

New Legislation Modernizes New York Not-For-Profit Corporation Law

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On November 21, 2022, Governor Kathy Hochul signed into law [new legislation](#), which amends certain provisions of the New York Not-For-Profit Corporation Law (the “N-PCL”).

The legislation, described in detail below, “modernizes provisions of law relating to members, directors and officers to align with current practices, streamline procedures and eliminate unnecessary regulatory burdens”[\[1\]](#), and is a welcome update for organizations looking to maximize efficiency with respect to their decision-making processes.

1. Expansion of electronic consent for actions authorized without a meeting

To the extent members or directors of a not-for-profit organization are required or permitted to take any action by vote, the N-PCL allows such action to be taken without a meeting upon the *written* or *electronic* consent of all the respective members or directors entitled to vote on the action.[\[2\]](#)

Under previous law, electronic consent was limited to consent by *electronic mail* – namely, consent via *email*.[\[3\]](#)

However, to better align with current industry practices, the new legislation expands electronic consent to include consent via electronic mail *or other electronic means*. Organizations routinely use various electronic portals to collect votes because it is more efficient than collecting votes by email. The legislation updates the N-PCL to explicitly state that the use of such other electronic means is permissible.

2. Increased flexibility in selecting terms for replacement directors

Under previous law, a director elected or appointed to fill a vacancy in an unexpired term would, by default, hold office until the organization’s next annual meeting. This is potentially problematic where, for example, an organization’s board is classified and the vacancy being filled is a directorship of a class that ends after the organization’s next annual meeting.

The legislation does away with the one-size-fits-all approach under previous law by specifying that a director elected or appointed to fill a vacancy in an unexpired term will hold office until either (i) the end of the term that the director was elected or appointed to fill (including a term that might extend past the next annual meeting) or (ii) the end of a term determined by the board and that ends at an annual meeting. Under the legislation, the board has the flexibility to select a different term when filling the vacancy that better aligns with the organization's specific objectives, including rebalancing uneven class sizes in the case of a classified board. However, it should be noted that general restrictions with respect to first-time directors and classified boards applicable under previous law continue to apply – namely, (i) first-time directors are prohibited from serving terms longer than five years and (ii) for organizations utilizing a classified board, the term of any director may not exceed the number of years equal to the number of classes into which the board is classified (e.g., if there are four classes of directors, the maximum term for a first-time director is four years).

3. Clarification of quorum requirements when conflicted directors leave a meeting

Under the N-PCL, an action is only approved if a quorum is present at the time of the vote.^[4] In some instances, a meeting begins with a quorum, but one or more directors must leave the meeting due to conflicts. Under previous law, it was unclear how the quorum is impacted, if at all, in such a situation.

The legislation clarifies that the quorum is not impacted when conflicted directors leave a meeting – namely, 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 are treated as present at the time of the vote for purposes of determining if a quorum is present at such time.

New York not-for-profit organizations should consider including language in their certificate of incorporation and/or by-laws incorporating the updates under the new legislation discussed above.

^[1] S. 9047 (N.Y. 2022).

^[2] See N-PCL §§ 614(a) and 708(b).

^[3] See *id.*

[\[4\]](#) See N-PCL § 708(d).

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