

This profile is part of a set of 51 profiles, including all U.S. states and the District of Columbia, which outlines state laws, regulations, and requirements that apply to charitable organizations. It covers six areas and highlights ways in which state laws differ from federal laws governing charitable organizations.



## Formation, Elections, Operation, and Dissolution

### Nonprofit Corporations

New York Not-For-Profit Corporation Law. NPCL § 101 et seq.

### Nonprofit Unincorporated Associations

No specific statute governing nonprofit unincorporated associations, however unincorporated associations are recognized generally. "An unincorporated association is an organization composed of a body of persons united without a charter for the prosecution of some common enterprise. It is not a legal entity separate from the persons who compose it." *Meinhart v. Contresta*, 194 N.Y.S. 593, 594 (Sup. Ct. 1922).

### Election of Directors

The number of directors constituting the entire board shall be not less than three. Subject to such limitation, such number may be fixed by the by-laws or by action of the members or of the board under the specific provisions of a by-law allowing such action, or by any number within a range set forth in the by-laws. Directors shall be elected or appointed in the manner and for the term of office provided in the certificate of incorporation or the by-laws. NPCL §§ 702-703.

### Director Term

Generally, director terms are fixed in the bylaws but shall not exceed five years. In the absence of a provision fixing the term, it shall be one year. NPCL § 703.

### Meeting and Quorum Requirements

Quorum (Members): Members entitled to cast a majority of the total number of votes entitled to be cast at the meeting constitute a quorum (unless the bylaws or certificate of incorporation provide for a lesser quorum, but in no case lower than one hundred votes or one-tenth of the total number of votes). NPCL § 608

Quorum (Directors): Unless this chapter, the bylaws, or the certificate of incorporation require a greater proportion, the majority of the entire board constitutes a quorum. However, in some cases specifically mentioned in the statute, the bylaws may fix the quorum requirement at a lower proportion than majority. Directors who are present at a meeting but not present at the time of a vote due to a conflict of interest or related party transaction shall be determined to be present at the time of the vote. NPCL § 707.

Annual meeting required. NPCL § 603.

### Officer Requirements

No requirement to appoint any specific officers. NPCL § 713.

### Officer Term

Each officer shall hold office for the term for which he is elected or appointed, and until his successor has been elected or appointed and qualified. Unless otherwise provided in the certificate of incorporation or the by-laws, all officers shall be elected or appointed annually. NPCL § 713.

### Dissolution

NPCL § 1001 et seq. govern the dissolution of a New York nonprofit corporation.

## Duties, Indemnification, and Interested Transactions

### Director Duties

Duties of Care and Loyalty. NPCL § 717. "Directors...shall discharge the duties of their respective positions in good faith and with that degree of diligence, care and skill which ordinarily prudent men would exercise under similar circumstances in like positions."

### Officer Duties

Duties of Obedience, Care, and Loyalty. NPCL § 717. "...officers shall discharge the duties of their respective positions in good faith and with that degree of diligence, care and skill which ordinarily prudent men would exercise under similar circumstances in like positions."

## Board Independence Requirements

The Nonprofit Revitalization Act of 2013 contains multiple provisions requiring director independence:

- 1) Independent Chair - No officer or employee of the nonprofit may serve as chair of the board. This rule becomes effective January 1, 2015 (no transitional relief).
- 2) Independent Directors - New York nonprofits must have an audit committee composed of independent directors or identify independent directors to supervise the audit, approve certain transactions, and oversee conflicts of interest and whistleblower policies.
- 3) To be "independent" a director must exchange less than \$10,000+ in compensation or \$25,000+ in payments (or 2% of gross revenues) to or from the nonprofit, close relative, or entity in which either has a substantial financial interest. Membership dues are counted toward this threshold but charitable contributions are not. "Independent director" now also excludes a director who is or has a relative who is a current owner, director, officer or employee of the corporation's outside auditor or who has worked on the corporation's audit at any time during the past three years. The Dec. 2015 amendment to The Nonprofit Revitalization Act of 2013 also clarifies that "payments" do not include dues or fees paid to the corporation for services which the corporation performs as part of its nonprofit purposes, provided that such services are available to the public on the same terms.

See also NPCL § 712.

## Interested Transactions

Interested transactions are generally permitted if the interested director's position is disclosed in good faith to the rest of the board and Secretary. NPCL § 715 and Dec. 2015 Amendment to the Nonprofit Revitalization Act of 2013.

## Indemnification of Directors/Officers

Indemnification of directors and officers is permitted. NPCL § 721 et seq.

## Loans to Directors, Officers, or Employees

Loans to directors or officers are generally disallowed. NPCL § 716.

## Notable Departures from Federal Law

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### Religious/Church Exemption

New York Constitution Article XVI, Section 1 exempts from taxation real or personal property used exclusively for religious, educational or charitable purposes. Churches are not automatically exempt, and must apply for exemption from New York sales tax with Form ST-119.2. See N.Y. Tax. Law § 1116(a)(4); New York State Department of Taxation and Finance Publication 843. Certain nonprofit and religious corporations are exempt from the New York State corporation franchise tax imposed by Tax Law Article 9-A. See New York Tax Law Article 9-A regulations, section 1-3.4(b)(6).

See tax sections below.

## Healthcare "Plus Factors"

New York nonprofit hospitals are not required to provide a specified minimum level of charity care or other community benefits.

## General

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### Rebuttable Presumption of Reasonableness - Delegation to Disinterested "Others"

The Nonprofit Revitalization Act of 2013 provides that no committee of the corporation and, therefore, only a committee of the board, shall have the authority to bind the board. In other words, a committee of "others" cannot be vested with the power to bind the corporation. Consequently, if the nonprofit cannot assemble a committee of disinterested directors for purposes of evaluating proposed compensation the rebuttable presumption of reasonableness cannot be satisfied. IRC § 53.4598-6(c).

### Charitable Solicitation Requirements

New York nonprofits must register with the New York Charities Bureau to solicit contributions. See Solicitation and Collection of Funds for Charitable Purposes N.Y. Exec. Law §§ 171-a to 177; Administration of Charitable Assets ("EPTL"), N.Y. Est. Powers & Trusts Law § 8-1.4.

### State-Specific Retention Policies

N.Y. BSC. Law § 624 governs the retention of corporate records in New York.

### Personal Information Collection and Protection Laws

No statutory protection found.

### Whistleblower Protection

The Nonprofit Revitalization Act of 2013 requires New York nonprofits with revenue in excess of one million dollars in the prior fiscal year and with 20 or more employees to adopt a whistleblower policy. The policy must protect those who report suspected improper conduct from retaliation, nominate a person to administer the policy, and establish procedures for reporting suspected violations. One of the means by which an organization may comply with the distribution requirement is by posting the policy on its website or at its offices in a conspicuous location accessible by employees and volunteers.

### State Volunteer Liability Law

Uncompensated directors of New York nonprofit organizations are generally protected from liability. NPCL § 720-a. No statutory protection found for nondirector volunteer liability.

### Independent Audit Requirements

The Nonprofit Revitalization Act of 2013 imposes several independent audit requirements:

1) Nonprofits with gross revenue in excess of \$500,000 must file an independent certified public accountant audit with the New York Attorney General. N.Y. Exec. Law § 172-b.

2) If the nonprofit's gross revenue exceeds the \$500,000 threshold, the board or a “designated audit committee of the board comprised solely of independent directors” must oversee the corporation’s accounting and financial reporting processes. However, nothing shall prohibit the board or committee from requesting that a person with an interest present information as background or answer questions at a meeting prior to the commencement of such deliberations or voting. NPCL §712-a.

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#### Disclaimer

This manual is intended to be used as a practical and informative guide only, and is not a substitute for the advice of legal counsel. It is not to be considered comprehensive or to be used as legal authority for any purpose. Please note that the information provided within may not be accurate for many reasons, including but not limited to changes in applicable legal authority and the applicability of such authority in any particular circumstance is highly fact-specific and open to multiple interpretations. The information presented here is accurate as of 10/26/2016.

## State Filing Requirements

Registered charitable and other nonprofit organizations must submit an Annual Filing for Charitable Organizations to the New York Charities Bureau each year. See Form CHAR500.

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## Model Acts

### Uniform Prudent Management of Institutional Funds Act

Adopted

### Uniform Prudent Investor Act

Not adopted

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## Tax Exemptions

### Income Tax

New York nonprofits must apply to the New York Department of Taxation and Finance for exemption from the franchise tax imposed by New York Code Article 9-A. See Form CT-247, New York State Department of Taxation and Finance Application for Exemption from Corporation Franchise Taxes by a Not-for-Profit Organization.

### Sales and Use Taxation

New York nonprofits must apply to the New York Department of Taxation and Finance to obtain an exempt organization certificate. See Form ST-119.2, New York State and Local Sales and Use Tax Application for an Exempt Organization Certificate.

### Property Tax Exemption

New York nonprofits must submit an Application for Real Property Tax Exemption to the New York Department of Taxation and Finance. See New York RPTL § 302(5), 490, 494-a.

### Miscellaneous Exemptions

N/A.

General Resource:

<http://codes.findlaw.com/ny/notforprofit-corporation-law/>