



## **Not-for-Profit Incorporation Instructions**

### **Introduction**

Not-for-profit corporations are formed in New York State pursuant to the [Not-for-Profit Corporation Law](#) (“NPCL”). 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. Due to the complexity of the legal and tax issues related to not-for-profit corporations, it is recommended that you consult an attorney and accountant prior to incorporating a not-for-profit corporation. The Department of State cannot provide legal advice.

### **Forming a Not-for-Profit Corporation**

Domestic not-for-profit corporations are formed by filing a [Certificate of Incorporation](#) with the Department of State. The Department’s Certificate of Incorporation form meets all the basic requirements of the NPCL. However, you are not required to use the Department’s Certificate of Incorporation form. 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 will be issued to the filer.

### **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.

#### **Paragraph First and Title Clauses - Corporation Name**

Enter the name of the corporation at the top of the form to complete the certificate’s title. Also enter the name of the corporation in Paragraph First and in the title of the certificate on the last page of the form. 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 its rules and regulations. 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**

Unless an exemption applies, the name of the corporation must contain one of the following words or abbreviations: Incorporated, Corporation, Limited, 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 consent or approval from other governmental agencies or offices. The written consent or approval must be attached to the Certificate of Incorporation when presented for filing to the Department of State. In addition, the name of the corporation may not imply a purpose or power for which the corporation is not formed. (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](#). However, note that neither a determination by the Department that the name is available, nor the filing of an Application for Reservation of Name constitutes 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. Accordingly, 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

The Certificate of Incorporation must set forth the purpose or purposes for which the corporation is formed. The Certificate of Incorporation may state the specific corporate purpose(s) of the corporation or it is sufficient to include the general statement that the purpose of the corporation is 1) any purpose for which corporations may be organized under the NPCL as a Charitable Corporation, or 2) any purpose for which corporations may be organized under the NPCL as a Non-Charitable Corporation, or 3) any purpose for which corporations may be organized as a Charitable Corporation or as a Non-Charitable Corporation. It is also permissible to set forth one of the general statements regarding not-for-profit corporate purposes and in addition include an identification of one or more specific not-for-profit corporate purposes for which the corporation is formed. The Certificate of Incorporation form includes four choices regarding the corporation’s purpose. Check the appropriate boxes.

If the Certificate of Incorporation sets forth specific purposes, such statement of purposes must include sufficient information for a reader of the document to recognize such purpose(s) as among those authorized as a basis for the formation of a not-for-profit corporation whether a charitable corporation or a non-charitable corporation. The Certificate of Incorporation may also set forth any activities that the corporation intends to carry out in furtherance of its purpose or purposes. However, **it is not required** to set forth such activities or otherwise state how the corporate purposes will be achieved.

The following drafting tips should be reviewed prior to drafting a statement of corporate purposes:

Tips for drafting specific purposes

- If the corporation is being formed to benefit a specific geographic community or country, the purposes should identify such location.
- If the corporation is being formed to benefit a specific group, the purposes should 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 purposes must clearly identify the membership (e.g., the purposes of an association of electricians must clearly identify its membership: electricians).

Avoid the following common errors when providing specific purposes

- Do not use IRS tax exemption language as a statement of purposes.
- Do not use the phrase “including but not limited to” when describing purposes as this indicates that there are additional purposes which remain unstated.
- Do not rely on the name of the corporation as a description of the corporation’s purposes. The statement of corporate purpose must independently describe the corporation’s purposes.

**1. Purpose Drafting Questions.** A well drafted purpose statement will answer the following two (2) questions:

- **Why is the corporation being formed or what does the corporation intend to accomplish?**
- **Who will benefit from the corporation’s accomplishments?**

**2. Examples of Acceptable Purposes:** (The actual Purpose Drafting Questions should not be included in the corporation’s purpose statement.)

**Example 1:**

“The corporation is formed for the civic purpose of maintaining and beautifying the parks in the Town of Oyster Bay, New York, for the benefit of the residents of the Town and others who use the Town parks.”

This example answers the Purpose Drafting Questions as follows:

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

To maintain and beautify the parks in the Town of Oyster Bay, New York.

**Who will benefit from its accomplishments?**

Residents of the Town of Oyster Bay, New York and others who use the Town parks.

The above example of purposes would categorize the corporation as a Non-Charitable Corporation. (See section entitled **Paragraph Fifth – Charitable/Non-Charitable Category** 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.”

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

**Who will benefit from its accomplishments?**

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

The above example of purposes would categorize the corporation as a Charitable Corporation. (See section entitled **Paragraph Fifth - Charitable/Non-Charitable Category** of these instructions.)

**Example 3:**

“The corporation is formed for the charitable purpose of owning, operating and maintaining housing for low and moderate income individuals and families that cannot otherwise 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 own, operate and maintain housing for low and moderate income individuals and families that cannot otherwise afford decent housing.

**Who will benefit from its accomplishments?**

Low and moderate-income individuals and families.

The above example of purposes would classify the corporation as Charitable Corporation. (See section entitled **Paragraph Fifth - Charitable/Non-Charitable Category** of these instructions.)

**Example 4:**

“The corporation is formed for the charitable purpose of offering direct financial support to victims of cancer in New York City to assist in their recovery.”

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 offer financial support to victims of cancer in New York City to assist in their recovery.

**Who will benefit from its accomplishments?**

Victims of cancer in New York City.

The above example of purposes would classify the corporation as Charitable Corporation. (See section entitled **Paragraph Fifth - Charitable/Non-Charitable Category** of these instructions.)

**Paragraph Fourth – Consents or Approvals**

Corporations formed for certain purposes require the consent or approval of another governmental agency or office. (See NPCL § 404) When one is required, the written consent or approval must be attached to the Certificate of Incorporation when it is submitted to the Department of State for filing. Complete Paragraph Fourth by checking the appropriate statement to indicate whether any consents or approvals are required.

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

<b>Agency or Office</b>	<b>Applicable Section of the NPCL and Purpose Requiring Consent or Approval</b>
<a href="#">Office of the Attorney General</a> Antitrust Bureau 120 Broadway, 26 <sup>th</sup> Floor New York, NY 10271 (212) 416-8436	Section 404(a) - formation of a trade or business association.
<a href="#">Office of Children &amp; Family Services</a> 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.

<p><a href="#">Department of Health</a>  Division of Legal Affairs  Corning Tower, Room 2482  Empire State Plaza  Albany, NY 12237  (518) 473-3233</p>	<p>Section 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.</p>
<p><a href="#">Department of Education</a>  Office of Counsel  State Education Bldg.  Room148  Albany, NY 12234  (518) 473-8296</p>	<p>Section 404(d) – operation of a school, college, university or other entity providing post-secondary education, library, museum or historical society.</p> <p>Note: The Department of Education requires a \$10 fee to obtain consent.</p>
<p>Public Health and Health Planning Council  <a href="#">Department of Health</a>  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><a href="#">Office of Mental Health</a>  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><a href="#">Office of Alcoholism and Substance Abuse Services</a>  Bureau of Certification  1450 Western Avenue  Albany, NY 12203-3526  (518) 485-2250</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>

### **Paragraph Fifth - Charitable/Non-Charitable Category**

Indicate whether the corporation is a Charitable Corporation or a Non-Charitable Corporation. The charitable or non-charitable categorization is based on the corporation’s purposes. (See NPCL §§ 102, 201)

A Charitable Corporation is any corporation formed for Charitable Purposes. Charitable Purposes of a corporation means one or more of the following purposes: charitable, educational, religious, scientific, literary, cultural or for the prevention of cruelty to children or animals.

A Non-Charitable Corporation means any corporation formed under the Not-for-Profit Corporation Law, other than a Charitable Corporation, including but not limited to one formed for any one or more of the following non-pecuniary purposes: civic, patriotic, political, social, fraternal, athletic, agricultural, horticultural, or animal husbandry, or for the purpose of operating a professional, commercial, industrial, trade or service association.

A corporation formed for both charitable and non-charitable purposes is a Charitable Corporation.

## **Paragraph Sixth - 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 Seventh - Initial Directors**

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

## **Paragraph Eighth - 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 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 Ninth - 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.
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, except legal holidays.

### **Filer Contact Information**

For certificates submitted by [mail](#) - If your certificate of incorporation is unacceptable for filing and you would like to receive an email with a copy of the letter explaining the correction(s) that must be made to the certificate, please include an email address in your cover letter. The certificate will be mailed back to you for correction along with your remittance.

For certificates submitted by fax - If your certificate of incorporation is unacceptable for filing, a letter explaining the correction(s) that must be made to the certificate will be faxed to you. Please be sure to provide a fax number in your cover letter or on the Credit/Debit Card Authorization form. The certificate and correction letter will be mailed to you if a fax number is not provided.

### **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, if requested, 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(s) with your request. The Division of Corporations cannot accept or prepare overnight delivery shipping labels with an overnight delivery account number or credit card number. All overnight delivery shipping labels must be prepaid. The Department of State will not accept prepaid shipping labels with the Department of State listed as the sender. The prepaid shipping label must list yourself as the sender and the receiver.