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### **Legal Alert: Committees of the Board vs. Committees of the Corporation**

As a general matter, a committee is a group of individuals organized to perform, assist with, or provide advice on certain designated tasks, functions, or activities that are performed by a Board of Directors, and are authorized by the bylaws of a nonprofit organization. New York Not-for-Profit Corporation Law defines two types of committees for nonprofits: committees of the Board and committees of the corporation. While both types of committees have common features, nonprofits should ensure that they understand the legal distinctions between the two. This Legal Alert provides a brief overview of these distinctions and other considerations when forming and operating committees of the Board and committees of the corporation.

#### **Authority**

A committee of the Board is unique in that it can bind the corporation to a decision it has made. With the exception of nine items specifically enumerated in the New York Not-for-Profit Corporation Law (NPCL) on which *only* a Board of directors has authority,<sup>1</sup> a committee of the Board may be delegated authority to make decisions on any matter related to the corporation.

A committee of the corporation, on the other hand, is purely advisory. A committee of the corporation may deliberate and make decisions, but these decisions can only be passed along to the Board as recommendations. The Board must approve any recommendations of a committee of the corporation before any action can be taken.

Prior to the 2014 amendments to the NPCL by the Nonprofit Revitalization Act, committees were described as special and standing committees. In the interest of clarity and adherence to best practices, bylaws referring to special and standing committees should be updated to reflect the new terminology described in this legal alert.

#### **Composition**

Each member of a committee of the Board must be a director. Because a committee of the Board can bind the corporation, members of such committee must be able to vote on matters presented to the committee. An outside advisor may, for example, make a presentation at a meeting, but should not be a member of a committee of the Board.

Membership for a committee of the corporation, however, need not be limited to directors. Committees of the corporation may even be made up entirely of non-directors. Often, committees of the corporation are a mix of directors, members of the community, advisors, consultants, and volunteers.

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<sup>1</sup> NPCL §712

Members of a committee of the Board must be appointed by a majority of the Board. Members of a committee of the corporation may be appointed or elected in the same manner that officers are appointed or elected.

### **Examples of Committees**

A nonprofit has great flexibility in the number and types of committees it forms (and can choose not to have any committees at all). However, there are some committees that are commonly formed as either committees of the Board or committees of the corporation.

Executive Committees, Audit Committees, and Compensation Committees are frequently organized as committees of the Board. Because of the nature of the tasks that these committees may carry out, a committee that can bind the Board is often the most effective. Nominating and Governance Committees or Finance Committees are also often committees of the Board, though an organization that would like outside advisors to sit on these committees, may decide to form them as committees of the corporation instead.

Common committees of the corporation include Strategic Planning Committees, Gala/Special Event Committees, Fundraising Committees, Scholarship Committees, or other advisory committees.

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