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**Highlights of the Non-Profit Revitalization Act (NPRO): Chapter 549 of 2013**

The Non-Profit Revitalization Act (NPRO) streamlines several aspects of the regulations governing not-for-profit corporations, while strengthening controls over conflicts of interest and the financial oversight responsibilities of boards of directors. Specifically, the NPRO simplifies the classifications of not-for-profit corporations; amends the financial reporting requirements applicable to non-profits; imposes requirements to limit potential conflicts of interest in corporate transactions and compensation decisions; requires certain non-profits to implement whistleblower policies; strengthens audit oversight responsibilities of boards of directors; and streamlines the procedures for mergers, consolidations, dissolutions, and disposition of real property. The new law takes effect on July 1, 2014. The following is a brief summary of the key provisions:

**Fund Raising Counsel**

- Revises the definition of “fund raising counsel” to exclude individuals retained solely to write grant applications, thereby exempting such individuals from registration and contracting requirements specified in the Executive Law.

**Financial Reporting Requirements**

- Raises the annual gross revenue thresholds that determine whether charitable organizations engaged in fundraising must file with the Attorney General’s Office a certified CPA review report or an audited financial statement. The law provides for three increases in the annual revenue thresholds, as follows:

Required Submission	July 1, 2014-June 30, 2017	July 1, 2017-June 30, 2021	July 1, 2021-forward
Unaudited financial report	Annual revenue up to \$250,000	Annual revenue up to \$250,000	Annual revenue up to \$250,000
Independent CPA review report	Annual revenue \$250,000-\$500,000	Annual revenue \$250,000-\$750,000	Annual revenue \$250,000-\$1M
Independent CPA audit report	Annual revenue in excess of \$500,000	Annual revenue in excess of \$750,000	Annual revenue in excess of \$1M

- Authorizes the Attorney General to require an independent CPA’s audit report from not-for-profits with gross revenues over \$250,000, if he/she determines that one is needed after reviewing the CPA’s review report.
- Eliminates the requirement that every organization that uses paid individuals to conduct fundraising must file an audited financial statement regardless of annual revenue.

### **Types of Not-for-Profit Corporations**

- Simplifies the classification of not-for-profit corporations from four types (Types A, B, C, and D) to two types – charitable and non-charitable corporations.
- Defines “charitable corporation” as one formed for a charitable purpose, which is defined as “charitable, educational, religious, scientific, literary, cultural or for the prevention of cruelty to children or animals.”
- Defines “non-charitable purposes” to include, but not be limited to: “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.”
- ‘Grandfathers’ not-for-profits formed prior to July 1, 2014. Type A corporations formed prior to July 1, 2014 are deemed non-charitable. Types B and C are deemed charitable. Type D corporations formed for charitable purposes are deemed charitable, and those formed for other purposes are deemed non-charitable.

### **Audit Oversight Responsibility**

- Imposes requirements related to board oversight of accounting, financial reporting and audits.
- Requires the board or a designated audit committee comprised solely of independent directors to oversee the accounting and financial reporting processes of the corporation and the audit of its financial statements.
- Imposes additional audit oversight requirements on the boards of corporations with over \$1 million in annual revenue.

### **Conflicts of Interest and Related Party Transactions**

- Creates new definitions of “independent director,” “related party” and “related party transactions.”
- Prohibits an employee of a not-for-profit corporation from serving as the chair of the board of directors.
- Prohibits directors, officers, and members from being present when compensation is deliberated, if such individuals might benefit from the compensation under discussion.

- Prohibits not-for-profit corporations from entering into related party transactions, unless the board determines the transaction to be “fair, reasonable, and in the corporation’s best interest.”
- Requires the board to consider alternatives to a related party transaction, when a related party has a “substantial financial interest.”
- Prohibits related parties from participating in voting or deliberations concerning a related party transaction.
- Authorizes the Attorney General to enjoin, void or rescind related party transactions or seek additional damages and other remedies, including removal of directors and officers.
- Requires not-for-profit corporations to adopt conflict of interest policies and sets forth the requisite elements of such policies.
- Requires directors to file with the corporation’s secretary an annual statement of any potential conflicts.
- Adds “key employees” to the list of individuals against whom legal action may be brought for misconduct in relation to corporate assets.
- Includes parallel provisions in the EPTL to govern charitable trusts.

### **Whistleblower Policy**

- Requires all not-for-profits with over 20 employees and more than \$1 million in revenue to implement a “whistleblower policy” and defines the necessary elements of such policies.
- Includes parallel provisions in the Estates Powers and Trusts Law to govern charitable trusts.

### **Updated Notice and Meeting Requirements**

- Permits various notices to, waivers and consents by, members and directors to be made by email or fax.
- Permits board members to participate in board and committee meetings via videoconference.

### **Purchase and Disposition of Real Property**

- Permits the purchase of real property upon a majority vote of directors or a majority of a committee authorized by the board, rather than a two-thirds vote of the entire board. However, if the property to be purchased would constitute all or substantially all of the assets of the corporation, a two-thirds vote of the entire board is required, unless there are 21 or more directors, in which case a majority vote is sufficient.
- Permits the sale, mortgage or lease of real property based upon a majority vote of the board or a committee authorized by the board, rather than a two-thirds majority, except when the property in question represents all or substantially all of the assets of the

corporation. In that case, a two-thirds vote of the entire board is required, unless there are 21 or more directors, in which case a majority vote is sufficient.

### **Merger, Consolidation, Dissolution**

- Permits the disposition of all or substantially all of the assets of a not-for-profit corporation with the approval of the Attorney General, in lieu of court approval, unless the corporation is insolvent or would become insolvent as a result of the transaction, or the Attorney General concludes that a court should review the transaction.
- Permits mergers, consolidations and dissolutions with the approval of the Attorney General, in lieu of Supreme Court approval. The Attorney General may determine that a court should review the application.