

Not-for-Profit Incorporation Guide

Introduction

Not-for-profit corporations are formed in New York State pursuant to the [Not-for-Profit Corporation Law](#) (“NPCL”). NPCL §201 provides various purpose categories for not-for-profit corporations. In all instances not-for-profit corporations may not be formed for profit or financial gain. Additionally, no corporate assets, income or profit may be distributed to the corporation’s members, directors or officers unless permitted by the NPCL.

Forming a Not-for-Profit Corporation

Domestic not-for-profit corporations are formed by filing a [Certificate of Incorporation](#) with the Department of State. Foreign not-for-profit corporations, which are formed under the laws of another state or country, may apply for authority to conduct activities in New York State by filing an [Application for Authority](#) with the Department of State.

The Department of State’s Certificate of Incorporation form meets all the basic requirements of the NPCL. In the alternative, you may draft your own Certificate of Incorporation or use forms available from legal stationery stores.

The completed Certificate of Incorporation, together with the \$75 filing fee (payable to the Department of State) must be submitted for filing to the Department of State, Division of Corporations, State Records and Uniform Commercial Code, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231. A [certified copy](#) of the Certificate of Incorporation may be requested for an additional fee of \$10. [Expedited Handling Services](#) are also available for an additional charge. Upon the filing of the Certificate of Incorporation by the Department of State, an official filing receipt is issued to the filer of the Certificate of Incorporation.

Instructions for Completing the Department of State’s [Certificate of Incorporation Form](#)

These instructions have been prepared to assist you in the process of incorporating a not-for-profit corporation pursuant to the NPCL. This material should be used as a guide. Due to the complexity of the legal and tax issues related to not-for-profit corporations it is recommended that an attorney and accountant of your choice be consulted prior to incorporating a not-for-profit corporation. The Department of State cannot provide you with legal advice.

Paragraph First and Title Clauses - Corporation Name

Enter the name of the corporation in the certificate’s title at the top of the form. Also enter the name of the corporation in Paragraph First and in the title of the certificate on the last page of the form. (If completing this form online, entering the name in the certificate’s title will automatically populate Paragraph First and the title on the last page of the form with the corporation’s name). The name of the corporation must be exactly the same in all three places, including spacing and punctuation.

Choosing the Name of the Corporation

The Department of State reviews a proposed corporate name for conformity with applicable statutes and the rules and regulations of the Department. Note the following when choosing the name of the corporation:

- **Name Distinguishability**

The name of the corporation must be distinguishable from the names of other corporations, limited liability companies and limited partnerships already on file with the Department of State. (See NPCL §301(a)(2)) The rules and regulations of the Department of State ([19 NYCRR Part 156](#)) provide the standards for determining whether a corporate name is distinguishable.

- **Corporate Indicator**

The name of the corporation must contain one of the following words unless an exemption applies: “Incorporated”, “Corporation” or “Limited”, or one of the following abbreviations: “Inc.”, “Corp.” or “Ltd.” (See NPCL §301(a)(1))

- **Name Restrictions**

Certain [words and phrases](#) may not be used in the name of a corporation. Other words and phrases when used in the name of a corporation may require the written approval from other State agencies or offices. The written approval must be attached to the Certificate of Incorporation when presented for filing to the Department of State. (See NPCL §§301 and 404)

- **Name Availability**

To determine whether a proposed corporation name is available prior to filing the Certificate of Incorporation with the Department of State, you may submit a [Name Availability Inquiry](#) or reserve a name by filing an [Application for Reservation of Name](#). Note that a finding that the name is available or the filing of an Application for Reservation of Name is not a final approval of the name by the Department of State. A final determination regarding the acceptability of a corporate name is not made until the Certificate of Incorporation, including the purposes for which the corporation is formed, is reviewed and filed by the Department of State. No expenditure or other commitment should be made in reliance upon the name availability inquiry or the filing of an Application for Reservation of Name.

Paragraph Second - Not-for-Profit Corporation Definition

The Certificate of Incorporation must contain a statement that the corporation is a corporation as defined in NPCL §102(a)(5). Paragraph Second of the Certificate of Incorporation form contains the required language.

Paragraph Third - Corporation’s Purpose or Purposes

Part A The Certificate of Incorporation must include the purpose or purposes for which the corporation is being formed. A sufficient purpose paragraph will allow anyone to determine why the corporation has been formed and what it will do to accomplish its goal.

Part B A Certificate of Incorporation which includes purposes of a Type C corporation must also include a separate statement identifying the lawful public or quasi-public objective which each business purpose of the corporation will achieve. (See Paragraph Fourth - Type.)

Drafting Tips for the Corporation's Purpose or Purposes

- 1. Purpose Drafting Questions.** A well-drafted purpose paragraph will answer the following three (3) questions:
 - **Why is the corporation being formed or what does the corporation intend to accomplish?**
 - **Who will benefit from the corporation's accomplishments?**
 - **How will the corporation achieve its purpose?**
- 2. Examples of Acceptable Purposes:** The actual Purpose Drafting Questions should not be included in the corporation's purpose paragraph.

Example 1:

"The purpose for which the corporation is formed is to be a homeowners association for the owners of homes in the Sunny Estates development located in the City of Buffalo. The corporation will maintain private roadways and common areas in said development for the benefit of its members."

The above example answers the Purpose Drafting Questions as follows:

Why is the corporation being formed or what does the corporation intend to accomplish?

To serve as a homeowners association.

Who will directly or indirectly benefit from its accomplishments?

The owners of homes in the Sunny Estates development located in the City of Buffalo.

How will the corporation achieve its purposes?

By maintaining private roadways and common areas in said development.

The above example of purposes would classify the corporation as Type A. (See Paragraph Fourth-Type of these instructions)

Example 2:

"The corporation is formed for the charitable purpose of aiding persons living in western New York who are in need of food, clothing, and shelter by providing such individuals with food, clothes and referrals to organizations that provide housing."

The above example answers the Purpose Drafting Questions as follow:

Why is the corporation being formed or what does the corporation intend to accomplish?

To aid individuals in need of food, clothing and shelter.

Who will directly or indirectly benefit from its accomplishments?

Individuals in western New York in need of food, clothing and shelter.

How will the corporation achieve its purposes?

By providing food, clothes and referrals about housing.

The above example of purposes would classify the corporation as Type B. (See Paragraph Fourth–Type of these instructions)

Example 3:

“The corporation is formed for the purpose of owning, operating and maintaining housing for low and moderate income individuals and families in Albany, New York. The lawful public or quasi-public objective which each business purpose will achieve is providing housing to individuals and families who could otherwise not afford decent housing.”

The above example answers the Purpose Drafting Questions as follows:

Why is the corporation being formed or what does the corporation intend to accomplish?

To provide housing to individuals and families who could otherwise not afford decent housing.

Who will directly or indirectly benefit from its accomplishments?

Low and moderate income individuals and families.

How will the corporation achieve its purposes?

By owning, operating and maintaining housing in Albany, New York.

The above example of purposes would classify the corporation as Type C. (See Paragraph Fourth-Type of these instructions)

3. Avoid the following common errors:

- Do not use IRS tax exempt language as a description of purposes.
- Do not use the phrase “including but not limited to” when describing the purposes as this implies that there are other unstated purposes.
- Do not state the routine activities and powers of the corporation (e.g., owning property).
- Do not use a vague and general description of the purposes.
- If the corporation is being formed to benefit a specific community or country, the purposes must identify such location.
- If the corporation is being formed to benefit a specific group, the certificate must clearly identify the group (e.g., poor and needy, senior citizens, etc.).
- If the corporation is being formed to benefit the members of the corporation, the certificate must clearly identify the membership. (e.g. the purposes of an association of electricians must clearly identify its membership; electricians)

- Do not rely on the name of the corporation as a description of the corporation's purposes. While the name of the corporation may indicate the corporation's purposes, the purpose paragraph must independently describe the corporation's purposes.

Consents/Approvals

Corporations formed for certain purposes require the consent or approval of another governmental agency or office. (See NPCL §404) The written consent or approval must be attached to the Certificate of Incorporation when it is submitted to the Department of State for filing.

The following is a partial list of state agencies and offices that must consent to the filing of certain Certificates of Incorporation prior to filing with the Department of State. Questions regarding consent or approval should be directed to the agency or office at the address or telephone number listed.

Agency or Office	Applicable Section of the NPCL and Purpose Requiring Consent or Approval
<u>Office of the Attorney General</u> Antitrust Bureau 120 Broadway, 26 th Floor New York, NY 10271 (212) 416-8436	Section 404(a) - formation of a trade or business association.
<u>Office of Children & Family Services</u> 52 Washington Street Rensselaer, NY 12144 (518) 473-7793	Section 404(b) - institutions for children; care of destitute, delinquent, abandoned, neglected or dependent children; adoption services; establishment or operation of a home or shelter for unmarried mothers; residential programs for victims of domestic violence or the solicitation of contributions for any such purposes.
<u>Department of Health</u> Division of Legal Affairs Corning Tower, Room 2482 Empire State Plaza Albany, NY 12237 (518) 473-3233	Sections 404(b) - establishment or operation of any aged care accommodation; adult care facility; enriched housing programs; residences for adults or the solicitation of contributions for any such purpose.
<u>Department of Education</u> Office of Counsel State Education Bldg., Room 148 Albany, NY 12234	Section 404(d) - promotion of science, literature, art, history or other department of knowledge; any educational purpose. The Department of Education requires a \$10 fee to obtain consent.

<p>Public Health and Health Planning Council Department of Health Division of Legal Affairs Corning Tower, Room 2482 Empire State Plaza Albany, NY 12237 (518) 473-3233</p>	<p>Sections 404(o) and (t) - establishment or maintenance of a hospital or facility providing health related services or the solicitation of contributions for any such purpose.</p>
<p>Office of Mental Health Office of Counsel 44 Holland Avenue Albany, NY 12229 (518) 474-7700</p>	<p>Section 404(q) - establishment, or operation of a facility for which an operating certificate from the commissioner of mental health is required by article 31 of the mental hygiene law, or the solicitation of contributions for any such purpose</p>
<p>Office of Alcoholism and Substance Abuse Services Bureau of Certification 1450 Western Avenue Albany, NY 12203-3526 (518) 485-2251</p>	<p>Section 404(u) - establishment or operation of a substance abuse, substance dependence, alcohol abuse, alcoholism, chemical abuse or dependence program or the solicitation of contributions for any such purpose.</p>

Note: The purpose paragraph may include a provision indicating that the corporation will not engage in any of the activities mentioned in NPCL §404. Use of such a provision may clarify the corporation's intentions and help the Department of State to determine whether a consent or approval is necessary.

Paragraph Fourth - Type Classification

Indicate the corporation's Type classification. The corporation's purpose(s) determine its Type classification. NPCL Section 201 provides for four different Type classifications - Type A, B, C, or D - and are defined as follows:

Type A: Corporations formed for any lawful non-business purpose or purposes including, but not limited to, any one or more of the following non-pecuniary purposes: civic, patriotic, political, social, fraternal, athletic, agricultural, horticultural, animal husbandry, and for a professional, commercial, industrial, trade or service association. (See Example 1 in Examples of Acceptable Purposes)

Type B: Corporations formed for any one or more of the following non-business purposes: charitable, educational, religious, scientific, literary, cultural or for the prevention of cruelty to children or animals. (See Example 2 in Examples of Acceptable Purposes)

Type C: Corporations formed for any lawful business purpose to achieve a lawful public or quasi-public objective. The Certificate of Incorporation of a Type C not-for-profit corporation must include a separate statement identifying the lawful public or quasi-public objective which each business purpose of the corporation will achieve. (See Example 3 in Examples of Acceptable Purposes)

Type C corporations are organized for one or more purposes typically pursued by a business corporation for profit. If the nature of a corporation's proposed activities are considered to be those usually performed by a business corporation, the corporation is classified as Type C regardless of any benefit, charitable or otherwise, that will be provided to the public. The absence of fees for any services provided will not alter the Type classification. The public or quasi-public objective to be achieved by such customary business purpose allows the corporation to be formed as a not-for-profit corporation. All not-for-profit corporations, including those classified as Type C, cannot be formed to make a profit.

Type D: Corporations of this type may be formed under the NPCL when such formation is authorized by any other corporate law of this state for any business or non-business, or pecuniary or non-pecuniary, purpose or purposes specified by such other law, regardless of whether its purposes are also with Type A, B or C.

If the corporation is formed for both Type A and Type B purposes, the corporation is classified as Type B. If any of the purposes for which a corporation is formed would be characterized as Type C, the corporation is classified as Type C even if other purposes of the corporation might be appropriately characterized as Type A or Type B corporate purposes. (See NPCL Section 201(c))

Paragraph Fifth - County Location of the Office of the Corporation

Provide the county within New York State where the office of the corporation will be located. Enter only the name of a county; do not include the street address. In New York City, the borough of Manhattan is New York County, the borough of Brooklyn is Kings County and the borough of Staten Island is Richmond County. Bronx and Queens are both boroughs and counties.

Paragraph Sixth - Initial Directors

List the names and addresses of the initial directors (minimum of three).

Paragraph Seventh - Designation for Service of Process

The corporation must designate the Secretary of State as its agent for service of process. You must provide an address in the United States where the Secretary of State shall mail a copy of any process accepted on behalf of the corporation. "Process" is defined as the papers served on a corporation for the purpose of acquiring jurisdiction of such corporation in a legal action or proceeding. (See NPCL §102(a)(12))

Paragraph Eighth - Tax Exempt Status

To qualify for tax exempt status under the Internal Revenue Code, the corporation must be organized for one or more of the purposes specifically designated in the Internal Revenue Code. The Internal Revenue Service will require that certain provisions be included in the corporation's Certificate of Incorporation prior to granting tax exemption. These provisions are included in the Internal Revenue Service's [Publication 557 - Tax Exempt Status for your Organization](#).

Signing the Certificate of Incorporation

The Certificate of Incorporation must be signed by the incorporator **and** include the typed or printed name and address of the incorporator. An incorporator must be a natural person over the age of 18.

Backer/Filer Information

1. Enter the name of the corporation in the certificate's title on the last page exactly as it appears in Paragraph First. (The name field is automatically populated on forms completed online.)
2. Provide the name and address of the filer of the Certificate of Incorporation. The Department of State will mail the official filing receipt or notice of rejection to the filer at the address provided.

Additional Information

Filing Fee

The fee for filing the Certificate of Incorporation is \$75. The fee may be paid by cash, check, money order, MasterCard, Visa or American Express. Checks and money orders should be made payable to the "Department of State." Do not send cash through the mail.

To pay the filing fee using a credit card or debit card complete and sign the [Credit Card/Debit Card Authorization Form](#).

[Expedited Handling Services](#) and [copies](#) of certificates are available for an additional fee.

Filing with the Department of State

Submit the completed Certificate of Incorporation to the Department of State, Division of Corporations, State Records and Uniform Commercial Code, 99 Washington Avenue, Suite 600, Albany, New York 12231. Office hours for the Division are 9:00 a.m. to 4:30 p.m., Monday through Friday.

Filing Receipt

The Department of State issues an official filing receipt to the filer of a Certificate of Incorporation. The filing receipt is usually mailed two business days after the certificate is filed by the Department. The filing of the certificate of incorporation creates an entry on the Department of State's [Corporation & Business Entity Database](#). The Corporation & Business Entity Database is normally current through the previous business day. The Department of State is unable to provide the status of pending certificates.

Please note that the filing receipt and certified copy, if requested, will be returned by first class mail by the United States Postal Service. Filing receipts and certified copies are mailed separately. You may request that your filing receipt and/or certified copy be returned by overnight delivery service by including a prepaid shipping label with your request.

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