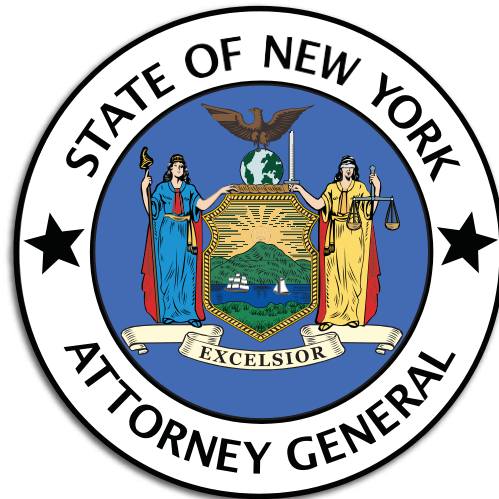


Guidance for members of New York not-for-profit corporations conducting virtual meetings

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**Guidance for members of not-for-profit New York corporations
conducting virtual meetings**

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Introduction

The Office of the New York State Attorney General prepared this guidance to assist your New York not-for-profit corporation in conducting membership meetings electronically. This guidance is also for your attorneys, advisors, directors, and members.

According to Article 6 of the Not-for-Profit Corporation Law (N-PCL), members of New York not-for-profit corporations may hold meetings electronically:

- Section 603(a): meetings of members
- Section 603(c): special meetings of members

This guidance is not intended to be a substitute for legal advice. If you have questions about the laws that apply your not-for-profit corporation, or the responsibilities of your officers and directors, consult your attorney. The New York State Bar Association offers a lawyer-referral service for the public at <https://nysba.org/new-york-state-bar-association-lawyer-referral-service/>. In addition, some organizations provide legal services to nonprofit organizations at low or no cost.

You can find this guidance and other information of interest to not-for-profit corporations at: <https://ag.ny.gov/libraries-documents/publications#charitablegive>

What your electronic meetings must accomplish

N-PCL section 603(a) describes requirements for meetings of members, whether these are “conducted partially or solely by means of electronic communications.” Your board must adopt procedures to do all of the following:

- verify that each person participating electronically is a member or a proxy of a member
- provide each member participating electronically with a reasonable opportunity to participate in the meeting (includes proposing, objecting to, and voting upon a specific action to be taken by the members; and seeing, reading, or hearing the proceedings of the meeting at the same time as those proceedings)
- record and maintain a record of any votes or other actions taken by electronic communication at the meeting

Conducting annual or special membership meetings electronically

This section applies if your not-for-profit corporation is considering conducting annual or special membership meetings entirely or partially through virtual means. In addition, review your certificates of incorporation and bylaws: These may already authorize and include other requirements for conducting virtual meetings.

Here are some best practices to consider to ensure that your members will be able to hear, be heard, participate, and vote during membership meetings. Specific procedures for your organization will depend on many factors, such as:

- number of members entitled to vote
- specific notice periods required by your certificate of incorporation or by-laws
- whether the meeting is an annual or special meeting
- issues to vote on

Not all of these best practices will be appropriate for every organization or meeting.

Before the meeting

- Identify an accessible platform for meeting. Provide all members with clear, easy-to-follow instructions for accessing the platform. Note: A video conference may be more conducive to member participation than a conference call. There are many commercial options available, some of which are free.
- Give members multiple means to access the meeting. For example, provide the option to dial into a video conference by phone in case they cannot access it by video.
- Confirm the names of members and those entitled to vote. Review your bylaws and Article 6 of the N-PCL to determine if any specific qualifications apply for membership or entitlement to vote. The applicable sections of Article 6 are:
 - section 607: list or record of members at meetings (members are entitled to receive such a list)
 - section 611: qualifications of voters, fixing record date to determine eligibility to vote, voting entitlement
 - section 612: limitations of right to vote
 - section 616: voting by class of members
- Provide the members with the information required by your bylaws concerning candidates for director and officer positions.

- Make sure your organization has appropriate contact information (e.g., street address, phone numbers, email addresses) for all members.
- Prepare and disseminate a notice stating the date and time of the meeting, the electronic form of the meeting, instructions on how to log on or call-in, and the purpose of the meeting (N-PCL section 605). Consider providing members with the agenda, even if not required. Note: N-PCL section 609 (proxies) permits voting by proxy; section 609(b) expressly allows proxies to be given by email.
- Test the system you will use for the virtual meeting to make sure it is in working order.
- Determine the method for taking attendance.
- Determine the method for counting votes.
- Arrange to take and maintain minutes of the meeting.
- Appoint someone to manage the meeting to make sure that the meeting adheres to the agenda and allows an opportunity for attendees to participate. Some virtual meeting programs have a feature that allows people to “raise their hands.”
- Appoint someone to help people who are having trouble joining the meeting. Provide a separate phone number to allow reporting and resolving problems in real time.
- Maintain a record of calls or complaints about logging-in.

During the meeting

- Confirm membership and record of attendance.
- Determine if the meeting meets the requirements for a quorum. Note: Review your organization’s certificates of incorporation, bylaws, and N-PCL sections 608 (quorum at meeting of members) and 615 (greater requirement as to quorum and vote of members) to determine the number of members needed to reach a quorum.
- Ensure that participants can hear and see, if applicable, the proceedings. Ensure everyone can communicate to the full group in real time.
- Set time limits for presentations and discussions.

- Give members the opportunity to communicate, consistent with your organization's bylaws.
- Give members the opportunity to bring motions or nominations from the floor, consistent with your organization's by-laws.
- Consider challenges to nominations, voting eligibility, and requirements, consistent with your organization's bylaws and N-PCL § 603.
- Count votes.
- Maintain a record of votes as soon as the vote has been taken.
- Record minutes during the meeting.

After the meeting

- Circulate draft minutes.
- Give member-attendees the opportunity to suggest corrections or additions to minutes.
- Circulate final minutes.
- Obtain member approval of minutes at the next meeting, if that is standard practice for your organization.

Other considerations

Some sections of the N-PCL require members to vote to approve significant transactions by not-for-profit corporations. These include sales of property, mergers, dissolution, and amendments of certificates. When conducting such votes, you may have to provide additional information and material, such as by distributing detailed documentation or discussing the issues involved.

In addition, some boards of directors must be elected by the members. If this is the case, to ensure that your members can make informed decisions, ensure that they have all the necessary information and an opportunity to ask questions. See guidance on transactions by not-for-profit and religious corporations at https://ag.ny.gov/sites/default/files/regulatory-documents/religious_corporations_disposition_assets.pdf.

N-PCL section 708 (action by the board) explicitly permits boards of not-for-profit corporations to conduct board meetings virtually, **unless such action is prohibited by their certificate of incorporation or bylaws**. Consult your organizations' certificates of incorporation and bylaws to determine whether they bar virtual meetings. If so, the board may be able to amend the situation with the board's unanimous written consent. However:

- Your members' approval may be required to amend the **bylaws** (N-PCL section 602). If so, you must submit the proposed amendment to the membership for approval before it can take effect.
- Your organization's **certificate of incorporation** may forbid virtual board meetings. If this is the case, you must file an amended certificate of incorporation with the Department of State (N-PCL section 803).

How the Charities Bureau can help

Send questions, including those concerning registration and filing by charities, to our **Customer Service Unit** at charities.bureau@ag.ny.gov.

Messages will be referred to the appropriate staff member for response.

If your organization is seeking approval of a transaction, such as the sale of property, a merger, dissolution, or amendment of a certificate of incorporation to change purposes or powers, please consult our guidance for submitting those applications at <https://ag.ny.gov/libraries-documents/publications#charitablegive>.

Send complaints about charities to charities.complaints@ag.ny.gov

Additional guidance for charities, including "Right from the start: Responsibilities of directors of not-for-profit corporations," is available at <https://ag.ny.gov/sites/default/files/publications/Right-From-the-Start.pdf>.