

Forming a Library Foundation and Trustee/Foundation Relationships

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Friends Groups

- **Are generally recognized by the IRS as 501(c)(3) organizations**
- **Are separate from the town**
- **Are not subject to the right to know law**
- **Any funds received by the library from a Friends Group are subject to the publication and public hearing requirement if over \$5,000**

Creating a Foundation

- **In deciding whether to recommend the formation of a foundation there are several points to consider:**
 - **Who should be on the board of directors?**
 - **Is there a potential to adversely affect the amount appropriated to the library if the foundation is successful?**
 - **How will requests from the library for funding be handled?**
 - **Are the Foundation's goals compatible with the Library Trustees' goals?**

Section 501(c)(3)

- Section 501(c)(3) of the Internal Revenue Code describes the purposes for which nonprofit, charitable status will be granted to an entity.
- There are, however, two types of 501(c)(3) organizations:
 - **Public charities**
 - **Private Foundations**

Public Charities

- Must meet the IRS “public support” test:
 - **At least 1/3 of annual revenue must come from outside the organization: gifts, bequests, donations, grants, etc.**
- Friends of the Library groups are generally classified as public charities

Private Foundations

- At least 1/3 of annual revenue is “self generated” from endowment funds and investments.
- New library foundations are generally granted public charity status initially and may be reclassified as private foundations by the IRS at a later date as their endowment grows.

Differences in Administration

- Public charities may receive and retain as much money as the board deems to be prudent or necessary and will not incur federal taxes or penalties as a result
- Private foundations are bound by the “5% rule” and must distribute at least 5% of the fair market of the foundation each year.
- Private foundations may also be subject to a 2% excise tax on their investments

The Board of Directors

- Most library foundations are created as nonprofit corporations with the Secretary of State
- SOS form NP-1 Articles of Agreement
- The Articles are signed by five individuals known as “incorporators”.
- The Incorporators elect the first board of directors.

Who should serve on the Board?

- Interested in the library's role in the community
- Has the time to be an effective board member
- Willing to assist in fundraising activities for projects or a capital campaign
- Ideally, holds a library card or has used the services of the public library

- **Is there a potential to adversely affect the amount appropriated to the library if the foundation is successful?**
- Communication is key – if the foundation is created the Board of Directors should clearly communicate its role in raising funds for special projects which are not ordinarily funded through tax dollars.

How will requests from the library for funding be handled?

- Once the foundation is created it is important for the Library Trustees and the foundation Board to meet to discuss the process for requesting and receiving funds from the foundation.
- Other issues can include budgeting, acceptance of funds, reporting requirements, and the extent of oversight by the foundation Board.

Are the Foundation's goals compatible with the Library Trustees' goals?

- The Library Trustee/Foundation relationship can be tricky
- If the goals are not compatible the relationship may become acrimonious over time
- Strategic planning in the beginning of the relationship can help to overcome differences of opinion or other areas of disagreement

What's Next?

- Once all parties have agreed the creation of a foundation will be beneficial in supporting the public library, the next step is to create the entity and obtain tax exempt status from the Internal Revenue Service.

Creating a Foundation

- 1. Draft the mission statement. Example:
 - ***To increase and improve educational and cultural activities in the Town of X through the continued support, growth, and development of the resources, services, and facilities of the X public library. Such support to be in addition to that derived through the normal budgetary process.***

Creating a Foundation

- 2. Determine governing structure:
 - **Corporation**
 - **Unincorporated Association**
 - **Trust**

Governing Structure

- Unincorporated Association:
 - Constitution
 - Bylaws
- Corporation:
 - Incorporate with the Secretary of State (must have five incorporators)
 - www.sos.nh.gov/
 - Bylaws

Standard bylaw provisions including N.H. specific requirements

- Name (**make sure you renew your charter with the Secretary of State in 2020**)
- Mission or Purpose
- Board of Directors
 - **REMEMBER, RSA 292:6-a: all nonprofit corporations to have a board of directors composed of at least **five independent directors not related by blood or marriage**. This law is designed to promote diversity on boards and to prevent conflicts of interest.**

Standard bylaw provisions (cont)

- Board role and size (**at least five**)
- Terms (**important to discuss whether or not there should be term limits**)
- Meetings (**when and where including annual meeting**)
- Means of participation in meetings (**Skype? Speaker phone? Virtual meetings?**)
- Notice of Meetings (**snail mail only? Or can notice be given electronically?**)

Standard bylaw provisions (cont)

- Election of board members – **how and when? Do board members serve until their successors are appointed or elected?**
- **Quorum? What number of directors/members constitutes a quorum?**
- **Duties of Officers**
 - President
 - Vice-President
 - Secretary
 - Treasurer

Standard bylaw provisions (cont)

- Vacancies – what is the procedure for filling a vacant officer or director position? And by whom?
- Resignation, termination, or absence – consider whether or not to have the ability to remove officers and/or directors for cause. What are the reasons? How is removal accomplished? Due process considerations.

Standard bylaw provisions (cont)

- Special meetings – called by whom and for what purpose?
- Committee structure – are there standing committees (audit, nomination, executive)? How are members to the committees selected and by whom?
- Process for amending bylaws must be included

Other Provisions

- Whistleblower Policy
- Document maintenance and destruction policy
- Specific powers that directors can only exercise upon supermajority votes of the directors – purchase or sale of real estate, hiring and firing decisions, etc.
- Qualifications of board members – are background checks required?

Conflict of Interest requirement

- RSA 7:19-a requires nonprofit organizations to adopt a conflict of interest policy and to affirm the policy on an annual basis.

Conflict of Interest bylaw provisions

- RSA 7:19-a I (c) “the following shall not be considered as pecuniary benefit transactions:
 - (2) A benefit provided to a director, officer, or trustee or member of the immediate family thereof if:
 - (A) The benefits are provided or paid as part of programs, benefits, or payments to members of the general public; and
 - (B) The charitable trust has adopted written eligibility criteria for such benefit **in accordance with its bylaws** or applicable laws; and
 - (C) The director, trustee, or family member meets all of the eligibility criteria for receiving such benefit;

Conflict of Interest bylaw provisions

- II. A pecuniary benefit transaction shall be prohibited unless it is in the best interest of the charitable trust and unless all of the following conditions are met:

(b) The transaction receives affirmative votes from at least a 2/3 majority of all the disinterested members of the governing board of the charitable trust, which majority shall also equal or exceed any quorum requirement **specified in the bylaws of the charitable trust**

Robert's Rules of Order

- *“We have said it before and we will say it again: Most organizations should avoid Robert's Rule of Order like the plague. There is nothing wrong with Robert's Rules of Order when adopted by the right organization for the right reasons. The right organization is a parliamentary or legislative body, not your typical nonprofit charity.”*
 - Jack Siegel A Desktop Guide for Nonprofit Directors, Officers, and Advisers, Avoiding Trouble while Doing Good

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Should we adopt Robert's Rules in our bylaws?

- There is no law mandating that nonprofits must make decisions using Robert's Rules but organizations often make the decision to use the Rules.
- If you decide to adopt Robert's Rules of Order it is important to understand what that means – perhaps appoint a Parliamentarian

Warning!

- A New Hampshire charity adopted Robert's Rules of Order in its bylaws
- The board voted to remove its President from office
- Robert's Rules are very specific on the process for removing an officer
- The President was removed and is now suing the board based on its alleged failure to follow the provisions of Robert's Rules of Order

Tips

- Make sure the **bylaws** are tightly worded and not open to conflicting interpretations
- Review the **bylaws** on a periodic basis and eliminate or amend any outdated or obsolete provisions
- Make sure all new board members receive a copy of the **bylaws** and encourage the members to read them.

Tax Issues

- 3. Apply for tax exempt status from the IRS on form 1023*:
 - <http://www.irs.gov/pub/irs-pdf/f1023.pdf>
- Apply for employer identification number (EIN) on IRS form SS#4:
 - <http://www.irs.gov/businesses/small/article/0,,id=102767,00.html>
 - **An EIN may be obtained on-line**

*Form 1023EZ

- If the foundation does not anticipate raising more than \$50,000 per year in its first three years of existence and does not currently have \$250,000 or more in assets, it is possible to apply for tax exempt status using the 1023EZ:
- <https://www.irs.gov/uac/About-Form-1023EZ>

Obtaining Tax Exempt Status from the IRS

- Complete the IRS form 1023 (application for tax exempt status) and the IRS form SS#4 (application for tax identification number)
- Register with the Attorney General, Charitable Trusts Unit
 - <http://www.doj.nh.gov/charitable-trusts/documents/nhct-1-application.pdf>

Annually/Periodically

- Annually - file form 990, 990EZ, or 990N with the IRS
- Submit annual financial statement to the Attorney General
- On any year that ends in a 5 or a zero, renew corporate charter with Secretary of State (2020)

Communications

- The Library and the Foundation are structured differently:
 - One is a government agency subject to the NH Statutes and the right-to-know law
 - One is a nonprofit organization subject to federal and state law and is not subject to the right to know law
- Communications should be handled separately and not combined

If the Foundation Fails

- Dissolution clause – assets are distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Code (or the corresponding section of any future federal tax code), or shall be distributed to the federal government, or to state or local government, for a public purpose.
- *Permanently restricted funds are handled differently*
- *Beware of reverter clauses*

Types of Gifts: Additional Considerations

What is meant by the term “Endowment”?

- *Permanently restricted:*
A donor-imposed restriction that stipulates that resources be maintained permanently but permits the organization to use or expend part or all of the income (or other economic benefits) derived from the donated assets.

Example

- I give the sum of \$100,000 to X Public Library Foundation, the income to be used to purchase computer equipment.”
 - **The principal amount must be held in tact, only the income may be expended and then only for the purchase of computer equipment.**
- If the foundation dissolves it may be necessary to have the probate court redirect any permanently restricted funds

Can unrestricted gifts become restricted?

- **Library Trustees and Boards of Directors of nonprofit organizations will sometimes want to gather together the unrestricted gifts received by the entity to create an “endowment fund” to provide for future needs.**
- **It is important to note the donee organization cannot place additional restrictions on a gift; successors in these positions are not bound by the actions of their predecessors and may remove the restriction.**

Non-cash contributions

- Including art, antiques, ephemera, collections, furniture, etc.
- Decide whether Foundation is willing to accept non-cash contributions.
- If yes, consider adopting an accession/deaccession policy
- Other considerations: insurance, preservation, climate control, indexing, etc.

Mistakes Foundations Make

- Failure of Library Trustees and the Foundation to maintain good communication
- Failure to retain copies of gift instruments including wills, trusts, etc.
- Failure to carry out donor intent
- Failure to classify donations properly for purposes of financial statements

Fundraising

- Donations and gifts
- Capital campaigns
- Grants
- Planned giving

- Outside fundraising consultants are most often hired when a foundation is engaging in a capital campaign or in creating a planned giving program

Library Foundations in NH

- Abbott Library Foundation, Sunapee
- Baker Free Library Foundation, Bow
- Bedford Public Library Foundation
- Concord Public Library Foundation
- Harvey Mitchell Memorial Library Foundation Epping
- Hopkinton Public Library Foundation
- Langdon Library Foundation Newington
- Manchester City Library Foundation
- Rye Library Development Foundation
- Whipple Free Library Foundation New Boston
- Wolfeboro Public Library Foundation

Contacting the Attorney General

Department of the Attorney General

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