

March 30, 2021

Legal Alert: Changing the Purposes Clause of a New York Not-for-Profit Corporation

To incorporate in New York State, a nonprofit organization is required to state in its Certificate of Incorporation the charitable purposes for which it is being formed. This clause, known as the “purposes clause,” is important because it defines the scope of the activities the nonprofit organization may engage in.¹ An accurate definition of proposed charitable activities is important because a nonprofit organization that engages in activities outside those listed in its purposes clause could theoretically face revocation of its tax-exempt status. A broad purposes clause can therefore be desirable because it grants an organization flexibility to evolve over time and not be constrained if the organization wishes to pursue new charitable activities.

In 2013, New York State passed the Non-Profit Revitalization Act (NPRA), which, among other changes, allowed nonprofits to adopt a broader purposes clause than previously allowed. The act provided that, as of July 1, 2014, a New York nonprofit organization must state in its Certificate of Incorporation “the purpose or purposes for which it is formed, *it being sufficient to state that the purpose of the corporation is any purpose for which corporations may be organized under this chapter as a charitable or non-charitable corporation*”² (emphasis added to illustrate the change).

New York nonprofits formed after July 1, 2014, have therefore been able to adopt broader, more flexible purposes clauses. In light of this change, nonprofits with narrower purposes clauses may consider replacing them with general ones mirroring the language allowed by the NPRA by amending their Certificates of Incorporation. Note, however, that not all nonprofits will be allowed to use the general purposes language of N-PCL § 402(a)(2-a). The Attorney General’s Charities Bureau currently takes the position that a nonprofit organization incorporated before July 1, 2014 (when the amended N-PCL went into effect), may not amend its purpose to the more flexible, general purposes clause.

This Legal Alert provides an overview of the procedure for amending a New York nonprofit’s purposes clause.³ **Lawyers Alliance does not recommend attempting to amend purposes without consulting counsel. Any nonprofit organization interested in amending its purposes clause should consult with an attorney to determine what revisions are appropriate, how to prepare the Certificate of Amendment, and how to approve and execute any amendment according to the requirements of the law.**

¹ Note that the purpose statement in the nonprofit’s Certificate of Incorporation is different from its mission statement, which often appears on the organization’s website and other promotional materials to attract donors and volunteers. The mission statement is not legally binding, and any change to it can usually be approved by a majority vote of the Board of Directors, subject to the organization’s bylaws.

² Codified as Not-for-Profit Corporation Law (N-PCL) § 402(a)(2-a).

³ This Legal Alert only describes steps that nonprofit organizations incorporated in New York must take. Delaware law provides for substantially more flexibility to amend corporate governance documents. For more information about differences between incorporation in New York and Delaware, see the Lawyers Alliance Legal Alert “Should a Nonprofit Organization Incorporate in New York or Delaware?”:

https://lawyersalliance.org/userFiles/uploads/legal_alerts/Incorporation_in_New_York_v_Delaware_Legal_Alert_April_2020.pdf.

Approve the purpose change

Any revision to an organization's purposes clause must be approved by its Board of Directors, or, if applicable, by its members. Organizations should pay close attention to their bylaws, which may require a supermajority vote (e.g. two-thirds of all board members) to make amendments to their Certificates of Incorporation.

Obtain the necessary approvals

Once the Board of Directors (or the nonprofit's members, as applicable) approves the change in purpose, the next step is to complete and sign the Certificate of Amendment, which can be found on the New York Department of State (NYDOS) website.⁴ The organization should then submit its signed Certificate of Amendment to either (1) the New York State Supreme Court on notice to the attorney general or (2) the attorney general's office itself for review.⁵

If the nonprofit organization's original Certificate of Incorporation required approval from a particular governmental agency or organization, the organization should be sure to first obtain approval or a waiver from that body for the change in purpose. The nonprofit organization can then submit documentation to the court or the attorney general's office. A copy of the approval should be attached to the nonprofit organization's filing with the court or the attorney general's office.

In addition, if the organization is adding a purpose to its purposes clause, one of its officers must prepare an affidavit stating that the corporation will dedicate its present assets to its existing purposes and only dedicate future assets to the new purposes. The organization must then submit the affidavit along with a copy of the original Certificate of Incorporation, any prior amendments to the Certificate of Incorporation, and one copy of the proposed Certificate of Amendment to the attorney general's office for review.⁶

File the Certificate of Amendment with the Department of State

Once approval is received from the attorney general or the New York State Supreme Court, as applicable, the organization should file its Certificate of Amendment, along with the approvals, with the NYDOS.⁷ As of the date of this Legal Alert, the filing fee for a Certificate of Amendment is \$30, and an organization may obtain a certified copy of the certificate for a \$10 fee.⁸ The NYDOS also provides options for expedited service, for an additional fee ranging from \$25 to \$150.⁹

Notify the Internal Revenue Services (IRS)

The IRS requires that any significant change to an organization's governing documents, including an amendment to its purposes clause, be reported in Part VI, Question 6, and on Schedule O on the annual

⁴ A fillable form is available and can be found at <https://dos.ny.gov/certificate-amendment-domestic-not-profit-corporations-0>.

⁵ Nonprofits should submit their documents to the attorney general's office designated to cover the county in which they are located. A list of the local offices of the attorney general and the counties they serve can be found at <https://www.charitiesnys.com/pdfs/Procedures-for-Forming-and-Changing-NFP.pdf> (Appendix A).

⁶ These documents should be submitted to the appropriate attorney general's office (see footnote 5).

⁷ Certificates of Amendment may be faxed to (518) 474-1418 or mailed to the New York State Department of State, Division of Corporations, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231.

⁸ The fee may be paid by check, money order, or by credit card/debit card using the Credit Card/Debit Card Authorization Form, (available at <http://www.dos.ny.gov/forms/corporations/1515-f-l.pdf>). If the request is faxed, payment must be made through the Credit Card/Debit Card Authorization Form.

⁹ <https://www.dos.ny.gov/corps/expedite.html>

Form 990 or Form 990-EZ filing. This reporting should be done only once all the required steps under New York State law are completed. So long as the new activities are considered charitable within the meaning of section 501(c)(3) of the tax code, an organization does not need to file a new Form 1023 with the IRS; reporting on the Form 990 will be considered sufficient notice.

This memo is meant to provide general information only, not legal advice. Please contact Rafi Stern at Lawyers Alliance for New York at rstern@lawyersalliance.org or visit our website www.lawyersalliance.org for further information. For their assistance in preparing this Legal Alert, Lawyers Alliance would like to thank Peter F. Martin, a Legal Fellow working with Lawyers Alliance through NYU School of Law's National Center on Philanthropy and the Law, and Amy Zhang of Columbia Law School.

Lawyers Alliance for New York is the leading provider of business and transactional legal services for nonprofit organizations that are improving the quality of life in New York City neighborhoods. Our network of pro bono lawyers from law firms and corporations and staff of experienced attorneys collaborate to deliver expert corporate, tax, real estate, employment, intellectual property, and other legal services to community organizations. By connecting lawyers, nonprofits, and communities, we help nonprofits to develop affordable housing, stimulate economic development, promote community arts, strengthen urban health, and operate and advocate for vital programs for children and young people, the elderly, and other low-income New Yorkers.