

NYS NON-PROFIT REVITALIZATION ACT



**JUNE 26, 2018
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OVERVIEW

Passed by Legislature in June, 2013

Governor signed in December, 2013

First significant changes in 40 years

Both expected changes and new compliance requirements

- Recognition of technology/communications advancements
- Enhanced compliance requirements in areas of perceived abuses (e.g. related party transactions/conflicts, audit, compensation, etc.)

Last amendments effective May 2017



GENERAL CHANGES

Eliminating corporate “typing” system

Eliminating unnecessary agency pre-approvals for incorporation

General charitable purpose statement at incorporation

Major transactions - only Attorney General approval required

Defining “entire Board” with default provision

Certain Real Property transactions may be delegated to a committee of the Board – otherwise 2/3 of entire Board unless more than 21 directors, then majority of entire

Chair restriction – no employee serves as chair of the Board unless approved by 2/3 vote of **entire** Board with decision contemporaneously documented



ELECTRONIC COMMUNICATIONS

Old Law

- Members notice by mail, in person or by publication (more than 500 members)
- Board meeting notice by any manner provided in By-laws

New Law

- Member and Board meeting notice by e-mail and fax, note requirements for non-delivery
- Waivers and consents by electronic means
- Meetings by videoconferencing



COMMITTEES GENERALLY

Committees

- Eliminates standing v. special committee distinction
- Retains distinction between committees of the board (board members only) and committees of the corporation (non-board members permitted to serve); but potential work arounds available
- Greater ability to engage/cultivate non-board members in committee roles
- 2016 amendments



AUDIT OVERSIGHT

Required

- Executive Law Article 7-A registration
- Independent audited financial statements

Independent Directors

- Employees or key person and relatives
- Compensation over \$10,000
- Substantial financial interest in organizations doing business with nonprofit
- Relationship with outside auditor



CONFLICT OF INTEREST POLICY

All nonprofits impacted

No specific form of policy required

Annual statements required

Required provisions

- Define conflict of interest
- Disclosure procedures
- Related party **cannot** be part of deliberations
- Documentation

Existing policies that are substantially consistent



RELATED PARTY TRANSACTIONS

Related Party defined (amended – again- December 2016)

Exceptions

Process prescribed

- Disclose material facts of relationship
- Related party absent from discussions and vote
- Board or board committee approval

Standard

- Transaction fair, reasonable and in best interests
- Consideration of alternative transactions for charities

Attorney General authority to bring action to enjoin or rescind



WHISTLEBLOWER POLICY

Nonprofits affected

- Twenty or more employees
- Annual revenue in excess of \$1 million in prior fiscal year

Contents

- System to report potential illegality, fraud or violation of any adopted policy of the corporation
- Prohibit retaliation

Distribution to all directors/trustees, officers, employees and volunteers who provide substantial services to the corporation

Compliance with other laws may suffice



ATTORNEY GENERAL ENFORCEMENT ACTIONS

The Attorney General and the AG's Charities Bureau - statutory and common law responsibilities for the oversight of nonprofits and charities in New York State.

- There has been increased enforcement activity in the past few years.
- New Bureau Chief appointed January 2014
- Form 990 information
- Attorney General review of major transactions



RECENT ENFORCEMENT ACTIONS

In December 2013, former Executive Director and Chief Executive Officer of a New York City based organization was charged with conspiring with others to inflate the rate of insurance policies paid by the organization while pocketing the difference in cost, amounting to more than \$5 million stolen from the organization over roughly twenty years.

The allegations also indicate that the illegalities began shortly after the accused became Executive Director in 1992, indicating a long-standing pattern of behavior.



RECENT ENFORCEMENT ACTIONS

In July 2013, the AG obtained a \$950,000 settlement from the former leadership of National Arts Club for self-dealing and breach of fiduciary duty.

The former President used more than a dozen apartments, offices, and other rentable club spaces for himself and his twin brother for years without paying any rent.

Also, the misuse of a donor-restricted fund required the Club to apply a portion of the restitution to replenish the fund.

The AG also imposed an agreement requiring governance reforms and tighter financial controls.



RECENT ENFORCEMENT ACTIONS

In June, 2013, the AG was also successful in shutting down a Brooklyn charity “ring” which allegedly withdrew more than \$2 million in cash from donations intended for charitable causes in Israel.

Charitable funds were reportedly used to pay for dentist visits, utility bills, personal vehicles, video rentals, and a trip to an Atlantic City casino.



QUESTIONS



THANK YOU.

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