

# Nonprofit Revitalization Act of 2013

## OVERVIEW

- ❖ On June 21, 2013 NYS Legislature enacts the first major reform of Nonprofit (NP) laws in 40 years (since 1970)
- ❖ On December 18, 2013 Governor Andrew Cuomo signed the Act into law
- ❖ Effective date of Act - July 1, 2014
- ❖ The Act effects important reforms in two major areas:
  1. Reducing unnecessary and outdated burdens on nonprofits such as by:
    - ❖ Raising thresholds for financial reporting (e.g. independent Financial Audit)
    - ❖ Allowing communications via electronic media (e.g. Board meetings & notices)
    - ❖ Allowing Attorney General (AG) to accept filings & reports in electronic format
    - ❖ Reducing incorporation delays by allowing correction of minor errors
    - ❖ Simplifying corporate Mergers & Dissolutions & increasing AG authority to approve transactions in lieu of court approval
  2. Enhancing nonprofit governance and oversight to prevent fraud and improve public trust along with increasing the NP's Board's responsibility with regard to external, independent audits, executive compensation and interested/related party transactions. More specifically the new Act:
    - ❖ Requires Boards (or Audit Committees) to be responsible for hiring the independent auditor & reviewing with them their findings.
    - ❖ Requires Boards to be responsible for accessing and approving transactions between their Organization and interested/related parties such as directors, officers, key employees and their relatives and ensure that all transactions are fair, reasonable and in the best interest of the NP.
    - ❖ Requires NPs to adopt written conflict of interest policies if not already in existence
    - ❖ Requires NPs with 20 or more employees and revenue in excess of \$1 million to adopt whistleblower policies that creates systems for employees and volunteers to report potential illegalities and prohibit retaliation for doing so
    - ❖ Prevents employees (e.g. CEO or ED) of the corporation from serving as chair of the board or hold any other title with similar responsibilities
    - ❖ Requires the Board's leadership to be independent and therefore no employee (e.g. CEO or President) of the corporation shall serve as chair of the board or hold any other title with similar responsibilities.
    - ❖ Grants the AG additional powers to challenge & investigate NFPs actions
    - ❖ Grants Directors & Officers the right to inspect a NP's Books if they suspect wrongdoing

**NOTE – Some of the provisions of the new Act effect ALL Nonprofit entities while others only effect one or more of the following: Charitable Corporations, Wholly Charitable Trusts, Charitable Corporations with annual revenues in excess of \$500,000 or \$1,000,000.**

**- TURN PAGE OVER FOR DEFINITIONS -**

## DEFINITIONS (as defined in Section 29 of the Act)

<b>Charitable Corporation</b>	Any corporation formed, or for the purposes of this chapter, deemed to be formed, for charitable purposes.
<b>Charitable Purposes</b>	The purpose stated in the certificate of incorporation that the corporation's purpose is charitable, educational, religious, scientific, literary, cultural or for the prevention of cruelty to children or animals.
<b>Director &amp; Board of Directors</b>	Any member of the governing board of a corporation, whether designated as director, trustee, manager, governor, or by any other title. The term "board" means "board of directors" or any other body constituting a "governing board".
<b>Entire Board</b>	The total number of directors entitled to vote which the corporation would have if there were no vacancies. If the by-laws of the corporation provide that the board shall consist of a fixed number of directors, then the "entire board" shall consist of that number of directors. If the by-laws of any corporation provide that the board may consist of a range between a minimum and maximum number of directors, then the "entire board" shall consist of the number of directors within such range that were elected as of the most recently held election of directors.
<b>Non-Charitable Corporation</b>	Any corporation formed under this chapter, other than a charitable corporation, including but not limited to one formed for any one or more of the following non-pecuniary purposes: civic, patriotic, political, social, fraternal, athletic, agricultural, horticultural, or animal husbandry, or for the purpose of operating a professional, commercial, industrial, trade or service association.
<b>Affiliate</b>	Any entity controlled by, in control of, or under common control with Nonprofit (NP).
<b>Independent Auditor</b>	Any Certified Public Accountant performing the audit of the financial statement of a corporation required by Subdivision 1 of Section 172b of the Executive Law.
<b>Independent Director</b>	Someone who currently or in the last 3 years has not been an employee of NP or their affiliate or who's relative currently or in the last 3 years is not a key employee of NP or their affiliate. Has not received (or had a relative receive) in the last 3 years >\$10,000 in direct compensation from NP. Is not a current employee of or have a substantial financial interest in (or had a relative that is a current officer of or has a substantial financial interest in) any entity that made payments to, or received payments from the NP or any affiliate, for property or services in any of the last 3 years in an amount that exceeded the lesser of \$25,000 or 2% of the entity's consolidated gross revenue.
<b>Relative</b>	An individual's spouse, ancestors, brothers and sisters (whether whole or half-blood), children (whether natural or adopted, grandchildren, great-grandchildren, spouses of brothers, sisters, children, grandchildren and great-grandchildren, or domestic partner as defined in section 2924(a) of public health law.
<b>Related Party</b>	Any director, officer or key employee of the organization or an affiliate; any relative of such individual; any entity in which any such individual or relative has a 35% or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of 5%.
<b>Related Party Transaction</b>	Any transaction, agreement or any other arrangement in which a related party has a financial interest and in which the corporation or any affiliate of the corporation is a participant.
<b>Key Employee</b>	Any person who is in a position to exercise substantial influence over the affairs of the organization as referred in the U.S. Internal Revenue Code.