



**NOT-FOR-PROFIT INCORPORATION
& TAX EXEMPTION**

The Edmond de Rothschild Nonprofit Assistance Program

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TABLE OF CONTENTS

I.	INTRODUCTION.....	3
II.	BACKGROUND INFORMATION.....	3
III.	DECIDING WHETHER TO FORM A NOT-FOR-PROFIT CORPORATION.....	4
IV.	STEPS TO FORMING A TAX-EXEMPT NOT-FOR-PROFIT CORPORATION.....	6
V.	INCORPORATION UNDER NEW YORK STATE LAW.....	7
VI.	KEY CONSIDERATIONS FOR RUNNING YOUR NOT-FOR-PROFIT.....	19
VII.	EXECUTIVE COMPENSATION.....	24
VIII.	BUSINESS OPERATIONS.....	25
IX.	GOVERNMENT OVERSIGHT AND ENFORCEMENT.....	25
X.	TAX EXEMPTION UNDER FEDERAL LAW.....	26
XI.	TAX EXEMPTION UNDER STATE AND LOCAL LAW.....	31
XII.	WHAT YOU NEED TO DO IF YOU DECIDE TO USE VLA'S SERVICES.....	35
	APPENDIX A -- APPLICATION FOR RESERVATION OF NAME.....	36
	APPENDIX B -- SAMPLE CERTIFICATE OF INCORPORATION.....	37
	APPENDIX C -- SAMPLE OF CONSENT COVER LETTER.....	40
	APPENDIX D -- THINGS TO CONSIDER WHEN DRAFTING BY-LAWS.....	41
	APPENDIX E -- SAMPLE BY-LAWS.....	51
	APPENDIX F -- SAMPLE CONFLICTS OF INTEREST POLICY.....	57
	APPENDIX G -- SAMPLE ORGANIZATIONAL RESOLUTION.....	60
	APPENDIX H -- SAMPLE FISCAL SPONSORSHIP AGREEMENT.....	61
	APPENDIX I -- SAMPLE SS-4 FORM.....	64
	APPENDIX J -- SAMPLE BUDGET.....	66
	APPENDIX K -- SAMPLE CT-247 Form.....	67
	APPENDIX L -- SAMPLE ST-119.2 FORM.....	69
	APPENDIX M -- SAMPLE CHAR410 FORM.....	71
	APPENDIX N -- USEFUL WEBSITES.....	74
	APPENDIX O -- RECOMMENDED RESOURCES FOR MANAGING A NOT-FOR-PROFIT.....	75
	APPENDIX P -- FREQUENTLY ASKED QUESTIONS ABOUT OBTAINING 501(C)(3) STATUS.....	80
	APPENDIX Q -- FREQUENTLY ASKED QUESTIONS ABOUT APPLYING FOR FISCAL SPONSORSHIP.....	82
	APPENDIX R -- INFORMATION ABOUT NEW IRS FORM 1023EZ.....	86
	APPENDIX S -- ORDER OF EVENTS FOR NFP FORMATION.....	88

I. INTRODUCTION

With this booklet, we hope to educate you about the process of forming a not-for-profit, tax-exempt corporation. **This booklet is intended for those people who are working with an attorney and should not be used in lieu of the legal advice and guidance of an attorney.**

We recommend using this booklet in the following way:

- A. Read this booklet all the way through—twice.
- B. Come up with a list of questions. These questions should be for both your organization and the attorney with whom you and your group will be placed.
- C. Meet with the rest of your organization and work through all of the questions your organization is capable of answering.
- D. Save all the questions that you and your organization are unable to answer. Ask the volunteer attorney your remaining questions.

II. BACKGROUND INFORMATION

Nonprofit law in New York is governed by the New York Not-for-Profit Corporations Law (“NPCL”), as amended by the Nonprofit Revitalization Act of 2013, in effect as of July 1, 2014. Additional amendments were signed into law in 2015 and 2016. Some of these changes were implemented in 2016, and some will be put into effect in 2017. These changes have been referenced below.

A. Basic Characteristics of a Corporation

- 1) A corporation is a separate entity—it is a “person” under New York law. A corporation exists and acts as a legal entity apart from its members, officers, directors, or stockholders. A corporation can incur debt, enter into contracts, and lease or own property.
- 2) Limited liability—except in certain unusual circumstances, the individuals who control the corporation are not liable for its obligations—only the corporation is.
 - a) In certain circumstances, a court may find that the individual members, directors, or officers of a corporation have acted in a manner inconsistent with the corporate structure and therefore disregard the corporate structure or “pierce the corporate veil.” For example:
 - (1) Individuals fail to make it clear to people with whom they are dealing that they are acting on behalf of the corporation in their corporate capacities and not as individuals; or

- (2) Corporate funds are co-mingled with the funds of the individuals associated with the corporation.
- 3) It has perpetual life—unless otherwise stated in the certificate of incorporation, a corporation is deemed to have perpetual existence. Since a corporation exists separate and apart from its members, its legal existence is not dependent upon the continued participation of individual members, shareholders, or directors.

B. Basic Characteristics of a *Not-for-Profit* Corporation

- 1) It is not owned by the Board of Directors—it is not owned by anyone. It has no shareholders and cannot have any investors. It is controlled by its officers and directors (and possibly members, if any exist) who must act only in furtherance of the not-for-profit's purpose.
- 2) It must have a public purpose—its primary (although not exclusive) purpose must be non-pecuniary (i.e., not money-making)—it exists for the community. This includes such “charitable” goals as education, promotion of culture, and relief of poverty.
- 3) Any money made by the corporation goes back to support its purpose—none of its assets, income, or profit can go to its directors, officers, or members. This does not mean that the corporation cannot make money or that its employees cannot earn a reasonable salary. The corporation cannot, however, be a profit-making operation for the founders.

III. DECIDING WHETHER TO FORM A NOT-FOR-PROFIT CORPORATION

A. Reasons to Form a Not-for-Profit Corporation

- 1) You will have limited liability. If you form a corporation, it is a separate entity which operates beyond you and shields you from the obligations and debts of the corporation.
- 2) It is the best **stepping stone** to getting tax exempt status, which includes the following benefits:
 - a) Easier to apply for grants—although 501(c)(3) status is **no guarantee** for getting a grant, it is often a prerequisite;
 - b) Generally speaking, your not-for-profit organization will pay no taxes;
 - c) Donations to your organization will be tax deductible;
 - d) Your organization can apply for a bulk mailing rate; and

- e) Your organization will avoid state sales tax on its purchases. (Note that whether or not your organization has to pay taxes on what it sells is a complicated issue that is beyond the scope of this class.)

B. Reasons NOT to Form a Not-for-Profit Corporation

- 1) Your group is presently able to carry out the activity it wishes to pursue without any outside financial support—for example, your group earns sufficient funding by conducting one performance each weekend.
- 2) You or your group wishes to become profit-making at some time in the future—i.e., you or your group are in it for commercial reasons. The assets of a not-for-profit cannot be freely moved to a for-profit and a not-for-profit cannot have investors.
- 3) Time is an important factor—the process of incorporating a not-for-profit can take several months and obtaining tax exempt status can take approximately a year (whereas it is possible to incorporate a for-profit entity within a day).
- 4) You want total and complete control—all not-for-profit corporations must have at least 3 members on its Board of Directors, who ultimately control the corporation and can vote you out.
- 5) You do not want to be bothered with paperwork—there are filing and reporting requirements for the New York Attorney General, the Charities Bureau, and the IRS.

C. Alternatives to Incorporating as a Not-for-Profit

- 1) Unincorporated Association: This is simply a group of people joined together for a common purpose. Unlike a corporation, it has no legal existence or identity separate from its members and thus does not have the benefit of limited liability.
- 2) Operate under an Umbrella Organization or Fiscal Sponsor: A fiscal sponsor is an organization that is tax exempt under Section 501(c)(3) of the Internal Revenue Code and allows individuals or organizations to use its not-for-profit 501(c)(3) status to apply for grants and solicit charitable contributions. *The fiscal sponsor manages or co-manages all of the funds, assets, and contributions for the individual or organization in exchange for an administrative fee equal to 5-10% of the funds that the sponsor collects on your organization's behalf.*
- 3) Incorporate as a For-Profit: A for-profit corporation has the benefits of separate corporate personhood—including limited liability and perpetual existence—but its activities, unlike those of a not-for-profit corporation, may be directed toward any purpose that an individual could lawfully pursue. Its owners, so long as they follow their own internal procedures, may operate the corporation and dispose of the corporation's assets for the purpose of enriching themselves or any individual or group that they prefer, and need not consider any greater social purpose.

IV. STEPS TO FORMING A TAX-EXEMPT NOT-FOR-PROFIT CORPORATION

Forming a tax-exempt not-for-profit corporation is a two-part process. First, you incorporate a not-for-profit corporation under state law. Second, you obtain federal tax-exempt status from the IRS. These steps will be expanded upon in the following sections.

A. Incorporation under State Law

- STEP 1. Pick Corporate Name
- STEP 2. Check Availability of Corporate Name
- STEP 3. Reserve Corporate Name (Optional)
- STEP 4. Draft Certificate of Incorporation
- STEP 5. Obtain Consents from Necessary State Agencies (e.g., Department of Education in New York)
- STEP 6. File Certificate of Incorporation with Department of State
- STEP 7. Draft By-Laws
- STEP 8. Organizational Meeting of the Initial Directors

B. Tax Exemption Under Federal Law

- STEP 9. Apply for Federal Employer Identification Number (EIN)
- STEP 10. Apply for Recognition of Tax Exemption under Section 501(c)(3) of the Internal Revenue Code
- STEP 11. Respond to Questions from IRS (if questions are asked)

C. Tax Exemption under State and Local Law

- STEP 12. Apply for Exemption from State Corporate Tax
- STEP 13. Apply for Exemption from State and Local Sales Tax
- STEP 14. Register with the State of New York, Office of the Attorney General, Charities Bureau

V. INCORPORATION UNDER NEW YORK STATE LAW

A. STEP 1. Pick Corporate Name

- 1) There are very few legal requirements in choosing a name:
 - a) You should avoid using the words “school,” “museum,” “library,” or “archive” unless that is what you are. If so, you have to go through a special chartering process with the Board of Regents;
 - b) The name cannot imply that the organization is a public or governmental agency or is possessed of powers which it does not have or which are illegal;
 - c) The name cannot contain the noun or adjective form of any profession which is licensed and regulated by the Board of Regents—e.g., medicine, dentistry, law;
 - d) The suffix of the name must contain one of the following: Incorporated (Inc.), Corporation (Corp.), or Limited (Ltd.); (cannot be LLC), and
 - e) The name cannot be the same as (or confusingly similar to) the name of an existing corporation on file with the New York Department of State.
- 2) Practical Considerations:
 - a) Do not use the word “trust” or “foundation” unless that is what your corporation is or intends to become;
 - b) The name should indicate the purpose of not-for-profit corporation; and
 - c) The name should be unique.

B. STEP 2. Check Availability of Corporate Name

- 1) Before incorporating, incurring the expense of creating a logo, and ordering letterhead, you may want to check on the availability of a name and/or reserve it. This is a simple and inexpensive procedure and lets you know if there is a problem before your organization’s Certificate of Incorporation is rejected. If the name is available in New York, this does not protect your organization against trademark claims in New York or elsewhere. You may have to do a trademark search as well.
- 2) Recommended actions:
 - a) Go to https://www.dos.ny.gov/corps/bus_entity_search.html and search the New York Department of State’s Corporation/Business Entity Database and do a search for your chosen entity name or a portion of the name;

- b) Go to www.uspto.gov and do the same search; and
- c) Do a general Google search.

C. STEP 3. Reserve Corporate Name (Optional)

1) To reserve one or more names, you must do the following:

- a) Fill out an Application for Reservation of Name for each of your first three choices for names and draft a cover letter ranking these first three choice;
- b) Send the Application, cover letter, and \$10 reservation fee to the following address:

NYS Department of State
Division of Corporations, State Records and Uniform Commercial Code
One Commerce Plaza
99 Washington Avenue
Albany, NY 12231-0001

- c) Your organization will get the first available choice of corporate name; and
- d) Once granted, your organization will receive a Certificate of Reservation of Corporate Name. The reservation is good for 60 days and can be renewed for a subsequent \$10 payment.

For Sample Application for Reservation of Name, please see Appendix A.

D. STEP 4: Draft Certificate of Incorporation

The Certificate of Incorporation (sometimes referred to as the Articles of Incorporation or Constitution) provides the framework under which the organization will operate, and serves as its fundamental law. Think of the Certificate of Incorporation as your corporation's birth certificate. It defines and limits the organization's purpose. For organizations incorporated before July 1, 2014, it should also define the organization's scope of anticipated activities. Although it is still allowable to provide this information, this is no longer required for organizations incorporating after July 1, 2014.

Important: The Certificate of Incorporation is not the same as the corporation's By-laws. The By-laws are an internal document that details the corporation's operating procedures. By-laws do not need to be filed with the Department of State and may be amended internally.

For Sample Certificate of Incorporation, please see Appendix B.

1) Key Items in the Certificate of Incorporation

a) **NAME** (See Steps 1 and 2)

b) **CORPORATE MISSION**—Determining and describing your corporation's mission is the most important task you will undertake in creating your Certificate of Incorporation. (See Item 3 of Appendix B)

(1) Guidelines for Describing Mission:

(a) Should be specific and unique. More detailed than a general philosophy, the mission should make the organization's day-to-day activities apparent;

(b) Must indicate that your corporation is clearly for the public benefit. Additionally, must show that you are not doing something that is ordinarily done. Must differentiate from for-profit organizations that do the same thing; and

(c) Decide whether to specify duration of not-for-profit corporation. Corporations, including nonprofit corporations, may schedule their existence to end after a specified period of years. However, there is no general advantage to this. You can always end your corporation's existence at any time by properly approving and filing a Certificate of Dissolution. Generally, the better course of action is to establish your not-for-profit corporation to have perpetual existence.

(2) Important considerations:

(a) **Future.** Try to identify what you would want the organization to do five years from now if it is wildly successful and wealthy. You should try to ensure that those activities fall within the ambit of your organization's mission statement;

(b) **Amendments.** If the goals of the organization change, the Certificate can be amended. A change in the purposes requires notifying the IRS, and may require more extensive explanation and documentation, with some time and expenses involved. That is why, as an initial matter, you want to make every effort to think broadly about the scope of your organization's activities and reflect that in your organization's Certificate; and

(c) **Sample Tax-Exempt Mission Clauses.** To help you, here are sample mission statements from the Certificates of Incorporation of two arts organizations that have been granted tax-exempt status.

i) A musical organization promoting the works of a specific composer:

a. The purposes for which the corporation is to be formed are:

(i) To perpetuate the memory of [famous composer] by promoting, sponsoring, presenting and conducting forums, lectures, and discussions relating to his music, teachings, and writings, and arranging for performances of his composition;

(ii) To hold public recitals and concerts; to assist qualified instrumentalists by obtaining for them practice and rehearsal facilities in private and public premises prior to professional engagements; and

(iii) To aid instrumentalists in the general development of their careers by counseling, holding competitions with appropriate prizes, promotion, grants, and maintaining contact with concert management personnel.

ii) A theatre ensemble:

a. The purposes for which it is formed are:

(i) To develop a way of working based largely on the teachings of [a famous theatrical figure] and to encourage public interest in [the famous theatrical figure's] contributions to the art and technique of acting. The [famous theatrical figure's] approach is an objective method of working with and through both the physical and imaginative faculties in order to free the actor from the subjective, personalized approach found in most modern methods of acting;

(ii) In furtherance of this general purpose, the Corporation may do any of the following:

Ensemble Development. Working and developing as an ensemble to (a) explore the theater event and the role of the actor therein, (b) research and explore new approaches to the performing arts in a process-oriented way, and (c) work within the theatrical process to harmonize the various elements of the actor's art: speech, movement, and acting. These efforts may develop into theater pieces although performance is not the foremost goal. All of this is to be developed

outside of the competitive and financially motivated atmosphere of the commercial theater.

Work with Other Artists. Offer classes, workshops, and other similar activities for artists of varying ages, different disciplines and levels of experience to experiment with, explore, and examine the theater event in ensemble. Establish a training facility for same.

Work with Non-Artists. Bring acting and performing arts experiences to members of the general public (through classes, workshops, and other activities involving teachers, health workers, athletes, visual artists, social workers, business people, etc.) that they may better fulfill their own vocational goals. Introduce the performing arts to a wider audience, including to people who rarely or never attend theater performances, in schools, churches, hospitals, shelters for the homeless and homes for the mentally handicapped, elderly, disabled, and mentally ill. This wider audience may be reached by means of various activities, including, but not limited to, national and international performance and lecture tours, theater festivals, and publishing.

c) **CORPORATE STRUCTURE** - Elimination of Corporate Types by the NPRA as of July 1, 2014:

- (1) The previously used letter designations (Types A, B, C, and D) will no longer be used for newly formed organizations; and
- (2) Designation of Charitable or Non-Charitable: Generally, organizations that were previously Type B and C will be designated as charitable, Type A corporations will be designated as non-charitable, and Type D corporations will require an analysis of their corporate purpose to assess the correct designation. Voting Members for charitable organizations are optional.

d) **MEMBERSHIP AND MEMBER VOTING RIGHTS**

- (1) Members are those people or entities who have some status and rights with respect to the organization. In New York, Charitable organizations may choose to have no members;
- (2) If your organization has members, you may choose to have different classes or types of members, e.g., individual, corporate, community. Your organization may assign different rights to different classes of members. For example, you could assign voting rights to certain classes of members and not to other members. Think about which type of member—if any—would best embody, pursue, and help attain your organization’s mission; and

- (3) If your organization has members, at least one class of members must have the right to elect the Directors. Always remember that, essentially, whoever elects the Directors holds controlling power over the organization.
- e) **COUNTY LOCATION.** Every corporation, whether for-profit or not-for-profit, must indicate the county within the state where the office of the corporation will be located. (See Item 9 of Appendix B)
- f) **INITIAL BOARD OF DIRECTORS.** The Directors or Trustees (those names are often used interchangeably) of a not-for-profit corporation are legally responsible for overseeing and managing the affairs (and, thus, legally in control) of the corporation. For the Certificate of Incorporation, an Initial Board of Directors is provided. (See Item 10 of Appendix B)

(1) The Board of Directors:

- (a) Is responsible for keeping the corporation on track and for making appropriate filings with the State Charities Office, IRS, and Attorney General's Office;
- (b) Does not conduct the day-to-day management of the corporation but needs to be informed of activities on a regular basis—it gives approval on major purchases, hiring, firing, and compensation of officers and employees;
- (c) Is composed of directors who are generally not paid for serving on the Board but may be reimbursed for legitimate expenses; and
- (d) Requirements for Board Chair: Effective January 1, 2017, NPCL § 713(f) prohibits the CEO or other corporate employees from serving as chair of the board, unless the board approves the election by a two-thirds vote of the entire board, and “contemporaneously documents in writing the basis for the board approval.”

(2) Requirements for the Initial Board of Directors:

- (a) New York, New Jersey, and Connecticut require not-for-profit corporations to have at least three Initial Directors;
- (b) Directors must be over the age of 18;
- (c) Directors need not be residents of New York nor be citizens of the United States;
- (d) There is no maximum number of Directors; and
- (e) For organizations incorporated before July 1, 2014, you must list the Initial Board of Directors on the Certificate of Incorporation with street addresses

for each Director (and not P.O. boxes). This disclosure is no longer necessary for organizations incorporated after July 1, 2014.

(3) Practical Considerations:

- (a) Choose Directors who will support the group's mission, who may have special expertise to offer, and who, above all, will take their corporate and legal responsibilities seriously;
- (b) Keep the organization's Board size manageable, especially in the beginning. It is often very difficult to get large groups of people together for required annual or special meetings; and
- (c) It is often advisable to begin your organization with only three Directors until all of the initial organizational activities (filings, opening bank accounts, adopting By-laws, and obtaining tax exempt status) have been completed.

g) **REGISTERED AGENT.** Every corporation, whether for-profit or not-for-profit, must have a registered agent within the State to receive the organization's official mail. The registered agent's only duty is to forward notices that are served on the agent to the corporation at its last known address. (See Item 11 in Appendix B)

(1) Requirements for Registered Agent:

- (a) In New York, the corporation *may* designate the Secretary of State as its agent for service of process, along with an address inside or outside New York to which the Secretary of State shall mail a copy of any notice or process served. If the corporation chooses to appoint its own registered agent, he or she must be a resident of New York or have an in-state New York business address;
- (b) In New Jersey, the corporation must have a registered agent who is at least 18 years of age and has an in-state address; and
- (c) In Connecticut, the corporation must have a registered agent who may be either a person who is a Connecticut resident or a domestic corporation.

h) **PROVISIONS FOR TAX EXEMPT PURPOSES.** A not-for-profit organization seeking 501(c)(3) status should include provisions in its Certificate of Incorporation that address:

(1) Dissolution: What happens if the not-for-profit dissolves?

It is required that upon dissolution of a 501(c)(3), the assets go to another

501(c)(3) or to the State. (See Item 13 in Appendix B)

- (2) Inurement: What restrictions are there on the current use of assets?

No asset of the not-for-profit corporation may be given to a private person or entity unless it is part of the corporation's mission (e.g., a not-for-profit soup kitchen giving out food to the needy) or unless the not-for-profit receives fair market value in return (e.g., the not-for-profit cannot pay more than a fair market price to purchase tables, supplies, or someone's services—i.e., salary). (See Item 6 in Appendix B)

- (3) Campaigning for Candidates: What campaigning for candidates may a 501(c)(3) do?

NONE. Section 501(c)(3) corporations *are absolutely prohibited from* participating or intervening in any political campaign in favor or in opposition to any candidate for elected public office. No one in the corporation loses his/her right individually to participate in the political process, but they must not do it in their official capacity with the corporation or the corporation is at risk of losing its tax exemption. (See Item 7 in Appendix B)

- (4) Lobbying for Legislation: How much lobbying may a 501(c)(3) do?

This is a complex area even though the basic rule sounds simple. A section 501(c)(3) corporation cannot have a “substantial part” of its activities consist of lobbying, or otherwise the 501(c)(3) risks losing its tax-exempt status.

The term “substantial part” has never been meaningfully defined and its determination has differed depending upon the particular facts and circumstances surrounding the activity. Generally, courts have analyzed the relative significance of a particular activity by examining the receipts and expenditures connected with that activity, the amount of volunteer time involved, and the success of the activity.

As an alternative to the “substantial part” test, the 501(c)(3) organization can elect to be subjected to a “mechanical lobbying expenditures” test under IRC 501(h).

If the election is made, an organization will be denied its tax-exempt status only if it “normally” exceeds the lobbying expenditures permitted by Section 501(h). An organization can, without adverse consequences, expend annually for lobbying purposes (subject to an upper limit of \$1 million) 20% of the first \$500,000 of the organization's exempt purpose expenditures, 15% of the next \$500,000, 10% of the next \$500,000, and 5% of the organization's expenditures in excess of \$1,500,000. In addition, no more than one-fourth of such permitted lobbying expenditures may be for “grass-roots” lobbying; that is, attempts to influence the general public on legislative matters.

Note that a non-charitable organization, such as a 501(c)(4) organization, *can* engage in a substantial amount of lobbying. However, it may have to pay a tax on its political expenditures.

A 501(c)(4) organization may even create a separate political action committee (“PAC”) if it wishes to contribute to political campaigns or political parties. The PAC will then be treated as a separate entity from the non-charitable organization and as a political organization for tax purposes. A corporation should adopt articles of organization and By-laws for a PAC to clarify its separate status and to place clear limits on its administration and use.

It should be noted that there is a fine line between a 501(c)(3) organization and a 501(c)(4) organization, which is determined by the nature of the organizations’ purposes. Groups should consult with tax and legal professionals regarding such issues.

(5) Incorporators

The role and responsibility of the incorporators is to sign and file the Certificate of Incorporation, and, in doing so, ensure that the Certificate accurately reflects the organization’s intentions in incorporating. The incorporator(s) can be anyone who is familiar with the organization and Certificate’s contents (including the attorneys or agents who file the Certificate). (See Signature Line of Appendix B)

(a) Requirements for Incorporator:

- i) In New York and New Jersey, the incorporator must be at least 18 years of age, but need not reside within New York or New Jersey; and
- ii) In Connecticut, there are no age or residency qualifications for the incorporator.

E. STEP 5. Obtain Consents from Necessary State Agencies

- 1) Depending on the stated purpose of your organization, it may need to obtain the consent or waiver of consent of a state agency. The most common state agency from which New York arts not-for-profit organizations seek consent is the Department of Education.
 - a) Consent from Department of Education: After July 1, 2014, organizations no longer need to obtain consent from the Department of Education, unless the purpose of the organization includes the operation of a school, university, library, museum or historical society. Other types of organizations only need to notify the DOE within 30 days of filing the Certificate. If your corporation arguably has any kind of educational purpose (see the definition stipulated in New York

Education Law §216), and it was incorporated before July 1, 2014, you would have needed to send your corporation's Certificate of Incorporation to the Department of Education for a consent or waiver of consent to file the Certificate. Now, only organizations identifying themselves as schools, museums, libraries or historical societies need to seek DOE consent. If your nonprofit provides comprehensive, school-like education in an artistic discipline or some kind formal certification or accreditation regulated by the Department of Education, the Department *should* provide a consent or waiver of consent to your incorporation.

b) Step-by-Step Process of Obtaining Consent from the Department of Education:

- (1) Draft cover letter;
- (2) Put together packet, including:
 - (a) An original of your Certificate of Incorporation;
 - (b) One copy of your Certificate of Incorporation;
 - (c) Cover letter;
 - (d) A backer sheet to the package (basically a cover page—see: <http://www.dos.ny.gov/corps/bcfaq.asp#backcover>);
 - (e) The completed consent form (www.counsel.nysed.gov/commom/counsel/files/documents/forms);
 - (f) Fee of \$10, made payable to the NYS Education Department; and
 - (g) Confirm with DOS whether a corporate indicator (i.e. “Inc.”) needs to be included with the corporate name
- (3) Send to:

Counsel and Deputy Commissioner for Legal Affairs
New York State Education Department
89 Washington Avenue
Albany, NY 12234

For Sample of Consent Cover Letter, please see Appendix C.

F. STEP 6. File Certificate of Incorporation with Department of State

- 1) When filing with the Department of State, your application must include the following:
 - a) Executed original Certificate of Incorporation;
 - b) Any consents or waiver of consents (e.g., from the Department of Education);
 - c) Certificate of Reservation of Corporate Name (if applicable); and
 - d) Filing fee of \$75 in the form of a certified check, money order, attorney's check, or credit card payment (use the Division of Corporations' Credit Card/Debit Card Authorization form: <http://www.dos.ny.gov/forms/corporations/1515-f-1.pdf>).
- 2) Send your filing to:

NYS Department of State
Division of Corporations, State Records and Uniform Commercial Code
One Commerce Plaza
99 Washington Avenue
Albany, NY 12231-0001

Clerical Corrections: The Department of State may correct typographical errors in filings upon written request by the filer, rather than sending them back to the applicant for corrections, whether the filings are for incorporation or amendment.

G. STEP 7. Draft By-laws

- 1) By-laws are the Corporation's internal rules. They set out the procedures that the leadership and the members of the corporation follow in making decisions, especially those at a strategic and institutional level. The IRS requires that not-for-profit organizations applying for tax-exempt status submit copies of their By-laws.
- 2) By-laws serve the following three functions:
 - a) Officially and legally identify who holds what power within the corporation, as well as what processes must be followed to make various decisions for the corporation. By looking at the By-laws, everyone within and outside the corporation will know who can make decisions, who can implement the decisions, and who speaks for the group;
 - b) Indicate the different roles or capacities that people within the corporation serve:
 - (1) **Officers**: Organizations typically have at least 3 officers: a President, Secretary, and Treasurer. There is no legal requirement that officers also are

Board Members, but most organizations require this in their By-laws. The By-laws also include a description of the Officers' roles and responsibilities.

- c) Establish the procedures for decision-making such that the corporation can function successfully despite the involvement of different people with differing views. In establishing your organization's By-laws, think about what processes will work best for your organization;
- d) Be patient. It may take three or four sessions with your organization to produce your By-laws. It will be worth it. You will have established procedures that will help your organization run smoothly on an institutional level so that you can concentrate your energies on your artistic endeavors;
- e) Resist the impulse to simply copy another organization's By-laws. Your organization's needs and objectives will be different than those of other organizations. Use other By-laws as examples to consider, but do not put yourself in the situation of having to comply with someone else's rules;
- f) In drafting your organization's By-laws, consider the questions listed in Appendix D;
- g) Conflict of Interest Policy – This is required by New York Law for all Nonprofits (see Sec. VI (A)(5) below); and
- h) Whistleblower Policy – This is required of Nonprofits with 20 or more employees and over \$1 million in revenue.

For Sample By-laws, please see Appendix E.

H. STEP 8. Organizational Meeting of the Initial Directors

- 1) After the Certificate of Incorporation has been accepted for filing with the Secretary of State, an organizational meeting of the corporation's initial Directors must be held to:
 - a) Adopt initial By-laws;
 - b) Elect Directors (unless the Certificate of Incorporation or the By-laws provide that the Initial Directors shall serve until the first annual meeting); and
 - c) Transact any other business necessary to set up the corporation (such as electing Officers or authorizing the opening of a corporate bank account).
- 2) An organizational meeting need not be held if each initial Director or each incorporator or his or her attorney-in-fact signs a unanimous written consent setting forth the corporate action to be taken. (Although, generally, if at all practicable, it is

highly advisable that your organization convene this meeting in order to encourage a good communication and a habit of adherence to corporate formalities from the corporation's outset.)

- 3) Finally, as a practical matter, if the corporation intends and is ready to seek tax-exempt status, the Directors, at the organizational meeting, should authorize that someone sign an IRS Form 2848 (IRS power of attorney) and proceed with the tax exemption application.

For a Sample Organizational Resolution, please see Appendix G.

VI. KEY CONSIDERATIONS FOR RUNNING YOUR NOT-FOR-PROFIT

A. FIDUCIARY DUTIES OF DIRECTORS AND OFFICERS

Those who control and operate a corporation are obligated to act in the corporation's best interest. All directors and officers must be aware of these duties, and their possible liability for the consequences of their wrongful actions if they breach these duties.

- 1) The **Duty of Care** requires that directors and officers discharge the duties of their respective positions in good faith and with a certain degree of diligence, attention, care, and skill. The duty of care relates to the process of decision-making, and the manner in which directors exercise their responsibilities, rather than on the correctness of the decision.

A director can fail to discharge her duty of care by failing to supervise the corporation's officers or by failing to make an informed decision about an important transaction or fundamental change in the way the entity operates.

A director properly discharges the duty of care by actively participating in the organization's activities and operations. This participation includes, but is not limited to:

- a) Regular attendance Board meetings;
- b) Review of minutes and written materials disseminated to Directors prior to or at meetings;
- c) Periodic meetings with the corporation's senior management;
- d) Careful review of financial statements; and
- e) Consulting with outside experts such as accountants or attorneys.

Informed decision-making includes:

- a) Taking opportunities to hear presentations by management, accompanied by written materials explaining the rationale for the decision;
 - b) Obtaining advice and recommendations from outside experts to debate and deliberate over the proposal;
 - c) Where appropriate, gathering information from comparable institutions; and
 - d) Spending a reasonable amount of time in considering additional information.
- 2) The Duty of Loyalty requires directors to refrain from improperly using their positions to obtain a personal benefit or advantage that may properly belong to the not-for-profit.

A director is expected to make decisions objectively and solely in the best interest of the corporation. A director must disclose to the corporation whenever there is a potential conflict of interest relationship that may impair the director's objectivity. After a director's disclosure of a conflicting interest, the remaining board or committee members decide if a conflict of interest exists. If the Board of Directors determines that a conflict of interest does actually exist, the conflicted director must refrain from participating in the corporation's decision-making process with respect to any decisions or transactions relating to the conflict. (The Board of Directors may also decide to prohibit the director from continuing in the conflict of interest relationship.)

Common forms of interested transactions include, but are not limited to:

- a) The use of an organization's property or assets on a more favorable basis than available to outsiders;
- b) Usurpation of a corporate opportunity, such as taking advantage of a venture that is or could be made available to the nonprofit, or that is relevant to the nonprofit's purpose;
- c) The use of material non-public organizational information or a privileged position. For example, New York courts have found that a director who misrepresented that he owned intellectual property rights, which in actuality belonged to the not-for-profit organization, breached his fiduciary duty to the organization. In addition, by profiting from this misrepresentation, the director had engaged in a conflict of interest transaction;
- d) Corporate waste. Corporate waste occurs when a transaction serves no legitimate corporate purpose. It is generally found when no rational business person could have thought that the director made a fair business decision, and its only legitimate purpose was to benefit the director himself;

e) Related Party Transactions: Competing with the organization.

- (1) Whether a Board of Directors should permit a related party transaction or relationship or not depends greatly on its facts and circumstances. A type of transaction that may be perfectly proper in one context may be inappropriate under slightly different circumstances. NYCL §715(a) permits the board or an authorized committee to approve a related party transaction;
- (2) NPCL §§102(a)(24) and §715(a) define such a transaction as any arrangement in which a related party has a financial interest in which the corporation or any affiliate of the corporation is a participant, unless the board determines that the transaction is “fair, reasonable and in the corporation’s best interest.”
- (3) “Related parties” are now defined as any director, officer or key person, or any relative of such persons, or any entity in which a person has a 35% or greater ownership or beneficial interest . . .”

NPCL § 102(a)(25) defines “key person” as anyone who “has responsibilities” or power or influence over the corporation in the manner of a board member, manages the corporation, or “controls a substantial portion of the corporation’s capital expenditures or operating budget.”

- (4) Relative means: spouse or domestic partner, or ancestor, sibling, children, grandchildren, great-grandchildren or their spouses;
- (5) For any transaction in which a related party has a substantial financial interest, the board of the charitable organization, or an authorized committee of the board must:
 - (a) Consider alternative transactions before entering into the interested transaction;
 - (b) Approve the transaction by at least a majority vote of the directors or committee members present at the meeting; and
 - (c) Document in writing the basis for the board or committee’s approval, including any considerations of alternative transactions.

A not-for-profit may take steps to avoid breaches of the duty of loyalty by its directors and officers by:

- (a) Establishing clear procedures for compensating its employees;
- (b) Electing a majority of directors who have no financial relationship in the organization. Independent directors should dominate the board;¹ and

¹ “Independent director” means a director who: (i) is not, and has not been within the last three years, an employee of the corporation or an affiliate of the corporation, and does not have a relative who is, or has been within the last

(c) Allowing only transactions that are “fair, reasonable and in the corporation’s best interest.”

- 3) The **Duty of Obedience** requires Board members to carry out the purposes of the organization as expressed in the Certificate of Incorporation.

In essence, the duty of obedience requires the directors to refrain from transactions and activities that are beyond the not-for-profit’s powers and purposes. If a not-for-profit board desires to alter the organization’s fundamental objectives, it must amend its Certificate of Incorporation and By-laws and provide notice to the appropriate state officials.

B. BUSINESS JUDGMENT RULE

- 1) The law provides a rebuttable presumption that a Board of Directors’ decisions are rationally undertaken in the corporation’s best interest, and that the substance of these decisions should not be subject to review or second-guessing by the courts (the “business judgment rule”). If a Board decision is challenged through a lawsuit, this presumption may be overcome by proving that the decision involved:
 - a) Fraud or illegality, or a conflict of interest (breach of good faith or loyalty);
 - b) The lack of a rational business purpose (corporate waste); or
 - c) Gross negligence by Board members in discharging their duties to supervise officers and to remain informed.

C. REQUIRED POLICIES

The Board is required to implement the following:

- 1) *Conflict of Interest Policy*: Developing a written conflict of interest policy that details how a transaction with *related parties* will be considered. The policy should set forth the standards of permissible conduct.

three years, a key employee of the corporation or an affiliate of the corporation; (ii) has not received, and does not have a relative who has received, in any of the last three fiscal years, more than ten thousand dollars in direct compensation from the corporation or an affiliate of the corporation (other than reimbursement for expenses reasonably incurred as a director or reasonable compensation for service as a director as permitted by paragraph (a) of section 202 (General and special powers)); and (iii) is not a current employee of or does not have a substantial financial interest in, and does not have a relative who is a current officer of or has a substantial financial interest in, any entity that has made payments to, or received payments from, the corporation or an affiliate of the corporation for property or services in an amount which, in any of the last three fiscal years, exceeds the lesser of twenty-five thousand dollars or two percent of such entity's consolidated gross revenues. For purposes of this subparagraph, “payment” does not include charitable contributions. NPCL § 102(a)(21).

a) Corporations are now required to adopt written conflict of interest policies. It is also required that the corporation performs an annual identification of any conflicts that board members may have. These policies must contain:

- (1) A definition of circumstances that would constitute a conflict of interests;
- (2) Procedures for disclosing potential conflicts to the audit committee or board;
- (3) Requirements that the individual with a conflict not be present at or participate in board discussions and voting on the conflicted matter;
- (4) A prohibition on any attempt by the conflicted individual to influence board deliberations;
- (5) Documented procedures for detailing the existence and resolution of conflicts; and
- (6) Procedures for disclosing and addressing transactions with related parties.

For a Sample Conflict of Interest Policy, please see Appendix F.

2) *Whistleblower Policy*: Nonprofits with 20 or more employees and over \$1 million in annual gross revenue must have a policy to protect employees, officers or directors who report illegal activity from retaliation. The policy must designate a person to administer the policy.

a) NYCP 715-b(b)(2) provides that no employee who also has a position as a director may take part in any board or committee deliberations concerning the administration of whistleblower policies; and

b) Any person subject to a whistleblower complaint may not be present at a board or committee deliberation or vote on any matter relating to the complaint.

3) *Audit Committee*: The audit committee must be formed solely of “independent directors,” as defined in NPCL § 102(a)(21). An organization that is required to register with the Attorney General’s Office to solicit charitable contributions in New York State (see Sec. XII(B)(3)) must take the following measures:

a) If the corporation has an annual revenue that exceeds \$500,000:

- (1) Implement a procedure by which the board designates an audit committee comprised of independent directors, to oversee the accounting and financial reporting process and audit the corporation’s financial statements; and
- (2) Annually retain an independent auditor to conduct an audit of these reports, a review the audit results and any related management letters with the auditor.

b) If the corporation has an annual revenue that exceeds \$1,000,000:

- (1) The audit committee must, prior to the audit, review the scope and planning of the audit with the independent auditor. After the audit is complete, the committee must review and discuss with the auditor any material risks or weaknesses that the auditor identified in the internal controls of the organization, any restrictions on the scope of the audit or the auditor's access to information, any significant disagreement between the auditor and the board, and the adequacy of the organization's accounting and financial reporting; and
 - (2) The committee must additionally consider, on an annual basis, the performance and independence of the auditor, and must also report the committee's activities to the board.
- 4) *Technology*: Electronic notices are now permitted for corporate business communications:
- a) Email is permitted for the unanimous written consents by the board, committee actions, member actions, and member proxy voting;
 - b) Email and fax is permitted for notice and waiver of notice of member meetings;
 - c) Video conference is permitted for board and committee meetings; and
 - d) Notice of member meetings may be given on the website, in addition to newspaper publication for corporations with over 500 members.

VII. EXECUTIVE COMPENSATION

It should also be noted that the salaries of executives of nonprofit organizations have been under greater public scrutiny over the last decade.

Under federal tax law, the reasonableness of compensation is judged by a standard which examines "only such amount as would ordinarily be paid for like services by like enterprises under like circumstances." The IRS also examines the facts and circumstances surrounding the salary and compensation in comparable nonprofit positions. On average, nonprofit compensation is roughly half of what top executives of major firms earn.

To find more information on comparable executive compensations, GuideStar.org is a useful resource that provides data on the operations and finances of not-for-profits. It compiles an annual report of salary compensation data according to a not-for-profit's location, type of organization, revenue, asset size, and number of employees.

An executive who is deemed unreasonably compensated may be charged with improperly influencing the amounts awarded to him, and the Board may be charged with approving his salary based upon materially incomplete, inaccurate, and misleading information.

VIII. BUSINESS OPERATIONS

A. *Corporate transactions: Approved at two levels:*

- 1) The board level for transactions that require special board approval; and
- 2) The government level for transactions that currently require court approval.

B. *Real Property transactions: Subject to the following approvals:*

- 1) Only a majority of a Board need approve the corporation's leasing of real property (as the lessee or tenant);
- 2) For the purchase or sale of real property, as long as the transaction is not a disposition of substantially all of the corporation's assets, a committee approval is sufficient instead of a majority approval. If board approval is the preferred mechanism for approval, only a simple majority (instead of two thirds) of the board is required; and
- 3) If the sale is all or substantially all of the corporation's assets, the board must give approval by two-thirds vote if the board consists of 20 or fewer members.

IX. GOVERNMENT OVERSIGHT AND ENFORCEMENT

A. ***Approvals:*** Court approval is no longer required for the following transactions. Instead, the corporation may seek approval from the Attorney General, although court approval is an option, and can be sought to appeal the Attorney General's refusal of approval on the following transactions:

- 1) Sales of all or substantially all of the corporate assets;
- 2) Mergers;
- 3) Changes to the corporate purpose; or
- 4) Dissolution of assets

B. ***Enhancement of Attorney General's Enforcement Powers for Related Party Transactions:*** The Attorney General may bring an action to enjoin, void, or rescind any related party transaction or proposed transaction that violates the N-PCL or is not reasonable and in the best interests of the corporation at the time of the transaction's approval.

- 1) AG may seek restitution (payment to rectify wrongdoing), and the removal of directors and officers, or

- 2) AG may require any person or entity to:
 - a) Account for profits made from an interested transaction, and pay those profits to the corporation;
 - b) Pay the corporation the value of the use of corporate property or assets used in that transaction;
 - c) Return or replace and corporate property or assets that were lost as a result of the transaction, or account for the proceeds of sale of that property and pay the proceeds, with interest at a legal rate, to the corporation; or
 - d) Where the wrongful conduct was willful and intentional, pay the corporation up to double the amount of the benefit improperly obtained by the interested entity or individual.

C. Financial Reporting: New Thresholds for Financial Reporting

Based on the following income thresholds, the corporation must file the following types of financial reports:

Gross Revenues	Unaudited Financial Report on Form Provided by AG	Independent CPA Review Report	Independent CPA Audit Report
Current	\$100,000 or less	More than \$100,000 but not more than \$250,000	More than \$250,000
Effective July 1, 2014	\$250,000 or less	More than \$250,000 but not more than \$500,000	More than \$500,000
Effective July 1, 2017	\$250,000 or less	More than \$250,000 but not more than \$750,000	More than \$750,000
Effective July 1, 2021	\$250,000 or less	More than \$250,000 but not more than \$1,000,000	More than \$1,000,000

X. TAX EXEMPTION UNDER FEDERAL LAW

A. BACKGROUND

Most not-for-profit arts organizations apply for recognition of tax-exempt status under section 501(c)(3) of the Internal Revenue Code. They do so for several reasons:

- 1) To be exempt from paying federal income taxes;
- 2) To be eligible to receive contributions that are charitable deductions from individuals;

- 3) To be eligible to receive private foundation grants (While not an absolute requirement, many private foundations will only make grants to registered 501(c)(3) organizations. And remember that private foundations give billions of dollars each year!);
- 4) To be eligible for any special government programs or funds set aside for registered 501(c)(3) organizations; and
- 5) To be eligible for exemption from state income tax (while technically the application for state tax-exempt status is a separate procedure, as noted below, a grant of federal tax-exempt status usually renders this process a formality).

B. STEP 9. Apply for Federal Employer Identification Number (EIN)

Your organization will need to file a Form SS-4, Application for an Employee Identification Number (EIN). All organizations must have this nine-digit “EIN” even if the organization has no intention of hiring any employees. You can file the SS-4 with the Form 1023, but it is best to do so sooner. Many banks ask for your EIN when you want to open an organization bank account.

In theory, you can get an EIN over the phone and then fax the application form (again, Form SS-4) to the IRS. However, it is often hard to get through on the phone. The alternative is to mail the Form SS-4.

For Sample Form SS-4, please see Appendix I.

C. STEP 10. Apply for Recognition of Tax Exempt Status under Section 501(c)(3) of the Internal Revenue Code

A not-for-profit will **NOT** be treated as exempt under section 501(c)(3) of the Internal Revenue Code unless it obtains a determination of its tax-exempt status from the IRS.

In order to obtain such a determination, the organization must file Form 1023, Application for Recognition of Exemption Under Section 501(c)(3). Read carefully the official instructions accompanying Form 1023.

As of July 1, 2014, there is a 1023EZ simplified form available to small nonprofits with gross receipts of less than \$50,000 per year, and less than \$250,000 in assets. This form is only three pages and the fee to file is \$275, rather than \$600 for the 1023 form. **See Appendix R for more details relating to the 1023EZ.**

When filling out Form 1023, the main point to keep in mind is that the application must consistently and convincingly establish that the applicant is a bona fide not-for-profit organization pursuing charitable purposes: the narrative of activities, description of fundraising plans, and budgets should all fit together and give the IRS a clear picture of a legitimate and properly run not-for-profit organization that is dedicated to its stated mission.

When you submit your organization's application to the IRS, you will give extensive information about the purposes for which the group was organized and the way the group is or will be operated. The IRS will determine whether it "recognizes" your group as one described in section 501(c)(3).

- 1) The characteristics of a 501(c)(3) organization are as follows:
 - a) It must not participate or intervene at all in any political campaign on behalf of or against a candidate for public office;
 - b) No part of the net earnings of the organization (that is, after the payment of salaries) can be given to or otherwise be used to benefit any individual outside of the organization's not-for-profit mission;
 - c) If and when the organization is dissolved, its assets will be distributed to another organization engaged in tax-exempt activities that the IRS recognizes, or to the state;
 - d) The organization will spend no more than an insubstantial amount of time, money and effort on lobbying to influence legislation. Any organization that plans to do any lobbying is well advised to consider making the 501(h) election. This limits the IRS' review to only the amount of money spent on lobbying, not the amount of time and effort spent on lobbying. It allows for unlimited use of volunteers and permits organizations to spend a certain percentage on lobbying (20% of their first \$500,000 each year, 15% of any amount between \$500,000 and \$1,000,000, and 10% over \$1,000,000 up to a maximum of \$1,000,000 each year). Review the 501(h) election option with your organization's tax advisor so that you understand it fully before making any election to have it apply; and
 - e) It must be organized and operated exclusively for one or more of the tax-exempt purposes set forth in the Internal Revenue Code. Fortunately for arts groups, one of the exempt purposes explicitly mentioned in section 501(c)(3) is education. The Internal Revenue Code tells us that education is "the instruction of the individual for purposes of improving, or developing his capabilities," or the "instruction of the public on subjects useful to the individual and beneficial to the community."
 - (1) The IRS regulations specifically mention museums and symphony orchestras. IRS rulings have clarified that other activities, such as establishing a repertory theatre, operating a school for contemporary dance, and promoting the appreciation of jazz as an American art form, are tax-exempt activities.
- 2) Beginning in 2008, small tax-exempt organizations now have a new tax filing requirement. If your group or entity is a tax-exempt organization that normally has annual gross receipts of \$50,000 or less and does not have to file Form 990 or 990-

EZ, you must instead file the e-Postcard. The e-Postcard is due by the 15th day of the fifth month after the close of your tax year. So, if your organization operates on a calendar year, the e-Postcard is due by May 15 of the following year.

If your organization does not file the e-Postcard, the IRS will send a reminder notice and your organization risks losing its tax-exempt status. Go to www.irs.gov/eo for complete details. While you are there, you should strongly consider signing up for Exempt Organizations Update, the IRS' free email newsletter, to receive up-to-date information posted on the charity webpages at irs.gov.

For additional information, IRS Publication 557, titled "Tax-Exempt Status for Your Organization," provides an excellent explanation of the various privileges and restrictions that apply to 501(c)(3) organizations.

- 3) When filling out Form 1023, there are three areas to which your group should give careful preliminary thought. They are the following:
 - a) **Activities.** Develop a *detailed* statement of all the activities of the organization—past (if it is not a new group), present, and future. *Note that the broad language of the purpose clause of your organization's Certificate of Incorporation will, standing on its own, be insufficient for this section of the 1023 application.*

The IRS wants to know significantly more about your organization than that it will be "engaged in educational activities concerning dance." Instead, write something like this: "There will be monthly two-hour lectures on X topic given by Y, a well-known scholar in the area, and they will be open to the public. There will be one five-day seminar held each year. The first is scheduled for next April. Outside groups with regional reputations will be invited to perform. We expect to charge an amount to cover our expenses." And so on. This is a place where it is better to tell the IRS *more* rather than less.

To summarize, describe all of your organization's activities. Explain when each will (or did) happen and who will conduct or participate in each of the activities.

Write down as much as you can. Your lawyer will help you to edit so that it flows and—more importantly—that it is in a format that will make it clear that your organization has all of the characteristics of a 501(c)(3) organization.

- b) **Financial Support and Fundraising.**

Public Charity vs. Private Foundation. Section 501(c)(3) organizations fall into two broad categories: public charities and private foundations. Whether your organization qualifies as a public charity or a private foundation depends upon the number and nature of your organization's funders. You always want to be a public charity—as most arts groups naturally are—because they have advantages over

private foundations, which are subject to additional stringent restrictions.

Public Charities. Public charities are organizations that are supported or used by the public. Examples include churches, schools, and organizations that are supported by contributions from the general public as opposed to one or two large donors. The theory is that the IRS does not have to stringently regulate public charities because the public will do it. The “public” would not make contributions, or attend the school or church, if that organization were not doing something valuable.

Private Foundations. Private foundations, on the other hand, are more heavily regulated because the funds in such organizations come from only one or two sources (e.g., from a family or a company). Congress and the IRS have determined that there is a much greater possibility for abuse in a private foundation.

Elimination of Advance Ruling Process by IRS. On September 8, 2008, the IRS issued new regulations that eliminate the so-called advance ruling process. Previously, the IRS granted public charity status to newly formed organizations for an initial five-year period but required groups receiving an advanced ruling to show that they satisfy the public support test by filing a Form 8734 at the end of the ruling period.

Under new regulations, a new 501(c)(3) organization will be classified as a publicly supported charity, and not a private foundation, if it can show that it reasonably expects to be publicly supported when it applies for tax-exempt status. An organization will retain its public charity status for the first 5 years, regardless of the percentage of public support actually received during that time. Beginning with the organization’s sixth taxable year, it must prove that it meets the public support test through reporting on its Schedule A to Form 990 (Return of Organization Exempt from Income Tax). An organization meets the public support test if it receives at least a third of its financial support from a combination of the general public, charities, and the government or receives at least 10% from these sources and meets several other tests included in Treasury Reg. 1.170a-9(e). Additional information is available at <http://www.irs.gov/charities>.

Try to be a Public Charity. Your group should seek broad-based support so that it will be a public charity. As a public charity, you will be eligible to receive grants from private foundations. Private foundations are often unwilling to give money to other private foundations. In addition, the annual filing and bookkeeping tasks for a public charity are not as onerous as for a private foundation. The tax code also imposes certain limits on the tax deductions that a private foundation’s donors may claim.

CAUTION: This is a generalized summary. The laws and regulations relating to the distinction between public charity and private foundation status are intricate. Discuss your financial sources and fundraising ideas with your tax specialist, and he or she will be able to give you more specific guidance.

- c) Financial Data. Addressing your organization’s financial data is your last big task before sitting down with your Form 1023 and answering the shorter questions.

If your organization is new, you will need to provide a budget for the current year, as well as a two-year proposed budget for Form 1023. Try to make educated estimates. For example, if you are planning on sending out 100 fundraising letters, you should add the price for a stamp, an envelope, and the letter (paper and printing), and multiply by 100 to estimate the cost. Make reasonable estimates as to how many members you will have and the amount of dues they will pay. If you have no idea how much it will cost to put on a three-day folk arts festival, check with other groups who have done similar projects. At some point, you will need to find out how much it costs to rent the hall, serve coffee, print programs, and so on, anyway. Do it now.

For a Sample Budget, please see Appendix J.

- d) Timeline. If Form 1023 is filed within 27 months of the filing of your Certificate of Incorporation, the grant of 501(c)(3) status will be retroactive to your date of incorporation. That is, once you receive your “determination letter” from the IRS, your tax-exempt status will “relate back” to the date your organization was formed—up to a maximum of 27 months back—so that contributions you received from the time of filing your Certificate will be deductible by the donors. If you file more than 27 months after you file your Certificate of Incorporation, the status is effective not from your date of incorporation, but from the date of your Form 1023 filing, unless you can convince the IRS that you had a good reason for not filing within the 27 month period.

D. STEP 11. Respond to Questions from IRS (if questions are asked)

After submitting your Form 1023, you will first receive a letter from the IRS confirming receipt of your application. The letter promises review of your application within a certain number of days. The IRS does not always meet this deadline.

In addition, you may receive a letter from the reviewer at the IRS, which asks a few questions. Respond to these questions promptly and, preferably, with the aid of your attorney.

XI. TAX EXEMPTION UNDER STATE AND LOCAL LAW

A. STATE CORPORATE TAX

Corporations organized and doing business in the State of New York are subject to franchise taxes pursuant to Article 9-A of the New York State Tax Law. Exemption from most New York state taxes depends in large part on securing federal recognition of tax-exempt status. The minimum tax for “doing business” in New York is \$250.

- 1) In order to be presumed tax-exempt from New York State corporate tax, an organization must:
 - a) Be organized and operated as an other than for-profit organization;
 - b) Not have stock, shares, or certificates for stock or for share;
 - c) Not have net earnings that inure to the benefit of any officer, director, or member; and
 - d) Be exempt from federal income tax under Section 501(a) of the Internal Revenue Code (which includes tax-exemption under Section 501(c)(3)).
- 2) **STEP 12. Apply for Exemption from State Corporate Tax**

- a) In order to obtain tax exemption from New York State corporate tax, you need to file a Form CT-247 with New York State Department of Taxation and Finance.

For Sample Form CT-247, please see Appendix K.

An organization has a continuing duty to inform the Department of Taxation and Finance of any change in its structure or federal tax status which would affect its state tax status. If a corporation loses its federal tax exemption, it will also lose its state tax exemption (although the reverse is not necessarily true).

B. STATE AND LOCAL SALES TAX

- 1) **STEP 13. Apply for Exemption from State and Local Sales Tax**
 - a) In order to be presumed tax-exempt from New York state and local sales tax, an organization must:
 - (1) Be organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes;
 - (2) Not have net earnings that inure to the benefit of private shareholders or individuals;
 - (3) Not, as a substantial part of its activities, attempt to influence legislation; and
 - (4) Not participate in political campaigns for or against any candidate for public office.
- 2) To obtain state and local sales tax exemption, an organization must file Form ST-119.2 with the New York State Department of Taxation and Finance at the following address:

Taxpayer Assistance—Exempt Organizations
New York State Department of Taxation and Finance
Building 8—Room 900
W.A. Harriman Campus
Albany, NY 12227
(518) 457-2782

For Sample Form ST-119.2, please see Appendix L.

3) STEP 14. Register with the State of New York, Office of the Attorney General, Charities Bureau

Charitable organizations operating in New York are required to both register with and provide annual reports to the Charities Bureau of the Office of the Attorney General. Not-for-profits are required to register with the Attorney General prior to soliciting funds in New York.

To register, an organization must submit a Charities Registration Statement, Form 410, to the Attorney General and pay a \$25 fee.

For Sample Form 410, please see Appendix M.

C. UNRELATED BUSINESS INCOME TAX (UBIT)

This tax applies to income from a “trade or business” which is “regularly carried on” and not substantially related to the organization’s exempt purpose. The income must not fall within any of the exceptions or exclusion provided in the law.

The objective of UBIT is to eliminate a source of unfair competition by placing the unrelated business activities of exempt organizations on the same tax footing as the non-exempt businesses with which they compete.

Exceptions to UBIT occur when:

- Substantially all the work of the trade or business is carried on by volunteers (e.g., a hospital gift shop);
- The trade or business is carried on for the convenience of students, members, or employees (e.g., a school cafeteria); or
- Substantially all the merchandise is donated (e.g., a thrift shop).

Exclusions from UBIT under IRC Section 512(b) include:

- Dividends, interest payments with respect to security loans, and annuities;
- Royalties;
- Rents from real property, to the extent the property is not financed by debt;
- Gains or losses from the sale of property not carried in inventory or held primarily for sale to customers in the ordinary course of business;
- Gains or losses from the lapse or termination of certain options and deposit forfeitures in connection with investment activities;
- Income derived from government research;
- Income from research by a college, university, or hospital; or
- Income from research the results of which are freely available to the general public.

XII. WHAT YOU NEED TO DO IF YOU DECIDE TO USE VLA'S SERVICES:

- A. **Attend VLA Not-for-Profit Workshop.** The workshop is given every month in VLA's auditorium located on the first floor of One East 53rd Street, between 5th Avenue and Madison Avenue. The workshop costs \$150.
- B. **After attending the workshop, call VLA's Art Law Line at (212) 319-2787, ext. 1** and let the legal intern answering the phone know that you would like to schedule an initial consultation with one of VLA's staff attorneys for formation of a not-for-profit corporation.
- C. **Prior to the initial consultation, prepare:**
- 1) Your organization's purpose and proposed activities (about 1/2 page single-spaced);
 - 2) Three (3) different and unique names for the organization (unless you are already incorporated or have received confirmation of your reserved name);
 - 3) Names of three board members; and
 - 4) Proposed budgets for the present and next two fiscal years.
- D. The VLA administrative fee for not-for-profit incorporation and tax exemption is \$785.

This includes:

- 1) VLA Membership (which includes full access to VLA Clinics);
- 2) The Not-for-Profit Workshop (the \$775 fee is reduced by the amount paid for the class if the \$150 class fee was paid before deciding to utilize VLA for the entire process);
- 3) Initial consultation with a staff attorney; and
- 4) Placement on case list to be assigned to a pro bono attorney for assistance with completing the nonprofit formation process.

APPENDIX A - APPLICATION FOR RESERVATION OF NAME



**Division of Corporations,
State Records and
Uniform Commercial Code**

New York State
Department of State
DIVISION OF CORPORATIONS,
STATE RECORDS AND
UNIFORM COMMERCIAL CODE
One Commerce Place
99 West Street
Albany, NY 12242-0001
www.dos.ny.gov

Application for Reservation of Name

Under §303 of the Business Corporation Law

PLEASE TYPE OR PRINT

APPLICANT'S NAME AND ADDRESS
NAME TO BE RESERVED
RESERVATION IS INTENDED FOR (CHECK ONE) <input type="checkbox"/> New domestic corporation (The name must contain "Incorporated" or "inc." or one of the other words or abbreviations in §301 of the Business Corporation Law.) <input type="checkbox"/> New domestic professional service corporation (The name must end with "Professional Corporation" or "P.C.") <input type="checkbox"/> Foreign corporation intending to apply for authority to do business in New York State* <input type="checkbox"/> Proposed foreign corporation, not yet incorporated, intending to apply for authority to conduct business in New York State <input type="checkbox"/> Change of name of an existing domestic or an authorized foreign corporation* <input type="checkbox"/> Fictitious name for a foreign corporation intending to apply for authority to do business in New York State whose real corporate name is not available for use in New York State* <input type="checkbox"/> Fictitious name for an authorized foreign corporation intending to change its fictitious name under which it does business in this state* <input type="checkbox"/> Fictitious name of an authorized foreign corporation which has changed its corporate name in its jurisdiction, such new real corporate name not being available for use in New York State*

X _____
Signature of applicant, applicant's attorney or agent *Typed/printed name of signer*
 (If attorney or agent, so specify)

NOTES:

1. Upon filing this application, the name will be reserved for 60 days and a certificate of reservation will be issued.
2. The certificate of reservation must be returned with and attached to the certificate of incorporation or application for authority, amendment or with a cancellation of the reservation.
3. The name used must be the same as appears in the reservation.
4. A \$20 fee payable to the Department of State must accompany this application.
5. Only names for business, transportation, cooperative and railroad corporations may be reserved under §303 of the Business Corporation Law.

*If the reservation is for an existing corporation, domestic or foreign, the corporation must be the applicant.

APPENDIX B - SAMPLE CERTIFICATE OF INCORPORATION

Certificate of Incorporation OF SAMPLE THEATRE GROUP UNDER SECTION 402 OF THE NOT-FOR-PROFIT CORPORATION LAW

The undersigned, a natural person of the age of eighteen or over, certifies:

- 1) The name of the Corporation is Sample Theatre Group (the “Corporation”).
- 2) The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law and shall be a Type B corporation under section 201 of the Not-for-Profit Corporation Law.
- 3) The purposes for which the Corporation is formed are as follows:
 - a) to advance public interest in and understanding of the theatrical arts;
 - b) to expose the public to the works of emerging playwrights through showcase and other productions, readings, and similar activities;
 - c) to provide playwrights with a forum to expose their work to the public;
 - d) to organize, sponsor, and present forums, lectures, and discussions related to the creation of new theatrical works and the performance of new and existing works in order to foster a greater appreciation and understanding of the theatrical arts by the public;
 - e) to conduct classes and workshops for the development of new theatre artists and the public performance of new and existing works; and
 - f) to conduct any and all lawful activities that may be useful in accomplishing the foregoing purposes.
- 4) In furtherance of the foregoing purposes, the Corporation shall have all the general powers enumerated in Section 202 of the Not-for-Profit Corporation Law and such other powers now or hereafter permitted by law for a corporation organized for the foregoing purposes, including the power to solicit grants and contributions for any corporate purpose.
- 5) Notwithstanding any other provision of this certificate, the Corporation is organized exclusively for charitable and educational purposes, and shall not carry on any activities not permitted to be carried on:

- a) by a corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code, as it may be amended (the “Code”); or
 - b) by a corporation contributions to which are deductible under 170(c)(2) of the Code.
- 6) The Corporation is not formed for pecuniary profit or for financial gain and no part of its assets, income or profits shall inure to the benefit of, or be distributed to, its members, directors, officers, or other private persons, except that the Corporation shall be authorized to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of Section 501(c)(3) purposes.
 - 7) No substantial part of the activities of the Corporation shall be the carrying on of propaganda, unless otherwise attempting to influence legislation, except to the extent permitted by the Code pursuant to an election under Section 501(h) of the Code or otherwise, and the Corporation shall not participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of or in opposition to any candidate for public office.
 - 8) Nothing herein shall authorize the Corporation to engage in any of the activities mentioned in Section 404(a) through (v) of the Not-for-Profit Corporation Law.
 - 9) The office of the Corporation shall be located in New York County, State of New York.
 - 10) The names the initial directors, each of whom is of full age, are as follows:

Name

Hugh Jackman

Art Lawyerson

Kim Kardashian

- 11) The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary shall mail a copy of any process against the Corporation served upon him is: c/o Art Lawyerson, One East 53rd Street, Sixth Floor, New York, NY 10022.
- 12) In the event of dissolution, all of the assets and property of the Corporation remaining after payment of expenses and the satisfaction of all liabilities shall be distributed to organizations which qualify under Section 501(c)(3) of the Code or to the Federal government or State or local governments for a public purpose, subject to the approval of a Justice of the Supreme Court of the State of New York.

IN WITNESS WHEREOF this Certificate has been signed and the statements made herein affirmed as true under the penalties of perjury this _____ day of _____, 2017.

Art Lawyerson, Incorporator
One East 53rd Street, Sixth Floor
New York, New York 10022

APPENDIX C - SAMPLE OF CONSENT COVER LETTER

Counsel and Deputy Commissioner for Legal Affairs
New York State Education Department
89 Washington Avenue
Albany, New York 12234

January , 2017

Re: Incorporation of XYZ, Inc.

Dear Sir or Madam:

I represent XYZ, Inc., which plans to incorporate as a not-for-profit corporation in New York State. Enclosed please find one original and one copy of the certificate of incorporation, together with a check in the amount of \$10.00 to cover your fee. I request that you, on behalf of the Department of Education, consent to the incorporation of this group, and return the original certificate of incorporation to me in the enclosed self-addressed stamped envelope.

Thank you for your cooperation.

Sincerely,

Attorney

Enclosure
cc: Client

APPENDIX D - THINGS TO CONSIDER WHEN DRAFTING BY-LAWS

I. BOARD OF DIRECTORS

A. How many people should be on your organization's Board of Directors?

You need a minimum of three Directors in New York.

In the Certificate of Incorporation, you decided how many people would be on the initial board of directors and chose specific individuals to serve. In the By-laws, you decide how many you want to have once the organization is up and running.

B. What, if any, requirements are there for your organization's Board of Directors?

New York requires that directors be at least eighteen years of age. They do not require in-state residency.

C. What, if any, qualifications will your organization require for your Board of Directors?

You may require that the directors have certain qualifications, e.g., only members may be directors or only theatre patrons can be directors.

Special categories ensure that people with certain talents, viewpoints or specialties are on the Board. That is, you can place qualification restrictions on a certain number of Board positions, e.g., "Three seats on the Board shall be occupied only by those who are artistic performers" or "One Director must be a Certified Public Accountant." Keep in mind, however, that special categories can complicate elections and management of the organization.

D. How will the members of the Board of Directors be chosen?

When you drafted your organization's Certificate of Incorporation, you had to decide whether you would have members and, if so, whether they would have voting rights. In the By-laws, you have to reflect that decision by noting whether the Directors will elect their successors (i.e., be a self-perpetuating board) or whether the Directors will be elected by the members. The mechanics of the election should be set forth in the By-laws to avoid later confusion.

Options include:

- (1) Election by the members at the annual meeting, with nominations from the floor, or proposed by a nominating committee or both.
- (2) Election by the Board of Directors at the annual board meeting.

E. How long is the term of service for Board members and how many consecutive terms can they serve?

In answering these questions the organization should keep in mind two important goals:

- (1) Continuity of leadership; and
- (2) A mechanism for bringing fresh ideas into the governance of the corporation.

Typical terms are one, two, or three years. New York law states that the term for Directors shall not exceed five years.

You may want to set the terms at longer than one year in order to give Directors the opportunity to learn about the organization during their first year and then be able to apply that experience for the benefit of the organization thereafter.

With respect to consecutive term service, limiting the number of consecutive terms allows for the circulation of new and different ideas within the leadership and prevents the formation of a leadership clique. On the down side, limiting the number of terms can also take a leadership position away from a capable and valuable leader.

Tip: If that occurs, immediately put your good leader on a committee and make sure that he or she stays in close touch with your board's activity.

F. How can directors be removed before the end of the term?

New York law provides that any or all of the directors may be removed for cause by vote of the members, or by vote of the directors.

G. How does a director resign from office?

The organization should require written notice to the Board of Directors or the Secretary before releasing the director from duty. The By-laws can specify when the resignation will take effect, and whether acceptance of a resignation is necessary to make it effective.

H. How will the organization fill the chair of a removed or resigned director?

Under New York law, vacancies among elected directors may be filled by vote of the majority of the directors then in office, regardless of their number, unless otherwise specified in the Certificate of Incorporation or By-laws. Directors that are elected to fill a vacancy shall hold office until the next annual meeting at which the election of directors is in the regular order of business.

I. How often will the Board meet? Where will the Board meet?

Under **New York** law, the time and place for holding annual or regular meetings of the board shall be fixed by or under the By-laws, or by the board.

J. Who may call meetings of the Board of Directors? How may they be called? How many days' notice is necessary?

Usually, at the end of each meeting the Board schedules its next meeting. If no meeting is scheduled, the Board Chair (through the efforts of staff members) will circulate a notice of the next Board meeting. The other ways your organization may want to allow meetings to be called are:

- (1) By a majority of the Board of Directors; or
- (2) By a majority of the Executive Committee.

Meetings are usually called by written notice mailed to the Board members in advance of the meeting. Every director must have received a notice, attended the meeting, or signed a waiver of notice, or any action taken at that meeting will be void. Other systems of notice such as phone calls, fax, or e-mail are acceptable, but must be mentioned in the By-laws.

When deciding how many days' advance notice is necessary, make sure to give directors sufficient notice so they can make travel arrangements or change their schedules in order to attend. But also make provision for emergency notice; nothing is more frustrating than having to wait several days while the notice period expires when a pressing matter demands immediate attention.

In New York, regular meetings of the board may be held without notice so long as the time and place of such meetings are fixed by the By-laws or the Board. A special meeting may be called at any time by the president or other corporate officer as provided in the By-laws or as determined by the board. In the case of a corporation without members, any director may call a special meeting upon written demand of not less than one-fifth of the entire board.

K. What should a notice of a meeting contain?

A notice should contain the date, time, and place of a meeting. Under New York law, the By-laws should prescribe what shall constitute notice of a meeting of the board. A notice or waiver of notice need not specify the purpose of any regular or special meeting of the board, unless required by the By-laws.

L. What is a quorum for a Board of Director's meeting?

A "quorum" is the number of people who have to be present at a meeting in order to transact business. If a quorum is not present, the Board cannot make any corporate

decisions. Typically, a majority of the entire Board will constitute a quorum. Your organization can establish a different measure.

Under New York law, a quorum is a majority of the directors in office, or else the percentage stated in the Certificate of Incorporation. In the case of a board with fifteen or fewer members, the quorum may not be less than one-third of the directors. If there are more than 15 members, the quorum must be at least 5, plus one additional person for every 10 members (or fraction of) in excess of 15.

M. Is a simple majority of a quorum sufficient to pass a motion of the Board of Directors?

Under New York law, the vote of a majority of the directors present at the time of the vote, if a quorum is present at such time, shall be sufficient.

N. If the members consent in writing, can the Board or a committee act without a meeting?

New York law holds that, unless otherwise restricted by the Certificate of Incorporation or the By-laws, any action required or permitted to be taken by the board may be taken without a meeting if all members of the board or the committee consent in writing to the adoption of a resolution authorizing the action.

O. Can the Board act if any director(s) is participating in a duly convened meeting by telephone conference?

Under New York law, any one or more of the board members may participate in a meeting of the board by means of conference telephone if authorized by the Certificate of Incorporation or the By-laws.

P. Can the Board empower committees to act for the Board between meetings? How are people chosen for the committees?

If there is a large Board, it may make sense for the Board to appoint committees and delegate some of their tasks to smaller groups. There are basically two types of committees: committees empowered to exercise the authority of the Board of Directors in the management of the corporation, e.g., the Executive Committee, and committees without such authority, e.g., special events committee, the membership committee.

Committees acting with the authority of the Board of Directors must be authorized in the By-laws and must contain at least two directors. The actual responsibilities of any such committee can be spelled out in a resolution of a majority of the Board members in office, i.e., more than a majority of a quorum. Committees without the management power of the Board of Directors can be formed from time to time by resolution of a majority of the Board members present at a meeting where a quorum is present. Empowering an Executive Committee with the authority to make board-level decisions in

between Board meetings does not excuse the remainder of the Board from the responsibility to review—and either ratify, amend, or reverse—the decisions of the Executive Committee.

Under New York law, a majority of the Board may designate 3 or more directors as an Executive Committee and delegate authority by resolution of the full Board. However, such a committee may not perform the following tasks: submit any action for membership approval, fill a vacancy on the Board or on a committee, fix directors' compensation, alter the By-laws or change a Board resolution.

Q. Should the staff or officers report to the Board of Directors at specific times throughout the year?

The staff should be expected to keep the Board regularly informed about:

- (1) Organizational finances;
- (2) Program accomplishments; and
- (3) Staffing.

It is hard to imagine that the Board will know what it should about the organization unless the Board, or its Executive Committee, receives formal or informal reports on at least a quarterly and preferably a monthly basis. This does not have to be included in the By-laws but should be a clear expectation of your organization's Executive Director.

II. OFFICERS

Officers of a corporation are given powers and duties through the By-laws and often by resolution of the Board of Directors.

A. What officers will the organization have?

New York law holds that the organization shall have whichever officers are specified in the Certificate of Incorporation or By-laws. One person may hold two offices simultaneously, except for the offices of president and secretary, or similar offices.

B. How will the officers be elected?

Under the New York statute, the board may elect the officers as provided in the By-laws.

C. How long will the officers serve?

In New York, officers hold office for one year, unless otherwise provided in the Certificate of Incorporation or the By-laws.

D. How can officers be removed before their terms' end?

Officers generally can be removed by those who elected them. The By-laws can specify grounds for removal but are not required to do so. As discussed with respect to Directors, your organization might want to require a higher vote for removal, e.g., two-thirds where a quorum is present, or a majority of all the Directors.

In New York, any officer elected by the board can be removed by the board with or without cause. An officer elected by the members or a class of members may be removed, with or without cause, only by the vote of the members.

E. How are Officers removed or resigning officers replaced?

If Officers are appointed or elected by the Board, the Board should fill the vacant office. If the officer was elected by the membership, a decision must be made about whether the Board or the membership should elect the replacement.

F. What are the President's responsibilities?

Typically, the President presides over all meetings and usually has authority to sign legal documents in the name of the corporation. The Board can require that the President obtain their approval before signing a document.

G. What are the Vice President's responsibilities?

Generally, the Vice President's major responsibility is to act as the President if the President is not available. The Vice President can be given other responsibilities through the By-laws or through resolutions of the Board not inconsistent with the By-laws.

H. What are the Secretary's responsibilities?

The Secretary makes sure that the organization keeps accurate, written records and is generally responsible for notices of meetings, minutes of meetings, and official correspondence of the Board of Directors.

I. What are the Treasurer's responsibilities?

The Treasurer keeps the financial records, prepares the financial statements, and reports to the Board about the corporation's financial status. Bookkeepers and accountants can be hired to work with the Treasurer if the corporation desires.

III. MEMBERSHIP

As you learned when you did your Certificate of Incorporation, it is not necessary to have members. If your organization does not intend on having members, you can skip this section on membership.

A. Who may be a member of the organization?

In setting membership requirements, try to identify who would be most interested in and devoted to the mission of the organization. Keep in mind that if the group is too small, the organization may suffer from a shortage of ideas, dues revenues, and helping hands. If the group is too large, it may become difficult to administer.

B. Should there be different classes of membership?

If the group has members with different interests, special classes of members with different rights may be appropriate for the organization's objectives. This could, however, create administrative confusion. You must ask yourself if the procedure is worth the effort.

C. How do people become members?

Usually, people become members by applying for membership, paying dues, and getting approved by the Board of Directors. You should definitely consider having as a condition of membership that the member be supportive of the mission of the organization.

D. How long does membership last?

Membership should last for as long as the member remains in good standing, which usually means that the member is current in their dues obligations and that he or she is supportive of the organization's mission.

E. What kinds of issues can members decide?

In most jurisdictions, members have no rights except those that are specifically given to them in the Certificate of Incorporation or By-laws. If they have voting rights, members can decide who will be elected to the Board of Directors and often can decide when and how to amend the By-laws. Members can be given more or less responsibility. With a wider range of responsibility comes a more democratic organization. The disadvantage is that the organization will have a slower—and perhaps more unpredictable—decision-making process. More decisions will have to wait to be decided in a full membership meeting.

F. What notice is required for a meeting of the membership?

The New York law requires that written notice state the place, date, and hour of the meeting, and, unless it is an annual meeting, indicate that it is being issued by or at the direction of the persons calling the meeting. Notice of a special meeting must also state the purpose or purposes for which the meeting is being called. Notice given personally or by first-class mail must be given not less than ten nor more than fifty days before the date of the meeting.

G. Who can call special meetings of the members?

Special meetings may be called by the President, the Secretary or a proportion (e.g., 20%) of the Board of Directors (or, if there are voting members, a proportion of the voting membership). If no number or proportion is stated in the By-laws, members holding at least one-twentieth of the votes can call a membership meeting. Notice for special meetings must conform to the rules stated above and must also include the purpose of the meeting.

H. How many members are necessary for a quorum?

The quorum is the number of people who must be present in order to transact business. No decisions can be made without a quorum present. A high quorum encourages broad participation but also makes it hard to do business if many members cannot come to the meetings. A low quorum ensures there will be enough members present to make decisions but allows binding decisions to be made by a small number of members.

New York law defines the members' quorum as the majority of voting members, or else, as specified in the By-laws. In no case may the quorum be less than 10% of the voting members, or 100 votes, whichever is less.

I. Who runs the members' meetings?

Generally, the President chairs the members' meetings. If your organization wants someone else to chair the meeting, state this in the By-laws.

J. How many votes are needed to pass a motion at a members' meeting?

In New York, a majority of the votes cast is sufficient to pass a motion, unless otherwise specified in the Certificate of Incorporation or By-laws. Except as otherwise permitted, a plurality of votes is required for the election of Directors.

K. Can members vote by proxy, i.e., assign voting rights to another member so that one's vote is counted even though the assigning member cannot attend the meeting?

The use of proxies allows members who cannot be present at a meeting to vote. The proxy granted can either be general or can direct the proxy to vote a specific way.

New York permits every member entitled to vote to authorize another person or persons to act for him by proxy unless otherwise provided in the Certificate of Incorporation or the By-laws.

IV. AMENDING THE BY-LAWS

If a particular By-law becomes obsolete or impracticable, the By-laws can be amended. Therefore, the original By-laws should have a section on how the corporation can amend its By-laws.

A. Who can change the By-laws?

New York law holds that the By-laws may be amended or repealed by the members at the time entitled to vote in the election of directors and, unless otherwise provided in the Certificate of Incorporation or the By-laws adopted by the members, by the Board.

B. What type of vote can change the By-laws?

Changing your By-laws is a serious matter. Your organization may want to require a higher quorum than usual or a higher proportion of the vote to amend. For example, if a majority vote is required to pass a resolution, a two-thirds vote may be required to amend the By-laws.

V. MISCELLANEOUS PROVISIONS

A. What provisions do you want to make for indemnification?

New York law permits a corporation to indemnify any person made, or threatened to be made, a party to an action or proceeding by reason of the fact that he was a Director or Officer of the corporation. The corporation may indemnify against judgments, fines, amounts paid in settlement, and reasonable expenses, including attorneys' fees actually and necessarily incurred as a result of such action or proceeding, so long as the director or officer acted in good faith for a purpose which he reasonably believed or be in the best interests of the corporation and where he had no reasonable cause to believe that his conduct was unlawful.

First, it is important to decide whether you want to have a policy of indemnifying (paying the legal expenses for) your organization's Directors and Officers. If so, you then have to decide whether the organization will be required to do it every time, or whether the organization is required only to decide if it will indemnify someone who is sued. Finally, you cannot decide to have an indemnification policy without researching (and probably purchasing) insurance to pay for any costs that are incurred in the event your organization does indemnify someone.

B. What provisions do you want to have for a corporate seal?

Although it is a surviving vestige from English common law, using a corporate seal is meant to signify that a particular document or signature reflects the will or decision of the corporation. These days, the only references to corporate seals are on old bank forms and on certain contracts. Instead of trying to explain to them that you are not required to have

a corporate seal, you may simply want to adopt a By-law that says that your official seal will be “in such form and contain such other words and/or figures as the Board of Directors shall determine, by any printing or process whatsoever,” thereby giving your organization’s Board the official authority to craft a seal whenever it is necessary.

C. Do you want to have an Advisory Board?

Your organization is required to have a governing board. It is optional whether it wants to have an Advisory Board. Such a Board lacks governing power or authority, and simply serves as a resource at the direction and pleasure of the Board of Directors by providing advice, assistance, expertise, and support to the Board of Directors for the advancement and promotion of the mission of the Corporation. If so, you should include it in your By-laws, and you might want to allow your Board of Directors to appoint a Chair of the Advisory Board who can serve as an *ex officio*, non-voting member of the Board of Directors to facilitate communication between the Advisory Board and the Board of Directors.

APPENDIX E - SAMPLE BY-LAWS

BY-LAWS OF [CLIENT NAME] (the “Corporation”)

ARTICLE I

MEMBERS

The corporation shall have no members.

ARTICLE II

BOARD OF DIRECTORS

Section 1. **Powers.** The Board of Directors (the “board”) shall manage the affairs and property of the corporation in accordance with the purposes and limitations set forth in the certificate of incorporation.

Section 2. **Number.** The number of directors constituting the entire board after the first annual meeting shall be three. (“Entire board” means the total number of directors entitled to vote which the corporation would have if there were no vacancies.) The Board may increase or decrease the number by amendment of the By-laws, but no decrease shall shorten the term of any incumbent director.

Section 3. **Election and Term of Office.**

- a. The initial directors shall be persons named in the certificate of incorporation and they shall serve until the first annual meeting of the board.
- b. At the first annual meeting, the initial directors shall divide prospective directors into three classes and shall, by vote of a majority of the initial directors, elect one-third of the directors to one-year terms, one-third of the directors to two-year terms, and one-third of the directors to three-year terms. Thereafter, at the annual meeting, the board, by vote of a majority of the entire board, shall elect directors to replace those whose terms are expiring to a term of three years. Any increases or decreases in the number of directors shall be apportioned among the classes so as to keep those as equal in number as possible.
- c. Except in the case of resignation or removal under these By-laws, directors shall serve on the board until the expiration of their terms and the election of the successors. Directors may serve an unlimited number of terms.

Section 4. **Removal.** The Board, by vote of a majority of the entire board, may remove any director for cause at any special meeting of the board called for that purpose. Missing three consecutive meetings shall constitute cause for removal.

Section 5. **Resignation.** Any director may resign from the board at any time by delivering a resignation in writing to the president, and the acceptance of the resignation, unless required by its terms, shall not be necessary to make the resignation effective.

Section 6. **Vacancies and Newly Created Directorships.** The board, by vote of a majority of the directors then serving on the board, may elect directors to fill any newly created directorship and any vacancies on the board. Except in case of resignation or removal, directors so elected shall serve until the next annual meeting of the board at which the election of directors is in the regular order of business and until the election of their successors.

Section 7. **Place and Time of Meeting.** The board shall hold an annual meeting in January of each year and shall set the time and place of that meeting and of regular meetings. The president or any other officer may call a special meeting at any time and shall specify the time and place of the meeting.

Section 8. **Notice of Meetings.** Notice of the time and place of each regular, special or annual meeting of the board, and, to the extent possible, a written agenda stating all matters upon which action is proposed to be taken, shall be given to each director by mail, telephone, facsimile, or electronic mail at least seven days before the day on which the meeting is to be held; provided, however, that notice of special meetings to discuss matters requiring prompt action may be given no less than forty-eight hours before the time at which the meeting is to be held. Notice of a meeting need not be given to any director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting prior to the meeting or at its commencement the lack of notice.

Section 9. **Quorum and Voting.** At all meetings of the board, a majority of the entire board shall constitute a quorum for the transaction of business. Except as otherwise provide by law or these By-laws, at any meeting of the board at which quorum is present, the vote of a majority of the directors present at the time of the vote shall be the act of the board. However, the following actions may be taken only if authorized as specified:

- a. The purchase, sale, mortgage, or lease of real property shall be authorized by vote of two-thirds of the entire board;
- b. The sale, lease, exchange, or other disposition of all, or substantially all, of the assets of the corporation shall be authorized by vote of two-thirds of the entire board and by the supreme court in the judicial district or the county court in the county where the corporation has its office or conducts its activities;
- c. An amendment or change of the certificate of incorporation shall be authorized by vote of a majority of the entire board;

- d. A petition for judicial dissolution or the revocation of voluntary dissolution proceedings shall be authorized by vote of a majority of the directors then serving on the board.

Section 10. Action by the Board.

- a. Any action required or permitted to be taken by the board or by any of its committees may be taken without a meeting if all members of the board or the committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents shall be filed with the minutes of the proceedings of the board or committee.
- b. Participation of one or more directors by conference telephone or other equipment allowing all persons participating in the meeting to hear each other at the same time shall constitute presence at a meeting.

ARTICLE III

OFFICERS, EMPLOYEES, AND AGENTS

Section 1. **Officers.** The officers of the corporation shall be a president, a secretary, and a treasurer, and any other officers elected by the board. All of the officers shall be chosen from among members of the board. No person may hold the offices of both president and secretary.

Section 2. **Election and Term of Office.** The board shall elect officers to a one-year term at the annual meeting of the board, immediately following the election of directors (in years where there is an election of directors). Except in the case of resignation or removal under these By-laws, officers shall continue in office until the expiration of their terms and the election of their successors. Officers may be elected to an unlimited number of terms.

Section 3. **Employees and Other Agents.** The board may appoint employees and other agents to serve during the pleasure of the board and such employees and agents shall have authority, perform the duties, and receive the compensation, if any, determined by the board.

Section 4. **Removal.** The board, by vote of a majority of the entire board may remove any officer, employee, or agent with or without cause.

Section 5. **Vacancies.** The board may elect a successor to fill a vacancy in any office, and the person elected shall serve until the next annual meeting of the board and the election of his or her successor.

Section 6. **President: Powers and Duties.** The president shall preside at all meetings of the board, shall generally supervise the affairs of the corporation, and shall keep the board fully informed. Unless the board specifically requires an additional signature, the president shall have the power to sign alone, in the name of the corporation, all checks and all contracts authorized either generally or specifically by the board. Together with the treasurer, the president shall present

to the board at the annual meeting the report described in Article III, Section 9.

Section 7. **Secretary: Powers and Duties.** The secretary shall:

- a. keep the minutes of all meetings of the board in books to be kept for that purpose;
- b. serve or cause to be served all notices of the corporation; and
- c. perform all duties incident to the office of secretary and any other duties assigned by the board.

Section 8. **Treasurer: Powers and Duties.** The treasurer shall keep or supervise the keeping of complete and accurate accounts of receipts and disbursements of the corporation and shall deposit all funds of the corporation in the name and to the credit of the corporation in the banks or other depositories chosen by the board. [When requested by the board], the treasurer shall at all reasonable times exhibit the books and accounts to any officer or director of the corporation, and shall perform any other duties assigned by the board. At the annual meeting of the board, the treasurer, together with the president, shall present a report showing:

- a. the assets and liabilities of the corporation as of a twelve month fiscal period terminating not more than six months prior to the meeting;
- b. the principal changes in assets and liabilities during that fiscal period;
- c. the revenues or receipts of the corporation, both unrestricted and restricted to particular purposes, for that fiscal period; and
- d. the expenses or disbursements of the corporation, for both general and restricted purposes, during that fiscal period.

The report shall be verified by the president and treasurer or certified by a public or certified accountant and filed with the minutes of the annual meeting. The report to the board may consist of a verified copy of any report by the corporation to the Internal Revenue Service or the Attorney General of the State of New York which includes the information specified above.

Section 10. **Compensation.** The board shall fix the compensation, if any, of any officer or employee. In determining compensation, the board shall consider the compensation offered by comparable organizations for similar positions and shall document the basis for its decisions. If an officer or employee is a board member, he or she may not participate in the discussion or the vote with respect to his or her compensation.

ARTICLE IV

COMMITTEES

Section 1. **Committees of the Board.** The board, by resolution adopted by a majority of

the entire board, may establish and appoint an executive and other standing committees. The president shall appoint the chairperson of each committee. Each committee so appointed shall consist of three or more directors and, to the extent provided in the resolution establishing it, shall have all the authority of the board except as to the following matters:

- a. the filling of vacancies on the board or on any committee;
- b. the amendment or repeal of the By-laws or the adoption of new By-laws;
- c. the amendment or repeal of any resolution of the board which by its terms shall not be so amendable or repealable; and
- d. the fixing of compensation of the directors for serving on the board or any committee.

The president may appoint special committees consisting of one or more directors. These special committees shall have only the powers specifically delegated to them by the board.

Section 2. **Committees of the Corporation.** The board may appoint other committees, including an advisory committee, consisting of directors or others.

ARTICLE V

CONTRACTS, CHECKS, BANK ACCOUNTS, AND INVESTMENTS

Section 1. **Contracts, Checks, and Documents.** Unless the board shall specifically require an additional signature, the president shall have the authority to sign alone, in the name of the corporation, all checks and all contracts authorized either generally or specifically by the board. The board shall determine who is authorized to sign other documents on the corporation's behalf. No instrument required to be signed by more than one officer may be signed by one person in more than one capacity.

Section 2. **Bank Accounts and Investments.** The board shall select depositories for the funds of the corporation and may hold the corporation's funds in cash or invest them in whatever real or personal property the board thinks desirable.

ARTICLE VI

OFFICE AND BOOKS

Section 1. **Office.** The office of the corporation shall be at the location set forth in the certificate of incorporation or at another location chosen by the board.

Section 2. **Books.** There shall be kept at the office of the corporation, or at another location chosen by the board, correct records of the activities and transactions of the corporation including: a copy of the certificate of incorporation; a copy of these By-laws; all minutes of meetings of the board; and all records maintained by or under the supervision of the treasurer.

APPENDIX F – SAMPLE CONFLICTS OF INTEREST POLICY

Article I

Purpose

The purpose of the conflict of interest policy is to protect this tax-exempt organization's (Organization) interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Organization or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

Article II

Definitions

1. Interested Person

Any director, principal officer, or member of a committee with governing board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.

[Hospital Insert – for hospitals that complete Schedule C

If a person is an interested person with respect to any entity in the health care system of which the organization is a part, he or she is an interested person with respect to all entities in the health care system.]

2. Financial Interest

A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

- a. An ownership or investment interest in any entity with which the Organization has a transaction or arrangement;
- b. A compensation arrangement with the Organization or with any entity or individual with which the Organization has a transaction or arrangement; or
- c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Organization is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

Article III

Procedures

1. Duty to Disclose

In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors and members of committees with governing board delegated powers considering the proposed transaction or arrangement.

2. Determining Whether a Conflict of Interest Exists

After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

3. Procedures for Addressing the Conflict of Interest

- a. An interested person may make a presentation at the governing board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest;
 - b. The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement;
 - c. After exercising due diligence, the governing board or committee shall determine whether the Organization can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest; and
 - d. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of
-

interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Organization's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement.

4. Violations of the Conflicts of Interest Policy

a. If the governing board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose; and

b. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

Article IV

Records of Proceedings

The minutes of the governing board and all committees with board delegated powers shall contain:

a. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact existed; and

b. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

Article V

Compensation

a. A voting member of the governing board who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation;

b. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation;

c. No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization, either individually or collectively, is prohibited from providing information to any committee regarding compensation; and

[Hospital Insert – for hospitals that complete Schedule C

d. Physicians who receive compensation from the Organization, whether directly or indirectly or as employees or independent contractors, are precluded from membership on any committee whose jurisdiction includes compensation matters. No physician, either individually or collectively, is prohibited from providing information to any committee regarding physician compensation.]

Article VI

Annual Statements

Each director, principal officer and member of a committee with governing board delegated powers shall annually sign a statement which affirms such person:

a. Has received a copy of the conflicts of interest policy;

b. Has read and understands the policy;

c. Has agreed to comply with the policy; and

d. Understands the Organization is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

Article VII

Periodic Reviews

To ensure the Organization operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

a. Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining; and

b. Whether partnerships, joint ventures, and arrangements with management organizations conform to the Organization's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

Article VIII

Use of Outside Experts

When conducting the periodic reviews as provided for in Article VII, the Organization may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.

APPENDIX G - SAMPLE ORGANIZATIONAL RESOLUTION

RESOLVED, that the actions of the Incorporators of the Corporation in incorporating the Corporation are ratified and approved;

RESOLVED, that a certified copy of the Corporation's Certificate of Incorporation as filed with the New York State Department of State on _____, 201__, be inserted in the Minute Book of the Corporation;

RESOLVED, that the following persons are elected to the offices of the Corporation set forth below opposite their respective names, each to serve until their successors are elected and qualified:

President	_____
Vice President	_____
Secretary	_____
Treasurer	_____

RESOLVED, that the attached By-laws are adopted as the By-laws of the Corporation;

RESOLVED, that the Secretary shall insert a copy of the By-laws in the Minute Book of the Corporation;

RESOLVED, that the proper officers of the Corporation are authorized and directed to pay all fees and expenses necessary to the organization of the Corporation;

RESOLVED, that the Corporation is authorized and directed to establish banking relations in the name of and on behalf of the Corporation with _____ and that the form of banking resolution provided by the bank for this purpose is adopted and confirmed as though set forth fully herein;

RESOLVED, that the Corporation appoints _____, or such other person or persons as he or she may designate in writing, as the agent or agents of the Corporation to establish banking relations;

RESOLVED, that the proper officers of the Corporation are authorized to take any action necessary for the Corporation to apply to the Internal Revenue Service for recognition of tax-exempt status as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and

RESOLVED, that the proper officers of the Corporation are authorized and directed to execute and declare all documents, certificates and other instruments, and to take all other actions, as any such officer believes necessary or proper to carry out the purposes of these resolutions.

APPENDIX H - SAMPLE FISCAL SPONSORSHIP AGREEMENT

AGREEMENT made this day of __, ____, by and between [insert name and address of exempt organization] (the “Sponsor”), and [insert name and address of non-exempt organization] (the “Project”);

WITNESSETH:

WHEREAS, the Sponsor, a not-for-profit corporation exempt from federal tax under section 501(c) (3) of the Internal Revenue Code of 1986, as amended (the “Code”), and exempt from New York State sales tax, is formed for the purpose(s) of [list charitable/educational purposes relevant to the Project];

WHEREAS, the Project is a [type of entity] formed for the purpose(s) of [list charitable/educational purposes relevant to Project];

WHEREAS, the Sponsor is willing to receive tax deductible charitable contributions (the “Funds”) to be awarded by donors (the “Donors”) to the Sponsor for the benefit and use of implementing the Project; and

WHEREAS, the Project, with the administrative assistance of the Sponsor, desires to use the Funds in order to implement the Project;

NOW, THEREFORE, in consideration of the mutual promises, conditions and covenants contained herein, the parties hereto agree as follows:

1. The Sponsor agrees to receive the Funds to be used for the Project, and to make the Funds available to the Project within three (3) business days from the date of receipt. The Sponsor hereby authorizes the Project to make purchases that, subject to paragraphs 2 and 4 below, the Project deems necessary and appropriate, on behalf of, and for the use of the Project.
2. The Project agrees to use any and all Funds received from the Sponsor solely for legitimate expenses on the Project, and to account fully to the Sponsor for the disbursement of all Funds received from it on a quarterly basis.
3. The Sponsor agrees that all Funds which it receives for the Project will be reported as contributions to it as required by law, and further agrees to acknowledge receipt of such Funds in writing and to furnish evidence of its status as an exempt organization under section 501(c)(3) of the Code to any Donors upon request. The Sponsor agrees to notify the Project of any change in its tax-exempt status.
4. The Project agrees not to use Funds received from the Sponsor in any way which would jeopardize the tax-exempt status of the Sponsor. The Project agrees to comply with any written request by the Sponsor that it cease activities which might jeopardize its tax-exempt status, and further agrees that the Sponsor's obligation to make funds available to it is

suspended and this Agreement shall be terminated in the event that it fails to comply with any such written request.

5. The Sponsor agrees to (a) send acknowledgement of the receipt of the Funds to the relevant Donors, (b) provide a copy of each such acknowledgement to the Project, (c) deposit such Funds in an interest bearing account (the "Project Account") in the name of the Sponsor, established by the Sponsor and maintained at [name and address of bank], (d) provide mailing and postage services, including, but not limited to, metered mailing, (e) to the extent available under the Sponsor's general liability insurance policy, provide and maintain insurance for no less than three (3) and no more than eight (8) members of the Project and (f) provide incidental services in connection with the aforementioned.
6. The Sponsor shall be entitled to deduct from each separate cash award of Funds received from Donors an administrative fee of [five] percent ([5]%) of the amount of such award, but in no event shall the aggregate of all such fees from all Donors deducted by the Sponsor during any fiscal year of the Sponsor exceed \$[insert dollar amount].
7. The Sponsor shall maintain all books and financial records for Funds in accordance with generally accepted accounting principles. The Project Account shall be segregated on the books of the Sponsor. Reports reflecting receipts, expenditures and balances will be delivered by the Sponsor to the Project on a monthly basis, within two (2) weeks after the end of each month, and, on an annual basis, within three (3) months after the end of each fiscal year of the Sponsor.
8. The Sponsor shall prepare all requisite New York State and federal governmental reports and informational returns required in connection with the Project, including those required by the Internal Revenue Service. In the event the Project shall be audited by auditors selected by any Donors, the Sponsor shall cooperate in good faith with such auditors. The Sponsor shall retain all records relating to the Project for such period as shall be required by law.
9. The Sponsor shall permit the Project to operate freely within the guidelines of the Project's purposes and shall not interfere with such purposes, and, subject to paragraphs 2 and 4 above, all right, title and other ownership interests in and to the Project including, without limitation, tangible and intangible property arising out of the Project and all income arising therefrom, shall be for the sole benefit of the Project.
10. This Agreement may be terminated by (a) mutual agreement of the parties hereto which shall be in writing and signed by each of the parties hereto, or (b) one party, in the event the other party breaches this Agreement, if such other party does not cure such breach within five (5) days after receiving written notice from the non-breaching party of such breach and the non-breaching party's intent to terminate this Agreement.
11. In the event this Agreement is terminated pursuant to paragraphs 4 or 10 above, the Funds shall not be transferred to any individual or entity for any purpose without the consent of the Sponsor.

12. This Agreement shall be governed by, construed and interpreted in accordance with, the laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

[NAME OF SPONSOR]

By: _____

[Name of Signatory and Title]

[NAME OF PROJECT]

By: _____

[Name of Signatory and Title]

APPENDIX I – SAMPLE SS-4 FORM

Form SS-4 (Rev. January 2010) Department of the Treasury Internal Revenue Service		Application for Employer Identification Number (For use by employers, corporations, partnerships, trusts, estates, churches, government agencies, Indian tribal entities, certain individuals, and others.) ▶ See separate instructions for each line. ▶ Keep a copy for your records.		OMB No. 1545-0003 EIN _____		
1 Legal name of entity (or individual) for whom the EIN is being requested						
Type or print clearly.	2 Trade name of business (if different from name on line 1)		3 Executor, administrator, trustee, "care of" name			
	4a Mailing address (room, apt., suite no. and street, or P.O. box)		5a Street address (if different) (Do not enter a P.O. box.)			
	4b City, state, and ZIP code (if foreign, see instructions)		5b City, state, and ZIP code (if foreign, see instructions)			
	6 County and state where principal business is located					
	7a Name of responsible party			7b SSN, ITIN, or EIN		
	8a Is this application for a limited liability company (LLC) (or a foreign equivalent)? <input type="checkbox"/> Yes <input type="checkbox"/> No			8b If 8a is "Yes," enter the number of LLC members		
8c If 8a is "Yes," was the LLC organized in the United States? <input type="checkbox"/> Yes <input type="checkbox"/> No						
9a Type of entity (check only one box). Caution. If 8a is "Yes," see the instructions for the correct box to check.						
<input type="checkbox"/> Sole proprietor (SSN)		<input type="checkbox"/> Estate (SSN of decedent)		<input type="checkbox"/> National Guard		
<input type="checkbox"/> Partnership		<input type="checkbox"/> Plan administrator (TIN)		<input type="checkbox"/> State/local government		
<input type="checkbox"/> Corporation (enter form number to be filed) ▶		<input type="checkbox"/> Trust (TIN of grantor)		<input type="checkbox"/> Federal government/military		
<input type="checkbox"/> Personal service corporation		<input type="checkbox"/> Farmers' cooperative		<input type="checkbox"/> Indian tribal governments/enterprises		
<input type="checkbox"/> Church or church-controlled organization		<input type="checkbox"/> REMIC		<input type="checkbox"/> Group Exemption Number (GEN) if any ▶		
<input type="checkbox"/> Other nonprofit organization (specify) ▶		<input type="checkbox"/> Other (specify) ▶				
9b If a corporation, name the state or foreign country (if applicable) where incorporated		State		Foreign country		
10 Reason for applying (check only one box)						
<input type="checkbox"/> Started new business (specify type) ▶		<input type="checkbox"/> Banking purpose (specify purpose) ▶		<input type="checkbox"/> Changed type of organization (specify new type) ▶		
<input type="checkbox"/> Hired employees (Check the box and see line 13.)		<input type="checkbox"/> Purchased going business		<input type="checkbox"/> Created a trust (specify type) ▶		
<input type="checkbox"/> Compliance with IRS withholding regulations		<input type="checkbox"/> Created a pension plan (specify type) ▶				
<input type="checkbox"/> Other (specify) ▶						
11 Date business started or acquired (month, day, year). See instructions.			12 Closing month of accounting year			
13 Highest number of employees expected in the next 12 months (enter -0- if none). If no employees expected, skip line 14.			14 If you expect your employment tax liability to be \$1,000 or less in a full calendar year and want to file Form 944 annually instead of Forms 941 quarterly, check here. (Your employment tax liability generally will be \$1,000 or less if you expect to pay \$4,000 or less in total wages.) If you do not check this box, you must file Form 941 for every quarter. <input type="checkbox"/>			
Agricultural	Household	Other				
15 First date wages or annuities were paid (month, day, year). Note. If applicant is a withholding agent, enter date income will first be paid to nonresident alien (month, day, year)						
16 Check one box that best describes the principal activity of your business.						
<input type="checkbox"/> Construction		<input type="checkbox"/> Rental & leasing		<input type="checkbox"/> Health care & social assistance		
<input type="checkbox"/> Real estate		<input type="checkbox"/> Transportation & warehousing		<input type="checkbox"/> Accommodation & food service		
<input type="checkbox"/> Manufacturing		<input type="checkbox"/> Finance & insurance		<input type="checkbox"/> Wholesale-agent/broker		
<input type="checkbox"/> Other (specify) ▶				<input type="checkbox"/> Wholesale-other		
				<input type="checkbox"/> Retail		
17 Indicate principal line of merchandise sold, specific construction work done, products produced, or services provided.						
18 Has the applicant entity shown on line 1 ever applied for and received an EIN? <input type="checkbox"/> Yes <input type="checkbox"/> No If "Yes," write previous EIN here ▶						
Complete this section only if you want to authorize the named individual to receive the entity's EIN and answer questions about the completion of this form.						
Third Party Designee		Designee's name		Designee's telephone number (include area code)		
		Address and ZIP code		Designee's fax number (include area code)		
Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, it is true, correct, and complete.				Applicant's telephone number (include area code)		
Name and title (type or print clearly) ▶				Applicant's fax number (include area code)		
Signature ▶				Date ▶		

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 16055N

Form SS-4 (Rev. 1-2010)

Do I Need an EIN?

File Form SS-4 if the applicant entity does not already have an EIN but is required to show an EIN on any return, statement, or other document.¹ See also the separate instructions for each line on Form SS-4.

IF the applicant...	AND...	THEN...
Started a new business	Does not currently have (nor expect to have) employees	Complete lines 1, 2, 4a-8a, 8b-c (if applicable), 9a, 9b (if applicable), and 10-14 and 16-18.
Hired (or will hire) employees, including household employees	Does not already have an EIN	Complete lines 1, 2, 4a-6, 7a-b (if applicable), 8a, 8b-c (if applicable), 9a, 9b (if applicable), 10-18.
Opened a bank account	Needs an EIN for banking purposes only	Complete lines 1-5b, 7a-b (if applicable), 8a, 8b-c (if applicable), 9a, 9b (if applicable), 10, and 18.
Changed type of organization	Either the legal character of the organization or its ownership changed (for example, you incorporate a sole proprietorship or form a partnership) ²	Complete lines 1-18 (as applicable).
Purchased a going business ³	Does not already have an EIN	Complete lines 1-18 (as applicable).
Created a trust	The trust is other than a grantor trust or an IRA trust ⁴	Complete lines 1-18 (as applicable).
Created a pension plan as a plan administrator ⁵	Needs an EIN for reporting purposes	Complete lines 1, 3, 4a-5b, 9a, 10, and 18.
Is a foreign person needing an EIN to comply with IRS withholding regulations	Needs an EIN to complete a Form W-8 (other than Form W-8ECI), avoid withholding on portfolio assets, or claim tax treaty benefits ⁶	Complete lines 1-5b, 7a-b (SSN or ITIN optional), 8a, 8b-c (if applicable), 9a, 9b (if applicable), 10, and 18.
Is administering an estate	Needs an EIN to report estate income on Form 1041	Complete lines 1-6, 9a, 10-12, 13-17 (if applicable), and 18.
Is a withholding agent for taxes on non-wage income paid to an alien (i.e., individual, corporation, or partnership, etc.)	Is an agent, broker, fiduciary, manager, tenant, or spouse who is required to file Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons	Complete lines 1, 2, 3 (if applicable), 4a-5b, 7a-b (if applicable), 8a, 8b-c (if applicable), 9a, 9b (if applicable), 10, and 18.
Is a state or local agency	Serves as a tax reporting agent for public assistance recipients under Rev. Proc. 80-4, 1980-1 C.B. 581 ⁷	Complete lines 1, 2, 4a-5b, 9a, 10, and 18.
Is a single-member LLC	Needs an EIN to file Form 8832, Classification Election, for filing employment tax returns and excise tax returns, or for state reporting purposes ⁸	Complete lines 1-18 (as applicable).
Is an S corporation	Needs an EIN to file Form 2553, Election by a Small Business Corporation ⁹	Complete lines 1-18 (as applicable).

¹ For example, a sole proprietorship or self-employed farmer who establishes a qualified retirement plan, or is required to file excise, employment, alcohol, tobacco, or firearms returns, must have an EIN. A partnership, corporation, REMIC (real estate mortgage investment conduit), nonprofit organization (church, club, etc.), or farmers' cooperative must use an EIN for any tax-related purpose even if the entity does not have employees.

² However, do not apply for a new EIN if the existing entity only (a) changed its business name, (b) elected on Form 8832 to change the way it is taxed (or is covered by the default rules), or (c) terminated its partnership status because at least 50% of the total interests in partnership capital and profits were sold or exchanged within a 12-month period. The EIN of the terminated partnership should continue to be used. See Regulations section 301.6109-1(d)(2)(iii).

³ Do not use the EIN of the prior business unless you became the "owner" of a corporation by acquiring its stock.

⁴ However, grantor trusts that do not file using Optional Method 1 and IRA trusts that are required to file Form 990-T, Exempt Organization Business Income Tax Return, must have an EIN. For more information on grantor trusts, see the Instructions for Form 1041.

⁵ A plan administrator is the person or group of persons specified as the administrator by the instrument under which the plan is operated.

⁶ Entities applying to be a Qualified Intermediary (QI) need a QI-EIN even if they already have an EIN. See Rev. Proc. 2000-12.

⁷ See also *Household employer* on page 4 of the instructions. **Note.** State or local agencies may need an EIN for other reasons, for example, hired employees.

⁸ See *Disregarded entities* on page 4 of the instructions for details on completing Form SS-4 for an LLC.

⁹ An existing corporation that is electing or revoking S corporation status should use its previously-assigned EIN.

APPENDIX J – SAMPLE BUDGET

<u><i>Proposed Budget</i></u>	<u>Budget FY'08</u>	<u>Budget FY'09</u>
<u>Total Budget</u>		
<u>Income Items</u>		
<i>Unearned Income</i>		
Grants & Contributions		
Government Funding (State or Federal)	\$ 1,500	\$ 2,000
Foundations	\$ 5,250	\$ 8,000
Contributions	\$ 1,750	\$ 2,000
Total Grants & Contributions	\$ 8,500	\$ 12,000
<i>Earned Income</i>		
Fundraisers Special Events	\$ 10,000	\$ 15,000
Membership (if applicable)	\$ 16,000	\$ 18,500
Performances Income	\$ 30,000	\$ 40,000
Art and Publications Sales	\$ 6,000	\$ 12,500
Bank Interest & Dividends	\$ 500	\$ 500
Total Earned Revenue	\$ 62,500	\$ 86,500
Miscellaneous	\$ 500	\$ 500
Total Income	\$ 71,500	\$ 99,000
<u>Expenditures or Expense Items</u>		
Staff Salaries/Tax/Benefits	\$ 26,000	\$ 29,000
Accounting/Audit Services	\$ 1,000	\$ 1,000
Office & Storage Rent	\$ 20,000	\$ 25,000
Insurance (Prof. Liability, Gen. Comp.)	\$ 3,000	\$ 3,000
Equipment Purchase & Lease & Maintenance	\$ 1,500	\$ 4,000
Office Supplies	\$ 2,000	\$ 2,750
Printing & Copying	\$ 2,000	\$ 3,500
Telephone	\$ 1,750	\$ 3,500
Postage & Delivery	\$ 1,000	\$ 2,500
Special Events Expenses	\$ 5,000	\$ 10,000
Marketing	\$ 1,750	\$ 3,500
Seminars, Workshops & Meetings	\$ 1,750	\$ 4,000
Travel	\$ 1,900	\$ 2,500
Staff & Board & Meeting Expenses	\$ 1,850	\$ 3,250
Other/Misc. (Bank Charges, etc.)	\$ 1,000	\$ 1,500
Total Expense Items	\$ 71,500	\$ 99,000
Excess or (Deficit)	\$ 0	\$ 0

Your Goal should always be to have a ZERO for this Budget Line.

APPENDIX K – SAMPLE CT-247 FORM



Department of Taxation and Finance

Application for Exemption from Corporation Franchise Taxes by a Not-for-Profit Organization

CT-247
(8/15)

Mailing name and address	Legal name of corporation	Employer identification number (EIN)	<i>For office use only</i>
	Mailing name (if different from legal name)		
	c/o Number and street or PO box	City State ZIP code	
NYS principal business activity		Date tax exemption claimed from	<i>For audit use only</i>
Form of organization (mark an X in the appropriate box) Corporation <input type="checkbox"/> Association <input type="checkbox"/> Trust <input type="checkbox"/> Other <input type="checkbox"/>		Business/officer telephone number ()	
Date of formation	State or country of incorporation	Taxable <input type="checkbox"/> Exempt <input type="checkbox"/>	
Indicate exact name of the law under which the entity was formed (general corporation, not-for-profit, membership, etc.). Cite statutory provisions.			

Federal return filed (mark an X in one): Form 990 Form 990-T Form 1120 Other: _____

For lines 1 through 7, mark an X in the Yes or No box

- 1 Is the entity organized and operated as a not-for-profit organization? Yes No
- 2 Is the entity authorized to issue capital stock? (If Yes, also mark an X in the appropriate box below.) Yes No
 Title holding company Collective investment Other: _____
 List shareholders: _____
- 3 Does any part of the net earnings of the organization benefit any officer, director, or member? Yes No
- 4 Does the entity meet the qualifications for exemption from federal income tax? (See General information) Yes No
 If No, stop. You do not qualify as an exempt organization.
- 5 Did the entity apply for federal exemption? Yes No
 If Yes, indicate date of exemption _____ Attach a copy of your federal exemption letter.
- 6 Is the entity engaged in an unrelated business activity at a location in New York State (NYS)? Yes No
- 7 Is the entity operating as a trust under Internal Revenue Code (IRC) section 401(a) and exempt from federal income tax under IRC section 501(a)? Yes No

8 List location and type of activity for each office and other places of business (attach separate sheet if necessary).

Location	Nature of activity

9 List officers, employees, agents, and representatives in NYS and briefly describe their duties (attach separate sheet if necessary).

Name	Title	Duties

10 List type and use of real property owned in NYS (attach separate sheet if necessary).

Type	How used

11 Describe any NYS activities not shown above (attach separate sheet if necessary).

--

Certification: I certify that this application and any attachments are to the best of my knowledge and belief true, correct, and complete. Willfully filing a false application is a misdemeanor punishable under the Tax Law.

Authorized person	Printed name of authorized person	Signature of authorized person	Official title	
	E-mail address of authorized person	Telephone number ()	Date	
Paid preparer use only <i>(see instr.)</i>	Firm's name (or yours if self-employed)	Firm's EIN	Preparer's PTIN or SSN	
	Signature of individual preparing this application	Address	City	State ZIP code
	E-mail address of individual preparing this application	Preparer's NYTPRIN or	Excl. code	Date

Instructions

General information

Certain not-for-profit and religious corporations are exempt from the New York State (NYS) corporation franchise tax imposed by Tax Law Article 9-A (Article 9-A regulations, section 1-3.4(b)(6)). You must file Form CT-247 to apply for exemption.

Generally, a corporation or an organization treated as a corporation must meet all of the following requirements to be tax exempt:

- It must be organized and operated as a not-for-profit organization.
- It must not have stock, shares, or certificates for stock or for shares. Not-for-profit corporations that issue stock are taxable under Article 9-A. However, title holding companies as described in Internal Revenue Code (IRC) section 501(c)(2), and collective investment entities as described in IRC section 501(c)(25), are exempt from tax under Article 9-A. For additional information, see TSB-M-87(9)C, *Exemption for Title Holding Companies (THC) and Collective Investment Entities (CIE)*.
- No part of its net earnings may benefit any officer, director, or member.
- It must be exempt from federal income taxation under IRC section 501, subsection (a).

If the organization meets all of the above requirements, it will be presumed to be exempt from tax under Tax Law Article 9-A. An organization denied exemption from taxation under the IRC will be presumed to be subject to tax under Article 9-A.

An organization whose tax exempt status has been revoked and later restored by the Internal Revenue Service (IRS), must file a new application on Form CT-247. The new application must be approved before any tax-exempt status under Article 9-A is restored.

Not-for-profit, nonstock organizations that are subject to the federal tax on unrelated business income are taxable under NYS Tax Law Article 13, if they pursue those unrelated business activities in NYS. File Form CT-13, *Unrelated Business Income Tax Return*, to report those activities.

Organizations required to file federal Form 1120 may be taxable under Article 9-A and may be required to file Form CT-3, *General Business Corporation Franchise Tax Return*.

When filing Form CT-247, submit all documents granting or denying exemption from tax by the IRS, the corporation's articles of incorporation, and its bylaws. Promptly report any changes in the corporation's federal tax status to the NYS Tax Department.

Any exemption granted by the filing of Form CT-247 is strictly for NYS corporation franchise tax. For federal exemption, contact the IRS.

Any inquiry on the taxable status of an organization must be in writing, signed by an officer of the organization, and mailed to the address under *Mail this application to:*

Refund of franchise taxes

If the organization paid franchise taxes in error, request a refund by filing an amended return. A housing development fund company must submit proof that it was organized under Private Housing Finance Law Article 11.

Mail this application to:

NYS TAX DEPARTMENT
CORPORATION TAX ACCOUNT RESOLUTION
W A HARRIMAN CAMPUS
ALBANY NY 12227-0852

Private delivery services

See Publication 55, *Designated Private Delivery Services*.

Signature

The application must be certified by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or other officer authorized by the taxpayer corporation.

The application of an association, publicly traded partnership, or business conducted by a trustee or trustees must be signed by a person authorized to act for the association, publicly traded partnership, or business.

If an outside individual or firm prepared the application, all applicable entries in the paid preparer section must be completed, including identification numbers (see *Paid preparer identification numbers* in Form CT-1). Failure to sign the application will delay the processing of any refunds and may result in penalties.

Need help? and Privacy notification

See Form CT-1, *Supplement to Corporation Tax Instructions*.

APPENDIX L – SAMPLE ST-119.2 FORM



New York State and Local Sales and Use Tax

Application for an Exempt Organization Certificate
State and Local Sales and Use Tax

ST-119.2
(9/11)

Name of organization		Organization's telephone number ()	
Physical address (number and street)	City	State	ZIP code
Mailing address	City	State	ZIP code
Name and title of person to be contacted (see instructions)		Contact person's telephone number ()	
Email address of person to be contacted		Contact person's fax number ()	
Date formally organized	Date incorporated	Federal employer identification number	

Mark an **X** in the appropriate box to indicate the Tax Law section under which you are claiming exempt status.

1a **Section 1116(a)(4)** – Mark an **X** in the appropriate box to indicate the purpose for which you are claiming exempt status (see instructions).

- | | | |
|--------------------------------------|----------------------------------------------------|-----------------------------------------------------------------------------------------|
| <input type="checkbox"/> Religious | <input type="checkbox"/> Testing for public safety | <input type="checkbox"/> Prevention of cruelty to children or animals |
| <input type="checkbox"/> Charitable | <input type="checkbox"/> Scientific | <input type="checkbox"/> Fostering national or international amateur sports competition |
| <input type="checkbox"/> Educational | <input type="checkbox"/> Literary | |

1b **Section 1116(a)(5)** – A post or organization organized in New York State of past or present members of the United States armed forces, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization **organized in New York State** (see instructions).

What percentage of your members are past or present members of the United States armed forces? %
 What percentage of your members are cadets or are spouses, widows, widowers, ancestors, or lineal descendants of past or present members of the United States armed forces or of cadets?..... %
 What percentage of your members do not fall within either of the above categories?..... %

If the post or organization has received a federal ruling on its exemption claim, attach a copy of the federal determination letter confirming your Internal Revenue Code (IRC) section 501(c)(19) exemption.

1c **Section 1116(a)(7)** – A not-for-profit corporation acting as a health maintenance organization subject to the provisions of Public Health Law Article 44. You must attach a copy of the certificate of authority issued by the New York State Health Department.

1d **Section 1116(a)(8)** – A cooperative or foreign corporation doing business in this state pursuant to the Rural Electric Cooperative Law.

1e **Section 1116(a)(9)** – A credit union, as defined by New York State Banking Law section 2(9), where it is the purchaser, user, or consumer of services or property, or where it is a vendor of services or property of a kind not ordinarily sold by private persons (see instructions).

2 Are you currently registered for sales tax purposes with the Tax Department? Yes No
 If Yes, enter your sales tax Certificate of Authority number _____.

If you answer Yes to questions 3 through 7, attach an explanation (see instructions).

3 Has any distribution of the organization's property ever been made to shareholders, members, or other individuals?..... Yes No

4 Does any part of the net earnings of the organization go to the benefit of any private shareholder or individual? Yes No

5 If you marked box 1a, has the organization ever attempted to influence legislation?..... Yes No

ST-119.2 (9/11) (back)

- 6 If you marked box 1a, has the organization ever participated or intervened, directly or indirectly, in any political campaign or endorsed or opposed any candidate for public office?..... Yes No
- 7 If you marked box 1a and the organization fosters national or international amateur sports competition, does it provide any facilities or equipment, either directly or indirectly, to anyone?..... Yes No
- 8 Has the organization received an exemption from federal income tax under IRC section 501(c)(3)?..... Yes No
(If Yes, you must attach a copy of the federal determination letter confirming your IRC section 501(c)(3) exemption.)
- 9 If you are a branch or chapter, has your parent organization received an exemption from federal income tax under IRC section 501(c)(3) that applies to subordinate branches or chapters (see instructions)? Yes No
(If Yes, you must attach a copy of the federal determination letter confirming your IRC section 501(c)(3) exemption.)

10 Mark an **X** in the appropriate box to indicate your type of organization (see instructions).

- Corporation (attach a copy of articles of incorporation, including filing receipt, and bylaws and any amendments to either of them)
- Trust or foundation (attach a copy of Declaration of Trust and bylaws and any amendments to either of them)
- Limited liability company (LLC) (attach a copy of articles of organization and operating agreement and any amendments to either of them)
- Credit union (attach a copy of federal or New York State charter)
- Other (attach a copy of constitution and bylaws and any amendments to either of them)

11 Attach the following to this application (see instructions):

- **Statement of activities** fully describing all current and proposed activities.
- **Statement of receipts and expenditures** for your most recent fiscal year of operation, clearly reflecting the nature and amount of receipts and the purpose and amount of expenditures. (If you have been in existence less than a year, submit a statement of your receipts and expenditures to date, and a proposed budget for the rest of the year.)
- **Statement of assets and liabilities** as of the end of your most recent fiscal year. (If you have been in existence less than a year, your statement should be as of the date of this application).
- **Note: Do not attach** federal Form 1023, *Application for Recognition of Exemption*.
- **Note:** The Tax Department may require the applicant to submit additional documents and information.

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Signature of officer or trustee	Date
Name and title of officer or trustee (please print)	
Email address of officer or trustee	

APPENDIX M – SAMPLE CHAR410 FORM

Form CHAR410 <small>For new registrants only (Amending use CHAR410-A, Re-registering use CHAR410-R)</small>	Registration Statement for Charitable Organizations New York State Department of Law (Office of the Attorney General) Charities Bureau - Registration Section 120 Broadway New York, NY 10271 www.charitiesnys.com/	Open to Public Inspection
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Part A - Identification of Registrant			
1. Full name of organization (exactly as it appears in your organizing document)		5. Fed. employer ID no. (EIN) ____-____-____	
2. c/o Name (if applicable)		6. Organization's website	
3. Mailing address (Number and street)		Room/suite	7. Primary contact
City or town, state or country and ZIP+4		Title	
4. Principal NYS address (Number and street)		Room/suite	Phone
City or town, state or country and ZIP+4		Fax	
		Email	

Part B - Certification - Two Signatures Required			
We certify under penalties for perjury that we reviewed this Registration Statement, including all schedules and attachments, and to the best of our knowledge and belief, they are true, correct and complete in accordance with the laws of the State of New York applicable to this statement.			
1. President or Authorized Officer/Trustee	Signature	Printed Name	Title
			Date
2. Chief Financial Officer or Treasurer	Signature	Printed Name	Title
			Date

Part C - Fee Submitted		
If registering to solicit contributions, fee is \$25. If not registering to solicit contributions, no fee is owed.	Check <input type="checkbox"/> if you are submitting \$25 fee to register to solicit contributions.	<i>Submit check or money order, payable to "NYS Department of Law."</i>

Part D - Attachments - All Documents Required
Attach <u>all</u> of the following documents to this Registration Statement, even if you are claiming an exemption from registration: <ul style="list-style-type: none"> • Certificate of incorporation, trust agreement or other organizing document, and any amendments; and • Bylaws or other organizational rules, and any amendments; and • IRS Form 1023 or 1024 Application for Recognition of Exemption (if applicable); and • IRS tax exemption determination letter (if applicable)

Part E - Request for Registration Exemption
Is the organization requesting exemption from registration under either or both Article 7-A or the EPTL? <input type="checkbox"/> Yes* <input type="checkbox"/> No
* If "Yes", complete Schedule E.

Part F - Organization Structure

1. Incorporation / formation

<p>a. Type of organization:</p> <p>Corporation <input type="checkbox"/></p> <p>Limited liability company (LLC) <input type="checkbox"/></p> <p>Partnership <input type="checkbox"/></p> <p>Sole proprietorship <input type="checkbox"/></p> <p>Trust <input type="checkbox"/></p> <p>Unincorporated association <input type="checkbox"/></p> <p>Other * <input type="checkbox"/></p> <p>* If Other, describe:</p>	<p>b. Type of corporation if New York not-for-profit corporation</p> <p>A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/></p> <p>c. Date incorporated if a corporation or formed if other than a corporation</p> <p>___ / ___ / ___</p> <p>d. State in which incorporated or formed</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

2. List all chapters, branches and affiliates of your organization (attach additional sheets if necessary)

Name	Relationship	Mailing address (number and street, room/suite, City or town, state or country and zip+4)

3. List all officers, directors, trustees and key employees

Name	Title	Mailing address (number and street, room/suite, city or town, state or country and zip+4)	End of term (if applicable)
			___ / ___ / ___
			___ / ___ / ___
			___ / ___ / ___
			___ / ___ / ___
			___ / ___ / ___
			___ / ___ / ___
			___ / ___ / ___
			___ / ___ / ___

4. Other Names and Registration Numbers

a. List all other names used by your organization, including any prior names

b. List all prior New York State charities registration numbers for the organization, including those from the New York State Attorney General's Charities Bureau or the New York State Department of State's Office of Charities Registration

Part G - Organization Activities

1. Month the annual accounting period ends (01-12)	2. NTEE code
3. Date organization began doing each of following in New York State:	
a. conducting activity	___/___/___
b. maintaining assets	___/___/___
c. soliciting contributions (including from residents, foundations, corporations, government agencies, etc.)	___/___/___
4. Describe the purposes of your organization	
5. Has your organization or any of your officers, directors, trustees or key employees been:	
a. enjoined or otherwise prohibited by a government agency or court from soliciting contributions? <input type="checkbox"/> Yes* <input type="checkbox"/> No	
* If "Yes", describe:	
b. found to have engaged in unlawful practices in connection with the solicitation or administration of charitable assets? <input type="checkbox"/> Yes* <input type="checkbox"/> No	
* If "Yes", describe:	
6. Has your organization's registration or license been suspended by any government agency? <input type="checkbox"/> Yes* <input type="checkbox"/> No	
* If "Yes", describe:	
7. Does your organization solicit or intend to solicit contributions (including from residents, foundations, corporations, government agencies, etc.) in New York State? <input type="checkbox"/> Yes* <input type="checkbox"/> No	
* If "Yes", describe the purposes for which contributions are or will be solicited:	

8. List all fund raising professionals (FRP) that your organization has engaged for fund raising activity in NY State (attach additional sheets if necessary)			
Name	Type of FRP (see instructions for definitions)	Mailing address (number and street, room/suite, city or town, state or country and zip+4)	Dates of contract
	PFR <input type="checkbox"/> FRC <input type="checkbox"/> OCV <input type="checkbox"/>		Start date: ___/___/___ End date: ___/___/___
	PFR <input type="checkbox"/> FRC <input type="checkbox"/> OCV <input type="checkbox"/>		Start date: ___/___/___ End date: ___/___/___
	PFR <input type="checkbox"/> FRC <input type="checkbox"/> OCV <input type="checkbox"/>		Start date: ___/___/___ End date: ___/___/___

Part H - Federal Tax Exempt Status

1. If applicable, list the date your organization:	
a. applied for tax exempt status	___/___/___
b. was granted tax exempt status	___/___/___
c. was denied tax exempt status	___/___/___
d. had its tax exempt status revoked	___/___/___
2. Provide Internal Revenue Code provision: 501(c)(___)	

APPENDIX N – USEFUL WEBSITES

Copyright Office	www.copyright.gov
Internal Revenue Service	www.irs.gov
Patent & Trademark Office	www.uspto.gov
New York Department of State	www.dos.ny.gov
New York Department of Labor	http://www.labor.ny.gov
Handicap Accessibility	http://www.usdoj.gov/crt/disability-rights-section
Screen Actors Guild	www.sagaftra.org
Writers Guild of America	www.wga.org
Authors Guild	www.authorsguild.org
American Guild of Musical Artists	https://www.musicalartists.org/
Immigration and Naturalization Service	www.uscis.gov
Better Business Bureau	www.bbb.org
Small Business Development Center	www.nyssbdc.org
Alliance for Nonprofit Management	www.allianceonline.org/faqs.html
The Chronicle of Philanthropy	http://philanthropy.com
The Foundation Center	www.fdncenter.org
ASCAP (Am. Soc. of Composers, Auth. & Pub.)	www.ASCAP.com
BMI (Broadcast Music, Inc.)	www.bmi.com
Lawyers Alliance for New York	www.lany.org
Nonprofit Coordinating Committee of New York	www.npccny.org
Guidestar (National Database of NFPs)	www.guidestar.org

APPENDIX O - RECOMMENDED RESOURCES FOR MANAGING A NOT-FOR-PROFIT

1. Americans for the Arts
One East 53rd Street
New York, New York 10022
(212) 223-2787
www.artsusa.org

Americans for the Arts maintains a national arts policy clearinghouse and is a resource for researchers that includes 4,000 publications. Contact to set up an appointment. Americans for the Arts sponsors arts education programs and government advocacy to encourage private sector awareness and giving.

2. ART/New York (Alliance of Resident Theaters)
575 Eighth Avenue, Suite 17 South
New York, New York 10018
(212) 244-6667
www.art-newyork.org

ART/New York provides free information and workshops for member theaters on board diversification, event planning, marketing and financial management, insurance, vendors, agents, contracts and copyright. ART/New York also provides an intern directory, job book, rehearsal space guide, employee referral, seminars, and publications for professional NFP theaters (Off-Broadway and Off-Off-Broadway). Any NFP theatre in New York is eligible for membership (fee: \$100-\$750). ART/New York will serve those with or without 501(c)(3) status.

3. Arts and Business Council, Inc.
Business Volunteers for the Arts,
520 Eighth Avenue, Suite 319
New York, New York 10018
(212) 279-5910
www.artsandbusiness.org

Arts and Business volunteers provide registered not-for-profit art groups with free assistance on management problems, including cash-flow analysis, budget development, personnel, marketing, public relations, and credit-related areas.

4. Cause Effective
505 Eighth Avenue, Suite 1212
New York, New York 10018
(212) 643-7093
www.causeeffective.org

Founded in 1981, Cause Effective is a New York-based nonprofit that helps not-for-profit organizations build their capacities to develop human and financial resources through consulting, workshops, and publications. Cause Effective helps not-for-profits plan and implement special events, train and develop their Boards, manage individual donors, enlist and manage volunteers, and promote and market their organizations.

5. The Field
161 Sixth Avenue, 14th Floor
New York, New York 10013
(212) 691-6969
www.thefield.org

The Field's Nonprofit Sponsorship Program enables performing artists and groups to accumulate the funds they need to make their artistic and career goals a reality. Sponsorship provides independent performing artists and groups with: eligibility to apply for most government, foundation, and corporate grants which require a 501(c)(3), not-for-profit status; eligibility to receive tax-deductible donations of both money and goods from individuals; other services where 501(c)(3) status is necessary, including access to Materials for the Arts, the Costume Collection, reduced rental rates for certain performance spaces, etc. Membership fee is \$85 per year and includes discounts on workshops, publications, etc.

6. Fractured Atlas
248 West 35th Street, 10th Floor
New York, NY 10001
(888) 692-7878
<https://www.fracturedatlas.org/>

Fractured Atlas is a national organization that assists individual artists and arts organizations of all sizes. It is supported by membership dues and program fees paid by the artists. In exchange it provides fiscal sponsorship and other services. This allows the artists to solicit tax deductible donations from and apply for grants under its 501(c)(3) umbrella. It also provides educational opportunities, access to insurance, audience building software and access to performance and rehearsal space.

7. Fund for the City of New York
121 Avenue of the Americas, Sixth Floor
New York, New York 10013
(212) 925-6675
www.fcny.org

The Fund for the City of New York is a private operating foundation launched by the Ford Foundation in 1968 with the mandate to improve the quality of life for all New Yorkers. Through centers on youth, government and technology as well as core organizational assistance, the Fund introduces and helps to implement innovations in policy, programs, practice and technology in order to advance the functioning of government and not-for-profit organizations in New York City and beyond.

8. Independent Feature Project (IFP)
104 West 29th Street, 12th Floor
New York, New York 10001
(212) 465-8200
www.ifp.org

IFP is a not-for-profit service organization dedicated to providing resources, information and avenues of communication for its members: independent filmmakers, industry professionals and independent film enthusiasts. It is committed to the idea that independent film is an important art form and a powerful voice in our society. IFP provides services to independent filmmakers of varying levels of experience, which assist them in expressing their unique points of view. It facilitates a connection between the creative and business communities. Other goals of the organization are to expand and educate the audience for independent film, and to encourage the diversity and quality of independent production.

9. National Executive Service Corps (NESC)
120 Wall Street, 16th Floor
New York, New York 10005
(212) 269-1234
www.nesc.org

NESC consults for arts organizations of all sizes within NY metropolitan area. Deals with fundraising, board and staff relationships, development, administration, human resource problems, marketing, and strategic planning. A modest fee is charged based on size of project and organization's budget.

10. New York City Economic Development Corporation (NYCEDC)
110 William Street
New York, New York 10038
(212) 619-5000
www.nycedc.com

NYCEDC provides assistance in locating office space in corporate and industrial parks

throughout New York City and other business-related real estate matters. They also have a Small Business Reserve Fund for working capital loans, fixtures, machinery and equipment, and physical improvements.

11. New York Foundation for the Arts (NYFA)
155 Avenue of the Americas, 14th Floor
New York, New York 10013-1507
(212) 366-6900
www.nyfa.org

NYFA is a not-for-profit arts organization, one of the largest providers of grants and services to individual artists and their organizations in all artistic disciplines in the United States. Through its fellowships, residencies, sponsored projects, management services, loans, information and advocacy services, NYFA works with artists and arts organizations throughout New York State and other parts of the country to bring the work of contemporary artists to the public.

12. Nonprofit Coordinating Committee of New York (NPCC)
1350 Broadway, Suite 1801
New York, New York 10018
(212) 502-4191
www.npccny.org

NPCC provides its members with an array of services including low-priced Directors' and Officers' liability insurance, joint purchasing arrangements, technical assistance, and workshops on employee health insurance, pension plans and other operational topics. Workshops are free for members and at a fee for non-members. Roundtables meet periodically for financial managers and executive directors. Membership is \$25-1,000/year, on a sliding scale.

13. Pentacle Foundation of Independent Artists
246 West 38th Street, Eighth Floor
New York, New York 10018
(212) 278-8111
www.pentacle.org

Pentacle provides fiscal administration services to not-for-profit organizations, as well as grant writing assistance for dancers and other performing artists. Pentacle also provides a booking service, resource library and video equipment to artists. An annual fee is required for use of the booking service, but no membership is required to use the library or video services.

14. The Support Center for Nonprofit Management
305 Seventh Avenue, 11th Floor
New York, New York 10001-6008
(212) 924-6744
www.supportcenteronline.org

The Support Center for Nonprofit Management provides training programs in management, finances and fundraising. The Support Center will match not-for-profit organization with a volunteer accountant for a \$150 fee. Accounting services for individuals are \$50/hour. Initial consultation is free.

APPENDIX P - FREQUENTLY ASKED QUESTIONS ABOUT OBTAINING 501(C)(3) STATUS

How do we get a tax ID number?

Use IRS Form SS-4 to obtain an EIN (Employer Identification Number), an identifying number for all Federal tax purposes, whether you plan to have employees or not. You can apply for an EIN separately if you need one immediately, for banking, for instance, or attach a completed Form SS-4 to your application for tax exempt status.

NOTE: This number does not, in any way, indicate whether or not your organization is exempt from tax!

How much will it cost to get our tax-exempt status?

The IRS has charged a non-refundable processing fee for exemption applications since 1987. There is currently a two-tier fee schedule. Organizations whose gross receipts have averaged, or will average, not more than \$50,000 per year, and have assets less than \$250,000 may file the short 1023EZ form and pay \$275. Larger organizations pay \$600. A new IRS Revenue Procedure announcing the fees comes out each January; if you are submitting your application late in the year, there may be some benefit to getting it in before January 1st.

Other costs you might incur when setting up a new nonprofit organization include incorporation, charitable solicitation and other registration fees to state and local authorities, and fees to have your articles of incorporation, By-laws, and exemption application professionally prepared.

What is the deadline for applying for tax-exempt status?

A new charitable, educational, scientific, or religious organization must submit its application to the IRS by the end of the 27th month after the end of the month in which the organization was created. There is no similar deadline for non-501(c)(3) groups.

Can we ask for donations before we get our tax-exempt status?

If your charitable, educational, scientific, or religious organization submits its application to the IRS by the deadline described above and is approved, the “effective date” of your group’s tax-exempt status will be the day it was originally created. This means that contributions that your organization received after incorporation, but before the IRS issued your exemption letter will be deductible.

Because there is, of course, a chance that your application for tax exempt status will be turned down, it is only fair to let your potential donors know that you do not actually have IRS approval yet. Use the language: “501(c)(3) application pending.”

What are the chances of having our exemption application approved?

Recent statistics show the IRS approving tax-exempt status for a little more than 70% of the applications they receive, and denying tax-exempt status for less than 1% of the applications they receive. The other 29% or so are mostly organizations that become discouraged by the numerous questions the IRS asks, and give up before they actually get a ruling.

Does a small organization really need to apply?

Tax law does not require a 501(c)(3) application when an organization normally has gross receipts less than \$5,000 per year. A small organization may want to apply anyway to save donors possible inconvenience in an audit, to be able to apply for grants, or to obtain a bulk mailing permit. An organization that no longer qualifies for this low gross receipts exception must submit its application to the IRS within 90 days of the end of the year in which average gross receipts exceed \$5,000.

Can we pay salaries to our board members? Can we rent a building owned by a board member, or purchase equipment from a board member?

Tax law always permits the payment of reasonable compensation for goods or services actually rendered. If the IRS finds that amounts received by insiders are unreasonably high, however, they can fine both the insider who received the payment, and the board members who approved the payment. In extreme cases, they can take away the organization's tax-exempt status.

It is a good idea, therefore, to fully document the Board's decision-making process when any kind of payment will be made to an insider. Place copies of all relevant information (salary surveys, job description, résumés, prior salary history, real estate appraisals, rent "comparables") in the minutes, and never let a board member vote on his or her own compensation, or on the compensation of anyone related to him or her.

APPENDIX Q- FREQUENTLY ASKED QUESTIONS ABOUT APPLYING FOR A FISCAL SPONSORSHIP

What is a fiscal sponsor?

A fiscal sponsor is an organization that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code and allows individuals or organizations to use its not-for-profit 501(c)(3) status to apply for grants and solicit charitable contributions. While these sponsoring organizations are often called fiscal sponsors, the terms “fiscal agent,” “umbrella organization,” and “conduit” are also commonly used in describing such organizations.

How does a fiscal sponsor work?

The fiscal sponsor manages or co-manages all of the funds, assets, and contributions for the individual or organization in exchange for an administrative fee equal to 5-10% of the funds that the sponsor collects on your organization’s behalf.

Some points to consider:

- a) The fiscal sponsor must exercise sufficient supervision or control over the funds being donated to support your organization.
- b) The funds must be used by your organization only for charitable purposes that further the exempt purposes of the fiscal sponsor.
- c) Your organization should not rely on a fiscal sponsor to perform a fundraising function on your behalf.
- d) You should obtain a written agreement between your organization and your fiscal sponsor that sets forth the parties’ duties and obligations to each other.

CAUTIONARY NOTE: Before working with a fiscal sponsor, make sure to do your due diligence. Most importantly, confirm the financial health of the proposed sponsor.

Fiscal Sponsors in New York. While any 501(c)(3) organization may act as a fiscal sponsor (depending on its mission statement), the organizations listed below do so on a regular basis:

a) **The Field**

161 Sixth Avenue, 14th Floor
New York, New York 10013
(212) 691-6969
www.thefield.org

The Field's Nonprofit Sponsorship Program enables performing artists and groups to accumulate the funds they need to make their artistic and career goals a reality. Sponsorship provides independent performing artists and groups with: eligibility to apply for most government, foundation, and corporate grants which require a 501(c)(3), not-for-profit status; eligibility to receive tax-deductible donations of both money and goods from individuals; other services where 501(c)(3) status is necessary, including access to Materials for the Arts, the Costume Collection, reduced rental rates for certain performance spaces, etc. Membership fee is \$85 per year and includes discounts on workshops, publications, etc.

d) **Fractured Atlas**

1123 Broadway, Suite 1109
New York, New York 10010
(212) 277-8020
www.fracturedatlas.org

Fractured Atlas provides sponsorship for a project (which might be a one-time project, or an independent artist, or even an arts organization) that does not have its own 501(c)(3) status, thereby enabling that project to solicit and receive grants and tax-deductible contributions. Sponsored artists are re-granted all contributed funds, minus a 5% administrative handling charge. Membership fee is \$75 per year.

e) **The Foundation Center**

79 Fifth Avenue
New York, New York 10003
(212) 620-4230 or (800) 424-9836
www.fdncenter.org

The Foundation Center's mission is to strengthen the not-for-profit sector by advancing knowledge about U.S. philanthropy. Founded in 1956, the Center is the nation's leading authority on philanthropy. The Center provides a reference library for not-for-profit organizations and individuals (depending on area of interest). In particular, the Center provides education and training on the grant-seeking process.

f) **Pentacle Foundation of Independent Artists**

246 West 38th Street, Eighth Floor

New York, New York 10018

(212) 278-8111

www.pentacle.org

Pentacle provides fiscal administration services to not-for-profit organizations, as well as grant writing assistance for dancers and other performing artists. Pentacle also provides a booking service, resource library and video equipment to artists. An annual fee is required for use of the booking service, but no membership is required to use the library or video services.

C) Timeframe

- 1) If Volunteer Lawyers for the Arts places your nonprofit organization with a pro bono attorney for incorporation and tax exemption, the whole incorporation and tax exemption process will take at least six (6) months and may take up to one (1) year to complete (not including VLA's placement time).

APPENDIX R - INFORMATION ABOUT NEW IRS FORM 1023EZ

Effective July 1, 2014

What is it?

- The IRS currently has a backlog of 60,000 501(c)(3) applications;
- Starting July 2014, for small nonprofits with gross receipts of \$50,000 or less and \$250,000 or less in assets, can complete a new, streamlined application form;
- Only three (3) pages;
- Must be filled out and completed online;
- Must first complete the instructions (20 pages) and submit an online eligibility form attached to the instructions;
- Filing fee is \$400;
- Filers that have already filed a Form 1023 with the IRS, can convert their application to a Form 1023 EZ provided that their file has not been assigned to an auditor for review at the time they file the Form 1023 EZ;
- The Form 1023 EZ will be interpreted as a written request to withdraw the long Form 1023, and the fee for the Form 1023 application will NOT be refunded;
- The date on the Form 1023 EZ will be treated as the date the organization filed; and
- If the file has already been assigned, the IRS will refund the fee for the Form 1023 EZ.

What Information does the Form 1023EZ ask for?

- Contact Information for the organization and the Directors;
- Information about your organizational structure;
- Tax Exempt Purpose - attest that you are organized under a tax exempt purpose of 501(c)(3);
- Dissolution – attest that your remaining assets will be used for exempt purposes only either designated by you or by operation of state law in your incorporating papers;

- Other Activities – attest that only an insubstantial amount of activities will be spent in activities other than for your exempt purpose;
- Information about your specific activities;
- To qualify for exemption, organization must attest that;
- It will not support or oppose political candidates;
- None of its net earnings will inure to the benefit of in whole or in part to private individuals; i.e. board members, officers, key management employees or other insiders;
- Not further non-exempt interests more than insubstantially;
- Not be organized for the purpose of conducting business outside exempt purpose;
- Spend an insubstantial part of your activities attempting to influence legislation; and
- Not provide commercial insurance.

General outline of steps to forming a Not for Profit through VLA:

1. Go to www.vlany.org to the non-profit formation button on the main page.
2. Fill out the intake form
3. A VLA intern will contact you to obtain necessary information (board names, sample budget, mission statement)
4. Schedule a consultation at VLA or a law firm clinic to answer any additional questions and flesh out the case description.
5. Your case goes onto VLA's caselist for a volunteer attorney to choose.
6. Once a volunteer attorney has selected your case (we cannot guarantee placement or the timing of placement), they will contact you to start working on the following:
 - a. Drafting and filing Certificate of Incorporation
 - b. Acquiring your EIN
 - c. Drafting bylaws
 - d. Drafting and filing our 1023 (or 1023EZ) with the IRS
 - e. Drafting Conflict of Interest Policy and Sexual Harassment Policy
 - f. Drafting and filing State tax exemption forms