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GOVERNOR CUOMO SIGNS FIRST MAJOR OVERHAUL OF NYS NONPROFIT LAW IN FORTY YEARS

Nonprofit organizations in New York State have until July 1, 2014 to get ready for new obligations under the New York State Nonprofit Revitalization Act (the “Act”), which becomes effective on that date. The Act, signed into law in December 2013, is the first meaningful revision of the New York Not-for-Profit Corporation Law in over forty years. Many of the changes in the Act reflect policies which have been recognized as best practices in the sector. Some of these requirements will sound familiar to nonprofits dealing with the NYS Gateway process, [NYS EO 38](#), and governance questions in IRS 990. Despite imposing new obligations, many provisions of the Act are intended to make forming new nonprofits easier, simplify certain nonprofit transactions, and reduce regulatory burdens on smaller nonprofits.

This Legal Alert will help nonprofit managers and board members take appropriate steps to come into compliance with the new law.

Action Steps for Existing Organizations

Note that many of these actions will require careful review and, most likely, amendment of your organization’s existing bylaws.

Adopt/Review Conflict of Interest Policy

- All nonprofits are now required to have a conflict of interest policy for directors, officers and key employees.
- Review any existing conflicts policy to ensure adherence to statutory requirements including new definitions (such as “independent director”), procedures for disclosing a conflict, and prohibition against participation by the conflicted individual in board deliberations.
- Conform the conflicts policy to new statutory definitions of “related party transaction” and standard for board review of such transactions, which must be fair, reasonable and in the organization’s best interests. *Note that the New York State Attorney General now has the power to enforce the prohibition against unlawful transactions.*
- Individuals may not participate or vote in committee or board meetings to make compensation decisions that will affect them. The statute also expands the current requirement of “reasonable” compensation.

Adopt/Review Whistleblower Policy

- Nonprofits with more than 20 employees and \$1million in revenue in the prior fiscal year are required to adopt a whistleblower policy.

- The policy must include procedures for reporting violations, and be distributed to employees, volunteers, officers, and directors.

Board Chair

- No employee of the nonprofit may serve as Board Chair, effective January 1, 2015.

Audit Oversight

- For nonprofits with annual gross revenues of over \$500,000, the board or an Audit Committee must retain or renew the auditor and review the results with the auditor.
- For nonprofits with annual gross revenue over \$1 million, the board or Audit Committee have additional audit oversight duties including, among other things, holding pre- and post-audit conferences with the auditors.
- These requirements are effective July 1, 2014, except organizations with annual revenues under \$10 million will have until January 1, 2015.

Simplify Board Operations

- Notice of board and member meetings, waiver of notice, and action by unanimous written consent may now be made electronically.
- Board members may participate in meetings by video conference.
- Voting requirements for routine real estate transactions may now be relaxed to a simple majority rather than a two-thirds vote, unless the transaction involves all or nearly all of the organization's assets.
- For organizations whose bylaws provide for a range, rather than a fixed number, of directors, "entire board" is now defined as the number of directors authorized as of the most recent election of directors.

Easing of Regulatory Burdens

- Annual gross revenue threshold triggering filing a mandatory independent audit with the Attorney General's office is raised to \$500,000 (from \$250,000) as of July 1, 2014, and will be raised again, to \$750,000 as of July 1, 2017, and to \$1 million as of July 1, 2021.
- Annual gross revenue threshold triggering filing a review report by an independent CPA with the Attorney General's office is raised to \$250,000 (from \$100,000) as of July 1, 2014. However, the AG may require such organizations to file an audit report after reviewing the report.
- AG approval is sufficient for the following actions; court approval is no longer required:
 - the sale or lease of substantially all of a nonprofit's assets, unless the organization is or would become insolvent;
 - Article 10 dissolution; merger or consolidation; or
 - change of corporate purpose.

The Attorney General, however, may require court approval of any specific transaction after review.

- Individuals engaged solely as grant writers must no longer register as "fund raising counsel."

Information for Newly Forming Nonprofits

- New York nonprofits will now be classified as “charitable” or “not charitable.” **Existing nonprofits**, which currently must be classified as types A, B, C or D, **are automatically reclassified as follows:**
 - Type B and C nonprofits will be reclassified as “charitable;”
 - Type A nonprofits will be reclassified as “non-charitable;” and
 - Type D nonprofits will be reclassified as “charitable” or “non-charitable” depending on purpose.
- The certificate of incorporation need not describe the activities in which the nonprofit intends to engage in order to further its purpose.
- Department of Education consent is no longer required, unless the organization is a school or museum. However, a copy of the certificate of incorporation must be sent to the Department of Education after filing with the Department of State.

Lawyers Alliance for New York is eager to hear your comments/questions/experiences as the nonprofit community works to comply with the Act. For a more in-depth summary, visit www.lawyersalliance.org/pdfs/Summary_Nonprofit_Revitalization_Act_9-11-2013.pdf.

This alert is meant to provide general information only, not legal advice. Please contact Judith Moldover at Lawyers Alliance for New York at (212) 219-1800 x 250 or visit our website www.lawyersalliance.org for further information.

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