

November 21, 2019

## **Legal Alert: New York State Increases Minimum Number of Members for Membership Nonprofit Corporations**

A New York law that took effect July 1, 2019 requires that nonprofit membership corporations incorporated in New York have at least three members.

### **Which nonprofit organizations are covered by the new law?**

The law covers nonprofit corporations formed in New York that have members who play a role in governance (for instance by electing the members of the Board).

### **What does the new law say?**

Previously, New York allowed a single individual or entity to serve as the “sole member” of a nonprofit corporation. The new law states that a nonprofit membership corporation must have at least three members.<sup>1</sup>

However, the new law also includes a major exception:

A corporation *may* have a [single] corporation, joint-stock association, unincorporated association, or partnership as a sole member, if such corporation, joint stock association, unincorporated association or partnership *is owned or controlled by no fewer than three persons.*<sup>2</sup>

This means that a New York membership nonprofit corporation can have a sole member that is another nonprofit corporation, so long as the member corporation has at least three members or directors.

### **What should nonprofit membership corporations do now?**

If your organization is a membership nonprofit incorporated in New York, and it has a sole member, that member must be controlled by at least three persons. This typically means ensuring that the Board of that sole member has at least three directors.

If your organization has a sole member that is *not* owned or controlled by three persons, it may need to add more members. Your Board should consult with legal counsel regarding any structural changes may be necessary in order to comply with the new law.

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<sup>1</sup> New York Not-for-Profit Corporation Law sec. 601(a).

<sup>2</sup> *Id.* (emphasis added).

**How does the new law affect New York nonprofit corporations with no members?**

New York law does not require charitable nonprofit corporations to have governing members. Non-membership nonprofit corporations are governed by a Board of Directors, who are either selected by the Board or serve “ex officio” by virtue of their holding a particular office. These non-membership corporations are not affected by this law.

**How does the new law affect nonprofit corporations formed in other states?**

The new law does not affect organizations incorporated outside of New York.

***This alert is meant to provide general information only, not legal advice. For further questions or information, please contact Ciarra Chavarria at 212-219-1800 ext. 228, [cchavarria@lawyersalliance.org](mailto:cchavarria@lawyersalliance.org), or visit our website [www.lawyersalliance.org](http://www.lawyersalliance.org).***

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