

CLIENT UPDATE

NONPROFIT REVITALIZATION ACT OF 2013

HEADQUARTERS  
32 Old Slip  
New York, NY 10005  
800.221.5830

[WWW.CRYSTALCO.COM](http://WWW.CRYSTALCO.COM)

The intent of the law is to protect nonprofits and the missions that benefit from their work

A new act passed by the New York State Legislature goes into effect on July 1, 2014 and is intended to ease burdens on nonprofits while enhancing governance and oversight by imposing new requirements.

The Nonprofit Revitalization Act of 2013 (The Act) was passed by the New York Legislature in June of 2013 and was signed into law by Governor Cuomo on December 18, 2013. This new legislation, which goes into effect on July 1, 2014, has a dual purpose of easing some burdens on nonprofits while also enhancing governance and oversight by imposing new requirements. While the simplification of certain processes will facilitate implicated transactions, some crucial elements of the new law will impose new requirements on nonprofits operating in New York. Therefore, attention must be given to new obligations pertaining to by-laws, conflict of interest and whistleblower policies. The intent of the law is to protect nonprofits and the missions that benefit from their work through enhanced best practices in nonprofit governance, reducing the potential for fraud and other abuses. While this article discusses some important highlights of the Act, further elements of the Act will be found in a close review of the Act itself.

Key governance issues (some changes, some new requirements) are noted below:

- : **Audited Financial Statements** – Nonprofits with more than \$500,000 in annual revenue will now be required to file audited financial statements. Additional obligations will be imposed on nonprofits with revenues above \$1 million. These obligations will include, but are not limited to: greater audit review and scrutiny by the board and/or audit committee, discussion of audit weaknesses, and evaluation of accounting and reporting.
- : **Compensation** – The new law will prohibit impacted parties from voting on their own compensation.

It is crucial for New York nonprofits to adhere to these new requirements

- : **Related Party Transactions** – The Act tightens restrictions pertaining to related parties (which are generally defined by an ownership interest of greater than 35% by an officer, director or trustee in a third-party entity). The new law moves the bar from favorable presumptions to a stricter and more careful review of related party transactions. New procedures will emphasize disclosure and determinations of fairness along with barring the interested party from participating in the deliberations. Failure to adhere to these procedures will permit the Attorney General to void or rescind the transaction.
- : **Conflicts of Interest** – All nonprofits will be required to enact a conflict of interest policy. Requirements include disclosure of corporate relationships and transactions by directors, officers, trustees, and key employees prior to service.
- : **Whistleblower Policy** – For nonprofits with over \$1 million in revenue and more than 20 employees, a formal whistleblower policy will be required. The policy must state that employee whistleblowers will not be subject to intimidation, harassment, or adverse employment actions.
- : **Jurisdiction** – The Act will subject all directors, officers, and key employees of New York nonprofits to the jurisdiction of the Supreme Court of New York and the Attorney General. This would include individuals who are otherwise not domiciled in the State of New York but serve a New York nonprofit.

An additional component of the Revitalization Act focuses on the facilitation of doing business and the reduction of some burdens. This facet of the Act includes the following:

- : **Electronic Delivery/Videoconference** – Communications including notices, consents and waivers are now permitted via electronic delivery. Board members may participate in meetings via video screen communication or conference call.
- : **Real Estate Transactions** – As respects the sale, purchase, or lease of property, voting requirements have been softened to allow a majority vote versus the prior two-thirds voting to approve a transaction. This stipulation does not apply to the sale of substantially all or all of the nonprofit's assets.
- : **Simplification of Purpose in Certificate of Incorporation** – The Act amends current law to provide that while a nonprofit must still disclose its primary purpose, it no longer needs to disclose how that purpose will be achieved.
- : **Judicial Approval** – The Act revises the judicial approval for disposition of substantially all or all the nonprofit's assets by permitting a petition to the Attorney General.

The Act streamlines corporate procedures, while at the same time heightens and imposes important obligations. It is crucial for New York nonprofits to adhere to these new requirements, paying particular attention to new audit procedures, conflict of interest and whistleblower policies, and certain transactions. While the intent of the Act is to facilitate doing business, another byproduct of the Act is heightened scrutiny on nonprofits and their directors, officers, employees, business partners, and supporters. Therefore, a thorough review of the Act followed by strict adherence to it will be necessary for New York nonprofits.

This document is an insurance-related summary prepared for your convenience. It is intended to neither replace or amend any particular insurance policy nor does it constitute a contract, legal advice or tax advice.

Crystal & Company is a leading strategic risk and insurance advisor, addressing clients' risk management, insurance brokerage, and employee benefits consulting needs. The firm is comprised of more than 400 professionals, each distinguished by their technical expertise and industry-specific knowledge, and driven by their passion for client service. Crystal & Company is headquartered in New York with 10 regional offices throughout the country, placing over \$1 billion in premiums annually in the global insurance marketplace. Established in 1933, the company has sustained its independence through 80 years and three generations of Crystal family ownership and management.

Crystal & Company is a member of Brokerslink, a global alliance of leading independent insurance brokerages spanning more than 80 countries and 300 cities across the world.