

SCORE of the Merrimack Valley Presentation

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Charitable Trusts Unit

SCORE Website

- Library includes an article entitled The State and Your Nonprofit which has a listing of the requirements for the Secretary of State in each state
- No information on what attorneys general or the Internal Revenue Service require
- That information may be useful to those who use SCORE's library information

Today's Topics

- Charities in the Merrimack Valley region
- Filing requirements in N.H.
- Establishing policies
 - conflicts of interest
- Volunteer board issues
- Finances
- Preventing theft and embezzlement
- Accounting for restricted funds.

Charities in the Merrimack Valley

- Three cities – Concord, Manchester, Nashua
- Thirty-nine towns
- Charities are diverse and range from large institutions (YMCAs) to small organizations (Friends of the Library groups)
- Difficult to recruit board members
- Board members are volunteers – no previous experience required

Filing Requirements in New Hampshire

- Attorney General – Charitable Trusts Unit
 - Registration - a one time event
 - Reporting – on an annual basis by filing a copy of the Form 990, the 990 EZ, the 990PF, or the NHCT-2A with the Annual Report Certificate, Conflict of Interest Statement, and \$75.00 fee

Secretary of State

Renew corporate charter every five years (2020)

Filing must be done electronically For information go to the Secretary of State Website:

<http://www.sos.nh.gov/corporate>

Additional Requirements

- Healthcare charitable trusts – Community Benefits Plan
- Charities with gross annual income of over \$1M – annual audit required
- Conflict of Interest policy

Conflict of Interest Policy

Every New Hampshire charitable nonprofit organization must file a conflict of interest policy/ statement with the Attorney General on an annual basis. (RSA 7:19-a II (c))

The policy must be reviewed and followed by the Board.

Financial Interest: NH's Pecuniary Benefit Statute

- Generally, Board members cannot engage in transactions in which they have a financial interest with the non-profit on which they serve.
- However, if the requirements of RSA 7:19-a, the Pecuniary Benefit Statute, are satisfied, such transactions may be permitted.

Pecuniary Benefit Transactions

If the goods or services to be purchased by the charity from a Board member or immediate family member are valued at:

- \$500 or less

No action is required by the charity. This is a “safe harbor” provision.

Pecuniary Benefits (cont'd)

- \$500 - \$5,000

Full and fair disclosure of the conflict of interest must be given to the Board.

The Board member having the conflict may not participate or vote in any discussion of the transaction.

A record of the action must be made and recorded in the official minutes.

A list of every pecuniary benefit transaction must be reported to the Director of Charitable Trusts each year.

Pecuniary Benefits (cont'd)

- Over \$5,000

All of the preceding requirements must be met.

The charitable trust must publish notice of the transaction in a newspaper of general circulation in the community where the organization's principal office is located.

The notice shall state that it is in compliance with the law and shall include the name of the charitable trust, the name of the director receiving the pecuniary benefit, the nature of the transaction, and the specific dollar amount.

Real Estate Transactions

RSA 7:19-a VI: “No charitable trust shall sell, lease for a term of greater than 5 years, purchase, or convey any real estate or interest in real estate to or from an officer, director, or trustee without the prior approval of the probate court after a finding that the sale or lease is fair to the charitable trust.

However, this paragraph shall not apply to a bona fide gift of an interest in real estate to a charitable trust by a director, officer, or trustee of the charitable trust.”

Please Note

- No charitable trust shall lend money or property to its directors, officers, or trustees.
- Any director, officer, or trustee who assents to or participates in the making of any such loan shall be jointly and severally liable to the charitable trust for the amount of such loan until it is repaid.

Volunteer Board Challenges: Governance vs. Management

The Board of Directors has the duty to:

- Provide management and oversight to senior staff – but not to micromanage
- Understand and carry out the charity's mission.
- Attend Board meetings and trainings.
- Safeguard the organization's assets

Board Duties

- Engage in strategic recruitment of new Board members.
- Apply the by-laws.
- Establish policies.
- Exercise due diligence.
- Act within their scope of authority.

The “bobble-head board”

- Anyone familiar with bobble-head dolls knows the heads on these figures move up and down in response to the slightest pressure.
- Do members of your board nod their heads in approval, or fail to dissent, when any pressure is brought to bear during the meeting?
- Are questions and/or opposing opinions discouraged by officers or other directors?

Inharmonious Relations Among Board Members

- Personality conflicts and power struggles on NH nonprofit boards are on the rise
 - Lack of communication
 - Fear of change
 - “Ownership” issues
 - Interpretation of bylaws

Internal Controls

- The Board relies on internal controls in fulfilling its fiduciary duties.
- These controls and systems must be monitored for compliance and adequacy.
- Failure to have adequate internal controls can result in theft or embezzlement

Examples

- A “segregation of duties” - the person who logs in checks received in the mail is not the same person who is responsible for depositing checks.
- The same person should not both prepare the payroll, and also distribute or have custody of the payroll checks.
- A policy to keep all cash in a locked drawer and, after cash is counted by two people, to deposit cash and checks in the bank, soon after they are received.
- A policy to conduct a background checks of board members or employees who handle money.

The Treasurer's Duties

- Perform all duties assigned to the Treasurer by the corporate bylaws.
- Present monthly report to the Board.
- Present annual budget to the Board.
- Oversee corporate compliance with all policies regarding accounting, reporting, and internal controls.
- Keep the Board informed.

Treasurer's Report - Purpose

- The Treasurer's Report is a means by which the Board meets its fiduciary duties.
- It informs the Board about the organization's current financial condition and issues that may have a financial impact.
- It should be a regular agenda item for Board meetings.

A nonprofit may have a problem if

- The Treasurer becomes **hostile or defensive** when questions are asked about the financial reports
- The Treasurer refuses to produce copies of the bank statements **or tells the board it is none of their business**
- The Treasurer always has an **excuse** for not producing a financial report
- **The Treasurer is experiencing severe financial problems in his or her private life**

How Can Boards Minimize or Prevent Theft and Misuse of Assets?

- Adopt appropriate internal financial controls, and monitor compliance.
- Show up at meetings.
- Pay attention to all aspects of the organization's finances.
- Ask questions.
- Do not “go along to get along.”
- Do not accept excuses for financial information not being prepared, shared, or easily understood.

Donor Restricted Funds

- **Boards of Directors have the duty to**
 - **Carry out the organization's stated mission**
 - **Administer donations and trusts in accordance with the directives of the donor, and**
 - **to act within the scope of authority as stated in the New Hampshire Statutes.**

Duty of Care

- Under the New Hampshire Trust Code donor intent is paramount
- Boards and Trustees have a duty to retain gift instruments in order to implement donor intent
- Failure to carry out donor intent may be a breach of fiduciary responsibility

Classification of Donations

- Permanently restricted – endowment funds
- Temporarily restricted – time or purpose restricted
- Unrestricted – may be used for any purpose related to the organization's mission

Enforcing Donor Intent

- If the donor of a charitable trust is deceased, it is the attorney general, director of charitable trusts, who enforces donor intent.
- The purpose of a donor restricted fund can be modified or changed in one of two ways:
 - Nonjudicial settlement agreements
 - Petition to the probate court

Contacting the Attorney General

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