

AMENDMENT TO NEW YORK NPCL IMPACTS NOT-FOR-PROFIT CORPORATIONS WITH SOLE MEMBER GOVERNANCE STRUCTURES

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On July 1, 2019, an amendment to Section 601 of the New York Not-For-Profit Corporation Law (NPCL), which governs members, will go into effect. The amendment provides that, subject to certain established exceptions, the minimum number of individual members that a New York not-for-profit corporation is required to have will change from one to three. The change applies to both newly formed and existing New York not-for-profit corporations.

There are two notable exceptions. The three-member requirement does not apply if a particular New York not-for-profit corporation has as its sole member a corporation, a joint-stock association, or an unincorporated association or partnership, provided that such corporation, joint-stock association, unincorporated association or partnership is owned or controlled by no fewer than three persons. The three-member requirement also does not apply if the not-for-profit corporation is a charitable corporation with no members since New York charitable corporations are permitted to have self-perpetuating boards of directors instead of adopting a membership governance model.

While this change is unlikely to impact most nonprofits formed in New York, this new requirement may impact New York private foundations, particularly family foundations, which commonly utilize the sole or dual individual member structure. In addition, it will impact all other nonprofits which are organized as not-for-profit corporations under New York law and which have a single individual serving as a member or two individuals serving as members or which have an entity as a sole member that is owned or controlled by fewer than three persons. A nonprofit structured as such must act prior to the **July 1, 2019** effective date to modify its governance structure to ensure continued compliance under New York law.

By prohibiting a single individual from controlling a charitable nonprofit, the legislature (as stated in the sponsor memo[1]) aims to “prevent abuse by individuals who may try to use a charitable nonprofit for his or her own private interest.” Interestingly, however, New York charitable trust law still allows for a single individual to be sole trustee.

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If you are involved with an organization which may be impacted by this change, please contact a member of the Hodgson Russ Tax-Exempt Organizations Practice.

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[1] <https://www.nysenate.gov/legislation/bills/2017/s8699>