-PF filers) must adopt a policy pertaining to conflict of interests. RSA 7:19-a.

DISSOLUTION PROVISION: Indicate on the line provided where in the governing documents the dissolution provision appears or attach the applicable dissolution provisions. New Hampshire nonprofit corporations are required to include a dissolution provision in the articles of agreement. See above for sample language.

Third-Party Filing (online NHCT-11 only)

AUTHORIZATION FOR ELECTRONIC FILING BY AGENT: The Contact individual or other representative may submit Form NHCT-11 electronically on behalf of the organization, so long as [Form NHCT-50](#) is signed by an appropriate charitable organization officer and submitted concurrently. This option is not available for use with the paper version of Form NHCT-11.

Certification

DECLARATION: The president or chair of the board must sign the application on behalf of a charitable corporation or unincorporated association. A trustee must sign the form on behalf of an express trust. **Signatures of the business manager, clerk, secretary, executive director, chief financial officer, attorney, accountant, or advisor will not be accepted and the form will be returned for proper execution.**

If using the electronic version of the form, the signature should be typed. If an agent is filing the electronic form on behalf of the organization, and Form NHCT-50 was attached in the Basic Information section, the agent should type the name of the officer of the organization on whose behalf the form is signed.

Please note that RSA 641:8 provides that “[a] person shall be guilty of a class B felony if he knowingly makes a false entry in or false alteration of any registration statement, annual report or other information required to be filed with the director of charitable trusts.”