THE LEGAL AID SOCIETY

NOT-FOR-PROFIT ORGANIZATION LEGAL CHECKLIST

This checklist refers the nonprofit organization to issues that it must be aware of throughout the course of its organizational life. These include corporate, tax, charitable compliance, fund-raising, employment and insurance issues. This document is for educational purposes and should not be deemed legal advice.

I. Organization

☐ Certificate of Incorporation (and amendments, if any)

- Organization should revisit its mission statement (purposes clause) periodically to ensure that it conducts its activities accordingly. A mission statement describes the charitable purpose of the organization, its goals and reason for existence. The IRS looks at the mission statement to see if the organization meets the requirements for tax-exemption.

☐ New York State departmental approvals, if any _____

- Certificates of Incorporation with certain purposes must be reviewed and approved by N.Y. government agencies. The approval must be attached to the Certificate otherwise it will be rejected by the Secretary of State. For a partial list of the different agencies that need to approve the Certificate of Incorporation of different types of non-for-profit corporations, go to: www.oag.state.ny.us/business/not for_profit.html.
  This partial list of the most significant agencies can also be found at: http://www.dos.state.ny.us/corp/nfpguide.htm. The complete list is described in Section 404 of the NY non-for-profit law.

☐ D/B/A (doing business as) certificates _____

- Corporations are required by statute to conduct activities under their true legal name. If a corporation desires to conduct activities under a name other than its true legal name, a certificate must be filed with the New York State Department of State. The form can be downloaded at**:** www.dos.state.ny.us/corp/assdnmins.html.
- There two types of dba's or assumed names. The first type is when a foreign non-for-profit wants to do business in NY under its true name, but that name is not available. The non-for-profit will be given a forced assumed name in order to be able to operate in NY. The second type of dba is when the corporation wants to operate under an assumed name because is more user-friendly. Example: the true name of the non-for-profit is ""Friends of The Legal Aid Society, Inc.", and its registered assumed names, "Friends of Legal Aid" and "FOLA".

☐ Foreign qualifications certificates _____

- Apply for Authority to Conduct Business in New York (if you are incorporated in a different state) or for Authority to Conduct Business in other states (if you are incorporated in New York, but want to carry out activities in different states).

☐ Bylaws

☐ Membership or non-membership organization _____

☐ Board of Directors (min. of 3) _____

☐ Annual Board meetings _____

☐ Authorizing resolutions for contracts and actions of officers and employees _____

☐ Committees of the Board, if any _____

II. Registration/Licenses

☐ Charities registration with N.Y. Attorney General (CHAR 410) _____

www.oag.state.ny.us/charities/forms/charitiesforms.html

☐ Annual filings with N.Y. Attorney General (CHAR500) _____
www.oag.state.ny.us/charities/forms/charitiesforms.html

- Consider whether to file the multi-state unified statement instead of the NY registration form if you are soliciting funds regionally or nationally and should thus register with several states. The unified registration form (URS) can be found at http://www.multistatefiling.org. The URS can currently be filed in 34 different states in lieu of the states' own registration statements.

☐ Registration with state agencies, if necessary _____

- Check http://www.nys-permits.org. or www.gorr.state.ny.us/Main_GORR_Pages/Business-Permit-Assistance.html for assistance in identifying the agencies and necessary permits. You may also call the Governor's Office of Regulatory Reform at (518) 474-8275 or (800) 342-3464.

☐ N.Y. Department of Social Services, if any _____

☐ N.Y. Department of Health, if any _____

THE LEGAL AID SOCIETY

- ☐ N.Y. Department of Education, if any _____
- ☐ Other _____

III. Taxation

- ☐ U.S. Federal taxpayer ID number _____
- ☐ Application for exemption from U.S. Federal income tax (Form 1023) _____
- ☐ Exemption from payment of U.S. Federal income tax (501(c)(3) recognition letter) _____
- ☐ Annual U.S. informational income tax returns (Form 990 or Form 990-EZ)
- ☐ "Unrelated business taxable income" (UBTI) (Federal: Form 990-T; State: Form CT-13) _____
- ☐ Exemption from payment of N.Y. State corporate income tax (CT-247) _____
- ☐ Exemption from payment of N.Y. State and local sales tax (ST-119-2) _____
- ☐ Exemption from payment of state and local property tax (EA-120-ORG, EA 420-USF, RPAB 420 EXSPP)
- ☐ Exemption from payment of certain New York City water and sewer charges
- ☐ Discount mailing rates from U.S. Postal Service (3624)
- ☐ Withholding Social Security, Medicare and income taxes _____
- ☐ Federal, state and city employment tax returns _____
- ☐ N.Y. State unemployment insurance payments and filing returns
- ☐ Withholding/reporting for overseas payments _____

IV. Real Property

A. Premises are leased

- ☐ Current lease (Board Approval) & compliance _____

- ☐ Options to renew _____
- ☐ Rental Payment Schedule & Escalations _____
- ☐ Permitted uses of premises _____
- ☐ Sub-leases, if any _____

B. Premises are owned

- ☐ Title/Deed to real property _____
- ☐ Title Insurance covering property _____
- ☐ Property use in accordance with applicable regulations (including zoning) _____
- ☐ Permanent Certificate of Occupancy (CO) indicating appropriate use _____
- ☐ Compliance with building codes _____
- ☐ Hazard / Liability insurance _____
- ☐ Mortgages or other encumbrances _____
- ☐ Purchase and sale of any property _____

V. Insurance/Indemnification

- ☐ Current general liability insurance _____
- ☐ Current directors and officers insurance _____
- ☐ Indemnification of directors/members/managers/ trustees/officers/employees _____
- ☐ Current workers' compensation insurance _____
- ☐ Current employees liability insurance _____

THE LEGAL AID SOCIETY

VI. Litigation

- ☐ Pending or threatened litigation _____
- ☐ Outstanding judgments/claims _____
- ☐ Current litigation counsel and retention agreements? _____
- ☐ Law enforcement/Attorney General/public agency inquiries or investigations _____

VII. Intellectual Property

- ☐ Patents, trademarks, service marks, or copyrights _____
- ☐ Patents, trademarks, service marks, or copyright which require renewals _____
- ☐ Patents, trademarks, service marks, or copyrights required to cover mottoes, logos, publications, or lyrics _____

VIII. Employment Matters

- ☐ Evaluation/Appraisal Reports or Officers & Key Employees _____
- ☐ Sexual Harassment/Anti-Discrimination/EEO Policy _____
- ☐ Standards of Unacceptable Behavior _____
- ☐ Job Descriptions _____
- ☐ Statement of Employee Benefits _____

IX. Budget Activities

- ☐ Budget for current fiscal year approved by board _____
- ☐ Fundraising
  - Types: telephone solicitation _____
    - mail solicitation _____
    - paid fundraisers _____
    - benefit functions _____
  - ☐ Fundraisers registration with the N.Y. Charities Bureau _____
  - ☐ "Quid, pro quo" statements to donors indicating the value of benefits received _____

☐ Written acknowledgements of donations _____

☐ Resolutions and signature cards for accounts _____

☐ Resolutions and policies for investment of funds/endowment _____

☐ Record of disqualified person and other affiliate transactions, as well as approvals _____

☐ Attorney regularly engaged _____

☐ Accountant regularly engaged _____

☐ Material contracts _____

X. Corporate governance

☐ Two provisions of Sarbanes Oxley apply to all organizations whether non profit or for-profit:

(a) Whistle-blower Protection: Sarbanes Oxley makes it illegal for a corporate entity to retaliate against any employee who reports suspected illegal activity by their employer.

(b) Document Destruction: It is illegal to destroy or alter any document to prevent its use in an official proceeding (i.e. federal investigation or bankruptcy proceedings).

Draft policies to ensure that you comply with such provisions. (see suggested detailed Sarbanes Oxley compliance checklist to be found at www.independentsector.org/PDFs/sarbanesoxley_checklist.pdf)

☐ Conflict of Interest Policy, reviewed & acknowledged annually _____

XI. Record Keeping

☐ Maintain records of income and expenses to support the information provided in tax returns.

☐ Maintain records that show that funds are expended only for 501(c)(3) purposes or the organization may lose its exemption.

☐ Avoid income accumulation unless there are acceptable reasons why funds are accumulated and not expended for 501(c)(3) purposes.

☐ Expenditures must be commensurate to financial resources.

☐ Keep records to prove that business income furthers the tax-exempt purposes. i.e. is "related". Unrelated business activity must be limited.