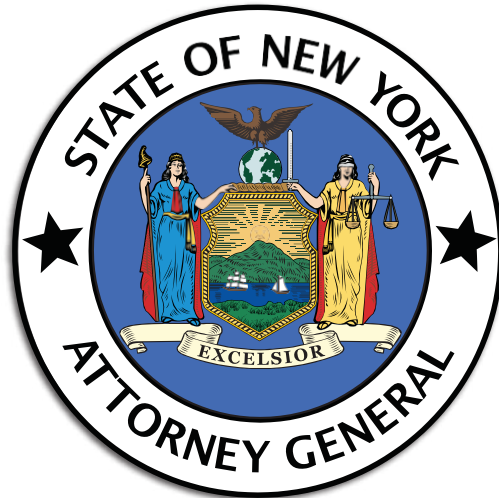


# Procedures for incorporating a New York not-for-profit corporation and amending its certificate



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# Procedures for Incorporating a New York Not-for-Profit Corporation and Amending its Certificate

Office of the NYS Attorney General  
Charities Bureau  
<https://ag.ny.gov/>

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# **Procedures for incorporating a New York not-for-profit corporation and amending its certificate**

## **GETTING STARTED – CHECKLIST FOR APPLICATIONS**

The Charities Bureau has prepared the checklist below to assist applicants in preparing their documents for submission to the Attorney General.

### **CHECKLIST OF DOCUMENTS FOR AMENDING OR RESTATING A CERTIFICATE OF INCORPORATION**

The following is a list of the forms and documents necessary for amending or restating a certificate of incorporation:

- A copy of the original certificate of incorporation and any prior amendments;
- A copy of the organization's bylaws;
- The current proposed certificate of amendment or restated certificate;
- The resolution of the directors (or members, if any) authorizing the amendment(s);
- If the purposes are being expanded or new purposes are being added, an Affidavit of Use, signed by an officer or director that states the organization's current assets will be used for its current purposes and future assets will be used for the purposes as amended.
- A statement as to whether the corporation has ceased any operations or intends to transfer any assets post amendment.

## Introduction

This guidance was prepared to assist individuals, organizations, and attorneys in forming a New York charitable Not-for-Profit Corporation or amending the Certificate of Incorporation of an existing charitable New York Not-for-Profit Corporation. This guidance and other information of interest to not-for-profit corporations may be found on the Attorney General’s Internet site: <http://www.ag.ny.gov>.

Certificates of Incorporation of charitable corporations that require approvals described below may not be filed with the New York State Department of State (“DOS”) until those approvals have been secured. Most Certificates of Incorporation of non-charitable corporations do not required approval and may be filed directly with DOS.

This guidance is not intended to be a substitute for legal advice. If you have questions about forming a not-for-profit corporation or amending the certificate of an existing not-for-profit corporation, you should consult your attorney. The New York State Bar Association has a Lawyer Referral Service for the public which can be accessed on the web here: <https://www.findalawyer.nys.org/>

## HOW TO INCORPORATE AS A NEW YORK STATE NOT-FOR-PROFIT CORPORATION

The Not-for-Profit Corporation Law (“N-PCL”) Article 4 sets forth the procedures for forming a New York not-for-profit corporation. The mission (purposes) of the organization you create may also be governed by other New York State laws such as the Religious Corporation Law, Education Law or Estates, Powers and Trusts Law. It is important to be aware of other statutes that apply to the organization you create.

In addition, certain New York State Agencies such as the Education Department, Department of Health or the Office of Mental Health, for example, have a role in the creation and amendment of Certificates of Incorporation drafted pursuant to the N-PCL. One of those agencies is the New York State Department of State. That agency reviews and determines whether a Certificate of Incorporation is acceptable for filing. The Department of State is NOT connected to the Attorney General’s Office and therefore, you should consult the Department of State’s website - <https://dos.ny.gov/certificate-incorporation-domestic-not-profit-corporations-0> for the filing requirements of that agency. That site includes a step-by-step guide to filing the Certificate of Incorporation. Other helpful guidance is posted by the Department of State at: <https://dos.ny.gov/system/files/documents/2018/12/1511-inst.pdf>

## DRAFTING A CERTIFICATE OF INCORPORATION

Following is information to assist you in drafting of a Certificate of Incorporation of a charitable corporation.

Quick Statutory Reference Guide	
Contents of Certificate of Incorporation	N-PCL § 402
Definition of Charitable Corporation	N-PCL §§ 102 (a)(3-a) & (3-b)

## 1. Name of the Corporation

Article 3 of the N-PCL includes provisions concerning corporate names.

It is important to determine if the name you have chosen is already in use or if there is a similar name which the Department of State would deem confusing. If so, another name will have to be chosen. To make that determination, you should consult the following link and search the Department of State database of corporate names: <https://apps.dos.ny.gov/publicInquiry/>

If you are unable to determine whether your chosen name is in use or would cause confusion if used, you may contact the New York State Department of State, Division of Corporations in writing and inquire whether the name(s) you want to use is acceptable. Enclose a check or money order for \$5.00 payable to the Department of State or Credit Card Authorization Form, (available at <https://dos.ny.gov/system/files/documents/2018/10/1515-f.pdf> and send the request to:

New York State Department of State Division of Corporations  
One Commerce Plaza  
99 Washington Street  
Albany, NY 12231-0001

Except under the special circumstances described in the N-PCL, the name of a not-for-profit corporation may not contain any of the following words or phrases, or any abbreviations or derivatives of them:

Acceptance	Doctor	Insurance	State Police
Annuity	Endowment	Investment	State Trooper
Assurance	Fidelity	Lawyer	Surety
Bank	Finance	Loan	Title
Bond	Guaranty	Mortgage	Trust
Casualty	Indemnity	Savings	Underwriter

### Quick Statutory Reference Guide

Corporate Name	N-PCL §§ 301(a)(5)(A) & (B)
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Also, you may reserve an available corporate name for 60 days by submitting an Application for Reservation of Name and the appropriate filing fee<sup>1</sup> to the Department of State Division of Corporations. Contact the Department of State for a copy of the form to reserve a name. A reservation can be extended for up to an additional two 60-day periods by filing an extension request with an additional fee.

### Quick Statutory Reference Guide

Reservation of name	N-PCL § 303
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**Note:** Consult N-PCL § 301 for additional restrictions concerning names of not-for-profit corporations.

<sup>1</sup> Consult N-PCL § 104-A for the appropriate filing fee.

If the corporate name contains a proper name, such as “Friends of ABC University” or “Mary Smith Foundation,” you should be aware that section 174-d of the Executive Law makes it a misdemeanor to use anyone’s name (including an organization’s name) to raise funds without receiving prior written permission.

## 2. Purposes for Which a New York Not-for-Profit Corporation May be Formed

Pursuant to the N-PCL, a not-for-profit corporation is either charitable or non-charitable. See “Contents of a Certificate of Incorporation” below for further explanation of these purposes.

Quick Statutory Reference Guide	
Definition of Charitable	N-PCL §§ 102(a)(3-a) and (3-b)
Definition of Non-charitable	N-PCL § 102(a)(9-a)
Purposes of a Corporation	N-PCL § 201

## 3. Contents of a Certificate of Incorporation

The Certificate of Incorporation must include the following:

- a. The name of the corporation.
- b. A statement that the corporation is a corporation as defined in section 102(a)(5) of the Not-for-Profit Corporation Law.
- c. A statement as to whether the corporation is charitable or non-charitable.
- d. The purposes for which it is formed. The corporation may state that is formed for one of the purposes set forth in the N-PCL as<sup>2</sup>:
  - i. Charitable, defined in the N-PCL as “charitable, educational, religious, scientific, literary, cultural or for the prevention of cruelty to children or animals.”
  - or
  - ii. Non-Charitable, defined in the N-PCL as “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,

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<sup>2</sup> However, an organization may be required to provide a fuller explanation of an organization’s purposes because, for example, agencies whose approval of the certificate or foundations and governmental funding agencies may require such information. Also, members of the public considering contributing to the corporation may look to the certificate for the organization’s purposes, such as the IRS if the corporation wishes to seek 501(c)(3) tax exemption.

or for the purpose of operating a professional, commercial, industrial, trade or service association.

**Note – this guidance is only for the creation and amendment of charitable corporations**

- e. The county in New York in which the corporation will be located.
- f. The names and addresses of at least three initial directors.
- g. The duration of the corporation if the duration is not perpetual.
- h. A designation of the Secretary of State as the agent for service of process and the address in New York or elsewhere to which a copy of any process should be sent.
- i. If the corporation has a registered agent for service of process, the name and address in New York of that agent and a statement that the registered agent is the agent to whom process may be served.
- j. If the corporation is a “Special Not-for-Profit Corporation” as described in Article 14 of the N-PCL, the certificate must include any additional statements required by that article.
- k. If the certificate is for an existing unincorporated association or group, an affidavit of the certificate’s subscribers must be attached stating that they are the majority of a committee authorized to incorporate the association or group.
- l. If the corporation does not require approval or consent of any organization or governmental agency pursuant to section 404 of the N-PCL, the certificate must include a statement to that effect.

The certificate may include additional provisions concerning its internal operations, such as classes of members, quorum requirements, and the date of the annual meeting. In addition, it must include language required by other statutes or agencies.

Most notably, the Internal Revenue Service requires that certain statements be included in the certificate if a corporation is seeking tax exemption. The IRS posts information on its website as well as an interactive training program that includes the requirements to become a 501(c)(3) tax exempt entity. This site also includes a step-by-step process for filing the application for exemption with the IRS. It can be found at: <https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-501c3-organizations> . The required statements must be preceded by the following:

“The following language relates to the corporation's tax-exempt status and is not a statement

of purposes and powers. Consequently, this language does not expand or alter the corporation's purposes or powers set forth in paragraph number XX.”

Questions about applying for federal and state income tax exemption and exemption from state sales and other taxes should be directed to the appropriate taxing authorities. The New York State Department of Taxation and Finance requires filing for “exemption from sales taxation” if the organization wants to be a recognized tax-exempt organization under New York State Law. The requirements for such filing can be found on the Taxation and Finance Department’s website at <https://www.tax.ny.gov/bus/st/exempt.htm>. If consent or approval of an agency or officer is required, a copy of such consent(s) or approval(s) must be attached to the certificate (See section 4 “Required Approvals from Agencies and Officers” below). If no approvals or consents are required, the certificate must contain a statement that the corporation’s purposes and powers do not include any for which a consent or approval is required pursuant to section 404 of the N-PCL (*see* sub-paragraph l above).

A sample Certificate of Incorporation posted on the Department of State’s website at <https://dos.ny.gov/system/files/documents/2021/02/1511-f.pdf>

Quick Statutory Reference Guide	
Contents of Certificate of Incorporation	N-PCL § 402
Corporate Name	N-PCL § 402(a)(1)
Corporate Purposes	N-PCL § 402(a)(2-a)
Location (County) of the Corporation	N-PCL § 402(a)(3)
Names and Addresses of Initial Directors	N-PCL § 402(a)(4)
Duration of the Corporation	N-PCL § 402(a)(5)
Designation of the Secretary of State as Agent for Service	N-PCL § 402(a)(6)
Designation of Registered Agent for Service	N-PCL § 402(a)(7)
Special Not-for-Profit Corporations	N-PCL §§ 402 (a)(8) & 1401 - 1412
Certificates for formerly unincorporated associations	N-PCL § 402(b)
Additional Language Pursuant to Other Laws	N-PCL § 402(c)
Approvals, Notices and Consents	N-PCL § 404
Statement that no Approval of Consent Required	N-PCL §§ 402(a)(2-b) & 404

#### 4. Required Approvals from and Notices to Agencies and Officers

Depending on the purpose of an organization, it may be required to get the approval of its Certificate of Incorporation from a particular agency (or organization), or it may be required to provide a particular agency (or organization) with a certified copy of the Certificate of Incorporation after the Certificate is filed with the Secretary of State. If an agency approval is required before filing the certificate with the Department of State, the approval must be attached to the original Certificate of Incorporation. Following is a partial list of the agencies that must approve Certificates of Incorporation before they are filed with the Department of State and/or receive certified copies of filed Certificates of Incorporation. For a complete list of the agencies and organizations from which approvals must be secured or to which copies of the Certificate must be sent, you should consult N-PCL sections 404 (a) – (w). If you have a question concerning such approval, please contact the organization or agency from which approval is required.



Type of Corporation	Agency Required to Approve or Receive a Copy of Filed Certificate	N-PCL Section
Trade or Business Association	Approval required from: Office of the Attorney General Antitrust Bureau 28 Liberty Street New York, NY 10005 (212) 416-8262 <a href="mailto:Antitrust.bureau@ag.ny.gov">Antitrust.bureau@ag.ny.gov</a>	N-PCL § 404(a)
Corporations whose purposes include care of destitute, delinquent, abandoned, neglected or dependent children; establishment or operation of any adult care facility, or the establishment or operation of a residential program for victims of domestic violence, or placing-out or boarding-out of children or a home or shelter for unmarried mothers, or the solicitation of contributions for those purposes.	Approval required from: Office of Children & Family Services 52 Washington Street Rensselaer, NY 12144 <a href="http://ocfs.ny.gov/main/">http://ocfs.ny.gov/main/</a> (518) 473-7793 Inquiries to OCFS may be sent by email to <a href="mailto:info@ocfs.ny.gov">info@ocfs.ny.gov</a>	N-PCL § 404(b)(1)
Corporations whose purposes include the establishment or operation of a child day care center.	Certified copy of filed Certificate must be sent to: Office of Children & Family Services 52 Washington Street Rensselaer, NY 12144 <a href="http://ocfs.ny.gov/main/">http://ocfs.ny.gov/main/</a> (518) 473-7793 Inquiries to OCFS may be sent by email to <a href="mailto:info@ocfs.ny.gov">info@ocfs.ny.gov</a>	N-PCL § 404(b)(2)
A school, college, university or other entity providing post-secondary education; a library; or a museum or historical society	Approval required from: Department of Education Office of Counsel State Education Building - Room 148 Albany, NY 12234 Questions may be sent to at <a href="mailto:legal@nysed.gov">legal@nysed.gov</a>	N-PCL § 404(d)
Any corporation whose purposes include a purpose for which a corporation might be chartered by the regents of the university of the State of New York.	Certified copy of filed Certificate must be sent to: Department of Education Office of Counsel State Education Building - Room 148 Albany, NY 12234 Questions may be sent to at <a href="mailto:legal@nysed.gov">legal@nysed.gov</a>	N-PCL § 404(d)
A Hospital	Commissioner of Health <a href="http://www.health.ny.gov/commissioner">www.health.ny.gov/commissioner</a> (518) 471-2011 Commissioner of Insurance Public Health and Planning Council	N-PCL §§ 404(c) & (o)
A Substance Abuse Program	Office of Alcoholism and Substance Abuse Services 1450 Western Avenue Albany, NY 12203-3526 (518) 473-3460 <a href="mailto:communications@oasas.ny.gov">communications@oasas.ny.gov</a>	N-PCL § 404(u)

Quick Statutory Reference Guide	
Approvals, notices and consents	N-PCL §§ 404 (a) through (v)

## 5. Filing the Certificate of Incorporation

Completed certificates of incorporation of charitable corporations, with any approvals required by N-PCL § 404, must be submitted to the New York State Department of State but do not need to be reviewed by the Attorney General.

Certificates of Incorporation for most non-charitable corporations may also be filed directly with the New York State Department of State without review by the Attorney General.

However, as noted in section 4 above, “Required Approvals from Agencies and Officers,” approval of the Office of the Attorney General is required for certificates of incorporation of trade and business associations. The original and one copy of such certificate (with a self-addressed envelope) should be sent to:

New York State Attorney General  
Antitrust Bureau  
28 Liberty Street  
New York, New York 10005

After reviewing the certificate, the Attorney General’s Antitrust Bureau will return the original certificate with its consent to the filing of the certificate or advise you as to why consent is not being given. When approved, the certificate must then be submitted to the New York State Department of State, Division of Corporations.

Completed certificates, with any required approvals and the necessary filing fee<sup>3</sup> (check, money order or Credit Card Authorization Form) made payable to the Department of State should be sent to:

NYS Department of State  
Division of Corporations, State Records and Uniform  
Commercial Code One Commerce Plaza  
99 Washington Ave.  
Albany, NY 12231  
Fax (518) 474-1418

When a Certificate of Incorporation is accepted for filing by the Department of State, the organization’s corporate existence begins. The Department of State will issue an official filing receipt, containing the filing date, which is also the date of incorporation. For a fee, you may request plain or certified copies of a filed Certificate of Incorporation. The required fees are posted at <https://dos.ny.gov/certificate-incorporation-domestic-not-profit-corporations-0>.

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<sup>3</sup> Consult N-PCL § 104-A for the appropriate filing fee.

## 6. Application for Authority

Article 13 of the N-PCL requires foreign (non-New York) corporations to file an Application for Authority with New York's Secretary of State if they are planning to conduct activities in New York. The application must include:

- The name of the foreign corporation;
- If applicable, the fictitious name the corporation will use in New York;
- The jurisdiction in which the corporation was formed and the date it was incorporated;
- A Statement that it is a foreign corporation, defined in section 102(a)(7) of the N-PCL<sup>4</sup>;
- A statement that, if formed in New York, it would be, as applicable, a charitable corporation or non-charitable corporation;
- A statement regarding the purposes it will pursue in New York and the activities which it proposes to conduct in New York and that it is authorized to conduct those activities in the jurisdiction in which it was incorporated;
- The county in New York in which its office is to be located;
- A designation of the New York Secretary of State as its agent upon whom process against it may be served and the post office address in or outside New York to which the Secretary shall mail a copy of any process;
- If the corporation will have a registered agent for service, the name and address of the agent within New York and a statement that the registered agent is to be its agent upon whom process against the corporation may be served;
  - A statement that the foreign corporation has not, since its incorporation or since the date its authority to conduct activities in New York was last surrendered, done any act in New York, except as set forth in N-PCL § 1301(b); or instead of such statement the consent of the New York State Tax Department to the filing of the application must be attached<sup>5</sup>;
  - Any provision required by a governmental agency; or officer, other person or body as a condition for consent or approval required for the filing of an application for authority.

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<sup>4</sup> N-PCL § 102(a)(7) "Foreign corporation" means a corporation formed under laws other than the statutes of this state, which, if formed under the statutes of this state, would be within the term "corporation or domestic corporation" as herein defined.

<sup>5</sup> See N-PCL § 1301(b) for categories of activities that are not "considered to be conducting activities" in NY.

- The Application for Authority must have attached to it:
  - A certificate from an authorized officer of the jurisdiction of its incorporation confirming that it is an existing corporation in that jurisdiction; and
  - Any consent or approval from any governmental body or officer, or other person that would be required if the corporation were formed in New York; and
  - If required, consent of the New York State Department of Taxation and Finance to the filing of the application.

If the application for authority includes any purpose requiring a New York corporation to provide notice of the filing of a Certificate of Incorporation to any person or entity, the corporation must send, by certified mail, return receipt requested, a certified copy of the certificate of authority to such person or entity within ten business days after the corporation receives confirmation from the Department of State that the certificate has been accepted for filing. A sample Application for Authority is posted at <https://dos.ny.gov/system/files/documents/2018/11/1335-f.pdf>.

Quick Statutory Reference Guide	
Authorization of Foreign Corporations	N-PCL § 1301
Application for Authority; contents	N-PCL § 1304
Approvals, Notices and Consents	N-PCL § 404

## **REGISTRATION REQUIREMENTS – REGISTRATION WITH THE ATTORNEY GENERAL**

Most organizations that hold property of any kind in New York for charitable purposes are required to register with the Attorney General’s Charities Bureau pursuant to section 8-1.4 of the Estates, Powers and Trusts Law. Most organizations that solicit charitable contributions from members of the public, foundations and other organizations and governmental agencies in New York State are required to register with the Attorney General’s Charities Bureau pursuant to Article 7-A of the Executive Law. Organizations that both hold property and solicit contributions in New York fall within the requirements of both laws, but only one registration is required.

The full text of both statutes as well as a summary of the registration and reporting requirements may be found on the Attorney General’s website at <https://ag.ny.gov/resources/organizations/charities-nonprofits-fundraisers/charities-registration>. Also posted on that site are the categories of organizations that are exempt from registration. Organizations that plan to solicit contributions must register prior to beginning such solicitation. Organizations that hold property in New York for charitable purposes must register within six months of receiving such property.

Questions concerning registration should be sent to [charities.bureau@ag.ny.gov](mailto:charities.bureau@ag.ny.gov).

Registration and annual financial reports must be submitted electronically. Paper filings are no longer accepted by the Charities Bureau. Portals for such submissions and detailed filing instructions are posted at <https://ag.ny.gov/resources/organizations/charities-nonprofits-fundraisers/charities-registration>.

## AMENDMENTS AND RESTATED CERTIFICATES

Prior to 2014, New York not-for-profit corporations were classified in one of four Types – A, B, C and D. Effective on July 1, 2014, New York not-for-profit corporations are classified either as charitable or non-charitable. The N-PCL classifies New York not-for-profit corporations formed before July 1, 2014, as follows:

- Type A corporations are deemed to be non-charitable corporations.
- Type B and C corporations are deemed to be charitable corporations.
- Type D corporations with charitable purposes are deemed to be charitable
- Type D corporations with non-charitable purposes are deemed to be non-charitable

Since corporations seeking to amend or restate their certificates may have been formed prior to July 1, 2014, reference to the former corporate types is included in this guidance.

Quick Statutory Reference Guide	
Definition of Charitable	N-PCL §§ 102(a)(3-a) and (3-b)
Definition of Non-charitable	N-PCL § 102(a)(9-a)
Purposes of a Corporation	N-PCL § 201

### Amendments and Restated Certificates

Pursuant to Article 8 of the N-PCL, a New York Not-for-Profit Corporation may amend its Certificate of Incorporation to:

- Change its corporate name;
- Change, add or limit its purposes;
- Strike out, change or add any provision that is not inconsistent with the N-PCL or any other applicable law or the rights of its members, officers or directors;
- Extend its duration or revive its existence if its original period of duration has expired;
- Specify, change or revoke the voting rights of its directors or members;
- State or change the corporation's location;

- State or change the address to which the Secretary of State must send a copy of any process served on the Secretary;
- Designate, change or revoke the designation of a registered agent; or
- Authorize the issuance of capital certificates and fix their value and terms and the rights and privileges of their holders.

Pursuant to Article 8 of the N-PCL, a New York Not-for-Profit Corporation may re-state its Certificate of Incorporation to:

- Restate in a single certificate the text of its Certificate of Incorporation without making any amendment or change, except that it may include any amendments or changes which may be authorized by its board without a vote of its members, or
- Restate in a single certificate the text of its Certificate of Incorporation as amended to include any amendments or changes authorized by the N-PCL.

A restated Certificate of Incorporation must be entitled "Restated Certificate of Incorporation of (Name of Corporation) under section 805 of the Not-for-Profit Corporation Law" and must include:

- The name of the corporation and, if it has been changed, the name under which it was formed.
- The date its Certificate of Incorporation was filed by the Department of State.
- If the restated certificate restates the text of the Certificate of Incorporation without making any amendment or change, a statement that the text of the Certificate of Incorporation is restated, without amendment or change, and the restated certificate must be set forth in full.
- If the restated certificate restates the text of the Certificate of Incorporation as amended or changed thereby, a statement that the Certificate of Incorporation is amended or changed to include one or more amendments or changes authorized by the N-PCL and specifying each amendment or change and that the text of the Certificate of Incorporation is restated as amended or changed. Also, the restated certificate must be set forth in full.
- A statement as to the manner in which the restated certificate was authorized.

**Note:** Approval or consent of the Supreme Court, the Attorney General or any other governmental body or officer, or other person or body, which was required for the corporation's Certificate of

Incorporation, or any Certificate of Amendment is not required if the restated certificate contains no amendments and if such consent previously required was secured. Applications for approval of Amendments or Restatements must be reviewed and approved by the Office of Attorney General that serves the county where corporation has its principal place of business, or the Supreme Court on notice to the Attorney General. A list of the offices of the Attorney General and the counties they serve is in Appendix A<sup>6</sup>.

When the restated certificate is filed by the Department of State, the original Certificate of Incorporation will be superseded and the restated Certificate of Incorporation, including any amendments and changes it makes, shall be the Certificate of Incorporation of the corporation.

Quick Statutory Reference Guide	
Right to Amend Certificate of Incorporation	N-PCL § 801
Restated Certificate of Incorporation	N-PCL § 805

Article 8 of the N-PCL sets forth the statutory requirements for amending a Certificate of Incorporation, including the required contents of a Certificate of Amendment. Those requirements include the following:

1. Trade Associations or Business Corporations (Type A or non-charitable)
  - a. Certificates of Amendment and Restated Certificates of trade or business associations must be approved by the New York State Attorney General’s Antitrust Bureau and then submitted to the Department of State.
  
2. Government Agency Approvals
  - a. Certificates of Amendment of corporations with certain purposes must be approved by certain organizations and government agencies. Required approvals must be attached to the Certificate of Amendment. *See* “Required Approvals from Agencies and Officers” above for information concerning required approvals. The N-PCL should be consulted for a complete list of required approvals.

Quick Statutory Reference Guide	
Approvals	N-PCL §§ 404 and 804

**PLEASE NOTE:** Pursuant to the N-PCL, either the Attorney General or the Court may approve an amended or restated certificate of a corporation that is changing its purposes and/or powers, and the corporation has the option of submitting its amended or restated certificate to either the Attorney General or the Court on notice to the Attorney General for approval. The N-PCL also provides that at any time, including if the Attorney General does not approve an amended certificate of incorporation or the Attorney General concludes that court review is appropriate, the corporation may apply for approval to the Supreme Court in the judicial district where the corporation's

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<sup>6</sup> Changes to a certificate other than to a corporation’s purposes or powers should be submitted directly to the Dept of State.

principal office is located.

If a purpose or power is being added or eliminated, the certificate must be accompanied by an “Affidavit of Use” from an officer of the corporation stating that current assets will be used for current purposes and powers and future assets will be used for purposes and powers as stated in the amended or restated certificate. Please see the checklist of the documents required for review by the Attorney General at page 2 of this guidance. A model Affidavit of Use may be found in Appendix B.

After its review of the certificate, the office of the Attorney General will advise the corporation, or its attorney if the certificate was submitted by an attorney, of any additional information that is needed or if court approval is appropriate. Otherwise, the office of the Attorney General will return the certificate with a written approval.

A Certificate of Amendment will not be approved for a corporation that has not complied with New York’s registration requirements *See* “REGISTRATION REQUIREMENTS - REGISTRATION WITH THE ATTORNEY GENERAL” above.

A sample Certificate of Amendment of a Certificate of Incorporation of a Not-for-Profit Corporation is posted by the Department of State at <https://dos.ny.gov/system/files/documents/2023/01/1511-f.pdf>.



## **APPENDIX A - Offices of the New York State Attorney General and the counties covered by each:**

### **ALBANY -**

Charities Bureau  
The Capitol  
Albany, NY 12224-0341  
518-776-2160  
Counties: Albany, Columbia, Fulton, Greene, Hamilton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, and Washington (note: Sullivan and Ulster for trusts and estates matters only)

### **BINGHAMTON REGIONAL OFFICE**

44 Hawley Street, 17th Floor  
Binghamton, NY 13901-4433  
607-251-2770  
Counties: Broome, Chemung, Chenango, Delaware, Otsego, Schuylar, Tioga, and Tompkins

### **BUFFALO REGIONAL OFFICE**

Main Place Tower - Suite 300A  
Buffalo, NY 14202  
716-853-8400  
Counties: Allegheny, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, and Wyoming

### **NASSAU REGIONAL OFFICE**

200 Old Country Road, Suite 240  
Mineola, NY 11501-4241  
516-248-3302  
Counties: Nassau (note: trusts and estates matters are handled by NYC)

### **NEW YORK CITY**

Charities Bureau Transactions  
Section  
28 Liberty Street  
New York, NY 10005  
212-416-8401  
Counties: Bronx, Kings, New York, Queens, and Richmond (note: NYC also handles Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester – trusts and estates matters only)

### **PLATTSBURGH REGIONAL OFFICE**

43 Durkee Street, Suite 700  
Plattsburgh, NY 12901-2958  
518-562-3288  
Counties: Clinton, Essex, and Franklin

### **POUGHKEEPSIE REGIONAL OFFICE**

One Civic Center Plaza Suite 401  
Poughkeepsie, NY 12601-3157  
845-485-3900  
Counties: Dutchess, Orange, Sullivan, and Ulster (note: Dutchess and Orange County trusts and estates matters are handled by NYC; Sullivan and Ulster County trusts and estates matters are handled by Albany)

### **ROCHESTER REGIONAL OFFICE**

144 Exchange Boulevard  
Rochester, NY 14614-2176  
716-546-7430  
Counties: Livingston, Monroe, Ontario, Seneca, Steuben, Wayne, and Yates

### **SUFFOLK REGIONAL OFFICE**

300 Motor Parkway  
Hauppauge, NY 11788-5127  
631-231-2424  
Counties: Suffolk (note: trusts and estates matters are handled by NYC)

### **SYRACUSE REGIONAL OFFICE**

615 Erie Blvd. West, Suite 102  
Syracuse, NY 13204  
315-448-4800  
Counties: Cayuga, Cortland, Madison, Onondaga, and Oswego

### **UTICA REGIONAL OFFICE**

207 Genesee Street, Room 508  
Utica, NY 13501-2812  
315-864-2000  
Counties: Herkimer and Oneida

### **WATERTOWN REGIONAL OFFICE**

Dulles State Office Building 317 Washington Street  
Watertown, NY 13601-3744  
315-523-6080  
Counties: Jefferson, Lewis, and St. Lawrence

### **WESTCHESTER REGIONAL OFFICE**

44 South Broadway  
White Plains, NY 10601  
914-422-8755  
Counties: Putnam, Rockland, and Westchester (note: trusts and estates matters are handled by NYC)

**Appendix B – Sample Affidavit of Use:**

State of New York  
County of \_\_\_\_\_ ss:

\_\_\_\_\_, being duly sworn deposes and says:

I am the \_\_\_\_\_ (title) of \_\_\_\_\_ (name of charitable organization) and hereby certify the following under penalties of perjury:

The corporation’s current assets will be used for its current purposes and its future assets used for the purposes as amended.

The corporation will comply with any restrictions on assets in effect prior to the amendment unless such restrictions are lifted by the donor or order of a court.

There is no transfer of all or substantially all of the corporation’s assets pending or contemplated at this time; the corporation does not intend to cease any operations, nor has it ceased any operations as of the date of this affidavit. However, upon any such transfer or change in operations, proceeds will only be used or distributed in accordance with the corporation’s purposes prior to this amendment.

\_\_\_\_\_  
Name

Sworn to before me  
This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public