



## NY Nonprofit Bylaws: Initial Questionnaire

March 2021

**Name of Organization:**

Questions	Answers
<b>Board of Directors</b>	
<p>1. How many Directors will serve on the Board of Directors?</p> <p>Under New York Not-for-Profit Corporation Law (NPCL) §702(a), the Board must have at least 3 Directors.</p>	
<p>2. How will the Board of Directors be elected?</p>	
<p>3. Will Directors have term limits?</p>	
<p>4. Will the Board have any <i>ex officio</i> Directors, and if so, will they have voting rights?</p>	
<p>5. Will the organization's Executive Director serve as an <i>ex officio</i> Director, and if so, will he or she have voting rights?</p> <p>Note: Review conflicts of interest, compensation and reporting issues.</p>	



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<b>Questions</b>	<b>Answers</b>
6. What is the length of each term of service?  Under NPCL §703(b), a term can be up to 5 years.	
7. Will Director terms be staggered?  If so, how many classes of Directors will there be, how many Directors will be in each class and what will be the initial term for each class?	
8. What is the procedure for Director resignations, vacancies and removal for cause? What constitutes "cause"?	
<b>Board Meetings</b>	
1. How often will the Board of Directors meet and where will the meetings be held?	
2. If the time and place of annual and regular meetings are not fixed in the Bylaws, what shall constitute proper notice of a Board meeting?	
3. Who may call a special meeting?  Under NPCL §710(c), the President/Chairperson or another officer specified in the Bylaws or determined by the Board can call a special meeting. If the organization does not have Members, any Director may call a special meeting upon written demand of not less than one-fifth of the "entire Board".	



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<b>Questions</b>	<b>Answers</b>
<p>4. How many Directors constitute a quorum for purposes of the Board conducting business?</p> <p>Under NPCL §707, the default requirement for a quorum is a majority of the Board. However, the Bylaws or the Certificate of Incorporation may provide otherwise; provided that for a Board of 15 or less voting Directors, a quorum must be at least 1/3 of the Board; and for a Board with more than 15 voting Directors, quorum must be at least 5 voting Directors, plus 1 voting Director for every 10 voting Directors in excess of 15.</p>	
<p>5. Can Directors participate in Board or Committee meetings (and count for quorum) via telephone conference call or electronic video screen communication?</p>	
<p>6. What vote of the Board is required for Board action? Should certain circumstances require a greater vote of the Board?</p> <p>Under NPCL §708(d), with certain exceptions, the vote of a majority of the Directors present at a meeting is sufficient for Board action.</p>	
<p>7. Can the Board act by unanimous written consent?</p> <p>Under NPCL § 708(b), any action may be taken by unanimous written or electronic (email) consent. The resolution and the written consents thereto by the members of the Board or Committee shall be filed with the minutes of the proceedings of the Board or Committee.</p>	



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<b>Questions</b>	<b>Answers</b>
<b>Officers and Committees</b>	
<p>1. Which Officers shall the organization have (e.g., President, Vice-President(s), Secretary, Treasurer, etc.)?</p> <p>Under NPCL §713(a), a single person may hold more than one office, except that the President/Chairperson and the Secretary may not be the same person.</p> <p>Officers are generally elected or appointed by the Board.</p>	
<p>2. What authority will each Officer have?</p>	
<p>3. Will any salaried staff of the organization serve as an Officer?</p> <p>Under NPCL §713(f), no employee may serve as Chair of the Board, unless the Board approves by a two-thirds vote of the entire Board and contemporaneously documents in writing the basis for the Board approval. No employee may serve on the Audit Committee.</p> <p>Under NPCL §715(e), compensation of Officers requires the vote of a majority of the entire Board.</p> <p>Note: Review conflicts of interest, compensation and reporting issues.</p>	
<p>4. What is the length of the term for Officers?</p>	



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<b>Questions</b>	<b>Answers</b>
<p>5. What Committees of the Board (i.e., Executive Committee, Finance Committee, Audit Committee, Nominating Committee, etc.) will be established?</p> <p>Under NPCL §712(a), Committees of the Board must consist of at least 3 directors and may be delegated the authority of the Board. Generally, the Board appoints the members of committees.</p> <p>Note: The NPCL dictates certain requirements for the Audit Committee, including that all members be "Independent Directors" as defined in the NPCL.</p>	
<p>6. Who shall serve on each Committee of the Board, how shall committee members be appointed and for what term?</p>	
<p>7. What responsibilities will each Committee of the Board have?</p> <p>Under NPCL §712(a), committees cannot have certain authorities, such as the election or removal of officers and directors.</p>	
<p>8. Will the organization appoint Committees of the Corporation or advisory boards?</p> <p>Under NPCL §712(e), "Committees of the Corporation" may have members who are not Directors, but may not have authority to bind the Board.</p>	



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<b>Questions</b>	<b>Answers</b>
<b>Members</b>	
<p>1. Will the organization have Members or no Members? If the organization will have Members, see the Member questions below.</p> <p>Under NPCL §601(a), non-charitable corporations are required to have Members, but charitable corporations may be structured with or without Members.</p>	
<p>2. How will Membership be defined?</p>	
<p>3. What will constitute a quorum for purposes of Member meetings?</p> <p>Under NPCL §608, quorum is a majority of votes present at the meeting unless the Bylaws or Certificate of Incorporation provide for a lesser quorum. With certain exceptions, the minimum permitted for quorum is the number of Members entitled to cast 100 votes or 1/10 of the total number of votes, whichever is less.</p>	
<p>4. How will proxies be handled?</p> <p>Under NPCL §609(a), Members can vote by proxy (whereas Directors cannot).</p>	
<p>5. When and where will the annual meeting be held, or shall it be fixed by the Board?</p> <p>Under NPCL §603(b), the Members must meet annually for the election of Directors and the transaction of other business.</p>	
<p>6. Who may call for special meetings?</p>	



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<b>Questions</b>	<b>Answers</b>
Under NPCL §603(c), special meetings may be called by the Board or anyone authorized in the Bylaws or Certificate of Incorporation, including by written demand of 10% of the total number of votes eligible to be cast at the meeting.	
7. How will notice of meetings be handled?  Under NPCL §605(a), notice of meetings must be given in person by hand, by first class mail, by fax or by electronic mail, except under certain circumstances. Notice of meetings must be given not less than 10 days and not more than 50 days before the date of the meeting.	
8. Will there be different classes of Members and will some classes have limited voting rights?	
9. What decisions must be approved by the Members?	
<b>Miscellaneous</b>	
1. Does the organization elect to provide permissive or mandatory indemnification to Directors?	
2. Is the Board required to obtain Directors and Officers Liability Insurance? Recommended.	
3. What is the organization's fiscal year?	



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<b>Questions</b>	<b>Answers</b>
4. What is the principal office address of the organization? Where are the organization's books and records located?	
6. Who may approve amendments to the Bylaws and what type of vote is required for amendments to the Bylaws?  For corporations without Members, an affirmative vote of a majority of the Board present at any meeting is sufficient. But the Bylaws can set a higher requirement.	

The questions listed in this form and references to the New York Not-for-Profit Corporation Law (NPCL) are meant to provide a general overview to assist in the preparation of new or revised Bylaws. This form does not contain an exhaustive list of topics that may be covered in Bylaws, and it does not contain a complete explanation of the NPCL or other applicable laws.

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