

Nonprofit Revitalization Act of 2013 Bylaws and Policy Compliance Checklist Compliance Update

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<p>What Type are you? A, B, C or D?</p>	<p>Found in Articles of Incorporation Now there are only “charitable” and “non-charitable.” As will be non-charitable Bs and Cs will be charitable Ds – case by case Understand what you are going forward. May impact mergers, dissolution, changes of purpose</p>	<p>Not-For -Profit Corporation Law §201</p>
<p>Attendance at meetings</p>	<p>Electronic attendance by speakerphone and Skype is permitted. Every participant must be able to hear and be heard simultaneously</p>	<p>§708(c)</p>
<p>Notices</p>	<p>Notices may now be sent by fax or email but with a “2-strike” rule</p>	<p>§605(a), 711(c)</p>
<p>Committees</p>	<p>“Standing” and “special” committees are abolished. Committees are now “of the Board” or “of the Corporation” Committees of the Board are comprised only of Board members and may be authorized to bind the Board Committees of the Corporation may include anyone may never bind the Board</p>	<p>§712</p>
<p>Conflict of interest policy</p>	<p>Every nonprofit must have one Seven required elements Applies to directors, officers, key employees and committee members 1. Define Conflict of Interest 2. Establish procedure for disclosing Conflict of Interest to audit committee or Board if none 3. Prohibit person with alleged Conflict of Interest from attending deliberations or voting on conflict 4. Prohibit person with alleged conflict from attempting to influence deliberation or voting</p>	<p>§715-a</p>

	<p>5. Require documenting the existence and resolution of the conflict</p> <p>6. Establish procedure for disclosing, dealing with and documenting Related Party Transactions</p> <p>7. Require written Conflict of Interest statements before a director is elected and then annually</p>					
Votes on real property transactions	<table border="0"> <tr> <td>Not All or Substantially All</td> <td>All or Substantially All Assets</td> </tr> <tr> <td>Majority vote of Board or an authorized committee of the Board</td> <td>Board < 21: 2/3 of entire Board Board of 21 or more: Majority of entire Board</td> </tr> </table>	Not All or Substantially All	All or Substantially All Assets	Majority vote of Board or an authorized committee of the Board	Board < 21: 2/3 of entire Board Board of 21 or more: Majority of entire Board	§509
Not All or Substantially All	All or Substantially All Assets					
Majority vote of Board or an authorized committee of the Board	Board < 21: 2/3 of entire Board Board of 21 or more: Majority of entire Board					
Entire board	Total if there were no vacancies. If a range – number at last election May impact quorum, voting	§102(6-a)				
Whistleblower Policy	Mandatory for nonprofits with 20 or more employees, and more than \$1 million annual revenue	§715-b				
Auditing	<p>Threshold increasing from \$250,000 to \$1 million over the next few years.</p> <p>If there is an Audit Committee it must be a Committee of the Board and comprised only of Independent Directors.</p> <p>If there is no Audit Committee the Board of Directors must perform the necessary tasks:</p> <ol style="list-style-type: none"> 1. Engage or renew the auditor 2. Review audit results and management letter with the auditor (and presumably address any deficiencies), and 3. Oversee adoption and compliance with Conflict of Interest and Whistleblower policies 	§712-a; Executive Law §172-b				
Independent Directors	<ul style="list-style-type: none"> • Is not and has not within 3 years been employed by the nonprofit • Is not related to a key employee of the nonprofit • Has not received more than \$10,000 in compensation from the nonprofit, and is not related a person who has • Is not an employee or principal of an entity doing business with the nonprofit exceeding the lesser of \$25,000 or 2% of gross revenue 	§102(21)				
\$1 Million Nonprofits	<ul style="list-style-type: none"> • Prior to audit, review with auditor the scope and planning of audit • After audit, discuss with auditor <ol style="list-style-type: none"> 1. Any weaknesses in internal controls 2. Restriction on auditors activities or access to information 3. Significant disagreements between auditor and management 	§712-a(b)				

	<p style="text-align: center;">4. Adequacy of accounting and financial reporting processes</p> <ul style="list-style-type: none"> • Every year, review performance and independence of auditor 	
Related Party Transactions	Any transaction, agreement or any other arrangement in which a related party has a financial interest and in which the corporation or any affiliate of the corporation is a participant.	§102(24)
The Basic Rule	No corporation shall enter into any related party transaction unless the transaction is determined by the board to be fair, reasonable and in the corporation's best interest at the time of such determination.	§715(a)
Disclosure Rule	Any director, officer or key employee who has an interest in a related party transaction shall disclose ... the material facts concerning such interest.	§715(a)
Additional Rule for Charities	Prior to entering into the transaction, the Board shall <ol style="list-style-type: none"> 1. Consider alternative transactions to the extent available; 2. Approve the transaction by majority vote; and 3. Include in the meeting minutes the basis for the board's approval, including consideration of alternatives. 	§715(b)
"Related party"	<ol style="list-style-type: none"> 1. Any director, officer or key employee of the corporation or any affiliate of the corporation; 2. Any relative of any director, officer or key employee of the corporation or any affiliate of the corporation; or 3. Any entity in which any individual described in (1) and (2) above has a 35% or greater interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of 5%. 	§102(23)
"Relative"	<p>Spouse</p> <p>Ancestors</p> <p>Siblings (whether whole or half blood)</p> <p>Children (whether natural or adopted)</p> <p>Grandchildren and great-grandchildren</p> <p>Spouses of siblings, children, grandchildren, and great-grandchildren</p> <p>Domestic partner</p>	§102(22)
"Key Employee"	Any person who is in a position to exercise substantial influence over the affairs of the corporation.	§102(25)
Employee-Chairs	Effective 1/1/2016 No employee may serve as Chair/President of the Board of Directors by whatever title	§713(f)
Voting on Compensation	People who may be paid by the nonprofit can no longer participate in the deliberations or votes on such compensation. They can make a presentation but must then leave.	§515(b)