

June 22, 2018

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

Choosing a name for your nonprofit organization is an important decision in forming an organization, but it does not have to be a permanent one. Nonprofits may determine that it is necessary to change the name of the organization for a variety of reasons: perhaps your organization has evolved over time, and it now needs a name that better reflects its mission, or perhaps it makes sense to make a name change simply to avoid confusion with a similarly named organization. Whatever the reason, New York nonprofits do have the option to legally change their name. This Legal Alert provides a basic guide to changing the name of a nonprofit organization in New York.¹

Check name availability

Organizations may send a request to the New York Department of State (NYDOS) to find out whether its potential new name is available.² Such a request should state that the organization wishes to determine the availability of a name or names, and include all such potential names to be searched. The fee for such a request is \$5.³

Reserve the new name

Once your organization has chosen its name, it may be prudent to reserve the name while the organization prepares for name change, particularly if the organization is concerned that the name might be taken by another organization. A name reservation may be made by filling out an Application for Name Reservation Form and submitting to the NYDOS⁴. Each name reservation lasts for sixty (60 days) and can be renewed once.⁵ The fee for a name reservation is \$10.

Approve the name change

The name change must be approved by an organization's Board of Directors, or, if applicable, by its members. Pay close attention to bylaws, which may require a supermajority vote for changes to the certificate of incorporation.

¹ Please note that this Legal Alert addresses name changes only: additional considerations and steps are required for changing the purpose or other provisions of a certificate of incorporation.

² Requests must be sent in writing to Department of State, Division of Corporations, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231 or faxed to (518) 473-1654.

³ The fee may be paid by a check, money order for \$5.00 payable to the Department of State or by Credit Card Authorization Form, (available at <http://www.dos.ny.gov/forms/corporations/1515-f-1.pdf>). If the request is faxed, payment must be made through the Credit Card Authorization Form.

⁴ The Application for Name Reservation Form can be found at <https://www.dos.ny.gov/corps/nfpcorp.html>. Forms may be mailed to the NYDOS (see footnote 1) or faxed to (518) 474-1418 (note that this is a different number than that for name availability request). See previous footnotes.

⁵ Both the request for name availability and the name reservation are entirely optional steps, but keep in mind that the NYDOS can reject applications for name changes if the name submitted is not "distinguishable" from another organization on file with the NYDOS.

Obtain any necessary approvals

If your organization needed consent to incorporate or if it requires consent to change the certificate of incorporation (e.g., from the Department of Education), be sure to obtain any such consents for your name change before filing any documentation with the State.

File the Certificate of Amendment with the Department of State

Organizations can find a fillable Certificate of Amendment on NYDOS website, which can be used for a name change. Once completed, the form should be filed with the NYDOS.⁶ If your organization made a name availability request or a name reservation, the NYDOS recommends that a copy of the response or reservation be included with your filing. The filing fee for a certificate of amendment is \$30 and you may obtain a certified copy of the certificate for a \$10 fee. The NYDOS also provides options for expedited service.

Notify the IRS

As soon as you have filed the certificate of change with the NYDOS, notify the IRS of your name change and request the IRS' confirmation. A request for an affirmation letter must include the organization's (1) full previous name and full new name, (2) Employer Identification Number, (3) supporting material for the name change (i.e., the certificate of amendment with proof of filing with the New York Department of State), and (4) an authorized signature of an officer indicating the capacity of the person signing the request (e.g. the president of the organization).⁷

The IRS will send you an affirmation letter that will acknowledge the name change and also verify your status as a 501(c)(3) under the new name. The process (from request to receipt of letter) takes about 45 days. Keep the affirmation letter in your records.

This alert is meant to provide general information only, not legal advice. If you have any questions about this alert, please contact Ciarra Chavarria at (212) 219-1800 ext. 228 or visit our website at www.lawyersalliance.org for further information.

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⁶ The fillable form can be found at <https://www.dos.ny.gov/corps/nfpcorp.html#damend>. Certificates of amendment may be mailed to the NYDOS (see footnote 1) or may be faxed to (518) 474-1418.

⁷ The materials may be mailed to the IRS Exempt Organizations division Internal Revenue Service, Exempt Organizations, Room 4024, P.O. Box 2508, Cincinnati, OH 45201, or may be faxed to (855) 204-6184.