

Commentary About the Forms

Update on Commentary

The NY Non-Profit Revitalization Act of 2013 (NPRA) was amended in 2016. The amendments became effective May 27, 2017 (except for the amendment relating to the chair of the board, which became effective on January 1, 2017).

The 2016 Amendment is intended to “improve and make clarifying amendments to the Nonprofit Revitalization Act of 2013” in order to “correct certain inconsistencies, and... make the statute operate more smoothly and efficiently.” The revisions also amend provisions governing related party transactions, prohibit certain employees from serving as the chair of the board of a corporation organized under the New York Not-for-Profit Corporation Law and impose certain restrictions on individuals subject to a whistleblower complaint.

These forms are intended to assist New York not-for-profit corporations to comply with the requirements of the Nonprofit Revitalization Act (“NPRA”), which is effective for most purposes on July 1, 2014. This packet provides you with sample documents to form a New York not-for-profit corporation and to modify the governance documents for existing New York not-for-profit corporations seeking to comply with the new governance standards.

- In order to form a not-for-profit corporation in New York State, it is necessary to file a Certificate of Incorporation with the New York State Department of State. The form certificates of incorporation and minutes of an organizational meeting reflect the NPRA’s reclassification of corporate types and the new rules for stating corporate purposes.
- The NPCL has undergone significant changes and not-for-profit corporations will be required to satisfy new governance standards effective July 1, 2014. The form bylaws, conflict of interest policy, audit committee charter, and whistleblower policy reflect the governance reforms included in the NPRA.

Minutes of an Organizational Meeting – Once the Certificate of Incorporation is filed with the Department of State the initial Board of Directors named in the certificate need to have an organizational meeting for purposes of transacting business including the adoption of by-laws. Organizers intending to create a non-membership corporation should use Minutes Of Organizational Meeting of Directors of a Non-membership Corporation. Organizers intending to create a membership corporation should use Minutes Of Organizational Meeting of Directors of a Membership Corporation.

By-Laws – Bylaws are a set of agreed upon rules and procedures for the internal operations of a not-for-profit corporation. These rules and procedures govern the decision-making processes of the Board of Directors and, for membership organizations, the members. Well crafted, easily understood bylaws make it possible for an organization to make binding decisions, turn those decisions into actions, and resolve internal disputes when they arise. Organizers forming a membership corporation should use the Sample Bylaws for a Membership Corporation. Organizers forming a non-membership corporation should use the Sample Bylaws for a Non-membership corporation. These sample bylaws can also be used by existing corporations seeking to amend their bylaws to comply with the revised Not-for-Profit Corporation Law.

Conflict of Interest Policy – All New York Not-for-Profit Corporations are required to have a conflict of interest policy. Conflict of interest policies must now cover “key employees” as well as officers and directors. The policy must now provide that a Board or committee approving transactions with related parties confirm that the transaction is fair, reasonable, and in the corporation’s best interests. This sample policy complies with both the New York Not-for-Profit Corporation Law and federal excess benefit transaction regulations.

Audit Committee Charter – New York Not-for-Profit Corporations that are required to register and report to the New York Attorney General and who have at least \$500,000 in annual revenue are required to have either the entire Board or an Audit Committee comprised entirely of “Independent Directors” engage the auditors and review the audit findings. The sample Audit Committee Charter establishes the criteria for service on the Audit Committee and establishes the responsibility of the Committee and the scope of the Committee’s authority.

Whistleblower Policy – New York Not-for-Profit Corporations with 20 or more employees and annual revenue in excess of one million dollars in the prior fiscal year are required to adopt a whistleblower policy. The policy protects directors, officers, employees and volunteers who in good faith report any violation of law or corporate policy from retaliation.

Certificate of Incorporation – This is the document that will be filed with the New York State Department of State to officially form the corporation. Organizers intending to engage in “charitable” activities and, perhaps, ultimately to file for tax exempt status under section 501(c)(3) of the Internal Revenue Code should use the form for a Charitable Not-for-Profit Corporation. Organizers intending to engage in “non-charitable” activities and, perhaps, ultimately to file for tax exempt status under a section of the Internal Revenue Code other than section 510(c)(3) should use the form for a Non-charitable Not-for-Profit Corporation.

These forms are intended as samples only are not meant as legal advice. We recommend that you consult an attorney prior to forming a Not-for-Profit Corporation or adopting governance policies.

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