



**Council on  
the Arts**



# NYSCA PRESENTS

## Guiding Board Members and Continuing Your Mission During COVID and Beyond

**WE WILL BEGIN MOMENTARILY**

### **Before we begin:**

- Attendees have been set to “listen only” and the share screen has been disabled
- Use the Q+A box for any questions – we will be able to address select questions throughout
- The webinar will run approximately 60 minutes. A PDF of the presentation will be shared by email following the webinar.



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## **NYSCA PRESENTS**

New York Attorney General's Charities Bureau

Guiding Board Members and Continuing Your Mission During COVID  
and Beyond

*Featuring*

***James Sheehan, Chief, NY Attorney General's Charities Bureau***

***Mara Manus, Executive Director, NYSCA***

# Charities Bureau Office of Attorney General

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Chief, Charities Bureau

Office of Attorney General Letitia James

NEW YORK ATTORNEY GENERAL  
LETITIA JAMES



# PRELIMINARY MATTERS

**Disclaimers:** I could be wrong or change my mind with new information. COVID19 presents novel legal and policy issues, and professional advice should address your organization's unique circumstances.

**Additional Information:** Official New York statutes, regulations, guidance documents, webinars, and forms are available on the AG Website: **CharitiesNYS.com**

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# NEW YORK – WORLD CENTER FOR THE ARTS

- Legacy institutions-Metropolitan Museum, MOMA, Museum of Natural History, Guggenheim, Intrepid Sea, Air, and Space, Albright-Knox Art Gallery, George Eastman Museum
- Grassroots-volunteers, participation, donations, NYSCA, New York City Department of Cultural Affairs
- Private grantors and foundations
- Education, experience, development for arts professionals
- Arts education and outreach-primary, secondary, university, adult, community

# HARD TIMES

- 2006-2016-fifty museums closed in the United States (out of 35,000)
- One in eight museums worldwide could face permanent closure due to COVID19 (UNESCO and International Council of Museums)(May 2020)
- “Over the last 50 years, audiences for museums, galleries, and performing arts institutions have decreased, and the audiences that remain are older and whiter than the overall population.” Nina Simon *The Participatory Museum (2014)*
- History museums at particular risk- “Saving Historical Museums from the Grave” (Rebecca Dickman 2016)
- “A Museum Devoted to Survivors Now Faces Its Own Fight to Live” (NY Times April 21) (Tenement Museum)
- “Many Museums Won’t Survive the Virus. How do you close one down?” (NY Times, April 29)
- Museums Facing Closure (British Museum Association) ([museumassociation.org](http://museumassociation.org)) (legal and ethical guide)

# HARD TIMES IN 2020

- “I didn’t sign up for this”
- Leadership and Staff must cope with:
- Remain in place/social distancing
- Costs of COVID19 compliance
- For performing arts, museums, no tickets, admissions
- Cancellation of fundraising events
- State and local government funding deficits, challenges and other priorities
- Habit and memory



# WHAT HAPPENS TO OFFICERS, DIRECTORS WHEN SURVIVAL AND MISSION ISSUES ARE IDENTIFIED?

- Board and senior leadership of College of New Rochelle
- Board and senior leadership of Berkshire Museum
- Board and leadership of Delaware Art Museum
- Miriam Nelson, President of Hampshire College
- Jeb Spaulding, Chancellor of Vermont State Colleges

# STEWARDSHIP – Treasure, Time, Talent

- Focus on Mission
- Cost/benefit of preserving staff, facilities, materials, collections
- Reputation and good will/ability to restart
- Notice and Engagement
- Digital Presence/interaction
- Transfers and Deaccessions

# USE OF “ENDOWMENTS” AND “INSTITUTIONAL FUNDS”

- “The Sacrosanct Endowment? Not Anymore for Some Arts Groups” NY (Times 6-2-2020)
- New York Prudent Management Of Institutional Funds (“NYPMFA”) (Not-for-Profit Corporation Law Section 550 et seq.) manage and invest institutional funds
- “Borrowing from endowment”-no such legal concept
- Board must “appropriate”-prudent for uses, purposes, duration-investigation, findings, alternatives in board minutes
- “Appropriation”-the 7% of fair market value rule-”rebuttable presumption of imprudence”
- Endowments/Gift Instruments (“including institutional solicitations”)
- Donor relationships
- Restricted gifts-catalogue and commitment
- Release of restrictions-administrative (20 year/\$100,000) or judicial

# CHARITIES DEACCESSIONING ISSUES

- Deaccessioning-selling off assets in collections (museum, library, art)
- Regulatory thicket-education regulators, charities regulators, museum regulators, professional associations, provenance verification
- If you decide to sell, what restrictions do you put on the buyer
- Affect of sales on public and donor support

# PRESERVING, PROTECTING, ADAPTING AND RESPONDING

- Risk assessment
- Potential harms to class of beneficiaries
- The Wheelock College teachout model
- Affiliations, joint ventures, transfers, dissolutions, donations of assets
- Planning for the mission to continue -merger (Pregones/Puerto Rican Traveling Theatre)
- Avoiding run on the bank-public projection may be self-fulfilling
- Funding sources

# INSURANCE

- Indemnification provision in bylaws(Section 722 of N-PCL)
- Think about coverage needs, costs, limits, and risks
  - Directors and officers defense and liability ( include employment claims)
    - A coverage-not indemnified-direct cost to directors(insolvency, etc.)
    - B coverage-indemnified (company policy)
  - General liability (epidemic exceptions)
  - Property/casualty

# AUDIT ISSUES FOR BOARD MEMBERS:

## “Going Concern,” management letters

- If the auditor believes there is substantial doubt about the entity's ability to continue as a going concern for a reasonable period of time, he should (1) obtain information about management's plans that are intended to mitigate the effect of such conditions or events, and (2) assess the likelihood that such plans can be effectively implemented.
- The Audit Committee needs to know
- Management letters-material weakness in internal control; significant deficiency-The Audit Committee needs to know

# WHAT ARE THE RESPONSIBILITIES OF OFFICERS, AND DIRECTORS IN HARD TIMES?

- Look to your charter and IRS 990-
- College of New Rochelle: “dedicated to the education of women and men in the liberal arts and professional studies. Building upon its original commitment to women, the College also reaches out to those who have not previously had access to higher education. . . .”
- Charitable mission-providing education to charitable beneficiaries
- Acting in best interest of that charitable mission



# WHAT ARE THE RESPONSIBILITIES OF OFFICERS, AND DIRECTORS IN HARD TIMES?

- Look to your board, members, and mission beneficiaries
- Look to your charter and IRS 990-
- Museum of Contemporary African Diaspora Arts (Brooklyn)
- Purposes:
  - Use visual and performing arts “for exploring new artistic production across a variety of disciplines.”
  - Use exhibitions and programming to encourage dialogue “on pressing social and political issues facing the African Diaspora.”
  - “Arts + Advocacy”

# WHAT ARE THE RESPONSIBILITIES OF OFFICERS, AND DIRECTORS IN HARD TIMES?

- Look to your board, members, and mission beneficiaries
- Look to your donors-what commitments have you made? What are their expectations?
- Look to your charter and IRS 990-Garth Fagan Dance (Rochester)
- “provides dance performances and educates the public concerning modern concert dance on a national level.” “13,095 people were performed for or taught this year.”
- Look to your public facing messages-garthfagandance.org
  - Summer movement institute, student institute, virtual public classes

# WHAT ARE THE RESPONSIBILITIES OF OFFICERS, AND DIRECTORS IN HARD TIMES?

- Look to your board, members, and mission beneficiaries
- Look to your charter and IRS 990-
- Carousel Society of the Niagara Frontier/Herschell Carrousel Factory Museum (North Tonawanda)
- Primarily volunteer organization (\$56,000 government grant)
- Purposes:
  - National historic site (Register of Historic Places) and community resource for family recreation and learning
  - Through educational, cultural, and recreational programming, visitors experience places and people associated with production of carousels, band organs, and amusement devices
  - “Once around is never enough.”

# THE CHARITIES BUREAU

- Registration for new charities, and for amended registrations, remain open during COVID19-now all electronic [www.charitiesnys.com/checklist.html](http://www.charitiesnys.com/checklist.html).
- Questions about fundraising: [charities.fundraising@ag.ny.gov](mailto:charities.fundraising@ag.ny.gov)
- Transactions: [charities.transactions@ag.ny.gov](mailto:charities.transactions@ag.ny.gov)
- Complaints about charities: [charities.complaints@ag.ny.gov](mailto:charities.complaints@ag.ny.gov)

# NY CHARITIES BUREAU INFORMATION

- AG.NY.GOV “Guidance on Coronavirus Resources”
  - Select a Topic drop down menu
- CHARITIESNYS.COM-Guides and Publications-
  - NYPMIFA Guidance
  - Audit Committee Requirements and Responsibilities
  - “Guidance for Charitable Nonprofit and Religious Corporations Facing the Challenges of the COVID-19 Pandemic”
  - Ongoing influential emails - send us your email address, we will put you on list
  - Charities Bureau Customer Service email – [charities.bureau@ag.ny.gov](mailto:charities.bureau@ag.ny.gov)
  - James.Sheehan@AG.NY.GOV