



Affiliate Link

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Nonprofit Organizations: To Incorporate or Not To Incorporate?

By David K. Fries, Esquire and Jason D. Gregoire

While many nonprofit organizations choose to incorporate, others remain unincorporated. There are important differences between these two forms in the area of liability for individuals or groups who belong to the nonprofit organization and perform management functions for it. This article provides some analysis on this issue and describes the steps for incorporating a nonprofit organization in New Hampshire.

Liability of Members of Nonprofit Organizations

A nonprofit organization may have all kinds of liabilities. These would include the organization's contractual or transactional liabilities (for example, liabilities to employees, landlords, vendors and service providers) as well as its liabilities for negligence or injuries to third parties (for example, liabilities to a third party who is injured in the course of the conduct of the organization's affairs or to someone who slips and falls on its premises).

Under New Hampshire law, individuals or groups who belong to an unincorporated nonprofit organization and perform management functions for it may be personally liable for the liabilities of the organization. They are personally liable for the unincorporated organization's debts if they authorize, assent to, or ratify the underlying transactions. Therefore, the creditors of the unincorporated nonprofit organization may be able to make claims against the personal assets of these individuals or groups.

If a nonprofit organization is incorporated and properly maintained and operated, the individuals or groups who belong to it and perform management functions for it generally have no personal liability for the debts and liabilities of the corporation. The nonprofit corporation's creditors only have access to the corporation's assets for satisfaction of their claims, and not to the personal assets of these individuals or groups.

Forming and Maintaining a Nonprofit Corporation under New Hampshire Law

In order to incorporate a nonprofit corporation under New Hampshire law, at least five incorporators must complete, sign and file Articles of Agreement in accordance with the governing statute (N.H. RSA 292) with both the New Hampshire Secretary of State's office and the clerk of the town or city in which the mailing address of the corporation is listed. The

Articles of Agreement contain information such as the name, address and purpose of the organization, must conform to the requirements set forth in the statute, and must be filed on Form NP-1. This form can be downloaded on the New Hampshire Secretary of State's Corporate Division Web site at: <http://www.sos.nh.gov/corporatel>. Once the filing fees are paid and the Articles of Agreement are recorded by both the Secretary of State and the town or city, the nonprofit corporation will be formed.

Once the corporation is formed, it must file a report with the Secretary of State's office every five years thereafter in order to maintain its existence.

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information: (a) the signature of the president or other officer of the corporation; (b) the corporation's principal address; and (c) the names and addresses of all the officers and directors or the governing board of the corporation. There is also a filing fee to be paid when the report is filed (currently \$25.00). If the corporation fails to file this report in timely fashion, the State will dissolve the corporation and the organization will become an unincorporated nonprofit organization. In many cases, the organization may

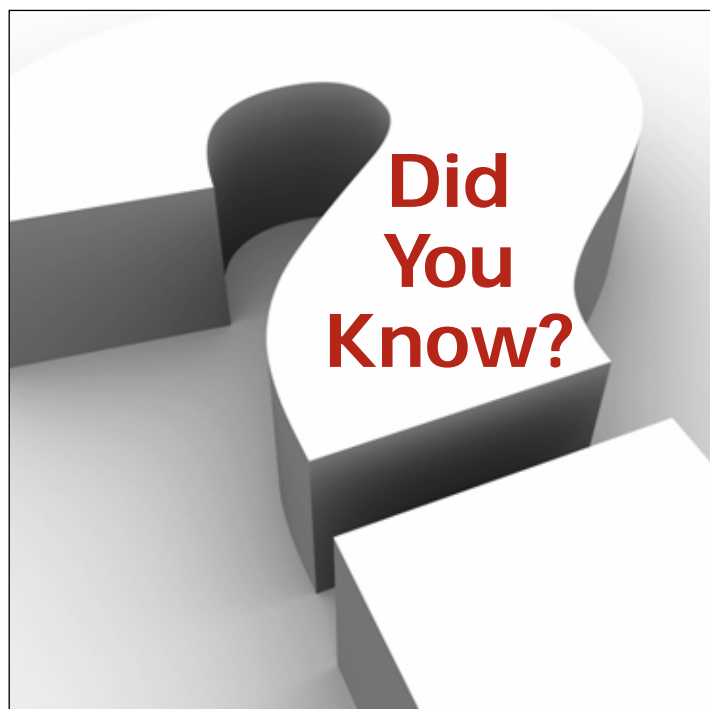
revive the dissolved corporation by filing a certificate of revival with the Secretary of State and paying the required filing fee.

In order to maintain the limited liability protection of the nonprofit corporation, the entity must abide by corporate formalities. Examples of these include holding board and member meetings, following its bylaws and charter, holding itself out to the public as being a corporation, signing documents in the corporation's name, keeping bank accounts in the corporation's name, and keeping proper corporate books and records.

Conclusion

Whether an organization or association is incorporated or unincorporated, it is important to realize the consequences of each form. Knowing the status of the organization is important for liability reasons and tax purposes. Most nonprofit organizations will want to be incorporated for protection against member liability. Each organization should consult its legal and tax advisors for guidance on these matters. It is important to recognize that being a nonprofit organization—incorporated or unincorporated—does not automatically mean that the organization is exempt from federal, state or other taxes. That is a separate issue and must be determined with reference to relevant tax law.

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To be designated a charitable organization able to receive tax-deductible contributions, your organization must apply to the Internal Revenue Service for determination that it is a 501(c)(3) organization using Form 1023.

For more information visit:
www.irs.gov/charities

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Our Mission: To provide programs and services that strengthen the quality of member governments and the ability of their officials and employees to serve the public by being a catalyst for dialogue and action, an advisor on problems, a provider of benefits and risk-management services, an educator/trainer in skills and a resource for information.

Affiliate Link is a quarterly publication of the New Hampshire Local Government Center (LGC) for board members participating in the Affiliate Group Services Program (AGSP). For more information about AGSP, contact either Director of Communications Eleanor Baron by phone at 800.852.3358, ext. 137 (e-mail at ebaron@nhlgc.org) or Communications Manager Jeni Eldridge at ext. 118 (e-mail at jeldridge@nhlgc.org). For more information about LGC, visit us online at www.nhlgc.org.

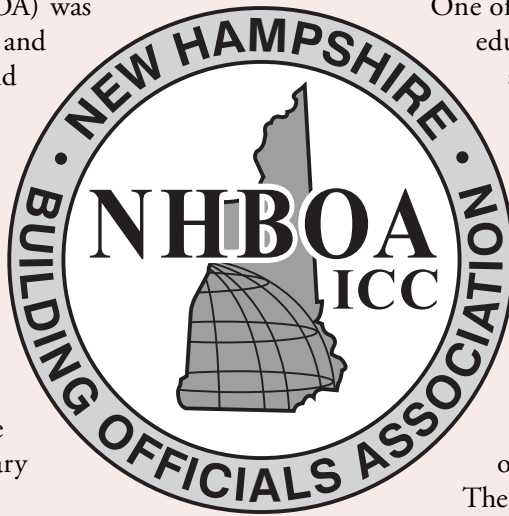
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Spotlight On

New Hampshire Building Officials Association

The New Hampshire Building Officials Association (NHBOA) was established in 1965 to provide support for building officials and ensure “standards for the protection of public safety, health, and welfare, from the hazards of fire or other dangers resulting from unsound construction practices.” Surprisingly, New Hampshire did not have a uniform building code until 2002, when NHBOA, along with other groups, worked successfully to establish a statewide code to regulate commercial construction. Until that time, rules varied from town to town, resulting in confusion and inconsistency in commercial construction practices, problems which persist in the residential market. Richard Canuel, NHBOA’s new president, lists efforts to expand the statewide code to include residential construction as one of the Association’s primary legislative goals.



Canuel has been a New Hampshire building official for 22 years, and has served with the Town of Londonderry for the past 10 years. The first new president of the Association in a decade, Canuel brings a strong understanding of the organization’s roots and mission. Momentum has been building for the past few years, both in terms of membership and member participation, and all signs point to continued growth for the Association.

Many nonprofit organizations struggle with spreading the tasks around, leaving the board or the president to manage every detail. In contrast, NHBOA employs several well-established committees charged with specific topic areas, for example, the Training and Education Committee, Legislative Committee and Code Consensus Committee, among others.

One of the primary goals of the Association has become continuing education, a goal Canuel served to fulfill for the past 10 years as a member of the Education and Training Committee. Ten times per year, NHBOA holds an educational seminar in conjunction with the monthly meeting to provide continuing education programs for their members. Many smaller towns are just beginning to hire building code officials, and there are few resources to support these new officials. According to Canuel, there are no other venues for code education in New Hampshire at the present time, and NHBOA endeavors to fill that training gap.

The Code Consensus Committee was first established in 2002 in order to establish a “way to resolve code interpretation disagreements.” The committee reviews questions of interpretation and works to reach agreement; the committee consensus serves as reference for future situations. The committee is experiencing a recent increase in review requests, which Canuel believes points to the need for a statewide code that addresses all building construction.

Among Canuel’s goals for his first year as president is an overhaul of the Association’s Web site. NHBOA has established a point person to work with LGC in updating and maintaining the Web site through the Affiliate Group Services Program. The new Web site will serve as a resource for members and others interested in the field. Asked if he has any thoughts of pursuing new programs or awards events, Canuel laughs: “Many thoughts. There’s too little time!”

For more information about the New Hampshire Building Officials Association, contact Richard Canuel at 603.432.1100, ext. 107.

New Hampshire Local Government Center Affiliate Groups

Association of New Hampshire Public Employer Human Resource Administrators
Fire Instructors and Officers Association of NH
Granite State Rural Water Association
Municipal and Governmental Law Section of the NH Bar Association
NH Association of Assessing Officials
NH Association of Conservation Commissions
NH Association of Emergency Medical Technicians
NH Association of Fire Chiefs
NH Association of Housing Authorities
NH Association of Regional Planning Commissions
NH Association of School Business Officials
NH Building Officials Association
NH Cemetery Association
NH City and Town Clerks’ Association
NH Coalition for Community Media
NH Economic Development Association
NH Excellence in Education
NH Fire Prevention Society
NH Government Finance Officers Association
NH Health Officers Association
NH Library Association
NH Library Trustees Association
NH Local Government Information Network
NH Local Welfare Administrators Association
NH Municipal Management Association
NH Municipal Secretaries Association
NH Planners Association
NH Public Works Association
NH Public Works Mutual Aid Program
NH Public Works Standards and Training Council
NH Recreation and Park Association
NH Road Agents Association
NH State Firemen’s Association
NH Tax Collectors’ Association
NH Water Pollution Control Association
Northeast Resource Recovery Association
Tri-State Association of School Business Officials
Working Dog Foundation

Organizations listed in red indicate participation in the Affiliate Group Services Program.

LGC’s 67th Annual Conference November 12 – 14, 2008

Radisson Hotel Manchester • Manchester, NH

LOCAL GOVERNMENT:



CHALLENGING TIMES
CREATIVE SOLUTIONS

The New Hampshire Local Government Center’s (LGC) 2008 Annual Conference continues a rich tradition of educational excellence and innovative programming. Wednesday and Thursday each feature a full day of workshops on topic areas including finance, governance, health and safety, human resources, land use and environment, technology and—new this year—schools.

We’ve made some exciting changes this year...

- **Dinner Banquet and Social Hour** – These events will be held on Wednesday evening this year. We hope this change will make it easier for those that travel long distances to attend both Wednesday and Thursday sessions.
- **Breakfast Roundtables** – New this year! Discussion topics will include: Selling the Budget; Regionalization/ Sharing Services; Energy Conservation; Ethics and Ethics Policies; Hiring and Keeping the Best; Merging School and Municipal Operations; Online Citizen Services; and Promoting Employee Wellness.

Don’t miss this opportunity to join with hundreds of local government officials and staff from cities, towns, counties and schools across the state in a chance to share challenges and discover creative solutions. We look forward to seeing you there!

New at www.nhlgc.org

Visit the expanded Annual Conference section at www.nhlgc.org to view the conference schedule, register online, download directions, access hotel information and more.