

A Guide to Sales and Other Dispositions of  
Assets Pursuant to Not-for-Profit Corporation Law  
§§ 510-511 and Religious Corporations Law § 12



THE OFFICE OF THE ATTORNEY GENERAL

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**A GUIDE TO SALES AND OTHER DISPOSITION OF ASSETS  
PURSUANT TO NOT-FOR-PROFIT CORPORATION LAW §§ 510, 511 and 511-a  
AND RELIGIOUS CORPORATIONS LAW § 12**

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**INTRODUCTION**

New York State Attorney General Eric T. Schneiderman's Charities Bureau has prepared this guidance (1) to assist not-for-profit corporations seeking approval of the Attorney General and/or the Court for sales and other dispositions of their assets, including real and/or personal property, as well as intangible property such as bonds, stocks or certificates of deposit and (2) to assist religious corporations seeking approval of a lease for a period exceeding five years or the sale or mortgage of any real property pursuant to the Not-for-Profit Corporation Law ("N-PCL"). N-PCL §§ 510, 511 and 511-a and Religious Corporations Law ("RCL") § 12(1).

New York law governing not-for-profit and religious corporations provides certain protections against the inappropriate transfer of assets of such corporations, including internal procedural rules for authorizing transfers. The law also provides for review by the Attorney General and/or by New York State Supreme Court for certain transactions.

Because of the unique role and responsibility of not-for-profit and religious organizations in the lives of our citizens and communities, and because of their legal responsibility to safeguard their assets and provide for the interests of their members and beneficiaries, the law requires the Court's or the Attorney General's approval of certain transactions by such corporations..

The procedures described in this guidance reflect amendments to the N-PCL that were included in the Nonprofit Revitalization Act of 2013 ("the Act" or "NPRA") that became effective on July 1, 2014 and amendments to the NPRA that became effective on December 11, 2015. Those laws set forth the procedures to be followed by not-for-profit corporations and religious corporations when they transfer certain assets, giving such corporations the option of submitting a verified petition for approval such transactions to either the Attorney General or the Court. As more fully described below, if an application is made to the Attorney General, the Attorney General may, determine that Court review of a particular application is appropriate. In such cases, the verified petition must be submitted to the Court on notice to the Attorney General.

This booklet is not a substitute for legal advice from an attorney but is intended to provide guidance to not-for-profit and religious corporations that are seeking to sell or otherwise dispose of their assets and the lawyers who represent them. The information in this guidance is general in nature. Each transaction is governed by its own facts, and the Attorney General reviews each one on a case-by-case basis. You are encouraged to discuss the proposed transaction in advance with the Attorney General's Charities Bureau in New York City or Albany or with an Assistant Attorney General in the appropriate

Regional Office of the Attorney General to which you should submit your application. A list of the offices of the Attorney General, their contact information and the New York counties they serve is in Appendix F. If you anticipate that members or employees of the organization, members of the public served by the organization, a public agency with regulatory oversight or contractual relationships with the organization, or members of the local community may have concerns about the proposed transaction, it is prudent to advise them of the planned transaction in order to address their concerns to the extent feasible consistent with the mission of the organization, and to document these outreach and consultation efforts.

## **WHAT TRANSACTIONS ARE COVERED**

### Not-for-Profit Corporations:

The sale, lease, exchange or other disposition of all or substantially all of the assets<sup>1</sup> of a Type B or charitable not-for-profit corporation<sup>2</sup> requires approval of the Attorney General or the Court, with notice to the Attorney General, pursuant to the procedures set forth in the N-PCL. N-PCL §§ 510, 511 and 511-a. The assets may be real and/or personal property, including intangible property such as bonds, stocks or certificates of deposit. N-PCL § 510(a). Transactions by foreign corporations that do business in New York are also covered. N-PCL § 103.

There is no fixed numerical or arithmetic measure of "all or substantially all." Approval of the Attorney General or the Court is required when the transaction involves a large proportion of the corporation's total assets or when it may affect the ability of the corporation to carry out its purposes, regardless of the percentage of the corporation's total assets that are the subject of the transaction.

### Exceptions to Covered Transactions by Not-for-Corporations

Mortgages, unless a component of the transaction involves a conveyance or lease that would otherwise come within N-PCL §§ 510-511, and 511-a and transactions by Type A<sup>3</sup> or non-charitable corporations<sup>4</sup> are not subject to the provisions of N-PCL §§ 510, 511 or 511-a.

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<sup>1</sup> Throughout this booklet, the term "transaction" will also be used to refer to the sale, lease exchange or other disposition of all or substantially all of a not-for-profit corporation's assets, and, in the case of religious corporations, it also refers to leases and mortgages.

<sup>2</sup> See N-PCL §§ 102(a)(3-a) and (3-b) for the definitions of charitable corporation and charitable purposes. Corporations formed as Type B corporations are, effective July 1, 2014, deemed to be charitable corporations. N-PCL § 201(c).

<sup>3</sup> Corporations formed as Type A corporations are, effective July 1, 2014, deemed to be non-charitable corporations. N-PCL § 201(b).

<sup>4</sup> See N-PCL § 102(a)(9-a) for the definition of non-charitable corporation.

### Religious Corporations:

Except as noted below, a lease for a period exceeding five years or the sale or mortgage of any real property of a religious corporation requires approval of the Attorney General or the Court, with notice to the Attorney General, pursuant to N-PCL §§ 511 or 511-a and RCL § 12(1). **NOTE:** Such approval is required even if the subject property does not constitute all or substantially all of the religious corporation's assets.

### Exceptions to Covered Transactions by Religious Corporations

Purchase money mortgages or purchase money security agreements and real property acquired as a result of a mortgage foreclosure proceeding or by a deed in lieu of the foreclosure of a mortgage owned by a religious corporation are not subject to the provisions of N-PCL §§ 510, 511 or 511-a. RCL §§ 12(1) and § 12(10). In addition, the following churches formed under the Religious Corporations Law are required to seek Court approval of a lease for a period exceeding five years or the sale or mortgage of any real property, but the law does not require them to give notice to the Attorney General: Protestant Episcopal Church, Roman Catholic Church, Ruthenian Catholic Church of the Greek Rite, African Methodist Episcopal Zion Church, Presbyterian Church of the General Assembly of the Presbyterian Church U.S.A., United Methodist Church, Reformed Church of the General Synod of the Reformed Church in America. RCL §§ 2-b (1)(d-1) and 12(2)-(5-c).

### **ROLE OF THE ATTORNEY GENERAL**

The N-PCL requires not-for-profit corporations seeking to sell or otherwise dispose of all or substantially all of their assets and religious corporations (other than those described above) seeking to lease for a period exceeding five years or sell or mortgage any real property to submit a verified petition for approval of such transaction to *either* the Attorney General or the Court, on notice to the Attorney General.

Where Court approval is sought, the N-PCL requires that, upon filing the verified petition with the Court, the Attorney General be given a minimum of 15 days notice before a hearing on the application. N-PCL § 511. However, the procedure preferred by the Charities Bureau and most Courts, is submission of a verified petition and proposed order, in draft form with tabs identifying any exhibits, to the Attorney General for review in advance of filing with the Court. A sample petition to the Court is attached as Appendix B, and a sample order is attached as Appendix D. This procedure enables the Attorney General to review the papers to ensure that all statutory requirements are met, that all necessary documents are included as exhibits, and that any concerns of the Attorney General are resolved *before* submission to the Court. A checklist of documents needed to request approval of a transaction is attached as Appendix C.

In the case of an application to the Court, on notice to the Attorney General, if the Attorney General has no objection to the transaction, the Attorney General's Office will provide the petitioner with a "No Objection" endorsement. Such endorsement, typically

provided in a letter to the petitioner or stamped on the proposed order approving the transaction, will waive statutory service of the petition since the papers will have already been submitted to and reviewed by the Office of the Attorney General. The petition can then be submitted to the Court and, if a hearing or other court proceeding is scheduled, the petitioner must give notice of such proceeding to the Attorney General. In addition, a copy of the order, signed by the judge, must be submitted to the Attorney General.

If the Attorney General does not approve the petition or there are parties who object to the transaction and wish to be heard by the Court, the application must then be made to the Court, on notice to the Attorney General and any other appropriate parties, for an order approving the transaction.

If approval of the Attorney General alone is sought, the verified petition will be reviewed by the office of the Attorney General to ensure that all statutory requirements are met, that all necessary documents are included as exhibits, and that any issues raised during the review are resolved. A sample petition to the Court is attached as Appendix B. The Attorney General may request the petitioner to provide additional information needed to complete the review. If, after the review, the Attorney General has no objection to the relief requested, the Attorney General will indicate approval of the transaction, in writing, on the "Attorney General's Approval," a sample of which is attached in Appendix E. A copy of the Attorney General's Approval will be sent to the petitioner's attorney and posted on the internet at [www.charitiesnys.com](http://www.charitiesnys.com).

If the Attorney General does not approve a petition, if the Attorney General concludes that Court review of the petition is appropriate, or if the corporation chooses to do so, the corporation may apply to the Court, on notice to the Attorney General, in the judicial district where the corporation's principal office is located for an order approving the transaction. Please note that, if the Attorney General has no objection to the transaction but determines that Court review is appropriate, the petition must be submitted to the Court.

Circumstances in which the Attorney General may determine that Court approval, on notice to the Attorney General, rather than approval of the Attorney General is appropriate, include:

- The corporation is insolvent and must proceed on notice to creditors pursuant to NPCL § 511(c).
- The Attorney General has received complaints or objections from members, creditors of the organization or other interested persons who are entitled to notice pursuant to N-PCL § 511(b).
- The Attorney General has objections to the transaction which have not been resolved after review of the petition and discussion with the corporation's attorney.

In addition, there may be circumstances when the Attorney General has no objection to a transaction but determines that review by the Court is appropriate, including transactions that are unusually complex or will have an impact on the public.

## **STATUTORY STANDARD**

Under the N-PCL's two-prong test, the Attorney General or the Court must be satisfied that (1) that the consideration and the terms of the transaction are fair and reasonable to the corporation and (2) that the purposes of the corporation or the interests of its members will be promoted by the transaction. N-PCL §§ 511(d) and 511-a(c). These statutory standards and other statutory requirements are discussed more fully below.

## **THE CORPORATION'S PREPARATION FOR THE TRANSACTION**

### **Approval of the Transaction by the Board**

The corporation's board of directors or trustees must approve the proposed transaction, or, if there are members entitled to vote (see *Approval of the Transaction by Members* below), the board must adopt a resolution recommending the transaction. A vote of at least two-thirds of the corporation's entire board is required unless the board has 21 or more directors, in which case a vote of a majority of the entire board is sufficient. Please note that a corporation's certificate of incorporation or by-laws may provide for greater quorum or voting requirements. The resolution must specify the terms and conditions of the proposed transaction, including the consideration to be received by the corporation and the eventual use to be made of such consideration, and a statement of whether or not dissolution of the corporation is contemplated. N-PCL §§ 510(a)(1) and (2).

If the transaction involves a sale or transfer to a "related party,"<sup>5</sup> the corporation must follow the procedures set forth in the N-PCL § 715, including ensuring that the transaction is in the best interest of and fair and reasonable to the corporation and that any officer, director or key employee who has an interest in the transaction discloses the facts of that interest. Where an officer, director, or key employee has such an interest, the officer, director or key employee must not participate in deliberations or votes of the Board in considering or approving the action. In addition, in certain circumstances, the Board must explicitly consider reasonable alternatives to the transaction. The abstention of the officer, director, or key employee, and the consideration of reasonable alternatives to the transaction must be documented in the minutes of the Board. Organizations

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<sup>5</sup> "Related party" means (i) any director, officer or key employee of the corporation or any affiliate of the corporation; (ii) any relative of any director, officer or key employee of the corporation or any affiliate of the corporation; or (iii) any entity in which any individual described in clauses (i) and (ii) of this subparagraph has a thirty-five percent or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of five percent. N-PCL § 102 (23).



planning a transaction should review and assess their compliance with the requirements of the N-PCL before entering into the transaction. N-PCL § 715.

#### Approval of the Transaction by Members

If a corporation has members with voting rights, the membership must approve the transaction. First, the board must adopt a resolution recommending the transaction. The resolution must describe the parties to and the terms and conditions of the proposed transaction, including the consideration to be received by the corporation, an explanation as to how the proceeds will be used and a statement of whether or not dissolution of the corporation is contemplated. The board resolution must then be submitted to a vote at an annual or special meeting of members entitled to vote on it. N-PCL § 510(a)(1).

Each member and each holder of subvention certificates or bonds of the corporation, whether or not entitled to vote, is entitled to notice of the meeting. The members may approve the proposed transaction according to the terms of the board resolution, or authorize the board to modify the terms and conditions of the proposed transaction, by a two-thirds vote of the members present at the meeting, provided that the number of affirmative votes is at least equal to the quorum. N-PCL §§ 510(a)(1) and 613.

The quorum for a membership meeting is a majority of the members, unless the corporation's certificate of incorporation or by-laws provides for a greater or lesser quorum requirement. If the certificate of incorporation or by-laws provide for a lesser quorum, the quorum may not be less than the number entitled to cast one hundred votes or one-tenth of the total number of votes entitled to be cast, whichever is less. N-PCL § 608(a) and (b) and 615. For religious corporations, where the RCL provides a different quorum, the RCL governs. The applicable sections of the RCL should be consulted as to the quorum requirements for members. *See, e.g.,* RCL §§ 134, 164 and 195.

Voting by proxy is permitted for members of not-for-profit corporations and for members of Jewish religious corporations, provided that the by-laws or certificate of incorporation permit proxy voting. N-PCL § 609 and RCL § 207.

### **PREPARING TO PETITION FOR APPROVAL OF A TRANSACTION**

#### Fair and Reasonable Consideration: Appraisals

In preparing to petition, either the Court or the Attorney General, for approval of a transaction, the corporation must determine whether or not the proposed consideration is fair and reasonable. To do so, there must be an appraisal of the assets, whether real or personal property, that are the subject of the transaction. Although the statute does not explicitly require an appraisal, Court decisions have established that fair market value can best be determined by means of an appraisal, and the Court and the Attorney General will generally reject the petition if it is not supported by an appraisal. The appraisal should be done by a licensed appraiser who is completely independent of both buyer and seller. The appraisal cannot be done by a broker involved in the sale of the property.

If the asset is real property, the appraisal should be based on at least three comparable sales, unless a different valuation method is more appropriate. If the transaction is not an arm's length transaction (i.e., if it involves a sale or transfer to a director, officer, employee or other person with some connection to the corporation), the Attorney General may require two appraisals.

An appraisal is not necessary where a solvent religious corporation seeks leave of court to convey real property to another religious corporation or to a membership, educational, municipal or not-for-profit corporation for nominal consideration and the purpose of such conveyance is the furtherance of the religious and charitable purposes of the corporation. RCL § 12(8). Conveyance for more than nominal consideration, however, generally indicates that the sale is not solely for religious or charitable purposes, and an appraisal is required under such circumstances to demonstrate that the interests of the corporation and its members are served by the conveyance.

#### Use of Proceeds of a Transaction

The use of the proceeds must be consistent with the corporation's purposes. Proceeds cannot be used for the personal benefit of a director, officer, employee, member or other interested party.

If the property being sold is a religious corporation's house of worship or a not-for-profit corporation's main premises and, as of the date of the sale, the corporation has not yet entered into a contract to purchase or lease new premises, the Attorney General will require, as a condition of approval, that the sale proceeds be placed in escrow to ensure that funds will be available to obtain new premises so that the corporation can continue to carry out its corporate purposes.

#### **VERIFIED PETITION FOR ATTORNEY GENERAL OR COURT APPROVAL**

The N-PCL requires that charitable not-for-profit corporations seeking to sell, lease, exchange or otherwise dispose of all or substantially all of their assets must seek approval of the Attorney General or the Supreme Court. N-PCL § 510(a)(3). A request for approval of such a transaction must be in the form of a verified petition to the Attorney General or to the Court. The requirements for the petition also apply to a religious corporation seeking to mortgage or sell property or to lease real property for more than five years.

#### **Verified Petition to the Attorney General or the Court**

A verified petition to the Attorney General or the Court must include the following information:

- The name of the corporation as it appears on its certificate of incorporation or an amendment. N-PCL § 511(a)(1). A copy of the certificate of incorporation and all

amendments and a certified copy of the corporation's by-laws should be attached as exhibits.

- The address of the corporation's principal location.
- The section of the law under which the corporation was incorporated. N-PCL § 511(a)(1).
- The names of the corporation's directors and principal officers, and their home addresses. N-PCL § 511(a)(2).
- A description of the corporation's activities. N-PCL § 511(a)(3).
- A description of the assets that are the subject of the transaction. N-PCL § 511(a)(4). If the subject asset is real property, a copy of the deed should be attached as an exhibit. In addition, a copy of the contract, lease, or mortgage commitment should be attached as an exhibit. If the contract has been assigned or will be assigned prior to closing, the assignment agreement should also be attached as an exhibit.
- A statement of the fair value of the asset. N-PCL § 511(a)(4). A copy of the appraisal should be attached as an exhibit.
- A statement of the amount of the corporation's debts and liabilities and how they are secured. N-PCL § 511(a)(4). The statement should be current, include the name of each payee, any security and if past due. In addition, a copy of the corporation's most recent annual financial report (i.e., IRS Form 990 or 990-PF) or audited or unaudited financial statements should be attached as an exhibit. If the corporation is not required to file a 990 or 990-PF and does not have annual financial reports, it should prepare a schedule, certified by its Treasurer, of all assets, liabilities, income and expenses of the corporation as of the most immediately completed prior fiscal year and attach it as an exhibit. In certain circumstances, the Attorney General may decide that financial statements certified by an independent accountant are required.
- The consideration to be received by the corporation. N-PCL § 511(a)(5). If any consideration is to be delivered other than in cash at closing, there should be evidence in the appraisal or other independent support as to the fair value of that consideration. If the consideration is less than the appraised value of the assets, a documented explanation of why the consideration is fair and reasonable must be provided.
- A description of the proposed use of the consideration. N-PCL § 511(a)(5). If the corporation is purchasing or leasing new premises, a copy of the contract or lease should be attached as an exhibit. The description should include disclosure of all existing commitments for use of the consideration. Support for all commitments

for use of proceeds should be attached to the petition as exhibits (evidence of debt, invoices, and a closing statement).

- A statement as to whether dissolution of the corporation is contemplated. N-PCL § 511(a)(5). In certain circumstances, the Attorney General will require that the proceeds be placed in escrow if the corporation plans to dissolve. In addition, if the corporation plans to dissolve after the sale, the legal doctrine of *quasi cy pres* requires that the net proceeds be distributed under a Plan of Dissolution and Distribution of Assets to organizations engaged in substantially similar activities.<sup>6</sup>
- A statement that the consideration and the terms of the transaction are fair and reasonable to the corporation and that the purposes of the corporation, or the interests of its members, will be promoted by the transaction, and a statement of the reasons for that determination. N-PCL § 511(a)(6).
- A statement that the transaction was recommended or authorized by a vote of the directors in accordance with law, at a meeting duly called and held. N-PCL § 511(a)(7). Include the total number of directors, the number of the directors present at the meeting, the vote pro and con, and what constitutes a quorum. A copy of the board resolution, certified by the secretary, should be attached as an exhibit. (See also above "Approval of the Transaction by the Board".)
- If consent of members of the corporation is required by law, a statement that such consent was given in accordance with law, at a meeting of the members duly called and held. N-PCL § 511(a)(8). Include the total number of members, the number of members present at the meeting, the vote pro and con, and what constitutes a quorum. A copy of the membership resolution, certified by the secretary, should be attached as an exhibit. (See also above "Approval of the Transaction by the Members".)
- If approval of any denominational governing bodies or officials is required, a statement that consent was given. A copy of any such approval should be attached as an exhibit.
- A statement that the transaction is arms-length and none of the directors, officers, key employees or members of the corporation or their relatives will receive a direct or indirect financial benefit as a result of the transaction or commitments for distribution of proceeds. If any exceptions to the prior statement are necessary, include a statement of how the related party arrangement was approved by the corporation, including but not limited to compliance with N-PCL § 715, and exhibits evidencing such approval.

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<sup>6</sup> Not-for-profit corporations contemplating dissolution should consult the Attorney General's guidance on dissolution posted at <http://www.charitiesnys.com/home.jsp>. Religious Corporations should consult RCL § 18.

- If other government agency approvals are required for the proposed transaction, a statement that such approvals have been obtained. A copy of the approval received from each government agency should be attached as an exhibit.
- A statement as to whether or not an application for similar approval was previously made to the Attorney General or the Court, and, if so, the determination made concerning the application.
- If the application for approval is made to the Attorney General, a statement that the corporation is not insolvent and will not become insolvent as a result of the transaction. N-PCL § 511-a(b).
- If the application for approval is made to the Attorney General, a statement as to whether any persons or entities have raised, or have a reasonable basis to raise, objections to the transaction, including a statement setting forth the names and addresses of such persons, the nature of their interest, and a description of their objections. N-PCL § 511-a(b).
- A statement of the relief requested (approval to sell real property, approval of mortgage, etc). N-PCL § 511(a)(9).

#### **Venue**

If the application for approval of the transaction is made to the Court, the verified petition must be submitted to the Supreme Court of the judicial district or county Court of the county where the corporation has its office or principal place of carrying out the purposes for which it was formed, even if the asset to be sold is located elsewhere. N-PCL §§ 510(a)(3) and 511(a).

If the application for approval of the transaction is made to the Attorney General, the verified petition must be submitted to the office of the Attorney General's Charities Bureau in New York City or Albany or to the appropriate Regional Office of the Attorney General that handles such applications. A list of the offices of the Attorney General, the New York counties they serve and their contact information is in Appendix F.

#### **Notice to Interested Persons**

The Court in its discretion may direct that notice of the application be given to any interested person, such as a member, officer or creditor of the corporation. N-PCL § 511(b). The notice must specify the time and place, fixed by the Court, for a hearing upon the application. Any person interested, whether or not formally notified, may appear at the hearing and show cause why the application should not be granted.

In certain circumstances, the Attorney General may ask the Court to give notice to interested parties (including tenants or other occupants of the premises) and/or hold an evidentiary hearing. For example, if there is a membership dispute, a dispute as to who

constitutes a duly authorized board or a question about the adequacy of the consideration, the Attorney General may ask the Court to hold an evidentiary hearing to resolve the dispute.

### **Notice to Creditors**

If the corporation is insolvent or if its assets are insufficient to liquidate its debts and liabilities in full, all creditors of the corporation must be served with a notice of the time and place of the hearing. N-PCL 511(c). In such circumstances, notice to creditors is required by statute, and the petition must be approved by the Court on notice to the Attorney General alone.

### **REQUIREMENTS FOR THE COURT ORDER OR ATTORNEY GENERAL APPROVAL**

If the petition requests Court approval, a copy of the proposed order should be submitted to the Attorney General with the verified petition. The order should set forth the terms of the transaction and the consideration. For sales, include the sale price, the purchaser and the address of the property. For leases, include the amount of rent, the term of the lease, the lessee and the address of the property. For mortgages, include the name and address of the lender, the amount of the loan, the interest rate, the length of the mortgage, and any period of amortization, and the address of the property.

The order must also set forth how the corporation will use the proceeds to be received by the corporation. N-PCL § 511(d). If all or part of the proceeds is to be placed in escrow, this must be stated in the order. Funds in escrow may only be released by further order of the Court on notice to the Attorney General.

In addition, the Attorney General requires that the order contain the following: a statement that a copy of the signed Court order shall be served on the Attorney General, and that the Attorney General shall receive written notice that the transaction has been completed (i.e., upon closing), if the transaction has been abandoned, or if it is still pending 90 days after Court approval.

If the verified petition requests approval of the Attorney General, a copy of the proposed Attorney General Approval should be submitted to the Attorney General with the petition. The Attorney General Approval should include all of the information described above that is required to be included in a proposed order.

### **REGISTRATION WITH THE ATTORNEY GENERAL'S CHARITIES BUREAU**

If the corporation is required to register with the Attorney General pursuant to Executive Law Article 7-A or Estates, Powers and Trusts Law § 8-1.4, the Attorney General will check to ensure that the corporation is registered and that its annual financial reports are up to date before completing the review of the transaction. If the corporation

is not registered, or if its reports are delinquent, it will have to register and file all required annual financial reports before the Attorney General's review can be completed. If the purchaser is required to register, its registration and reports must also be current before the Attorney General's review can be completed. Note that certain corporations, such as religious corporations, are exempt from registration.

### **GOVERNMENT AGENCY APPROVALS**

If other government agency approvals are required for the proposed transaction (i.e., NYS Department of Health, NYS Public Health and Health Planning Council, NYS Education Department, US Department of Housing and Urban Development, etc.), the Attorney General will require that such approvals be obtained before the Attorney General review is completed. A copy of each government agency approval should be attached as an exhibit to the petition.

### **CONCLUSION**

If you have any questions about the information contained in this booklet or about the procedures for obtaining Attorney General review and Court approval of a transaction, you may contact the Attorney General's Charities Bureau in New York City or Albany or any of the Attorney General's regional offices for assistance. A list of regional offices and their contact information is included in Appendix F of this booklet.

## **Appendix A - Checklist for Petitions for Approval of Property Transactions**

### **Verified Petition to the Attorney General or the Court**

\_\_\_ Petition

\_\_\_ Verification of Petition

#### **Attachments to Verified Petition**

- \_\_\_ Copy of the corporation's Certificate of Incorporation and all amendments
- \_\_\_ Copy of the corporation's by-laws or constitution and all amendments
- \_\_\_ Copy of the deed to any real property that is the subject of the transaction
- \_\_\_ Copy of the contract, lease, or mortgage commitment
- \_\_\_ If the contract has been or will be assigned, a copy of the assignment agreement
- \_\_\_ If the corporation seeks to use the proceeds to purchase or lease new premises, a copy of the contract or lease
- \_\_\_ If the corporation intends to use any of the proceeds to pay existing commitments or debts, including closing costs, copies of the evidence of the commitments or debts (invoices, executed notes, etc.) and proposed closing statement.
- \_\_\_ Copy of the appraisal
- \_\_\_ Copy of the corporation's most recent financial statement and, if not reflected in the financial statement, a schedule of existing debts and liabilities (amount, owned to whom, if overdue, if secured).
- \_\_\_ Copy of the resolution of the board, certified by the corporation's secretary, authorizing or adopting or recommending the key terms of the proposed transaction and use of proceeds and stating the total number of directors present at the meeting, the number of votes for and against the resolution and the number of board members constituting a quorum.
- \_\_\_ A copy of the resolution of the members of the corporation or the religious congregation, certified by the corporation's secretary, approving the key terms of the transaction and the use of the proceeds and stating the total number of members, the number of members present at the meeting, the number of votes for and against the resolution and the number of members constituting a quorum.



- \_\_\_ If approval of any government agencies is required, copies of such approvals
- \_\_\_ If approval of any denominational governing bodies or officials is required, copies of such approvals (religious corporations)
- **Approval of the Attorney General or Order of the Court**
- \_\_\_ If the Court's approval is sought, a proposed Order (see Appendix D)
- \_\_\_ If the Attorney General's approval is sought, a proposed Attorney General Approval (see Appendix E)

**Appendix B - Sample Petition for Court Approval of Sale of Assets**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_

-----X  
In the Matter of the Application of :  
(NAME OF CORPORATION) : VERIFIED PETITION  
For Approval to (type of transaction) :  
pursuant to Sections 510 and 511 of the : Index No.  
Not-for-Profit Corporation Law (or Religious :  
Corporations Law § 12) :  
-----X

TO: THE SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_

Petitioner, (name of corporation) by (name and title of officer) of the corporation for its  
Verified Petition herein respectfully alleges:

TEXT OF THE PETITION (See Appendix A)

WHEREFORE, petitioner requests that the Court approve the (type of transaction) by  
(Name of Corporation), a not-for-profit corporation, pursuant to the Not-for-Profit  
Corporation Law Sections 510 and 511 (or Religious Corporations Law § 12).

IN WITNESS WHEREFORE, the corporation has caused this Petition to be executed  
this \_\_\_ day of (Month), 20\_\_\_ by

\_\_\_\_\_  
(Name of Officer and Title)

Name of Attorney  
Address of Attorney  
Telephone Number of Attorney  
Email Address of Attorney

**Verification**

STATE OF NEW YORK )  
  SS  
COUNTY OF \_\_\_\_\_ )

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

I am the (Title) of (Name of Corporation) , the corporation named in the above Petition and make this verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof to be true of my own knowledge, except any matters that are stated on information and belief and as to those matters I believe them to be true.

\_\_\_\_\_  
(Signature)

Sworn to before me this  
\_\_\_\_ day of (Month) , 20 \_\_\_\_.

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

**Appendix C - Sample Petition for Attorney General Approval of Sale of Assets**

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_

-----X  
In the Matter of the Application of \_\_\_\_\_ :  
(NAME OF CORPORATION) : VERIFIED PETITION  
For Approval to (type of transaction) :  
pursuant to Sections 510 and 511-a of the : OAG No.<sup>7</sup>  
Not-for-Profit Corporation Law :  
-----X

TO: OFFICE OF THE ATTORNEY GENERAL  
\_\_\_\_\_  
(Street Address)  
\_\_\_\_\_  
(City/Town) , New York \_\_\_\_\_ (Zip Code)

Petitioner, (name of corporation) by (name and title of officer) of the corporation for its  
Verified Petition herein respectfully alleges:

TEXT OF THE PETITION (See Appendix A)

WHEREFORE, petitioner requests that the Attorney General approve the (type of  
transaction) by (Name of Corporation), a not-for-profit corporation, pursuant to the Not-  
for-Profit Corporation Law Sections 510 and 511-a.

IN WITNESS WHEREFORE, the corporation has caused this Petition to be executed  
this \_\_\_\_ day of (Month), 20\_\_\_\_ by

\_\_\_\_\_  
(Name of Officer and Title)

Name of Attorney  
Address of Attorney  
Telephone Number of Attorney  
Email Address of Attorney

<sup>7</sup> The office of the Attorney General will assign an identification number to each petition and advise  
petitioner of that number. The identification number must be placed on all subsequent filings and  
correspondence.

Verification

STATE OF NEW YORK )

SS

COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_(Name)\_\_\_\_\_, being duly sworn, deposes and says:

I am the (Title) of (Name of Corporation) , the corporation named in the above Petition and make this verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief and as to those matters I believe them to be true.

---

Signature

Sworn to before me this  
\_\_\_\_ day of (Month) , 20 \_\_\_\_.

---

Notary Public

**APPENDIX D - Sample Court Order Approving Sale of Assets**

At the Supreme Court of  
the State of New York,  
held in and for the  
the County of \_\_\_\_\_  
on the \_\_\_ day of (Month), 20\_\_.

**P R E S E N T :**  
HON.  
Justice.

-----X  
In the Matter of the Application of :  
(NAME OF CORPORATION) : **ORDER**  
For Approval to (type of transaction) :  
pursuant to Sections 510 and 511 of the : **Index No.**  
Not-for-Profit Corporation Law (or Religious :  
Corporations Law § 12) :  
-----X

**ADD BODY OF ORDER WITH RECITATIONS**

**AND DECRETAL PARAGRAPHS REGARDING THE TERMS OF THE  
TRANSACTION AND THE USE OF PROCEEDS**

**ENTER:**

\_\_\_\_\_  
Justice of the Supreme Court

\_\_\_\_\_  
Date

**APPENDIX E - Sample Attorney General's Approval of Transactions**

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_

-----X  
In the Matter of the Application of \_\_\_\_\_ :  
(NAME OF CORPORATION) : ATTORNEY GENERAL  
for Approval to (type of transaction) : APPROVAL  
pursuant to Sections 510 and 511-a of the :  
Not-for-Profit Corporation Law : OAG No.<sup>8</sup>  
-----X

1. By Petition verified on (Date), (Name of Corporation) applied to the Attorney General pursuant to Sections 510 and 511-a of the Not-for-Profit Corporation Law for approval of an application of (TYPE OF TRANSACTION)

2. The assets that are the subject of the Petition are (DESCRIBE ASSETS)

3. The terms of the transaction and the consideration are as follows:

Note - For sales, include the sale price, the purchaser and the address of the property. For leases, include the amount of rent, the term of the lease, the lessee and the address of the property. For mortgages, include the amount of the loan, the interest rate, the length of the mortgage and the name of the lender.

4. The proceeds will be used for the following purposes:

Note - If all or part of the proceeds is to be placed in escrow, this should be set forth. Funds in escrow may only be released by further approval of the Attorney General.

5. Based on a review of the Petition and the exhibits thereto (and the additional documents and information requested by the Attorney General), and the verification of (Name of Certifier) that (Name of the Corporation) has complied with the provisions of the Not-for-Profit Corporation Law applicable to the sale or other disposition of all or substantially all of its assets, and neither the Petitioner or any third party having raised with the Attorney General any objections to the proposed transaction, the transaction is approved.

<sup>8</sup> The office of the Attorney General will assign an identification number to each petition and advise petitioner of that number. The identification number must be placed on all subsection filings and correspondence.

6. Petitioner shall provide written notice to the Attorney General that the transaction has been completed, if it has been abandoned, or if it is still pending 90 days after approval.

Eric T. Schneiderman  
Attorney General of the State of New York

By: \_\_\_\_\_  
Assistant Attorney General

Date: \_\_\_\_\_



**Appendix F - Offices of the Attorney General  
and the counties covered by each:**

**ALBANY - New York State Attorney General  
Charities Bureau**

The Capitol  
Albany, NY 12224-0341  
518-776-2160

Counties: Albany, Columbia, Fulton, Greene,  
Hamilton, Montgomery, Rensselaer, Saratoga,  
Schenectady, Schoharie,

Warren and Washington (note: Sullivan and Ulster for  
trusts and estates matters only)

**BINGHAMTON**

New York State Attorney General

Binghamton Regional Office

44 Hawley Street, 17th Floor

Binghamton, NY 13901-4433

607-721-8771

Counties: Broome, Chemung, Chenango, Delaware,  
Otsego, Schuyler, Tioga and Tompkins

**BUFFALO**

New York State Attorney General

Buffalo Regional Office

Main Place Tower - Suite 300A

Buffalo, NY 14202

716-853-8400

Counties: Allegheny, Cattaraugus, Chautauqua, Erie,  
Genesee, Niagara, Orleans and Wyoming

**NASSAU (not for trusts & estates matters)**

New York State Attorney General

Nassau Regional Office

200 Old Country Road, Suite 240

Mineola, NY 11501-4241

516-248-3302

Counties: Nassau (note: trusts and estates matters are  
handled by NYC)

**NEW YORK CITY**

New York State Attorney General

Charities Bureau

Transactions Section

120 Broadway, 3rd Floor

New York, NY 10271-0332

212-416-8401

Counties: Bronx, Kings, New York, Queens and  
Richmond

(note: NYC also handles Dutchess, Nassau, Orange,  
Putnam, Rockland, Suffolk and Westchester - trusts  
and estates

matters only)

**PLATTSBURGH**

New York State Attorney General

Plattsburgh Regional Office

70 Clinton Street - Suite 700

Plattsburgh, NY 12901-2818

518-562-3288

Counties: Clinton, Essex and Franklin

**POUGHKEEPSIE (not for trusts & estates matters)**

New York State Attorney General

Poughkeepsie Regional Office

One Civic Center Plaza - Suite 401

Poughkeepsie, NY 12601-3157

845-485-3900

Counties: Dutchess, Orange, Sullivan and Ulster (note:  
Dutchess and Orange County trusts and estates matters

are handled by NYC; Sullivan and Ulster County  
trusts and estates matters are handled by Albany)

**ROCHESTER**

New York State Attorney General

Rochester Regional Office

144 Exchange Boulevard

Rochester, NY 14614-2176

716-546-7430

Counties: Livingston, Monroe, Ontario, Seneca,  
Steuben, Wayne and Yates

**SUFFOLK (not for trusts & estates matters)**

New York State Attorney General

Suffolk Regional Office

300 Motor Parkway

Hauppauge, NY 11788-5127

631-231-2424

Counties: Suffolk (note: trusts and estates matters are  
handled by NYC)

**SYRACUSE**

New York State Attorney General

Syracuse Regional Office

615 Erie Blvd. West, Suite 102

Syracuse, NY 13204

315-448-4800

Counties: Cayuga, Cortland, Madison, Onondaga and  
Oswego

**UTICA**

New York State Attorney General

Utica Regional Office

207 Genesee Street, Room 508

Utica, NY 13501-2812

315-793-2225

Counties: Herkimer and Oneida

**WATERTOWN**

New York State Attorney General

Watertown Regional Office

Dulles State Office Building

317 Washington Street

Watertown, NY 13601-3744

315-785-2444

Counties: Jefferson, Lewis and St. Lawrence

**WESTCHESTER (not for trusts & estates matters)**

New York State Attorney General

Westchester Regional Office

44 South Broadway

White Plains, NY 10601

914-422-8755

Counties: Putnam, Rockland and Westchester (note:  
trusts and estates matters are handled by NYC)

