

December 19, 2022

**Not-for-Profit Corporation Law Revisions Provide Flexibility
for Unanimous Consent and Filling Vacant Board Seats**

On November 21, 2022, Governor Hochul signed revisions to the New York Not-for-Profit Corporation Law to provide welcome flexibility to board governance. Under the new law, which took effect immediately, NY nonprofit corporations have new options for soliciting unanimous consent by governing members of the corporation, or by members of the board. The new law also provides the board with new options for setting the term of a board member elected to fill a vacant seat.ⁱ

Lawyers Alliance was a leading member of the coalition that drafted the legislation, and we thank the legislature and Governor Hochul for enacting it.

Using Electronic Means to Give Unanimous Consent

The board of a nonprofit corporation can act in two ways: 1) it can vote at a meeting, or 2) in between meetings, it can act by unanimous consent of all board members. The new law allows a greater range of methods to be used to indicate unanimous consent. It also applies to decisions made by the governing members of a nonprofit corporation, when they are acting via unanimous consent.

What the old law required

Under the old version of N-PCL 614(a) and 708(b), unanimous consent could be given via a written document or by e-mail.

What the new law allows

Now, unanimous consent can be given via any other electronic method, so long as that method sets forth, or is submitted with, information from which it can reasonably be determined that the transmission was authorized by the board member or governing member. This will allow unanimous consent to be given and collected via a board portal, direct message or other electronic method.

What you can do now

- Review the bylaws to see if they allow the governing members (if any) and board to use electronic methods other than email to provide unanimous consent without a meeting.
- If the bylaws require unanimous consent to be made solely in writing or by e-mail, and do not permit the use of other electronic methods, work with an attorney to amend the bylaws.

Filling board vacancies

Board members are elected for a certain number of years, known as a board term. Sometimes a board member leaves the board in the middle of a term, resulting in a vacant seat. The new law gives boards more flexibility in deciding how long a replacement board member can serve.

What the old law required

The old version of N-PCL 705(c) allowed the board to elect a new board member to fill a vacancy only until the next annual meeting of the members or of the board at which the election of directors is in the regular course of business, at which point the director could be re-elected to a full term.

What the new law allows

The new version of N-PCL 705(c) allows the board to fill a vacant board seat for the duration of the term of the recently departed board member. It also provides the board with the option to select a different term for the new board member, so long as the term ends at an annual meeting. As under the old law, a board member's term can never last longer than five years, and if the board is classified a board member's term cannot exceed a number of years equal to the number of classes.

What you can do now

- Review the bylaws to see if they require the board to fill vacancies only until the next annual meeting.
- If the bylaws do contain this limitation, consider whether your organization wants the flexibility to fill vacant board seats for a term lasting beyond the next annual meeting. If you would like that flexibility, work with an attorney to revise your bylaws.

This alert is meant to provide general information only, not legal advice. Please contact Senior Policy Counsel Laura Abel at label@lawyersalliance.org or visit our website www.lawyersalliance.org for further information or with specific questions.

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ⁱ The new law is Chapter 614 of 2022.