

New York Legislature Passes Further Updates to Not-for-Profit Corporation Law

On June 19, 2015, the New York Legislature passed two bills (the "Bills") updating the New York Not-for-Profit Corporation Law (the "N-PCL"). The latest changes add new restrictions to the already challenging rules regarding related party transactions and independent director approvals established by the Non-Profit Revitalization Act of 2013 (the "NPRA"). The changes also clarify ambiguities brought about by the NPRA and correct technical issues. A summary of the key changes is below:

- **Related Party Definition.** The Bills expand the universe of persons subject to the NPRA's restrictive rules regarding related party transactions by revising the definition of "related party" to include anyone who exercises the powers of directors, officers or key employees over the affairs of the corporation -- even if they do not hold those titles. Once the Bills are signed by the Governor, organizations should consider updating their policies to expand definitions to include this change.
- **Independent Director Definition.** The Bills restrict the ability of any individual who is associated with the corporation's outside auditor, or has worked on the corporation's audit any time during the last three years, from being considered an "independent director" and participating in a not-for-profit corporation's audit functions.

Additionally, the Bills clarify that an individual is still eligible to be an independent director if he or she pays fees to the corporation for services that it provides to the public in the ordinary course of business. For example, a hospital director who ends up being treated at the hospital could still be independent.

Organizations should update their policies and procedures to reflect the changes to this definition once the Bills are signed into law.

- **Presence at Meetings.** The Bills clarify that a director will be considered "present" at a meeting for purposes of a quorum, regardless of whether such director has recused himself or herself from the deliberation or voting on a specific matter because of a potential conflict of interest or related party transaction.
- **Distribution of Whistleblower Policy.** Echoing recent guidance released by the Attorney General's Office, the Bills state that a corporation may now post its Whistleblower Policy on the corporation's website or in a conspicuous location at the corporation's offices to comply with the distribution requirements under the N-PCL.

If you have any questions regarding the above developments, please contact any member of the Not-for-Profit Organizations Practice Group at (585) 232-6500. ■

PRACTICE LEADER

Joseph G. Casion
jcasion@hselaw.com

PARTNERS

Theresa A. Conroy
tconroy@hselaw.com

John G. Horn
jhorn@hselaw.com

Ross P. Lanzafame
rlanzafame@hselaw.com

David M. Lascell
dlascell@hselaw.com

Anthony D. Mancinelli
amancinelli@hselaw.com

Raymond P. Miller
rmiller@hselaw.com

Richard T. Yarmel
ryarmel@hselaw.com

Craig J. Zicari
czicari@hselaw.com

ASSOCIATES

Joshua E. Gewolb
jgewolb@hselaw.com

Michael Roche
mroche@hselaw.com

Rayza Santiago
rsantiago@hselaw.com

Mark F. Schuber
mschuber@hselaw.com

Edward H. Townsend
etownsend@hselaw.com

W. Derek Wilson
dwilson@hselaw.com



Harter Secrest & Emery LLP

ATTORNEYS AND COUNSELORS

ROCHESTER

1600 Bausch & Lomb Place
Rochester, NY 14604-2711
585.232.6500

BUFFALO

Twelve Fountain Plaza, Suite 400
Buffalo, NY 14202-2293
716.853.1616

ALBANY

111 Washington Ave., Suite 303
Albany, NY 12210-2209
518.434.4377

CORNING

8 Denison Parkway East, Suite 403
Corning, New York 14830-2638
607.936.1042

NEW YORK

733 Third Avenue
New York, New York 10017
646.790.5884