

**THE NONPROFIT REVITALIZATION ACT**

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**CORPORATE GOVERNANCE CHECKLIST**

**FOR**

**DISTRICT MANAGEMENT ASSOCIATIONS**

**Prepared by Lawyers Alliance for New York**

**in partnership with the New York City Department of Small Business Services**

**Current as of 11/7/16**

<i>Document</i>	<i>Area of Change</i>	<i>Explanation</i>	<i>Action Item</i>	<i>Must Action be taken?</i>	
				Yes	No
<b>Bylaws</b>				Yes	No
	<b>New definition of "entire board"</b>	<ul style="list-style-type: none"> <li>•Entire board means the total number of directors entitled to vote if there were no vacancies.</li> <li>•If the bylaws provide for a fixed number of directors, then that number shall be the entire board.</li> <li>•If the bylaws provide for a range of directors, then the entire board shall be the number of directors that were elected as of the most recent elections.<sup>1</sup></li> </ul>	<ul style="list-style-type: none"> <li>•Review governance practices to determine the number of directors that constitutes the “entire board.”</li> <li>•Recommend a range rather than a fixed number.</li> </ul>	Yes	No
	<b>Real property transactions</b>	<ul style="list-style-type: none"> <li>• Majority of directors or a majority of an authorized committee may authorize purchase, sale, mortgage, lease, exchange or other disposition of real property.</li> </ul>	<ul style="list-style-type: none"> <li>•Prior law required 2/3 of the entire board to approve any purchase, sale, mortgage, lease, exchange or other disposition of real property. If that requirement is memorialized in bylaws it needs to be revised.</li> </ul>	Yes	No
	<b>Authorize notice and waiver of notice of Board</b>	<ul style="list-style-type: none"> <li>•Notice of a meeting of directors or members may be sent by fax or e-mail.<sup>2</sup></li> <li>•If notice of a meeting of members is provided</li> </ul>	<ul style="list-style-type: none"> <li>•If existing bylaws list the accepted means of</li> </ul>	Yes	No

<sup>1</sup> Nonprofit Revitalization Act § 29(6-A), amending NPCL § 102

<sup>2</sup> Nonprofit Revitalization Act § 62, amending NPCL § 605

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	<b>(and membership meetings) by email</b>	by publication, the district management association must also post notice of the meeting on its website. <sup>3</sup> ●Waiver of notice of a meeting of directors or members may be written or electronic. <sup>4</sup>	communication; amend to include fax and email.		
	<b>Email authorization for appointment of proxy votes for members (</b>	●A member may authorize another person to act as a proxy by e-mail. ●Telegram and cablegram are no longer allowed. <sup>5</sup>	●If existing bylaws list the accepted means of communication; amend to reflect current law.	Yes	No
	<b>Board meeting participation via videoconference</b>	●Unless otherwise restricted in the certificate of incorporation or bylaws board members may participate via video screen. <sup>6</sup>	●Review bylaws and certificate of incorporation to ensure there are no limitations on mode of participation.	Yes	No
	<b>Eliminate distinction between standing and special committees</b>	●Committees of the board can bind the district management association. ●All other committees are committees of the district management association and lack the authority to bind the district management association. <sup>7</sup>	●Eliminate references to special and standing committees.	Yes	No
	<b>Audit Committee composed of independent</b>	●Any district management association that is required to file an independent CPA's audit report with the Attorney General (AG) must	●Determine that bylaws authorize creation of Audit	Yes	No

<sup>3</sup> Id.

<sup>4</sup> Nonprofit Revitalization Act § 63, amending NPCL § 606

<sup>5</sup> Nonprofit Revitalization Act § 64, amending NPCL § 609

<sup>6</sup> Non--profit Revitalization Act § 65, amending NPCL § 614

<sup>7</sup> Nonprofit Revitalization Act § 70, amending NPCL § 712

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	<b>directors</b>	<p>have the board or a designated audit committee comprised solely of independent directors oversee the district management association’s accounting and financial reporting processes and audit.<sup>8</sup></p> <ul style="list-style-type: none"> <li>●An “independent director” is a person who has not been within the last three years (i) an employee of the district management association or an affiliate and does not have a relative who has been a key employee; (ii) currently is not an employee; (iii) does not have a relative who is an officer; and (iv) does not have a substantial financial interest or a relative with a substantial financial interest in the district management association or an affiliate.<sup>9</sup></li> <li>●The board or committee must retain or renew the auditor and review the results and any related management letter with the auditor.<sup>10</sup></li> <li>●Any district management association that had in the prior year or expects to have in the current year annual revenue over \$1 million, has additional duties.<sup>11</sup></li> </ul>	<p>Committee if oversight will not be provided by the entire board.</p> <ul style="list-style-type: none"> <li>●Recommend adoption of Audit Committee charter specifying responsibilities.</li> </ul>	

<sup>8</sup> Nonprofit Revitalization Act §72, adding NPCL § 712-a

<sup>9</sup> Nonprofit Revitalization Act § 29(21), amending NPCL § 102

<sup>10</sup> Nonprofit Revitalization Act §72, adding NPCL § 712-a

<sup>11</sup> Id.

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	<b>Board Chair cannot be an employee</b>	<ul style="list-style-type: none"> <li>●No employee of the district management association may serve as board chair.<sup>12</sup></li> </ul>	<ul style="list-style-type: none"> <li>●Update description of Board Chair in bylaws to specify that an employee cannot hold the position.</li> </ul>	Yes	No
<b>Conflicts of Interest</b>				Yes	No
	<b>Related Party Transactions</b>	<ul style="list-style-type: none"> <li>●A district management association may not enter into a related party transaction unless the board has determined that the transaction is fair, reasonable and in the district management association’s best interests.</li> <li>●Any director, officer or key employee with an interest in a related party transaction must disclose the material facts to the board or an authorized committee.</li> <li>●If a related party has a substantial financial interest in a transaction, the board or an authorized committee shall: <ol style="list-style-type: none"> <li>1. consider alternative transactions to the extent available before entering into the transaction,</li> <li>2. approve the transaction by at least a majority vote of the directors or committee members present,</li> <li>3. Contemporaneously document in writing the basis for approval.</li> </ol> </li> <li>●A related party may not participate in deliberations or voting regarding a related party</li> </ul>	<ul style="list-style-type: none"> <li>●The district management association should develop procedure for identifying related party transactions and conducting review.</li> </ul>	Yes	No

<sup>12</sup> Nonprofit Revitalization Act §§ 73, 132, amending NPCL § 713

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		transaction, although the board or a committee may request that a related party be present to provide information before the deliberations or voting begin. <sup>13</sup>			
	<b>Executive Compensation</b>	<ul style="list-style-type: none"> <li>● No member, director or officer who may benefit from compensation from the district management association may be present at or participate in any board or committee deliberation or vote concerning the compensation.</li> <li>● The board or an authorized committee may request that a person benefiting from such compensation provide information or answer questions at a meeting prior to the start of the deliberations or voting.<sup>14</sup></li> </ul>	<ul style="list-style-type: none"> <li>● The district management association should develop procedures to approve compensation without the participation of interested parties.</li> </ul>	Yes	No
	<b>Conflict of Interest Policy</b>	<ul style="list-style-type: none"> <li>● The district management association shall adopt a conflict of interest policy including, at a minimum, the following:               <ol style="list-style-type: none"> <li>1. a definition of conflict of interest</li> <li>2. the procedure for disclosing a conflict to the board or an authorized committee</li> <li>3. a requirement that a person with a conflict not be present at or participate in board or committee deliberations or vote on the matter giving rise to the conflict</li> <li>4. a prohibition against any attempt by</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>● Conflict of interest policy must be adopted.</li> <li>● A district management association with existing conflict policies must review them for compliance with NPCL.</li> <li>● Any district management association that has</li> </ul>	Yes	No

<sup>13</sup> Nonprofit Revitalization Act § 74, amending NPCL § 715

<sup>14</sup> Nonprofit Revitalization Act § 58, amending NPCL § 515

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		<p>the person with a conflict to improperly influence the deliberation or voting on the matter</p> <ol style="list-style-type: none"> <li>5. a requirement that the existence and resolution of the conflict be documented, including in the minutes of any meeting at which the conflict was discussed or voted on</li> <li>6. procedures for disclosing, addressing, and documenting related party transactions.</li> <li>7. a requirement that before a director is initially elected, and annually thereafter, the director must complete, sign and submit to the board secretary a written statement identifying: a) any entity of which the director is an officer, director, trustee, member, owner, or employee, and b) any transaction in which the district management association is a participant and in which the director might have a conflicting interest. The secretary must provide all statements to the audit committee chair or board chair.<sup>15</sup></li> </ol>	<p>adopted a conflict of interest policy required by federal, state or local laws which is substantially consistent with the conflict of interest policy required by the NPCL is deemed in compliance.</p> <ul style="list-style-type: none"> <li>•Disclosure statement should be completed by new directors and annually by current board members.</li> </ul>	

<sup>15</sup> Nonprofit Revitalization Act § 75, adding NPCL § 715-a

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<b>Employment related issues</b>					
	<b>Whistleblower Policy</b>	<ul style="list-style-type: none"> <li>● Any district management association with 20 or more employees and annual revenue in the prior fiscal year in excess of \$1 million must adopt a whistleblower policy.</li> <li>● The policy must provide that no director, officer or employee who in good faith reports any action or suspected action by or within the district management association that is illegal, fraudulent or in violation of adopted corporate policy shall suffer intimidation, harassment, discrimination other retaliation or adverse employment consequences.</li> <li>● The policy must contain the following provisions:               <ol style="list-style-type: none"> <li>1. procedures for reporting violations of laws or corporate policies and preserving the confidentiality of reported information</li> <li>2. a requirement that an employee, officer or director be designated to administer the policy and to report to the audit committee, other committee of independent directors, or the board</li> </ol> <p style="margin-left: 20px;">a requirement that a copy of the policy be distributed to all directors, officers and employees</p> </li> </ul>	<ul style="list-style-type: none"> <li>● All district management associations that meet threshold must adopt whistleblower policies.</li> <li>● All district management associations with existing whistleblower policies must review for compliance with NPCL.</li> <li>● All district management associations that have adopted whistleblower policies required by federal, state or local laws which are substantially consistent with the conflict of interest policy required by the NPCL are</li> </ul>	Yes	No

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		<ul style="list-style-type: none"> <li>● A district management association that has already adopted a whistleblower policy pursuant to federal, state or local laws which is substantially consistent with the whistleblower policy required by the NPCL is deemed in compliance.<sup>16</sup></li> </ul>	deemed in compliance.		
<b>Fiscal Policies</b>					
	<b>Updated audit thresholds</b>	<ul style="list-style-type: none"> <li>● The annual gross revenue that triggers the obligation to obtain and file with the AG an audit by an independent CPA is currently \$500,000, increasing to \$750,000 as of July 1, 2017, and to \$1 million as of July 1, 2021.<sup>17</sup></li> <li>● The annual gross revenue that triggers the obligation to obtain and file with the AG a review report by an independent CPA is currently \$250,000. However, if upon review of that report the AG determines that the district management association should obtain an audit report, it must do so within 120 days.<sup>18</sup></li> </ul>	<ul style="list-style-type: none"> <li>● A district management association's fiscal policies should be updated to reflect these audit threshold changes.</li> <li>● Any district management association below thresholds should consider CPA audit if desirable for other reasons (e.g. funding requirements).</li> </ul>	Yes	No

<sup>16</sup> Nonprofit Revitalization Act § 75, adding NPCL § 715-b

<sup>17</sup> Nonprofit Revitalization Act §§ 3, 3-a, 3-b, 132, amending Exec. Law § 172-b

<sup>18</sup> Nonprofit Revitalization Act §§ 3, 132, amending Exec. Law § 172-b