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FAQs: Understanding Membership Structure for New York Not-for-Profits

When it comes to the governance of New York nonprofits, most organizations have two choices: (1) vest ultimate governance responsibility in a board of directors or (2) establish a class (or multiple classes) of members who provide a layer of governance “above” the board.

While a membership structure may present opportunities for more decentralized, grassroots decision-making, it also comes with additional administrative requirements that many nonprofits may find burdensome and difficult to administer.

This Legal Alert will answer some basic questions about membership structure for New York nonprofits.

Which nonprofits are required to have members?

A “charitable” nonprofit may choose to have members, but it is not required to do so. “Charitable” nonprofits are those formed for one or more of the following purposes: charitable, educational, religious, scientific, literary, cultural, or for the prevention of cruelty to children or animals. Generally, organizations that receive 501(c)(3) tax-exempt status are charitable nonprofits.

If a nonprofit corporation is formed for any other reason, it is considered a “non-charitable” nonprofit and it must have members. Examples of “non-charitable” nonprofits include those formed for any of the following reasons: civic, patriotic, political, social, athletic, agricultural, or for the purpose of operating a professional, commercial, industrial, trade, or service association.

If a nonprofit is formed for both “charitable” and “non-charitable” purposes, it is considered a “charitable” nonprofit and, as such, is not required to have members but may choose to have members.

What do members do?

Generally, members of a nonprofit play a role similar to shareholders in the for-profit context but without any rights to the profit or earnings of the organization.

Members vote to elect the directors of the nonprofit at the annual member meeting and also vote on other significant organizational decisions and changes, such as merging with another organization or selling substantially all assets of the organization. Members can also make changes to the organization’s bylaws. However, members are generally not involved in the day-to-day management and running of the organization.

If a nonprofit establishes multiple classes of members, different classes of members can have different voting rights (and some classes may not have any voting rights at all). However, at all times, at least a single class of members must have full voting rights.

What do directors do?

Whether or not an organization has a membership structure, the board of directors is responsible for the general oversight and management of the nonprofit.

The board delegates authority for the day-to-day operations of the nonprofit to the nonprofit's officers and staff but maintains a supervisory role.

Who elects the directors if there are no members?

If there are no members, a nonprofit generally has what is called a "self-perpetuating" board. That means that the current directors are responsible for electing their replacements.

Who can be a member?

Members can be natural persons or they can be legal entities. Organizations including corporations, unincorporated associations, partnerships and other legal entities can serve as members.

A nonprofit can set forth the eligibility criteria for its members and any application process for new members in its certificate of incorporation or bylaws.

How many members are required?

Generally, nonprofits with a legal membership structure must have a minimum of three members. However, a nonprofit can have a single member if that member is an entity (like a corporation or a partnership) that is, itself, controlled by a minimum of three persons.

When would having a single corporate member make sense?

A sole corporate membership structure would be appropriate when there is a special relationship or affiliation between two organizations. The sole member structure can be used as a mechanism for control and to prevent the actions of a "runaway board."

How many member meetings are required each year?

Membership nonprofits must hold at least one membership meeting each year. Additional member meetings may be called, as needed. Minutes should be taken during the meetings. The organization must keep records of its member meetings just as it does for meetings of its board of directors and for committee meetings.

What other rights do members have?

In addition to the voting rights discussed above, anyone who has been a member for at least six months is entitled to examine certain records of the nonprofit like its documentation regarding membership meetings, its membership list, and certain financial statements.

Members can also bring lawsuits on behalf of the nonprofit, so long as 5% or more of all members agree.

What obligations do members have?

Members should be committed to participating in the annual members meeting and voting on key decisions. A certain minimum level of member presence at member meetings (called “quorum”) is required for the organization to be able to make binding decisions.

Members may also be required to pay dues. The amount of required dues (or the method for setting dues) should be set forth in the certificate of incorporation or bylaws.

What are some of the administrative requirements for a nonprofit that has a membership structure?

A membership nonprofit must maintain an accurate and complete list of its members, including each member’s name, address, and class of membership (if there are multiple classes).

Having an accurate membership list is critical for the organization to be able to give all members notice of meetings in the manner required by the NPCL and the organization’s bylaws. In addition, if there are ever disputes about who is eligible to vote, the organization may need to present the official membership list to resolve the disagreement. Similarly, an organization needs to know how many members it has to establish that sufficient members are present (“quorum”) to take binding action at membership meetings.

While it may not seem hard to do, keeping an accurate membership list can be challenging for nonprofits, thereby making it difficult and time consuming to take important corporate actions where member approval is needed. An organization should take this into account when contemplating establishing a membership structure that involves multiple individual members.

Are there other types of “members” that a nonprofit can have? What about “nominal members”?

Many nonprofits – especially arts and cultural institutions – have other, non-legal forms of “membership.” A classic example is a nonprofit art museum that offers different tiers of “membership” to supporters and donors. In this model, a supporter may pay or donate a certain amount and, in return, receive a monthly newsletter and free admission. However, this type of “member” does not vote to elect the museum’s board of directors. This is what we could consider a “nominal member” of the organization, rather than a legal member. Having “nominal members” or otherwise charging dues will not create a legal membership structure for the organization if the certificate of incorporation or bylaws don’t establish a membership structure.

Are there alternatives to membership structure for organizations that value community input?

Frequently, an organization’s goals can be achieved without having a legal membership structure. Organizations can create incentives to increase the involvement of a grassroots community network by involving them as nominal members who support the organization through dues and may have certain privileges, but who do not vote to elect the board of directors or have legal rights to initiate other corporate activities. Other nonprofits may establish secondary “advisory boards” or other stakeholder

committees to provide non-binding input and advice to the formal board and leadership of the organization.

Can organizations change from having a membership structure to a non-membership structure?

Yes. For more information, see our Legal Alert: [Changing From a Membership to a Non-Membership Structure](#).

This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact Rafi Stern at rstern@lawyersalliance.org or visit our website at www.lawyersalliance.org for further information. To become a client, visit www.lawyersalliance.org/becoming-a-client.

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