

Supporting Nonprofit Organizations for Libraries

Terry M. Knowles

Assistant Director

Charitable Trusts Unit

Why start a supporting organization?

- To raise more resources for the public library and/or library programs for the community
- Although donations to a public library are tax deductible to the donor, citizens are often reluctant to give to government because they fear their donations will be misused
- A supporting organization is independent from the town or city government

Choices Available

- Friends Group
- Foundation
- What's the difference?
 - Depends on the goals and objectives of the supporting organization

Friends Groups

- **Are generally recognized by the IRS as 501(c)(3) organizations**
- **Are separate from the town**
- **Are not subject to RSA 91-A the right-to-know law**
- **May fundraise on behalf of the public library**
- **Any funds received from a Friends Group are subject to the publication and public hearing requirements.**

Starting a Friends Groups

- Determine the governing structure:
 - Nonprofit corporation
 - Unincorporated association

Nonprofit Corporation: Secretary of State's Office

The screenshot shows a Windows Internet Explorer browser window displaying the website for the Corporate Division of the New Hampshire Secretary of State's Office. The browser's address bar shows the URL http://sos.nh.gov/corp_div.aspx. The page features the New Hampshire state seal and the text "NEW HAMPSHIRE William M. Gardner | Secretary of State". A navigation menu includes links for Administration, Archives & Records Management, Corporate Division, Elections, Securities Regulation, Uniform Commercial Code (UCC), and Vital Records. The main content area is titled "Corporate Division" and includes a "Welcome to the Corporate Division" message. A sidebar on the left lists various services such as Business Name Lookup, Status Definition Legend, Annual Reports Online, Forms & Laws, FAQ's, Starting a Business in N.H., and Agent Listings. The Windows taskbar at the bottom shows the Start button, search bar, and several open applications, with the system clock indicating 2:08 PM.

Corporate Division - NHSOS - Windows Internet Explorer

ProLaw

http://sos.nh.gov/corp_div.aspx


File Edit View Favorites Tools Help

McAfee

Favorites Suggested Sites Free Hotmail Internet Service \$9.95 Volunteer - AVA Association...

Health... NH HB 1560 SSIR The Tr... NP Spott... Co... x

Search Go

 NEW HAMPSHIRE
William M. Gardner | Secretary of State

Administration Archives & Records Management Corporate Division Elections Securities Regulation Uniform Commercial Code (UCC) Vital Records

Business Name Lookup Home > Corporate Division

Status Definition Legend

Annual Reports Online!

Forms & Laws

FAQ's

Starting a Business in N.H.

Agent Listings

Corporate Division

Welcome to the Corporate Division

The Corporate Division is responsible for the statutory filing of business entities, trademarks and trade names and numerous miscellaneous filings. The Division is responsible for recording all required information regarding business entities and making this information available to the public. We strive to maintain and provide critical legal information that the business community and

start Search Desktop P... 5 E... 2 2:08 PM

Incorporation

- Check with Secretary of State either by phone or by searching the Business Name Lookup section of the website to see if the name you want to use is available.
- Need five individuals who are willing to be incorporators

ARTICLES OF AGREEMENT
OF
A NEW HAMPSHIRE NONPROFIT CORPORATION

FIRST: The name of the corporation shall be

SECOND: The object for which this corporation is established is:

[What is the mission of the organization?]

THIRD: The provisions for establishing membership and participation in the corporation are:

[Do you want to have members? If yes, can the members vote at Board of Directors meetings?]

FOURTH: The provisions for disposition of the corporate assets in the event of dissolution of the corporation including the prioritization of rights of shareholders and members to corporate assets are:

[Where do you want the assets of the organization to go if the Nonprofit goes out of business?]

FIFTH: The address at which the business of this corporation is to be carried on is

We recommend the organization have a post office box rather than the home address of one of the Directors

SIXTH: The amount of capital stock, if any, or the number of shares or membership certificates, if any, and provisions for retirement, reacquisition and redemption of those shares or certificates are: Not applicable

SEVENTH: Provision eliminating or limiting the personal liability of a director, an officer or both, to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, an officer or both is

[gives an extra layer of protection from liability to officers and directors]

EIGHTH: Signatures and post office address of each of the persons associating together to form the corporation: **MUST BE FIVE SIGNATURES**

Signature and Name

Post Office Address

Fee: \$25.00

Creating a Foundation

- **Foundations are nonprofit organizations not subject to the right-to-know law**
- **In deciding whether to authorize 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?**

501(c)(3)

- Section 501(c)(3) of the Internal Revenue Code describes the purposes for which nonprofit, charitable status will be granted.
- 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

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 be subject to a 2% excise tax on their investments

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

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**

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>

IRS Form 1023

- Essential information necessary to complete the form:
 - **For the Internal Revenue Service (the IRS) to recognize an organization's exemption, the organization must be organized as a trust, a corporation, or an association.**
 - **Does the organization have an exempt purpose?**

IRS Form 1023

- **Part I: Identification of Applicant questions**
- **Part II: Organizational Structure**
- **Part III: Required provisions in your organizational documents**
- **Part IV: Narrative description of your activities**
- **Part V: Compensation and Other Financial Arrangements With Your Officers, Directors, Trustees, Employees and Independent Contractors**

IRS form 1023

- **Part VI: Your Members and Other Individuals and Organizations That Receive Benefits From You**
- **Part VII: Your History**
- **Part VIII: Your Specific Activities**
- **Part IX: Financial Data including three-year budget**
- **Part X: Public Charity Status**

IRS Form 1023

- Part XI: User Fee Information
 - **If your average annual gross receipts have exceeded or will exceed \$10,000 annually over a 4-year period, you must submit payment of \$750.**
 - **If your gross receipts have not exceeded or will not exceed \$10,000 annually over a 4-year period, the required user fee payment is \$300.**

IRS Form 1023 attachments

- Schedules A – H may or may not be required depending upon the structure and purpose of the organization and whether it will have members.
- Membership organizations have additional requirements under NH law.

Membership Organizations in NH

- I. A voluntary corporation may have one or more classes of members or may have no members. In the absence of a provision in its articles or bylaws providing for members, a voluntary corporation has no members.

Membership Organizations (cont)

- II. If a voluntary corporation has no members, an action for which there is no specific provision of this chapter applicable to a voluntary corporation without members and that would otherwise require approval of the members requires only the approval of the board of directors.

Membership Organizations (cont)

- III. Members are of one class unless the articles establish, or authorize the bylaws to establish, more than one class. Members shall have no voting rights, except as specifically provided in the articles or bylaws. The articles or bylaws may fix the term of membership.

Membership Organizations (cont)

- IV. Notwithstanding any provision of the articles or bylaws to the contrary, each individual board member and each member of a voluntary corporation entitled to vote shall be entitled to no more than one vote.

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.**

What does “temporarily restricted” mean?

- A donor-imposed restriction that permits the organization to use or expend the donated assets in their entirety as specified by a certain event in time or by actions of the organization.
 - Example: “I give to the X Public Library Foundation the sum of \$100,000 to be used in building an addition onto the library.”

Unrestricted Gifts

- May be expended in their entirety according to the language of the donation.
 - “I hereby give to the X Public Library Foundation the sum of \$5,000 for its general purposes.”

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.**

Contacting the Attorney General

Department of the Attorney General

Charitable Trusts Unit

33 Capitol Street

Concord, NH 03301-6397

Phone: 603-271-3591

Fax: 603-223-6221

E-mail: terry.knowles@doj.nh.gov

