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Address Considerations for New York Not-For-Profit Corporations with Remote Operations

Many nonprofits have found that operating remotely has allowed for greater flexibility in hiring practices and considerable cost savings in office rent. However, there are considerations nonprofits need to be aware of when using this model. This Legal Alert will discuss issues when selecting and using official addresses for an all-virtual New York-based nonprofit.[1]

For Newly Forming Nonprofits – What Addresses are Required in a Certificate of Incorporation?

Under the New York Not-For-Profit Corporation Law (N-PCL), the certificate of incorporation must specify:

(1) the *county* within New York State in which the office of the corporation[2] is to be located;[3] and
(2) the *post office address* to which the Secretary of State will mail a copy of any process against the corporation received by the Secretary of State.[4]

A nonprofit organization may keep its books and records outside of New York State, and, if it does so, it should include in the certificate of incorporation the post office address outside of New York State where the corporation's books and records are kept and are available for inspection.[5]

In addition, if the corporation has a registered agent to receive service of process, the certificate of incorporation should also indicate the name and address of the registered agent.[6]

If there is a change in any of these addresses after the filing of the certificate of incorporation with the New York State Department of State (NYS DOS), the certificate will need to be amended to reflect the changes, as discussed in more detail below.

[1] This Legal Alert is limited to considerations regarding a nonprofit's corporate address. The employment and tax implications of having a remote workforce (particularly one that spans multiple states) are outside the scope of this Alert; please consult with legal counsel for questions related to remote workers.
[2] Note that under the N-PCL, the office "need not be a place where activities are conducted[.]" N-PCL § 102(a)(11). For nonprofits that operate remotely, the organization's office could be the home address of the executive director or board chair, for example, as long as such address is in New York.
[3] N-PCL § 402(a)(3).
[4] N-PCL § 402(a)(6). Effective January 1, 2023, nonprofit corporations were allowed the option of providing an email address for purposes of receiving copies of process received by the Secretary of State.
[5] N-PCL § 402(a)(3), N-PCL § 621(a).
[6] N-PCL § 402(a)(7).

For Existing Nonprofits – Notifying New York and the Internal Revenue Service of an Address Change

New York State Department of State

A nonprofit organization incorporated in New York should file a Certificate of Change or Amendment with the NYS DOS, Division of Corporations, in order to change any of the corporation's addresses or locations included in its certificate of incorporation.[7]

The N-PCL provides that changes to an organization's certificate of incorporation to reflect a different New York office location, address for notice of process and/or registered agent address may be authorized by a majority of the Board.[8] However, a nonprofit organization contemplating such an address change should consult its own bylaws to confirm whether a higher approval threshold (or member approval, if applicable) is required for amendments to its certificate of incorporation.

A fillable Certificate of Change, which can be used to reflect such address changes, can be found on the NYS DOS website, along with filing instructions and information on the applicable fees.[9] If an organization is, instead, changing the non-New York address for its books and records, it should file a Certificate of Amendment.[10]

New York State Charities Bureau

In selecting an address for an organization that will be operating fully remotely, it should be noted that the address will be made publicly available on the Charities Bureau's website. If a P.O. box or similar mailbox rental arrangement will be used, this may not be a concern. However, this fact should be disclosed and discussed if any individual (e.g., an officer, director, or staff member) is considering using their home address as the official address for the organization. Address changes may be reported to the Charities Bureau while filling out your annual CHAR500 by checking "yes" when prompted in the "Contact Information" section of the online filing portal.

Internal Revenue Service

Similarly, an organization with 501(c)(3) tax-exempt status must report a change of address to the Internal Revenue Service (IRS) on its next annual return or information notice:

- Form 990-N (e-Postcard): Simply enter the new mailing address in the address field.
- Forms 990-EZ and 990: Check the "Address change" box in Item B and complete Item C with the information on your new address.

An organization may separately notify the IRS of an address change prior to filing its annual return by filing Form 8822-B (Change of Address or Responsible Party – Business), available at https://www.irs.gov/forms-pubs/about-form-8822-b. The change can also be reported by calling the IRS Tax Exempt and Government Entities Customer Account Services at (877) 829-5500 (toll-free).

If an organization needs an affirmation letter confirming its tax-exempt status that also reflects its new address, it may report the change of address and request the affirmation letter at the same time. More

[7] *See* N-PCL § 801(b)(6)-(8), §803, §803-A(a).
[8] N-PCL § 802(c).
[9] https://dos.ny.gov/certificate-change-domestic-not-profit-corporations-0
[10] https://dos.ny.gov/certificate-amendment-domestic-not-profit-corporations-0

detailed instructions on requesting an affirmation letter by mail, fax, or phone in conjunction with a change of address can be found at: https://www.irs.gov/charities-non-profits/exempt-organizations-affirmation-letters.

Although the IRS has provided conflicting guidance, it is safest for an organization to report a change of address on its next annual return even if it previously reported the change by calling the IRS, filing Form 8822-B, or in conjunction with submitting a request for an affirmation letter.[11]

For All Nonprofits – Using a New York State Return Address for Solicitations

Many organizations use their main office address as their mailing address. However, if a non-profit organization transitions away from having a staffed, central office, the organization may need to establish and maintain a separate mailing address to continue to receive donations and other mail.

New York Executive Law § 172-d(20)[12] requires that if a nonprofit organization uses a New York address in its solicitations (including by using a New York state return address) but does not have a physical location at that address – meaning that it does not maintain and staff an office at that address – it must make that clear.

More specifically, the nonprofit organization is required to clearly state immediately proximate to the New York address both:

1. The business address of the charitable organization's actual headquarters, and

2. The fact that the New York address is a "mail drop", by either using the term "mail drop" or a substantially similar term that clearly conveys the message that the New York address is that of a mail handling facility.

These additional disclosure requirements apply most clearly to organizations who are using P.O. box addresses (or similar mailbox renting service addresses) in their solicitations. For an organization that is using the home address of an officer, director, or other staff member in its solicitations and that does not otherwise have a central office or headquarters, the additional language above should not be necessary.

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[11] *See* Instructions for Form 990 Return of Organization Exempt From Income Tax (2024), available at: https://www.irs.gov/pub/irs-pdf/i990.pdf ("Address change. Check this box if the organization changed its address *and hasn't reported the change on its most recently filed Form 990, 990-EZ, 990-N, or 8822-B, Change of Address or Responsible Party—Business, or in correspondence to the IRS*." emphasis added) and Instructions for Form 990-EZ (2024), available at: https://www.irs.gov/instructions/i990ez ("Address change. Check this box if the organization changed its address *and hasn't reported such a change on its most recently filed Form 990, 990-EZ, or 990-N, or in correspondence to the IRS*." emphasis added); *but compare* Change of Address - Exempt Organizations, available at: https://www.irs.gov/charities-non-profits/other-non-profits/change-of-address-exempt-organizations ("Please note that an organization must report the change of address on its next annual return even if it separately reported by filing Form 8822-B, by phone, or as part of a request for an affirmation letter.").

[12] https://www.nysenate.gov/legislation/laws/EXC/172-D

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