



By
The Corporate Division

The Corporate Division of the Secretary of State's office is located on the third floor of the State House Annex at 25 Capitol Street in Concord.

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Foreword

Under the provisions of RSA Chapter 292, five or more individuals may form a nonprofit corporation. Most nonprofit organizations usually fall within one of the following categories: religious, civic, charitable, educational, scientific or social (RSA 292:1).

There are many complex legal and tax questions involved in forming a nonprofit corporation. The Corporate Division will assist by checking your Articles of Agreement or other papers to make sure they meet filing requirements, but we are unable to provide legal advice. You may wish to seek the services of an attorney and an accountant.

Articles of Agreement

The articles actually constitute the corporation's charter or legal right to exist. See copy of RSA 292:2 included. Subsequent to filing with the Secretary of State, a copy shall be filed in the office of the clerk of the town or city in which the mailing address of the corporation is located.

Amendments

If the Articles are amended, the amendment should be filed with both the Corporate Division and the office of the clerk in the town or city in which the business of the corporation is carried out. All amendments must be approved by a majority vote of the corporation at a meeting called for that purpose.

Fees

The fee payable to the town/city clerk for recording the articles of agreement (after recording them with the Corporate Division) is \$5.00. The fee for recording the articles of agreement with the Corporate Division is \$25.00; amending the articles also costs \$25.00.

Returns

Your nonprofit corporation will be required to file a "return" during the calendar year of 2010 (regardless of its date of incorporation) and every five years thereafter. Corporations failing to file the return will be dissolved, but may at any time procure a revival of its certificate of incorporation provided that the corporate name is available. A name change amendment may be required if the name is no longer available. The Corporate Division will mail returns to all corporations required to file, to the principle address or a special address if requested. The return fee will be \$25.00 (RSA 292:25-30).

Federal Tax Exemption

Eligibility of a corporation for federal income tax exemption is determined by the IRS. Only certain kinds of nonprofit corporations may qualify, usually depending on how a corporation's income is expended. If you are interested in finding out if your corporation is eligible for an exemption, contact the IRS by telephone at 1-800-829-3676 and ask for Publication #557, Apply for Recognition of Exemption for an organization.

Exemption From the N.H. Business Profits Tax

For information regarding exemption from the New Hampshire business profits tax and local property tax exemption, contact:

The Department of Revenue Administration
Taxpayer Assistance office
P.O. Box 457
Concord, New Hampshire 03302-0457
(603) 271-2191

Charitable Trusts

A corporation formed for a charitable purpose should contact The Charitable Trusts Division of the N.H. Attorney General's office to find out about financial reporting requirements mandated by the state for such an organization (RSA 7:19-28a).

For further information contact:
Department of the Attorney General
Charitable Trusts Division
33 Capitol Street
Concord, NH 03301-6397
(603) 271-3591

Statutory excerpts

The following are relevant sections of the state law governing nonprofit corporations. Other sections may be important for your type of organization or your circumstances, and may be consulted at the State Library or other sources.

292:1 Incorporators; Purposes. – Five or more persons of lawful age may associate together by articles of agreement to form a corporation, for any of the following purposes:

- I. The promotion of the cause of temperance and of any charitable or religious cause.
- II. The establishment and maintenance of literary and scientific institutions, libraries, lyceums and

musical, agricultural, literary, or scientific associations, the promotion of education and the arts and sciences by any other means and for mental improvement.

III. The establishment and maintenance of hospitals, homes for the aged and for invalids, and other charitable institutions.

IV. The provision of suitable grounds and other conveniences for the burial of the dead.

V. The organization and maintenance of lodges of Free Masons, Odd Fellows, and other similar societies, and for social recreation and improvement.

VI. The provision and care of walks, parks, recreational and athletic facilities, commons, roads and streets.

VII. The planting, cultivation, and protection of shade, ornamental, and forest trees.

VIII. The promotion of agriculture.

IX. The promotion of the growth and prosperity of cities, towns, and villages, including provision for recreational and athletic facilities for public use.

X. The promotion of law and order and the better enforcement of existing laws, or to prevent cruelty to animals.

XI. The protection or propagation of fish and game, and for any other purpose not prohibited by law.

XII. To provide industrial, commercial, manufacturing and warehouse facilities for the purpose of developing the growth and prosperity of the state, counties, cities, towns and villages.

XIII. To serve and promote the recreational and athletic interests of the state of New Hampshire or any town or individual group thereof.

XIV. The provision of mental health services.

XV. Any other purpose for which an organization may be exempt from federal taxation under section 501 of the Internal Revenue Code of 1954, and any amendments thereto.

292:2 Articles of Agreement. – The articles of agreement shall contain the following:

I. The name of the corporation.

II. The object for which the corporation is established.

II-a. The provisions for establishing membership and participation in the corporation.

III. 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.

IV. The address at which the business of the corporation is to be carried on.

V. 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.

V-a. (a) The articles of agreement may contain a 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, except with respect to:

(1) Any breach of the director's or officer's duty of loyalty to the corporation or its shareholders.

(2) Acts or omissions which are not in good faith or which involve intentional misconduct or a knowing violation of law.

(3) Any transaction from which the director, officer, or both, derived an improper personal benefit.

(b) This paragraph shall not be construed to eliminate or limit the liability of a director, an officer, or both, for any act or omission occurring before January 1, 1992.

VI. The signature and post office address of each of the persons associating together to form the corporation.

292:3 Name. – Any corporate name assumed under this chapter shall not be deceptively similar to the name of any of those entities listed under RSA 293-A:4.01(b), without the written consent of such entities, which consent shall be filed with the secretary of state.

292:4 Record of Articles of Agreement; Effect. – The articles of agreement shall be recorded in the office of the clerk of the town in which the business of the corporation is to be carried on, and in the office of the secretary of state. When so recorded, the signers thereof shall be a corporation, and such corporation, its officers and members shall have all the rights and powers and be subject to all the duties and liabilities of other similar corporations incorporated under this chapter, their officers and members, except so far as they are limited or enlarged by this chapter.

292:5 Fees for Recording. – The fee for recording the articles of agreement in the office of the secretary of state as required in RSA 292:4 shall be \$25. The fee for recording any record of amendment in the office of the secretary of state as required in RSA 292:7 shall be \$25. The fee for recording the articles of agreement or amendments to such articles in the office of the town or city clerk as required in RSA 292:4 and RSA 292:7 shall be \$5.

292:5-b Foreign Nonprofit Corporations; Registration, Fees. – A foreign nonprofit corporation established for any of the purposes set forth in RSA 292:1 or for a substantially similar purpose, desiring to do business in this state in furtherance of such purpose for the benefit of citizens of this state, may register as a foreign corporation by making application as provided in RSA 293-A:15.03, excepting those portions relative to using a form of the words "corporation," "company," "incorporated" or "limited" in the corporate name. Any such foreign nonprofit corporation shall file the return and pay the fee provided in RSA 292:25-29.

292:7 Change of Name; Amending Articles. – Any corporation now or hereafter organized or registered in accordance with the provisions of this chapter, and any existing corporation which may have been so organized or registered, may change its name, increase or decrease its capital stock or membership certificates, merge with or acquire any other corporation formed pursuant to this chapter, or amend its articles of agreement, by a majority vote of such corporation's board of directors or trustees, at a meeting duly called for that purpose, and by recording a certified copy of such vote in the office of the secretary of state and in the office of the clerk of the town or city in this state which is its principal place of business. In the case of a foreign nonprofit corporation registered in New Hampshire, a copy of the amendment or plan of merger, certified by the proper officer of the state of incorporation, shall be filed with the secretary of state, together with the fee provided in RSA 292:5. The surviving corporation in a merger shall continue to have all the authority and powers vested in the merging corporations, including any powers previously conferred upon them by the legislature.

292:9 (Dissolution) Procedure.

I. Any such corporation, or 1/4 of the members thereof, may apply by petition to the superior court, or in the case of a charitable corporation to the superior court or the probate court, in the county in which the corporation is located, for a decree of dissolution, or for such other relief as may be just; and the court, after due notice to all parties interested and a hearing, may decree that the corporation be dissolved, subject to such limitations and conditions as justice may require. The attorney general shall be notified and given an opportunity to be heard in all cases involving charitable corporations.

II. The court shall have the right to appoint a guardian ad litem in the event that any members or shareholders, or both, are unknown or have abandoned a stock interest or membership interest in the corporation. The guardian ad litem shall file a report with the court setting forth its findings with respect to: the attempt to notify the unknown shareholders or members or both; any response from the unknown shareholders or members or both; and the length of time since the date of last contact by the unknown shareholder or member with the corporation.

III. The court shall have the discretion, after reviewing the report of the guardian ad litem, to conclude the extent of the rights and interests of the shareholders or members, or both, who are unknown or have abandoned their interests.

IV. No member or shareholder shall be entitled to receive an amount from a dissolution of assets greater than the member's or shareholder's total contribution to capital or purchase price, or both, of membership certificates. Any and all funds which may be payable to members or shareholders, or both, who have been adjudicated to have abandoned their interests under this section shall revert to the corporation as capital assets.

292:10 Filing Order. – The corporation shall cause an attested copy of the decree of the court to be filed in the office of the secretary of state forthwith after it is made; and when such copy has been so filed, the corporate existence of the corporation shall terminate in accordance with the terms of such decree.

292:10-a Dissolution by Vote. –

I. Except as provided in paragraph II, whenever 2/3 of the membership or voting stock or both of any such corporation shall have voted to dissolve the corporation, then said corporation shall be automatically dissolved upon the filing with the secretary of state of a statement signed under the penalties of perjury by the treasurer and a majority of the directors or trustees setting forth (a) that at least 2/3 of the members or stockholders voted dissolution; and (b) the plan for distribution of the corporation's assets and satisfaction of its obligations.

II. Whenever the voting membership of a church, organized under this chapter, shall have voted unanimously to dissolve the church, the church shall be automatically dissolved upon the filing with the secretary of state of a statement signed under the penalties of perjury by the treasurer and a majority of the directors or trustees setting forth (a) that all members eligible to vote voted dissolution; and (b) the plan for distribution of the church's assets and satisfaction of its obligations.

292:25 Renewal Required. –

I. Every corporation organized under this chapter or by act of the legislature shall, during the calendar

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year 1990, and every 5 years thereafter, make a return in writing to the secretary of state upon blanks to be furnished by him and shall pay a fee of \$25. The return shall be signed by the president or other officer of said corporation. The return shall state the corporation's principal address and the names and addresses of all the officers and directors or the governing board of the corporation. Any corporation which does not renew its charter as provided in this subdivision shall have its charter repealed, revoked and annulled; shall lose any right or title to the name under which it was incorporated; and shall be so advised in writing by the secretary of state.

II. The disposition of any corporate assets of any corporation that is dissolved under this section shall be performed in accordance with RSA 292:29.