

Report to the
NYSBA Executive Committee and House of Delegates

April 8, 2021

New York Bar Foundation

ON THE NEW YORK BAR CENTER

BACKGROUND

A few general points are worth emphasizing before we discuss the elements of our proposed strategy. The elements of this strategy will not be new to those who follow the history of the New York State Bar Association and the origins of the New York Bar Foundation.

The relationship between the Foundation and Association has been a long and productive one, with deep roots within New York's legal community. From the acquisition of the Bar Center in the 1960s to its expansion in the 1980s, the Foundation has remained firmly committed to working with the Association. Now more than ever, as we face the difficult decision to renovate or replace the Bar Center, we believe it is important to build on our shared history and strengthen our commitment to one another.

Over more than half a century, we have time and again found effective and efficient ways of acquiring, constructing, expanding, and renovating the property, for the benefit of our mutual members and the public we serve. Through joint building committees and joint campaign steering committees, we have successfully undertaken the due diligence, fundraising, financing, and case-making needed to get the job done. The joint building committee and joint campaign steering committee model, which was used so effectively in the late 1960s to raise \$1.9 million for site acquisition and buildout, and again in the late 1980s to raise \$6.8 million from about a thousand donors to expand the Bar Center, is an excellent model that we should actively look to replicate.

In addition to a joint fundraising strategy, by arrangement with the Association, the Foundation has taken out mortgages or loans on at least four occasions in connection with its ownership and the Association's long-term usage of the Bar Center: twice from the Association itself and twice from outside banks:

- i. In 1969, the Association transferred title of the 4 properties, 1-4 Elk Street, to the Foundation in exchange for promissory notes, which were subsequently forgiven.
- ii. In 1970, a \$900k loan was made in the Foundation's name from Albany Bank to finance construction costs that exceeded the \$1.9m raised for the initial build. The Association then advanced \$125k to cover immediate cash needs and provided funding to service the loan after the building was opened via lease payments to the Foundation.

iii. In 1978, the Association loaned the Foundation \$400k to finance the costs of expansion and renovation.

iv. In 1991, following the 1990 expansion, the Foundation held a variable rate loan from Norstar. Payments were serviced through rental payments by the Association.

In each case, the Foundation's borrowings were paired with a written commitment from the Association that it would provide the funds to service the loan, either via rent payments or, in the case of an inter-company borrowing between Foundation and Association, via release of promissory notes over time.

Beyond the economic terms of the relationship, the Foundation provides branding and visibility for the good works of lawyers across the state. Together we are strongly associated with causes that resonate deeply with our members, other stakeholders and the community at large, including access to justice, diversity, and the rule of law. We administer dozens of fellowships and scholarships on behalf of the Sections, many of which address diversity and pipeline issues, as well as the Catalyst program that the Chief Judge inspired to support law students interested in public service careers. The Foundation provides a formal structure (including metrics and goals) for these public interest efforts. Just this year alone, the Foundation is funding important public-facing Association initiatives such as the Law, Youth & Citizenship program, High School Mock Trial, and the State Bar's Office of Diversity and Inclusion Youth Day activities, bringing public school students to law firms to increase representation among New York's lawyers. The Foundation also funds NYSBA's Lawyer Assistance Program and the Committee on Courts of Appellate Jurisdiction.

It is in this context and with the historical backdrop in mind, and in the spirit of collaboration that has defined our relationship for the past 50-plus years, that we should undertake to address the important challenges facing us today.

THE CURRENT DILEMMA

The current lease between the Association and Foundation was first entered into in 1991 and then amended and extended in 2007, each for 15-year terms, currently expiring on 12/31/21. According to the terms of the "absolutely net" lease, the Association pays all expenses associated with the property. This includes real estate taxes, building insurance, maintenance and utilities. For two short periods of time, once in the years before 1977, and again between 2012-2018, the Foundation's ownership of the property provided the Association with the financial benefit of a real estate tax exemption. The City of Albany currently does not consider the property tax-exempt.

The forthcoming expiration of the current lease term, and the difficult decisions about what to do next, pose especially difficult challenges in these unprecedented times, faced as we are with the twin crises of a pandemic and associated economic uncertainty – the full impacts of which have yet to be discerned, even by experts in economics and real estate.

We are sensitive to the Association's need to manage its expenses in the current climate. Despite the best efforts of the Association's leadership and staff, we understand

that the Association is concerned in the near-term about a reduction in membership (and longer term, that its strategy emphasizes digital and virtual style programs and activities). Thus, the Association has an interest in reducing operating expenses and fixed costs associated with physical premises, which includes an assessment of how much space the Association might need or want in the future.

We understand that the current economic and real estate environment may make it tempting for the Association to look for a smaller space elsewhere. Clearly, the Association should consider the positive aspects of leasing a commercial space. At the same time, the Bar Center's strategic location and distinctive character reflects the Association's stature, culture, and community with powerful, tangible connections to our history that bolsters its identity. Moreover, the Foundation, by fixing monthly payments for an extended period of time, would protect the Association against rising commercial lease rates, which could increase significantly once economic conditions have improved, and may far outweigh the short-term challenges that we currently face. There may also be some public relations risk to both organizations associated with such a move. Put simply, a quick decision to move to a commercial space could be more damaging and costly than remaining in the current headquarters.

We acknowledge that the Association, based on its due diligence, has indicated that the Bar Center needs substantial improvements and renovations. On March 2, we received the Association's *Dropbox* with information about the condition of the building, alternatives and their costs, as well as needed and desired renovations. The Association has indicated that there are other repairs or renovations that are needed and they will continue to share information as it becomes available.

Both organizations have been working to develop and share the information needed to inform the best path forward.

FOUNDATION'S DUE DILIGENCE

We have engaged the services of an appraiser to perform a full appraisal of the Bar Center and help inform us of its value. The Foundation appreciates the Association's co-investment with us of approximately half the cost of the appraisal now underway. We have followed up as requested regarding timing, and we expect to have that information by mid-April.

In addition to the appraisal, we have sought the advice of a real estate broker to provide us more knowledge of the market and value of the Bar Center. Upon completion of the appraisal process, we expect that it may be necessary to obtain the services of an engineer or an architect to determine what critical repairs are needed.

We have begun some preliminary research on a potential fundraising consultancy for a joint fundraising campaign, roughing out a list of consultants and a draft RFP so that we may jointly receive counsel about the feasibility of a multi-million dollar campaign steering committee.

NEXT STEPS

We have expressed our willingness to work together with the Association to reach a resolution of these issues to the mutual benefit of both organizations. We also have kept the Association representatives apprised of our due diligence and timing for receiving the reports that we have commissioned. While the need for a solution is urgent to address immediate concerns, we believe it would be an error to rush into a decision or take shortcuts on the way to a long-term building plan and fundraising campaign. We all bear fiduciary duties to our organizations to timely pursue a diligent and thorough process.

In the end, we are confident that the key to resolving the issues before us is the acknowledgment that there is no “Foundation solution” or “Association solution.” The only real solution is a *joint solution* that we need to reach together. To that end, we propose the following recommendations moving forward:

- We should jointly review the appraisal to explore possible mortgage financing options. The appraised value will determine how much can be financed, since loan-to-value is a key metric for a mortgage bank. This will also give us further insight into the marketability of the building should we decide to sell or dispose of some or all of it.
- We should determine the extent of the repairs/renovations to be made. We will need a clear understanding of the timing required for any improvements and the associated cost in order to determine financing options. In the event of sale, we will have to determine the most urgent capital/structural work needed to maximize the building’s marketability.[1]
- We will need to seek the approval of the NYS Attorney General/Charities Bureau should we determine to transfer, sell, or otherwise dispose of some or all of the building, even if the transaction is just between the Foundation and the Association, meeting both prongs of the test that the transaction be “fair and reasonable” to the Foundation and in the interest of its members.
- We urge the appointment of a joint Building Committee, in the model of the Ad Hoc Committee on Bar Center Facilities (leading up to 1990 rededication of the Bar Center), so that we may bring our best problem-solving and fundraising game together to pursue the most efficient and desirable solutions that will maximize the benefits of our next real estate move – whatever that may be.

Finally, we address the following questions to the Association, if the Association wants to stay in the Bar Center:

1. Is the Association willing to join with the Foundation to retain a consultant to explore the feasibility of raising the funds the Association has determined will be necessary to renovate and update the Bar Center for it to stay as has been done in the past?
2. Is the Association willing to join with the Foundation to explore the feasibility of borrowing the funds needed to renovate and update the Bar Center

in order for the Bar Association to stay and to service the debt by rental income from the Association, as has been done in the past?

3. Is the Association willing to join with the Foundation, with the assistance of counsel, to jointly develop a petition for Attorney General approval of the transfer of ownership of the Bar Center in order for the Association to stay in the Bar Center?

CONCLUSION

While the process before us is complex, we believe we are stronger working together to reach decisions for the well-being of both organizations. We explicitly recommend an approach that is adaptive, staged and collaborative. Let us work together once again, as we have done in previous joint building and campaign committees, to resolve these issues in a prudent and timely fashion. We believe this approach can provide flexibility while sustaining member trust and confidence.

The Foundation looks forward to leveraging its fundraising acumen, its 501(c)(3) charitable status, and other assets it has available to help update the building and move both organizations forward.

Respectfully submitted,

Lesley Rosenthal, President

Carla Palumbo, Vice President and President-Elect

Hon. Cheryl E. Chambers, Vice President-Elect

David M. Schraver, Head of the Lease negotiating team

The following documents supplement this memorandum:

1. The Foundation's March 29, 2021 email response to David Miranda's email of March 26 on behalf of the Association.
2. Pages 2-4 of the Foundation's 1975 Restated Certificate of Incorporation which provide a current statement of the purposes of the Foundation.
3. A chronology of Association/Foundation Building Arrangements (describing the tax purposes for placing ownership with the Foundation; describing each party's role in the fundraising efforts and financing arrangements associated with the 1968-1971 initial purchase and construction and the late 1980s expansion and renovation; other financings secured by the building and serviced by rental income from the Association).
4. The brochure from the 1990 rededication of the expanded Bar Center (elaborating on the historical importance of the building, describing the reasons for the expansion, listing the Association and Foundation members of the Ad Hoc Building Committee and Campaign Steering Committee, and the approximately 1,000 donors to the fundraising campaign).
5. A Guide from the NY Attorney General Charities Bureau describing the steps needed to transfer ownership of real property by a New York nonprofit (requiring (1) that the transaction be fair and reasonable to the nonprofit corporation and (2) that the purposes of the nonprofit corporation or the interests of its members will be promoted by the transaction). [See p.6 re. Statutory Standard and pp.6-11 re. the Corporation's Preparation for and the Petition for Attorney General Approval of the Transaction.]

[1] While we have reviewed the repairs outlined by both President Elect Brown and Chair Miranda, they indicated at our March 22 meeting that immediate and necessary renovations are in the range of \$2.6 million and that the costs could be even more. We learned then for the first time that these costs do not include sprinklers in the Great Hall, a sliding door in the Great Hall, and unspecified work at the front entrance that they have also deemed immediate. Estimates have recently been received and appear to total approximately half a million dollars.

Dear Dave,

Thank you for your note of March 26th. This note responds to your request for the Foundation's "position" on certain matters relating to the building, in advance of your report on March 31.

We prefer to speak in terms of common interests and not positions, in keeping with the tenor and substance of your and Andrew's meeting with the Foundation's board. In that kindred spirit, and in preparation for your report, we hope the following proposed set of common interests is something we can all build on:

1. As you and Andrew both recognized, our two organizations are sister organizations and it is to our mutual advantage to approach the issues surrounding the building from the same side of the table.
2. As shared at our March 22nd meeting, both organizations require further information to best inform our path forward, including items you mentioned you would add to the drop box as well as items you identified at that meeting you were working on but had not yet received (e.g., regarding sprinklers, sliding glass doors, needed modifications to the front entrance).
3. The Foundation appreciates the Association's co-investment with us of approximately half the cost of the appraisal now underway. We have followed up as requested regarding timing, and we expect to have that information by mid-April. Together, we will want to review the appraisal so that we may explore possible mortgage financing, gain further insight into the marketability of the building if we should jointly decide to sell or dispose of some or all of it, understand from an appraisal/purchase point of view (separate from a usability point of view) which would be the most urgent capital/structural needs, if any, ahead of sale; and ultimately, if we were to decide together that it would be advantageous for the two organizations for the Foundation to transfer ownership of the building, whether to the Association or to a third party, we would both be reliant on the appraisal figure as we seek the approval of the NYS Attorney General/Charities Bureau for such a transfer.
4. The Foundation will appreciate the opportunity to designate one or more members to the Building Committee so that we may bring our best problem-solving and fundraising game together, to pursue the most efficient and desirable solutions that will maximize the benefits of our next real estate move, whatever that may be, whether continued use and if so with what structural improvements, on what timeline/phases, how financed, and under what ownership structure; and if not feasible or prudent, then a determination of where to next.
5. At the March 22 meeting, you advised that the costs related to what the Association has identified as immediate and necessary renovations are in the range of \$2.6 million and that the costs could be even more. In fact, you and Andrew also told us for the first time that not factored into these costs are sprinklers in the Great Hall, a sliding door in the Great Hall, and unspecified work at the front entrance that you have also deemed immediate. Estimates for these new items were not given. While we are still in the process of evaluating these costs, we agree that both organizations should come together on a "structure" as to what needs to be done and how it's going to be paid for. Once we reach an agreement on the list of priority items and their related costs, and once we have received the results of the appraisal in a few weeks' time, coming up with a joint timetable and funding plan will be a top priority for the joint group to discuss. In other words, in order to develop such a "structure," we need a clear understanding of the timing of the required renovations and the associated costs in order to assess financing options.
6. We believe it would be advantageous to explore together, from the "same side of the table," the following matters: Capital costs of remaining at One Elk over the long term (e.g., 20-30 years), phased if

necessary or advantageous, such as: Phase I – immediate building needs; Phase II – modernization plan; and Phase III: desirable building enhancements. Comparison with capital costs of moving to a different location over an equivalent period of years, including at are the capital costs associated with moving to different location over the long term, including moving, tenant fit-out, furnishings, technology set-ups, the cost of meeting space for large gathering such as the House of Delegates, and other expenses. We would also like to explore the comparative operating costs of One Elk and alternative space over the long term.

Most importantly, we request the opportunity to address the Association's Executive Committee and make a presentation to the House of Delegates to further explicate these common interests, in that same spirit in which we invited you to address our board.

We thank you for the spirit of partnership and joint problem-solving that we believe will be not only the best way but indeed the only way to serve both organizations' interests and those of the profession and the public that we serve.

Best regards,

Dave Schraver, Lesley Rosenthal, and Carla Palumbo

From: David P. Miranda <David.Miranda@hrfmlaw.com>
Sent: Friday, March 26, 2021 1:36 PM
To: Schraver, David <DSchraver@nixonpeabody.com>
Cc: cpalumbo@lasroc.org; cchamber@nycourts.gov; Andrew Brown <abrown@brownhutchinson.com>
Subject: One Elk Negotiations

[EXTERNAL E-MAIL]

Hi Dave

I hope you remain well. Carla asked us to communicate directly with you while she is recovering. All of us wish Carla well and hope for a speedy recovery. At our meeting last Monday, we requested the Foundation's position on a few specific questions.

1. We understand the full appraisal of the building is not yet complete, nevertheless, during the meeting we agreed that the Foundation would let us know what the appraisal means to our negotiations. If, for example, the results of the appraisal will determine the amount of a mortgage or loan the Foundation is prepared to obtain to fund proposed renovations, please tell us. If there is some other purpose

that will inform how the Foundation will fund the proposed renovations, please advise what the Foundation is proposing. If the Foundation has no intention of seeking a mortgage or loan to fund the renovations, please tell us.

2. We discussed, and have provided substantial detail, of the costs to fund immediate and necessary renovations to One Elk if we are to remain in the building beyond the end of the year. As you know, on February 5, 2021, the Association provided the Foundation with a proposal outlining a framework for our organizations to fund proposed renovations and go forward with a new lease. Our proposal was not accepted by the Foundation and no counter proposal on how the Foundation would fund renovations was provided by the Foundation. At the meeting we agreed that the Foundation would provide us with its proposal, including a specific framework to fund the necessary renovations. At this late date, broad generalizations will not suffice.
3. At the meeting, the Foundation asked if we would consider having ownership of One Elk returned to the Association without cost. We indicated that would not change the financial burdens on the Association but we were open to at least considering such a transfer under the right conditions, and in a subsequent conversation between Andrew and Carla we reiterated our willingness to consider that. If this is a proposal that the Foundation wants to make, please do so.

At our meeting we repeatedly expressed the need for urgency in our discussions. We want to give the Foundation an opportunity to fully express its position before any decision is made by the Association. I have been asked to give an update on the status of our negotiations on March 31, 2021. Please provide us with the Foundation's responses to the above questions, and any other information you would like to convey, prior to 2pm on March 31, 2021. Thanks

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CHRONOLOGY OF FOUNDATION AND ASSOCIATION RELATIONS RELATIVE TO THE BAR CENTER

- 1950: NY Bar Foundation (Fdn) was founded by members of NYSBA (Assn) to facilitate charitable and educational activities related to law.
- 1958: Fdn received tax exempt recognition by IRS. Gifts to the Fdn (by members of the Assn and others) are tax deductible, while gifts to the Assn are not.
- 1965-68: Assn acquired 4 contiguous parcels on Elk St. for \$452,731; sold its prior property at 99 Washington Ave for \$136k, and rented temp space at 74 State St during construction. Assn undertook a state-wide building fund campaign and raised \$1.9m from Assn members and their firms for site acquisition and estimated cost of construction. (Original estimated cost was \$1.1m; increased to \$1.9m and eventually \$2.8m). Assn determined for tax purposes to place ownership of the building with the Fdn.
- 1968-69: Construction began in August 1968. Most costs, including cost of construction administration, were paid by Assn from proceeds from the Building Fund Drive.
- 1969: Assn transferred title of the 4 properties to the Fdn in exchange for promissory notes, which were subsequently forgiven.
- 1970: Income from the \$1.9m Building Fund was deemed insufficient to meet construction costs. Fdn borrowed \$900k from an Albany Bank; Assn advanced \$125k to cover immediate cash needs, with Assn lease payments to the Fdn to service the remaining debt after occupancy.
- Summer 1971: construction complete, dedication ceremonies held. Overall cost of construction was \$2.778m.
- June 1, 1971-May 31, 1976: first rental agreement between Assn as tenant and Fdn as LL. Rent was initially established at \$42k/yr based on appraisal.
- 1978: Assn's Exec Ctee authorized a feasibility study for renovation of the upper 3 floors. Assn loaned the Fdn the renovation costs (\$400k) under a loan agreement whereby the Fdn was to repay at 6% interest (the prime rate was 11-12% at that time) by paying \$25k for principal in 1980 and \$50k yearly thereafter plus interest, until the full amount was refunded.
- Mid-late 1980s: Assn grew in membership and staff; determined to acquire properties at 5 and 6 Elk Street and planned to incorporate and renovate into an expanded Bar Center. A 16-member joint building committee was formed, co-chaired by the presidents of the Assn and the Fdn, and including 5 members of the Fdn board. They planned the expansion and building improvements and together raised funds from thousands of sources. Some financing was used to help with the expansion, a variable rate loan that was taken in the name of the Fdn and paid for by rental payments from the Assn.
- 1990: expanded Bar Center was rededicated.

HISTORY OF BORROWING AGAINST THE BUILDING BY THE FOUNDATION AS NOMINAL BUILDING OWNER

- 1969: Assn transferred title of the 4 properties to the Fdn in exchange for promissory notes, which were subsequently forgiven.
- In 1970, a construction loan of \$900k was required from an Albany Bank since Assn building campaign (\$1.9m raised) was insufficient to cover the construction costs, which had ballooned from \$1.1m to \$2.77m. The borrowing was made in the Fdn's name; the Assn advanced \$125k to cover immediate cash needs and provided funding to service the loan after the building was opened via lease payments to the Fdn.
- In 1978, the Assn's executive committee determined to expand and renovate the building. It loaned the Fdn the renovation costs (\$400k) under a loan agreement whereby the Fdn was to repay at 6% interest (the prime rate at that time was 11-12% at that time) by paying \$25k for principal in 1980 and \$50k yearly thereafter plus interest, until the full amount was refunded. All furniture, furnishings and fixtures for the renovated area were purchased by the Assn for \$60k and not transferred to the Fdn. Throughout the period, there was overlapping leadership, commingling of funds between Assn and Fdn. Clerical services and supplies provided by Assn to Fdn without charge.
- In 1991 the Fdn held a variable rate loan from Norstar, which payments were serviced through rental payments by Assn; any upward variations in the floating interest rate were to be covered by Assn as additional rent.



NEW YORK STATE BAR CENTER

REDEDICATION

NOVEMBER 10, 1990

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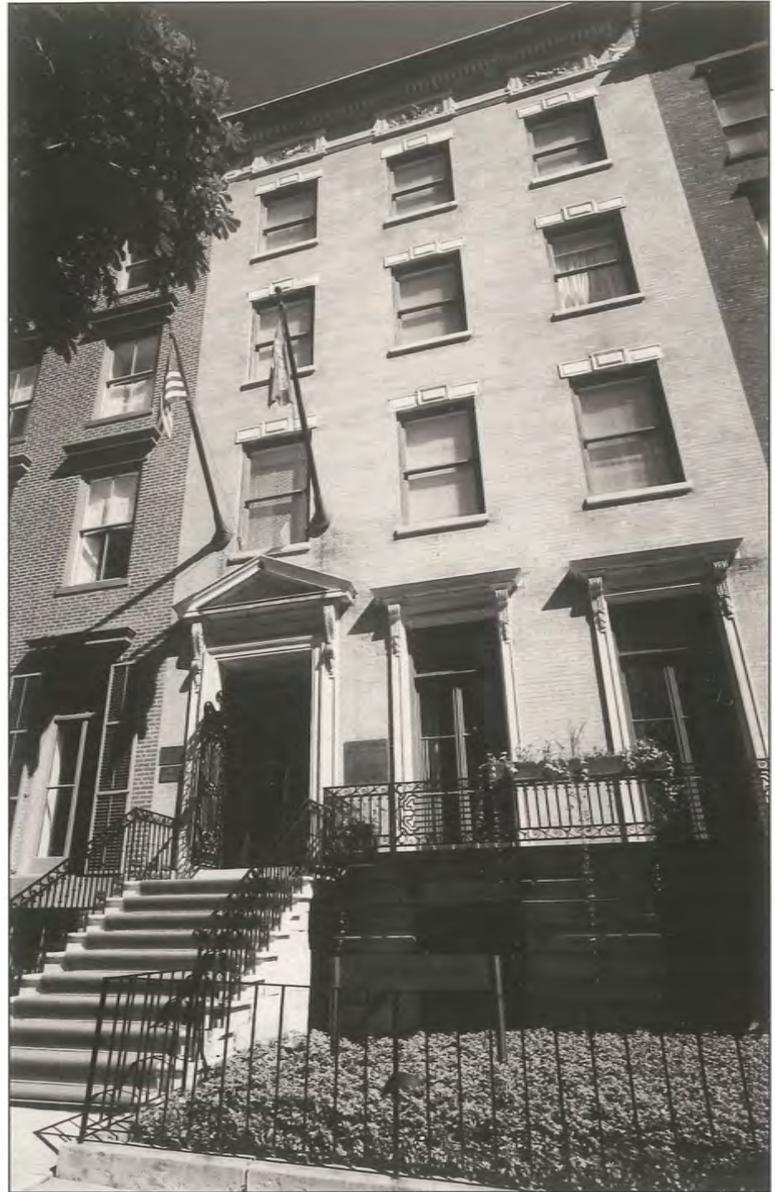
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ACKNOWLEDGEMENTS AND CREDITS

Grateful appreciation is expressed to Whitney North Seymour, Jr., Esq., of New York, for his contribution as Chair of the Advisory Committee on Building Design and Construction.

Bar Center Rededication logo, booklet design and typography: The Type & Design Center, Inc., Latham, New York.

Photography: Bill Murphy, Albany, New York.

Prime contractor for renovation of numbers 5 and 6 Elk Street and Bar Center expansion: L.A. Swyer Co., Inc., Albany, New York.

Architects: The Saratoga Associates, Saratoga, New York.

Office interiors for numbers 5 and 6 Elk Street: Erno Office Interiors, Clifton Park, New York and Richard Seiden Interiors, Albany, New York.

Members' lounge and dining area furnishings: Einhorn Yaffe Prescott, Albany, New York.

page 17: Mrs. Kevan Moss of Paul Smith's, New York, served as project designer and coordinator for the historical exhibit cases displayed in the State Bar Center. Mrs. Moss collaborated in writing the descriptive copy

which may be found near the exhibits as well as in the parlor rooms of numbers 5 and 6 Elk Street.

pages 18-21: Information researched and written by Patti Martino, an intern in the Association's Department of Communications and Public Affairs. She is a 1990 graduate of the State University of New York at Albany where she studied English Literature and Journalism.

pages 22-28: Information compiled by Mrs. Gretchen Sullivan Sorin of Cooperstown, New York, consultant to history museums, retained by The New York Bar Foundation to oversee the restoration of the public meeting space in numbers 5 and 6 Elk Street.

page 25: Photo courtesy of the Albany Institute of History and Art.

page 28: Designs by Denise Leone of Hamilton, New York, a stained glass artist whose works have been exhibited in the Prudential Guaranty Building in Buffalo, New York which is listed in the National Register of Historic Places. She has also designed and restored stained glass windows for many churches, synagogues and private collections.

page 29: Sketches of the 1885 view of Academy Park as seen from Elk Street were done by muralist Richard Yaco of Van Hornesville, New York. For the past 22 years his paintings and drawings have been exhibited throughout the United States in galleries, museums, schools, corporations, the Pentagon, and the Smithsonian Institute.

pages 32-36: The Bill of Rights murals were designed by Norman LaLiberte, one of the most versatile and creative artists in America. The nine banners made of brilliantly colored applique fabrics hanging in The Great Hall were originally created and designed by him in 1971. He is now in residence at his studio in Nahant, Massachusetts.

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One Elk Street
Albany, New York 12207



THE NEW YORK BAR'S ELK STREET HOME

For more than 100 years, the New York State Bar Association has shaped the development of the law, educated and informed the public, and responded to the demands of a changing society.

Today, with a membership of more than 52,000 lawyers, representing every town, city and county in the state, the New York State Bar Association is the oldest and largest voluntary state bar organization in the nation.

United States Presidents Grover Cleveland and Chester A. Arthur were two prominent members of the State Bar Association. In addition, United States Supreme Court Chief Justice Charles Evans Hughes served as a president of the State Bar. These and other notable Americans have contributed much to the State Bar's history. In its membership, ranking members of the nation's judicial and legislative bodies also have served, formulating and endorsing policies which have achieved national and international significance.

The Association's objectives, stated in its constitution adopted in 1877, are the same today. They are: to cultivate the science of jurisprudence, promote reform in the law, facilitate the administration of justice, and elevate the standard of integrity, honor, professional skill and courtesy in the legal profession.

The New York State Bar Center is owned by The New York Bar Foundation, the charitable and philanthropic arm of the Association, and is leased to the Association.

Founded in 1876, the New York State Bar Association rented space in a number of Albany locations (its first official office was a room on the first floor of the State Capitol) before acquiring its own headquarters at 99 Washington Avenue in 1953.

The original Bar Center space which occupies numbers 1 through 4 Elk Street faces Academy Park. The design combines a new building with three nineteenth century town houses, welding them together to form a single, functional complex. This unique combination of nineteenth century architecture and award-winning contemporary design led former *New York Times* design critic, Ada Louise Huxtable, to write that the building "...is one of the neatest architectural achievements in the country...it is a sophisticated triumph in the most delicate, complex and poorly understood art of the environment: urban design."

The project won the 1969 Progressive Architectural Award from the American Institute of Architects. It was formally dedicated on September 24, 1971. The Association has since received widespread acclaim for the preservation of a section of the historically significant Elk Street/Academy Park neighborhood. The result of the State

Bar's civic minded preservation led to the Department of Interior recognizing the State Bar Center as worthy of inclusion in the National Register of Historic Places.

The uniqueness of the Bar Center's design was highlighted in the 1987 book written by Ms. Huxtable, "Goodby History, Hello Hamburger." She recounts the remarkable creation "of a building for the New York State Bar Association out of three row houses adjacent to the State Capital." As Huxtable tells it, "the preservation of these architecturally middling but urbanistically significant row houses occasioned a marshalling of many preservation interests. A classic case for historic district preservation resulted, to which the Bar Association and its architect, James Stewart Polshek, a fellow of the American Institute of Architects, responded successfully."

She writes, "the result is a demonstration project of how to use the past without turning it into a charade and how to extend its fabric functionally into the 20th century for the best kind of living environmental continuity."

This reverence for the past has been successfully continued in the restoration of numbers 5 and 6 Elk Street.

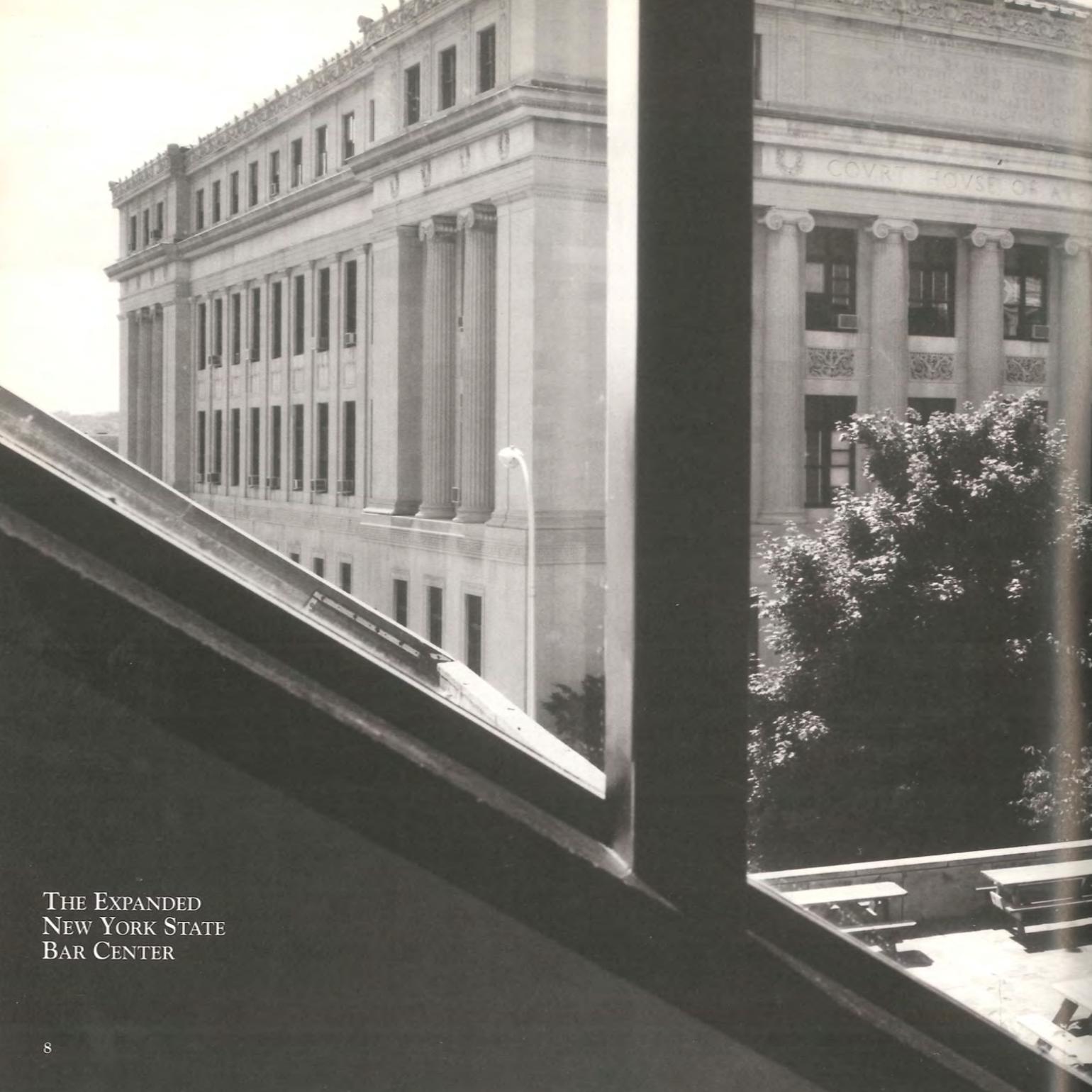
NYSBA COMPARISONS 1971-1990

- In 1971, when the State Bar Center was dedicated there were approximately 21,000 members in the Association. Today we have 52,000 members and are growing at a rate of approximately 4% per year.
- In 1971 there were 11 substantive law Sections and 65 Committees. Today, 20 Sections are in existence and more than 80 Committees have been created by the Association to respond to professional issues.
- In 1971 the Association was operated on a budget of \$940,000. The 1990 budget is more than \$11 million.
- The House of Delegates, the Association's decision and policy-making body, had an initial membership of 137 when it was created in 1972. Today there are 213 members.
- There were 28 staff persons employed by the Association in 1971. With the creation of new staff positions for the Lawyer Assistance Program, Law Office Economics and Management, and Director of Pro Bono Services, there will be 86 staff persons employed by the end of this year.
- The Continuing Legal Education Department will conduct approximately 153 seminars by the end of 1990 with a projected aggregate attendance in excess of 15,000.

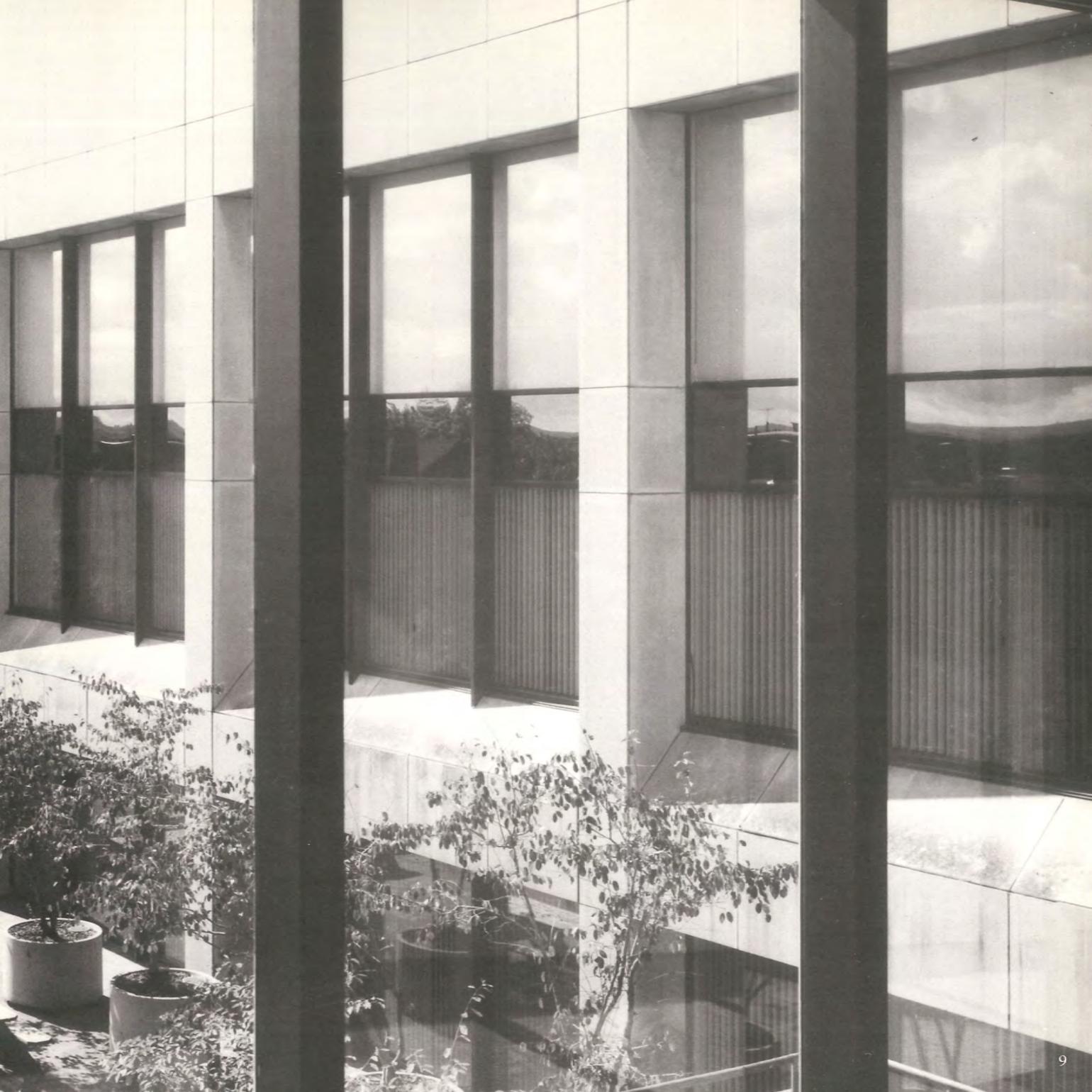


- A wide assortment of informational and educational materials are published and distributed to NYSBA members annually.

The Association's Graphics Department will make more than 40 million impressions in 1990.



THE EXPANDED
NEW YORK STATE
BAR CENTER



The expanded headquarters for the New York State Bar Center contains approximately 17,000 square feet of usable space increasing it from 20,000 square feet to 37,000 square feet. About three-quarters of the space is allocated for current administrative needs; the remainder is for much needed facilities for public and member use.

New public/member-use areas on the first floor of numbers 5 and 6 Elk Street contain a conference room suitable for meetings of 30 persons. There is also a conference room/visiting attorneys' room that can be used by visiting attorneys for dictation, small meetings, telephone calls, depositions, and out-of-town conference work.

Located on Elk Street, the Bar Center is easily accessible to local and out-of-town members. The headquarters is located within walking distance of such law-related facilities as the Court of Appeals, Albany County Courthouse, state law library, Justice Building, Attorney General's office, State Capitol, and administrative agencies. It is also located near the downtown business district and other facilities such as the Federal Courthouse and major area law firms.



Our expanded facility has been designed to allow easy access from either the front or rear of the Bar Center. With the administrative offices located on the second, third and fourth floors, and the public/member meeting facilities on the first floor, the interior layout was designed to avoid disruption of routine staff activities while providing easy access to the public/member-use areas. New construction in the rear of these town houses has allowed the consolidation and efficient use of space for the Graphics Department located on the ground floor level.



In addition to this much needed public and office space, the expansion work also included renovation of certain space already existing in the original structure which was built in 1971. A members' lounge and dining area has been constructed adjacent to The Great Hall to accommodate meal functions, coffee breaks and receptions in connection with meetings.

Additionally, much needed support facilities, such as adequate storage space, filing space and an efficient work/mail room were included in the design. The Bar Center is accessible by the handicapped and includes an elevator, stair chair lifts, adequate restroom facilities, and on-site parking for automobiles.





Before the renovation and new construction, direct access from the upper floors of the building constructed in 1971 to the town houses facing the Elk Street part of the Bar Center was not possible and proved inefficient. To remedy this problem a walkway-bridge was built to link the second floor Executive office wing with the second, third, and fourth floors of the newly-renovated Elk Street town houses.







The theme of the exhibit cases located in the Gallery, the Judge David W. Peck Executive Conference Room, and the reception area is, "The Legal Heritage of New York State." The artifacts and memorabilia illustrate the country lawyer, judicial excellence, and the public service character of the profession.

The exhibition captures the essence of the law as it has been practiced by country lawyers such as Samuel Nelson whose law office is reproduced in miniature and modeled after the full-scale replica that is part of the Farmer's Museum in Cooperstown, New York.

The state's contribution to the rich heritage of the nation's judiciary is exemplified through personal items, photographs, letters, and drawings explaining the life and times of two United States Supreme Court Justices, Robert Jackson and Benjamin N. Cardozo.

Since the days of the first Constitutional Congress, the legal profession has adhered to the notion of public service.

Over five generations, the family of Augustus C. Hand served the nation as lawyers, judges and public officials. One of his sons, Samuel, was the second President of the Association, and United States Court of Appeals Judge Learned Hand was a cousin. Rare photographs, and a letter from President Harry Truman highlight this exhibit.



A BRIEF HISTORY OF “QUALITY ROW”— HOME OF POLITICIANS, LAWYERS AND JUDGES

With its wrought iron balconies, carved columns and stone pediments, it isn't difficult to imagine why Elk Street, facing Lafayette and Academy Parks in downtown Albany, was known in the nineteenth century as “Quality Row.” However, Elk Street earned this title not because of superior craftsmanship, but because of the succes-

sion of prominent politicians, bankers and merchants who chose to live there.

This strip of brick town houses was built in the early 1800's at a time when Albany was making its transformation from a frontier community into a city of economic and political significance. As one of the first upscale residential neighborhoods

in Albany, Elk Street, along with neighboring Columbia Street, attracted many influential people as its inhabitants. Governmental figures, lawyers and judges chose an Elk Street address because of its proximity to the Capitol, City Hall and the court houses. By the mid 1800's, they were joined by some of the city's most successful industrialists and businessmen.

The expanded New York State Bar Center, located at One Elk Street in Albany, combines five nineteenth century town houses, originally numbered 2-6 with a uniquely twentieth century building. The original One Elk Street was demolished in 1969.



SHAPERS OF HISTORY

Just as the Association has shaped the development of law, many of the nineteenth century inhabitants of the original 1-6 Elk Street town houses have shaped the history and destiny of Albany as an important industrial and political center. As judges, diplomats and even a future president, their impact was additionally felt throughout the state, across the country and around the world.

After the American Revolution the Albany streets formerly named for the British past were re-named after animals, birds and the new American heroes. A 1794 map of Albany shows

the roads leading away from the city bearing names such as mink, otter and tiger. Of these streets, Elk (formerly Queen Street) and Beaver Street survive today. Perpendicular to these streets were the “bird streets”—Eagle, Hawk, Swan, Dove, Lark, Swallow and Snipe—many of which still remain.

Albany became New York’s state Capital in 1797, claiming governors and state officials as its new residents. The completion of the first Capitol building in 1809 was soon followed by the construction of town houses on nearby Elk and Columbia Streets.

Five brick row houses, numbered 1-5, were built on Elk Street in 1827, most likely from similar plans. Tax assessment records of the period show One Elk Street to be valued at \$3,000 and the others at \$2,500 each.

POLITICAL LEADERS

Elk and Columbia Streets provided fashionable and convenient homes for many important political leaders beginning in the early 1800’s. One Elk Street was built for James Stevenson who was mayor of Albany from 1826-1828. This building was used as the executive residence for three New York State governors before the state purchased the present

Governor’s mansion on Eagle Street in 1874 which became the official Executive mansion.

The first governor to reside at One Elk Street was Enos Throop who was affiliated with the “Albany Regency,” one of the most powerful political machines of the nineteenth century.

The Regency was formed by Martin Van Buren, a member of the liberal wing of the Republican party to oppose conservative Republican Dewitt Clinton and his followers. This political following, organized in the early 1820’s, helped spawn the early Democratic party and backed Andrew Jackson during his bid for the Presidency in 1828. Van Buren ran for governor of New York that same year in a successful attempt to garner state support for Jackson. He left the governorship after only three months to become Jackson’s Secretary of State and was succeeded by his running mate and fellow Regency member Enos Throop.

In 1830, Throop was elected for an additional term, but decided not to run for re-election the following term. While governor, he opposed both further canal building and increases in the state debt. When Van Buren became President in 1838, he appointed Throop “Charge d’affaires to the Kingdom of the Two Sicilies.”

“ALBANY REGENCY”

Two other prominent Regency members, William Learned Marcy and Edwin Croswell, lived on the site of the present Bar Center complex. Between 1833 and 1839 Governor Marcy rented number 2 Elk Street for use as his executive residence. As a member of the “Albany Regency” he was State Comptroller (1823-1829),



and Justice of the State Supreme Court (1829-1831). He was a member of the United States Senate (1831-1832) until his election as Governor in 1832.

Marcy served three consecutive terms as governor, during which he remained loyal to the Regency. He supported most of the policies of the Jackson and Van Buren administrations, including “hard money” policies and the Independent Treasury. He also commissioned the first geological survey of the state.

New York’s highest peak is named in his honor.

From 1845-1849 Marcy served as Secretary of War under President James K. Polk, and later as Secretary of State for President Franklin Pierce. He negotiated many treaties including the Gadsden Purchase of 1853 which extended the boundaries of New Mexico and Arizona south into Mexico.

Number 4 Elk Street was built for Edwin Croswell who succeeded Van Buren’s brother-in-law, Edward Cantine, as editor of the *Albany Argus* (1823-1854). Under Croswell’s direction, the newspaper became an important tool for the Regency in disseminating its agenda to the public.

EXECUTIVE RESIDENCE

One Elk Street was purchased in 1833 by Daniel D. Barnard, a lawyer who lived nearby on 25 Elk Street. Barnard served as a two-term United States Congressman (1827-1829 and 1839-1845). He practiced law in Albany when not in office. From 1850-1853 he was Minister to Prussia.

During Barnard’s ownership, two other governors used One Elk Street as their executive residence, Washington Hunt and Horatio Seymour. The fourth floor was altered from an attic under the gable roof to a full

floor later in 1849 probably for the occupancy of Governor Hunt.

In 1850, Hunt won the gubernatorial election over Horatio Seymour by a narrow margin. As governor, Hunt worked for economy and efficiency in state government. He also sought to enhance transportation by upgrading roads and expanding the canal system. In 1852, Hunt was defeated by Horatio Seymour. Seymour replaced Hunt as both governor and tenant of One Elk Street where he lived until 1854.

Seymour worked to improve the administration of the penal system during his first term as governor. He also vetoed a bill prohibiting the sale of liquor which may have contributed to his defeat in 1854 by temperance candidate Myron Clark. But Seymour returned as governor in 1863. Although he didn't support many of Lincoln's policies, he did support the Union cause during the Civil War and called for an end to the 1863 draft riots in New York City. He was nominated for President in 1868, but was defeated by General Ulysses S. Grant.

EVIDENCE NOT FOUND

Although Martin Van Buren is listed in the National Register of Historic Places Nomination as the owner of number 4 Elk



Street in 1837, historical research consultant Douglas Sinclair of Albany could not find evidence to support this. According to Sinclair this reference to Van Buren may have been gathered from an undocumented source instead of primary or even secondary records. However, Sinclair discovered during the course of his research that another U.S. President did live on Elk Street.

Franklin D. Roosevelt lived in number 4 Elk Street while he was a state Senator. In the state Legislature (1910-1912), Roosevelt opposed Tammany Hall, the powerful political machine in New York City and became a strong supporter of Woodrow Wilson. When Wilson was elected president in 1912, Roosevelt was chosen as an assistant to the Secretary of the Navy.

As President in the 1930's, Roosevelt's presence was felt in

Albany in the form of the public works projects generated by the New Deal. WPA workers transformed the old Bleeker reservoir into present-day Bleeker Stadium, repaved the city's streets and renovated schools.

LAST PATROON

Number 6 Elk Street was built in 1834 for William Patterson Van Rensselaer in the Greek Revival style popular during the decade at an estimated value of \$4,000. It appears to have been commissioned by his father, Stephen Van Rensselaer III, the last Patroon, for the use of his son and new wife.



The Van Rensselaer family came from a long line of wealthy, land owning "patroons." The Patroon system was devised in 1629 by the Dutch West India Company to establish settlements in the colonial wilder-

ness. In return for their patronage the Patroons were granted tracts of land, which they leased to tenants.

Stephen Van Rensselaer III played a key role in the development of the first rail line between Albany and Schenectady in 1831. He owned approximately 3,000 tenant farms in Albany and Rensselaer county. At the time of his death in 1839, he was one of the wealthiest residents of the state.

COURT HOUSES ATTRACT JUDGES

The court houses attracted judges and lawyers to the Capitol Hill neighborhoods. Prominent residents included Circuit Court Judge James Vanderpoel who owned number 5 Elk Street in the 1840's and James B. Jermain, a Supreme Court Judge who lived at number 6 Elk Street (date unknown).

Circuit Court Judge William Wallace, who was elected mayor of Syracuse in 1873, owned number 6 Elk Street at the beginning of the twentieth century. He was appointed United States Judge for the Northern District of New York by President Grant in 1874. In 1882 he became a United States Circuit Court Judge and headed the federal tribunal of the 2d Circuit which includes New York, Connecticut and Vermont.



BECOMES ECONOMIC CENTER

The invention of the steamboat, the completion of the Erie and Champlain canals and the installation of a railroad network all contributed to Albany's growth as a major center for trade and industry in the nineteenth century.

Beginning in the 1840's and continuing after the Civil War in the 1870's, industrialists and bankers, profiting from improved transportation methods and Albany's strategic position on the Hudson, made their move to Capitol Hill. It was also during this period when the New York State Bar Association was founded in 1876.

The inhabitants of numbers 1-6 Elk Street during this period reflect this trend. Three Elk Street was owned by Richard Varick De Witt, a steamboat agent in the 1840's. At this time

steamboat travel was at its height as hundreds of steamboats moved up and down the Hudson carrying passengers and waterborne freight.

INDUSTRIALISTS AND BANKERS

The two industries most associated with Albany in the 1800's, cast-iron stoves and lumber, also had their representatives on Elk Street. By the late 1800's there were 15 stove foundries in Albany. During this period Albany's cast-iron stoves received worldwide recognition for superior design and craftsmanship.

Members of the Townsend family, who owned the Townsend Furnace, noted for its steam trap devices, lived at various Elk Street residences beginning in the 1840's. They were joined in 1883 by Joel Rathbone, founder of a large stove factory, who owned number 5.

Curtis Douglas, a lumber dealer, owned number 5 Elk Street in the early 1900's. Lumber was Albany's principal export throughout the eighteenth and most of the nineteenth century. At its peak in the 1870's, Albany was the oldest and largest lumber market in the nation.

Elk Street bankers included Rufus King (2 Elk Street), lawyer and President of the State Bank

of Albany; J.B. Plumb (3 Elk Street), President of the Bank of the Interior; and Harmon Pumpelly (One Elk Street), President of the Albany Gas Company and the Albany Savings Bank.



ARCHITECTURAL CHANGES

During the late eighteenth century, numbers 1-6 Elk Street received a number of facade and structural changes. The roof of number 2 Elk Street was raised to a steeper pitch and the dormers altered to the Tudor-Jacobean style. The interior of number 5 was altered to the Queen Anne style and its facade was extensively remodeled to reproduce the Italianate style. The exterior of number 3 Elk Street changed several times.

The facades of both numbers 4 and 6 Elk Street were altered to the design of noted Albany

architect Marcus Reynolds in the Colonial Revival style. Reynolds is known as the designer of Albany's first "skyscraper" and the Gideon Putnam Hotel in Saratoga. He also designed the gothic styled former Delaware and Hudson/Albany Evening Journal Building at the foot of State Street and Broadway in Albany.

Reynolds retained the 1827 window treatment on the upper floors and added a floor to number 4 Elk Street in 1900. The owner at that time was Curtis Douglas. In 1906, Circuit Judge William Wallace also commissioned Reynolds to alter number 6 Elk Street. Reynolds retained the 1834 entry and raised the pediment at the roofline to accommodate a fourth floor. He also remodeled the interior using design elements associated with the Federal style, popular a century earlier, on the mantels and woodwork.

Present day Elk Street stands as a reminder of Albany's formation as the state Capital. In the twentieth century, the New York State Bar Association, the country's oldest and largest voluntary state bar association, has earned its place on "Quality Row." With its tradition of concerned service to the legal profession and the public, the Association continues the pioneering tradition long associated with Elk Street.

THE HISTORIC ELK STREET INTERIORS



“Rooms have just as much expression as faces,” wrote author Susan Brown in her 1881 book on household interiors. “They produce just as strong an impression on us at first sight... The walls and the floor, and the tables and chairs, all speak out at once... .” Certainly this is the role of the period interior. It provides those who use a particular space or those who have simply come to visit or experience it with a sense of how people lived in the past.

Episcopal Bishop William Doane who presided over the Cathedral of All Saints was a resident of Elk Street as were prominent attorney John Pruyn, who was the Chancellor of New York, and Erastus Corning Jr. Appropriately they were furnished with high style furniture of the period.

The diaries, paintings and photographs of various rooms along Elk Street indicate that each interior was as unique as its owner’s taste.



Much of what is known specifically about life on Elk Street during the latter part of the nineteenth century comes from the copious diary kept by Huiibertje Pruyn Hamlin, daughter of John Pruyn. Her journal chronicles social life, daily activities and the individuals that lived by what one period account was referred to as “Quality Row,” during the 1880’s when she was growing up. Her life, like that of the other Elk Street residents was generally one of ease for the nineteenth century. Here on “Quality Row,” unlike some of the immigrant neighborhoods in Albany, there was time and money for lavish entertaining, reading literature and enjoying carriage and sleigh rides. Children were cared for by nannies and household staffs were employed to cook and clean the elegant houses. The Pruyn household at one time had a staff of ten.

Household interiors on Elk Street were fashionable, following the dictates of design books of the period, but often combining the styles with abandon. The decades prior to the 1860’s had been characterized often by slavish adherence to a single style of furniture in the decoration of rooms, particularly for the formal parlors of rich families.





The second half of the nineteenth century brought, in rapid succession, a number of revivals which might be mixed together. Colonial Revival furnishings might be combined with a few pieces in the Renaissance or French antique styles. Wicker might be added for warmth and whimsy. With each new decade another revival style was introduced and the old ones were updated or augmented but they did not go out of fashion.

Huibertje noted that the parlor of number 13 Elk Street had “furniture [of] rose wood covered with a gorgeous orange Chinese brocade. There was a Florentine cabinet & a Dutch one—both full of mysterious drawers and secret places... There was a wonderful tall leather covered arm chair on the right side of the front room fireplace. It was solidly panelled under the seat...”

In both drawing rooms, the over mantel mirror carried out the Gothic idea and the glass chandeliers and side lights would have delighted a modern collector. (*Pruyn Diary*, pp. 112, 113, 114). She also describes wallpapers with gay birds, large green leaves and purple grapes, floors with herringbone parquet and covered with large Turkish rugs, walls covered with portraits, and “painting and engravings of Madonnas and Biblical scenes.”

Other furnishings ranged from an antique Chippendale mirror to contemporary sculpture on pedestals by neighbor Erastus Dow Palmer. The overall effect was a typical upper middle class interior, which blended the variety of then popular styles into an eclectic room setting. Such descriptions are important clues to the appearance of Elk Street interiors. Visual materials—photographs and paintings—provide further evidence.





The painting of the interior at number 6 Elk is similarly eclectic but its elements fit together nicely to create a pleasing whole. The wallpapers and carpet in such rooms are the unifying element according to Victorian taste. This interior, like that of number 13 described by Huiibertje Pruyt, reflects the taste of the Aesthetic movement of the time.

Popularized by such English designers as Charles Eastlake and William Morris, and Louis Comfort Tiffany on this side of

the Atlantic, the Aesthetic style was characterized by wallpapers featuring vining plants in restrained colors and heavy, English Revival furniture.

The carpet was also supposed to be in contrast with the wallpaper rather than repeating the same hue. Secondary hues were most popular. Thus, moss green or olive and crimson would be used. Red and green probably would not. Eastlake recommended simple geometric patterns which imitated the designs in Persian carpets. Popular col-

ors included rust, browns and deep golds, maroon and other deep tones.

Brussels carpets were perhaps the most popular weave and came in a multitude of patterns. A loom width was 26 inches and several loom widths were stitched together to form complete carpets. The drawing room rugs in number 6 Elk Street measure 15'2 1/4" wide by 22'4 1/4" long. They fit within the parquet border.

The furnishing plan for number 6 Elk Street is based on research in period documents and pictorial materials, including an 1885 painting of the parlors made by Albany artist Walter Launt Palmer. Jennie Norton, wife of the Rev. Frank Norton, who occupied the house in 1889, appears in the painting used to recreate the historic features of this town house (see photo at left).

Other Albany interiors of the same period were also used to identify features common to all parlors or libraries.

In the parlor in which Mrs. Norton sits are a Gothic chair, a wicker chair, a Rococo Revival chair and an English Revival chair. Barely visible in the rear parlor are two fringed Turkish chairs reflecting a new popular enthusiasm for exotic things.

The tables too are an eclectic mixture of styles, including a lyre based card or side table, a Colonial Revival desk and a low table topped with a brass tray.

Aesthetic interiors were developed as a reaction to the bright colors and excess ornamentation of the mid-Victorian period. More subdued colors and simpler furniture forms, the latter often harkening back to the American Colonial period or of English Revival forms, were popular.

Photo: Collection of the Albany Institute of History & Art

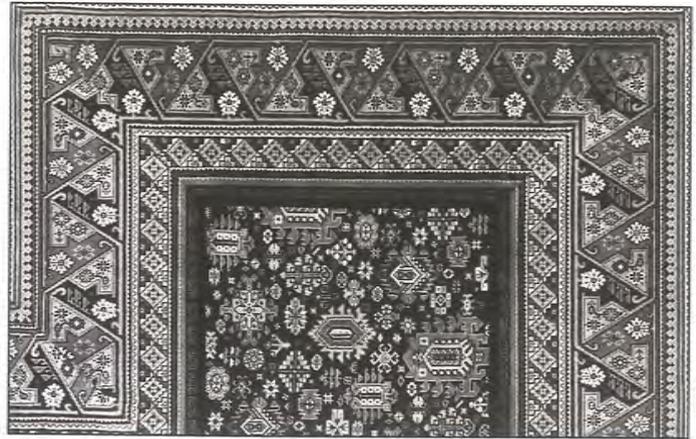
The stairhall in number 6 Elk Street is wallpapered in "Summer Street Damask," a freely interpreted foliage and fig pattern. It is an English pattern that dates from about 1850 and is named for the street location of a Queen Anne Revival mansion in Kennebunk, Maine, where it was found.



The parlors of number 6 Elk Street are decorated in "Persis," an English pattern that dates from around 1880 revealing an unstructured spray of sage green and olive Eucalyptus leaves interspersed with gold sunbursts (gilded blossoms). The original for this pattern was found in Boston, Massachusetts, and has also been documented in a photograph taken during the early 1880's inside a mansion in Sydney, Australia.



The frieze paper in the parlors is called "Chauncy Frieze" and is an American design of the 1880's that was found in a villa in Marshall, Michigan.



The weave of the carpet pattern found in the parlors as well as the hallway and stairs in number 6 Elk Street is made of 100 tuft per inch Worsted Wilton construction, the finest woven carpet available today. The two patterns chosen are part of a historic archive of more than 10,000 such patterns that is maintained by Woodward Grosvenor & Co. Ltd., Kidderminster, England. The United States representative of that company, J.R. Burrows & Co., historical-design merchants, Boston, Massachusetts, provided three reproductions of nineteenth century wallpaper designs that are used in the period decoration of number 6 Elk Street.



HISTORY RESTORED IN 6 ELK STREET

In 1833 when attorney William Patterson Van Rensselaer, half brother of the last Patroon, built number 6 Academy Park, also referred to as number 6 Elk Street, the grain weevil was a serious plague to area farmers, swine were roaming the streets of Albany eating garbage and construction of the New York and Erie Railroad had just begun. Albany, as the state Capital, strategically located on the route to the western part of the state was growing by leaps and bounds. Many of Albany's well-to-do citizens were beginning to construct homes on the small park near the Capitol building. The August 6 edition of the *Albany Evening Journal* noted that William Patterson Van Rensselaer was "erecting a fine house in Elk Street."

The architect of number 6 is not positively known but it is believed to have been either Henry Rector or Philip Hooker. Hooker had constructed several buildings for the Van Rensselaer family some of which were in the Greek Revival style. His many structures were prominent in the city during the late eighteenth and early nineteenth centuries. The Albany Academy (1814-1816), City Hall (1829) and Capitol Building (1804-1809) are among the public buildings known to have been designed by Philip Hooker. Few of his domestic buildings re-

main, but he is known to have worked for many of Albany's most prominent citizens. One of his best known homes is the imposing Hyde Hall on Lake Otsego in Springfield Center, New York. If Hooker indeed designed number 6 Elk, it was done near the end of his career. He died in 1836.

Rector, too, was designing Greek Revival structures and was a prolific architect in and around Albany during this period. He was considerably younger than Philip Hooker and seems to have been one of the primary architects to receive major commissions in Albany after Hooker's death. Unfortunately, relatively little information exists on Henry Rector and

not many of the structures he designed are known.

The Pearl Street Baptist Church (1833), which no longer remains, the State Hall (now the State Court of Appeals) and the Albany Female Academy are structures in the Greek style which were built by Henry Rector. Stanwix Hall, a Van Rensselaer building and one in which William Patterson Van Rensselaer had his law office for a time, is also attributed to Henry Rector. As the primary successor to Philip Hooker he is believed to have been the architect for many other public and private structures around the city which have not been attributed to him. One of these may be number 6 Elk Street.



The long and short of it—taken in 1910, this photo shows number 3 Elk Street to be one story shorter than it is today. Architectural change, which came later, conforms roof lines.

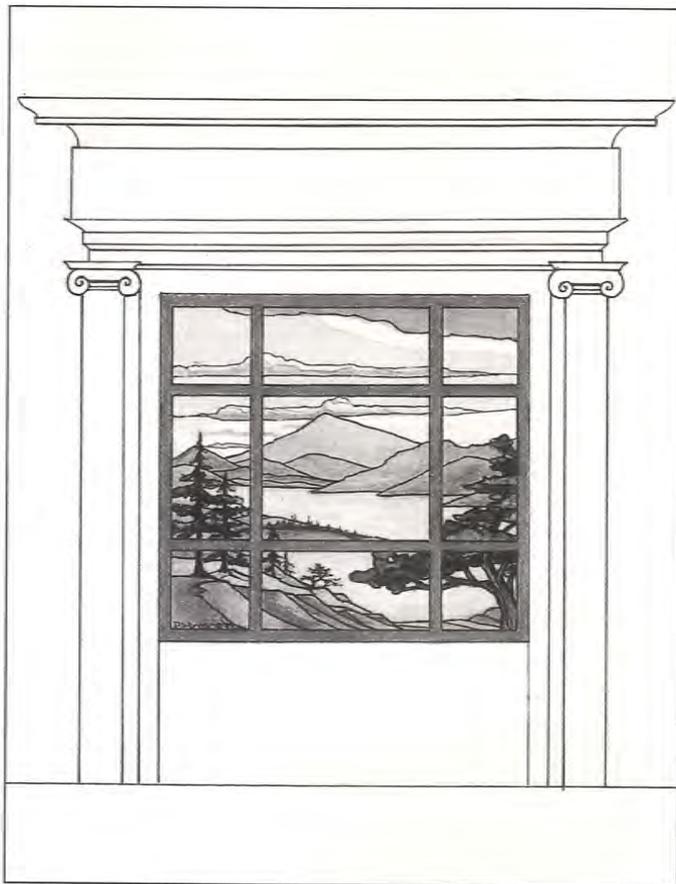
STAINED GLASS
AT THE REAR OF NUMBER
6 ELK STREET

Stained glass artist Denise Leone of Hamilton, New York was engaged to create an appropriate glass reproduction.

Ms. Leone is familiar with appropriate nineteenth century styles and has previous experience portraying scenic works. The design at the rear wall of number 6 Elk Street represents Ms. Leone's view of the natural beauty of the Catskill Mountains. Inspired by the work of such classic American painters as Thomas Cole, Frederick Church and Stanford Gifford, Ms. Leone's interpretation of the landscape was drawn from a variety of views of the mountains seen during frequent trips up and down the Hudson River, particularly the view from Frederick Church's home, Olana. Like the work of the Hudson River painters, this landscape is an idealized view, rooted in real places.

"I attempted to see the landscape the way the Hudson River painters would have, unspoiled and wild, a new world Eden," she said. The window is designed to make it appear that the viewer is looking out of a window "onto a painted vista."

To create atmospheric effects and to diminish lead lines some laminating of the glass was done using the technique in the Metropolitan Museum Tiffany windows. The overall measurement of the window is 7'9" x



7'3" for a total of 56 square feet.

Beneath the window are recessed wooden panels which form the framework of the window. This wooden structure also raises the glass above the floor so that it can't be accidentally kicked and broken. Because the window is lit by artificial light, reproduction Tiffany opalescent glass has been used to diffuse the light.

A 19TH CENTURY ACADEMY PARK BROUGHT BACK INTO 5 ELK STREET

Academy Park was a small neighborhood park in about a two acre irregular square of land bordered by Elk and Eagle streets roughly to the East and Park Place and Washington Avenue to the West. It appears that the park was not particularly unusual and during the interpretive date selected for the period rooms at the State Bar Center—1885—there were many shade trees and no statuary in the park.

The park was in great disrepair for some years prior to its refurbishing in 1881 and was essentially a drainage area for Lafayette Street and a haven for

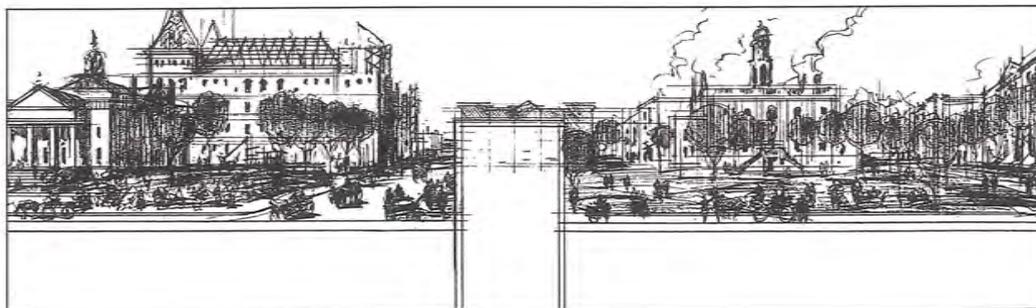
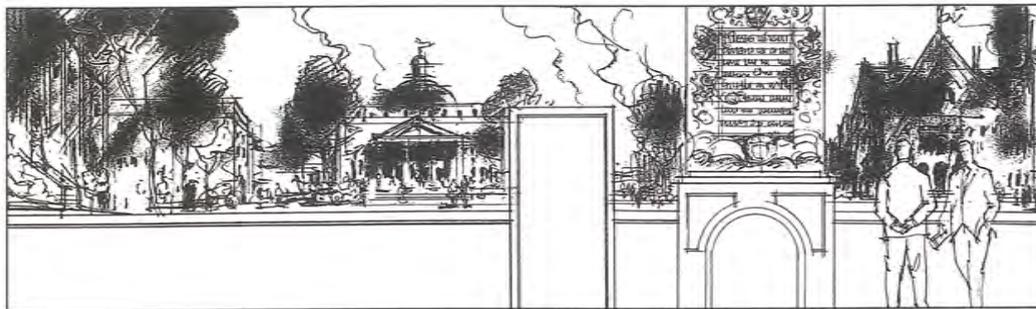
muggers. This was apparently its second refurbishing. Money had also been appropriated in the 1830's to grade the park and enclose it with an iron fence. According to late nineteenth century views, the iron fence seems to have been torn down and Academy Park was surrounded by a low fence, perhaps after its 1881 face lift. This fence appears in the foreground of illustrations of the Albany Academy.

The unique views of the park will be depicted in a mural to be painted on the East and West walls of the parlor in number 5 Elk Street and will include the

unusual buildings which lined the streets of the park during 1876-1877, a time that coincides with the founding of the Association. Most notable are the Albany Academy and the rather fanciful Egyptian revival waterworks which no longer exists. A series of buildings, now no longer standing, lined the Washington Avenue side of the park as well.

The East mural will include a partially raised street level view of the buildings lining Elk Street with their sides receding into one point perspectives together with a portion of the Elk Street town houses. Spaces between the buildings represent State Street, Maiden Lane and other streets to provide the illusion of descent. The West mural will feature Academy Park and the Capitol in the foreground. The new Capitol (still under construction at the time, with its scaffolding and building paraphernalia), and various commercial and residential buildings will also be illustrated.

The inclusion of people in period costumes and carriages by muralist Richard Yaco will add interest and identify the period of the scene.





Judge David Warner Peck

The Executive Conference Room located in number 5 Elk Street is dedicated to the memory of the late Judge David Warner Peck who was the 65th President of the Association from 1962-1963.

Born in Crawfordsville, Indiana in 1902, he entered Wabash College in his hometown at the age of 16, having skipped his senior year of high school. He graduated from Wabash in three years with distinguished honors and worked his way through Harvard Law School as a tutor who sometimes had as many pupils as any faculty member.

Upon graduation, he spent two months with White & Case in New York City before joining

the staff of United States Attorney Emory R. Buckner in the Southern District of New York where he served for three years. He left in 1928 and spent two years in multinational legal activity with the International Telephone and Telegraph Company.

In May 1930 David Peck joined Sullivan & Cromwell, became a partner in 1934, and led the firm's litigation practice until he accepted Governor Thomas E. Dewey's appointment to the New York State Supreme Court in Manhattan in 1943. Two years later, Governor Dewey appointed Judge Peck to the Appellate Division, First Department, and two years after that designated him the Court's Presiding Justice. It is said that he was the youngest justice ever to hold that position.

On the bench he initiated the practice of annually recruiting a new law clerk and left his distinctive mark on each one. They in turn formed a devoted band who proudly claimed for themselves the title of "Peck's Paragons."

As Presiding Justice he conducted a ten-year campaign to reduce congestion in the courts which resulted in significantly reducing calendar delay to its lowest point in 57 years. During this period he was selected by President Dwight Eisenhower to

serve as a Member of the Permanent International Court of Arbitration at The Hague, on which he continued to serve until 1963.

At the end of 1957 Justice Peck left the bench to rejoin Sullivan & Cromwell to resume his role as a trial and appellate advocate of great distinction. He served on various federal and state committees and commissions and in 1959 succeeded Governor Nelson A. Rockefeller as Chairman of the New York Commission on Revision and Simplification of the State Constitution. Elected President of the New York State Bar Association in 1962, three years later he became Chairman of the Board of the American Arbitration Association, a post he held for the next five years.

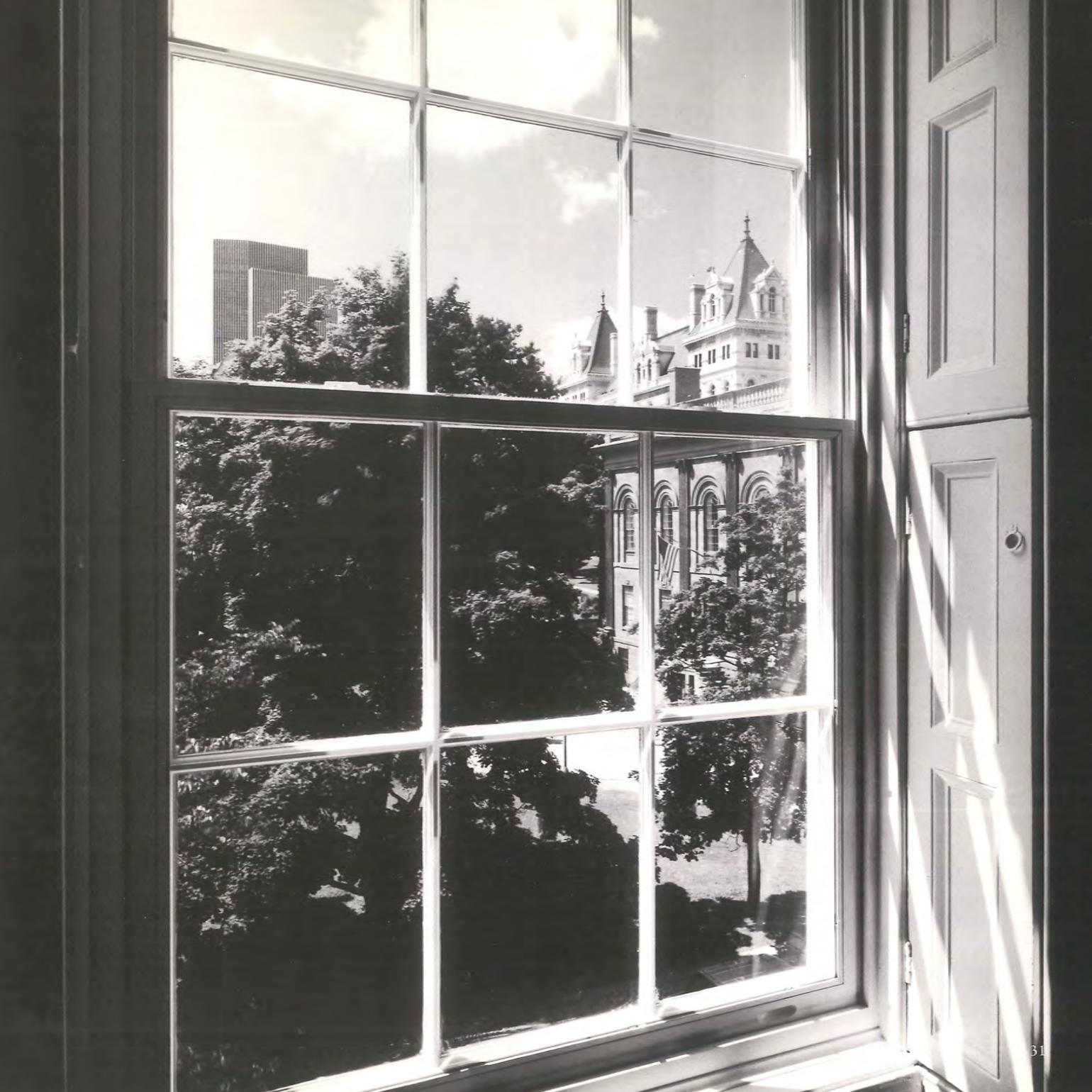
David Peck authored two books about cases in the New York courts, *The Greer Case* and *Decision At Law*, and remained until his death a champion of court reform and improvements in the administration of justice.

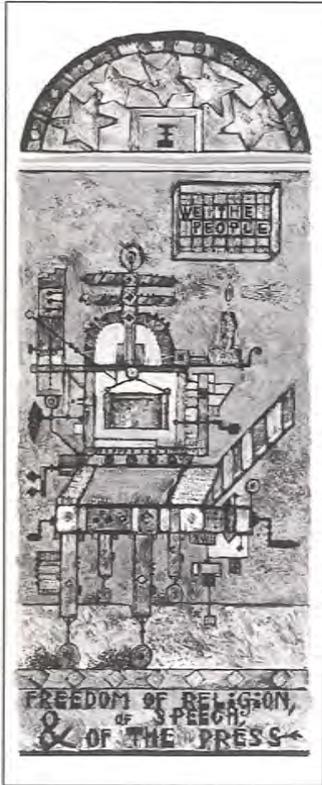
Outside the law, Judge Peck was renowned as a gourmet and connoisseur of French wines which led to his election to high office in the American chapter of the *Confrerie des Chevaliers de Tastevin*, an international organization of oenophiles based at Clos de Vougeot in Burgundy as well as

in the *Commanderie de Bordeaux*. To these pleasures he joined a long-standing dedication to the Metropolitan Opera and a penchant for travel which brought him repeatedly to the vineyards of France and, as an avid golfer, to the distinguished courses of Scotland. Judge Peck died in August, 1990 at the age of 87.

The furnishings in this room include a mahogany conference table manufactured by the Buffalo Table Company. This piece employs a classic heirloom finish with Sheraton style legs produced from the original designs of the late eighteenth century (also referred to as Federal style). They support the 24" x 60" dimensions of the table. This kind of table was originally manufactured 150 years ago by the Kittinger Company which is no longer in existence.

The chairs surrounding the table are "The College Chairs," manufactured by Nichols and Stone of Gardner, Massachusetts. They bear the seal of the Association. These are the same chairs that are found in numerous colleges and universities.





AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

This panel depicts the Gutenberg-style printing press which printed Thomas Paine's revolutionary pamphlet, *Common Sense*, and later helped win popular support for the draft Constitution proposed by the 1787 Constitutional Convention. The font of type in the upper right corner reflects the opening words of the 1776 Declaration of American Independence which was widely distributed as a printed broadside.

The Greek letters Alpha and Omega symbolize the beginning and the end of the alphabet, and represent freedom of religion in the new nation.

THE GALLERY OF THE BILL OF RIGHTS

Ten Panels by Norman Laliberte Interpreting the First Ten Amendments to the Constitution of the United States, Ratified December 15, 1791.



AMENDMENT II

A well regulated Militia, being necessary to the security of the free State, the right of the people to keep and bear Arms, shall not be infringed.

Citizen-soldiers have guaranteed the national security of the United States since they defeated foreign mercenaries during the American Revolution. This panel represents the volunteers who took up arms in defense of the colonies, carrying some of the early flags (left to right): 13-star ensign; The 1775 Pine Tree Flag of "Washington's Navy;" the 1776 naval standard "Don't Tread on Me" designed by Col. Gadsden of South Carolina; and the Nashville Regimental flag, "God Armeth the Patriot."

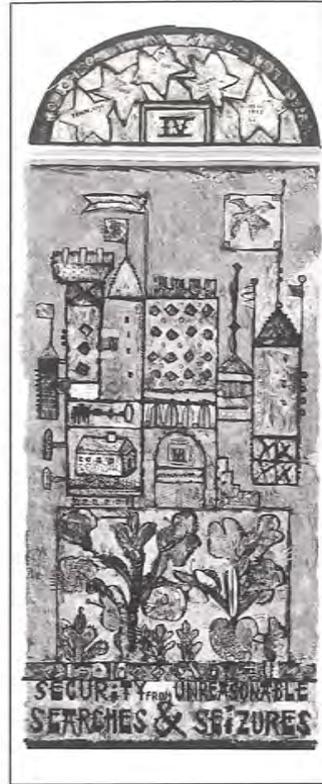
The stars in the arches at the top of each panel reflect the dates of admission of individual states to the union. The band of colors running across all of the panels represents the rainbow.



AMENDMENT III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

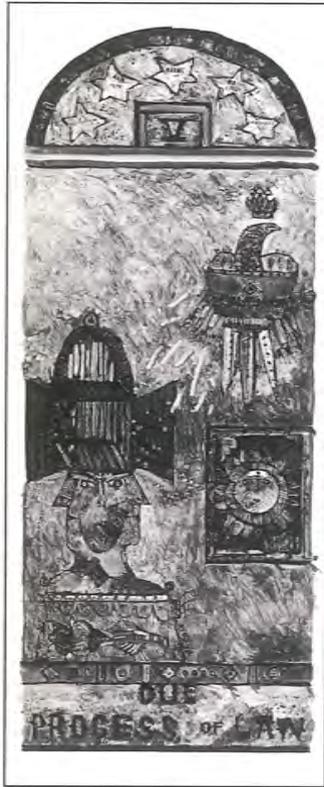
The olive branch and dove of peace above this person's home remind us that military authorities may not force citizens to provide food or shelter against their will.



AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

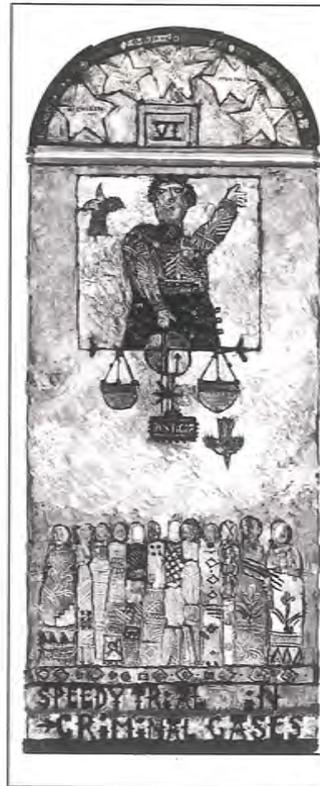
The Bill of Rights guarantees that "A man's home is his castle," as illustrated by replacement of the moat which once surrounded this castle by a bed of flowers.



AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

The bird of Freedom released from its cage and flying toward heaven symbolizes constitutional protection against denials of due process including double jeopardy, represented by the two-faced figure. The shining sun is the Constitutional guarantee of Justice.



AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

In this panel a criminal jury trial is presided over by an independent and impartial judge to insure that the scales of justice are in exact balance and the jury's verdict is arrived at fairly.



AMENDMENT VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

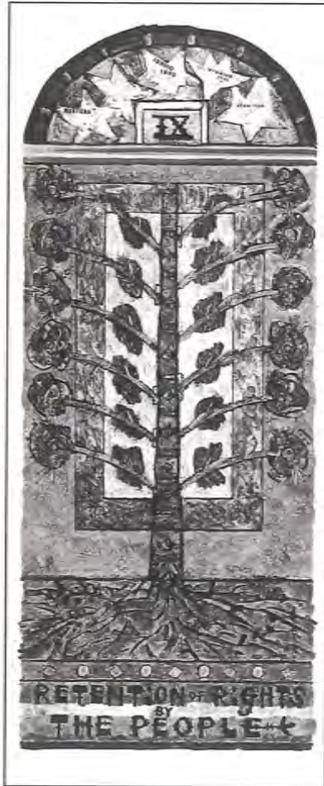
A jury wheel guarantees the random selection of citizens to serve on trial juries, insuring fairness and impartiality.



AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The stock gone to flower in this panel symbolizes the outlawing of the pillory, the rack, whipping, branding, and other barbaric punishments of the past. The lower panel contains an hour glass representing imprisonment, and figures holding large Greek and Roman coins symbolizing fines and bail.



AMENDMENT IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

The branches sprouting from the trunk of the tree represent the natural rights of the people which are encouraged to flower under Constitutional government.



AMENDMENT X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Fifty state birds in flight represent the freedoms enjoyed by the individual states which make up our republican form of government.

REDEDICATED TO THE BAR'S FUTURE

This commemorative booklet has a dual purpose: it is a permanent record of the Rededication of the expanded New York State Bar Center and a token of appreciation to all who have helped make this historic occasion possible.

Members of the Association responded enthusiastically to the Bar Center fund raising campaign. Their dedication to the difficult job of raising money and their personal generosity as financial contributors gives renewed meaning to the purposes for which this Association was founded.

On a November afternoon 114 years ago, some ninety-one lawyers met in the Assembly

Chamber of the old Capitol and moved the formation of the New York State Bar Association. Our first President, John K. Porter, could not have envisioned the growth of the legal profession, the complexity of vital issues addressed by our colleagues and the continuing expansion of this Association.

Thus, even though only twenty years have passed since the major expansion of our Elk Street headquarters, we soon realized that without additional space, the State Bar's capacity to maintain existing programs while inaugurating new ones would have been severely curtailed. This album chronicles our renovation of the town

houses at 5 and 6 Elk Street with the resulting transformation of this historic space into offices and meeting rooms in keeping with the rich legacy of the Albany block known as "Quality Row."

Today, we rededicate our Center which is much more than a building. It is a living monument to the spirit of this Association which will continue to serve the profession and the public far into the future.

Angelo T. Cometa

Angelo T. Cometa
President

November 10, 1990



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**A GUIDE TO SALES AND OTHER DISPOSITION OF ASSETS
BY NOT-FOR-PROFIT CORPORATIONS**



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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
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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**

INTRODUCTION

The New York State Attorney General’s Charities Bureau has prepared this guidance to assist not-for-profit corporations and the attorneys who represent them when 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. Not-for-Profit Corporation Law (“N-PCL”). N-PCL §§ 510, 511 and 511-a. Please consult “Religious Corporations: Sales and other Disposition of Assets,” posted at www.charitiesnys.com, for guidance concerning property transactions by religious corporations.

New York law governing not-for-profit 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 important and unique role and responsibility of not-for-profit corporations 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”) and 2015 and 2016 amendments to the Act. The Act amended the N-PCL and sets forth procedures to be followed when transferring or mortgaging property and gives corporations the option of submitting a petition to the Attorney General OR the Supreme Court on notice to the Attorney General for approval of the transaction. As more fully described below, in an application solely 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 and to the Attorney General, even though court approval is sought.

This guidance is not a substitute for legal advice from an attorney but is intended to provide guidance to not-for-profit corporations that are seeking to sell or otherwise dispose of their assets and to 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

The sale, lease, exchange or other disposition of all or substantially all of the assets¹ of a charitable not-for-profit corporation² 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 charitable 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 by 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 are not covered unless a component of the transaction would otherwise be covered by the N-PCL, such as when there is a conveyance or lease of the property to the lender. N-PCL §§ 510 or 511. Non-charitable not-for-profit corporations do not need Attorney General approval for their transactions. Non-charitable transactions are defined at N-PCL § 102(a)(9-a).

ROLE OF THE ATTORNEY GENERAL

The N-PCL requires not-for-profit corporations seeking to sell, exchange or otherwise dispose of all or substantially all of their assets to submit a verified petition for approval of such transaction *either* to the Attorney General or to the court on notice to the Attorney General.

Whether the petitioner decides to seek approval from the Attorney General or the court, it is advisable to make sure that the contract for the sale of the property is

¹ Throughout this guidance, 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.

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

contingent upon the approval of either the Attorney General and/or the Supreme Court. This will protect the corporation since the sale may only take place if it is approved.

When 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.** This procedure enables the Attorney General to review the papers to ensure that all statutory requirements are met, all necessary documents are included as exhibits, and any concerns of the Attorney General are resolved *before* submission to the court. A sample petition to the court is attached as Appendix B, a checklist of documents needed to request approval of a transaction is attached as Appendix A, and a sample order is attached as Appendix D.

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 signed petition, which must be exactly the same as the final draft petition and include exactly the same exhibits reviewed by the Attorney General, may then be submitted to the court. However, if a hearing or other proceeding is subsequently scheduled, the petitioner must give notice of such proceeding to the Attorney General. In addition, a copy of the order, when signed by the judge, must be submitted to the Attorney General.

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 Supreme Court for an order approving the transaction, on notice to the Attorney General, in the judicial district where the corporation's principal office is located.

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

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

- 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 court and/or the Attorney General 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 board of directors or trustees must approve the transaction, and, 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. 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 anticipated consideration to be received by the corporation, the eventual use of the proceeds of the transaction by the corporation, and a statement as to 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,"³ 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

³ "Related party" means (i) any director, officer or key person of the corporation or any affiliate of the corporation; (ii) any relative of any director, officer or key person 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).

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. Corporations 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, if 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.

Voting by proxy is permitted for members of not-for-profit corporations, if the by-laws or certificate of incorporation permits proxy voting. N-PCL § 609.

PREPARING TO PETITION FOR APPROVAL OF A TRANSACTION

Fair and Reasonable Consideration: Appraisals

In preparing to petition for approval of a transaction, the corporation must determine that the proposed consideration is fair and reasonable. To do so, the corporation must secure an independent appraisal of the property that is 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. A licensed appraiser who is completely independent of both buyer and seller must do the appraisal. A real estate agent or broker involved in the sale

of the property may not do the appraisal. A real estate agent or broker “fair market assessment” of a property is NOT the same as an appraisal.

If the asset is real property, the appraisal, which should be done no more than 12 months before the date of the contract, 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. If the proposed transaction is for the development of real property, the appraisal should be based on full FAR (floor area ratio) and evaluate any unused development rights (sometimes called “air rights”).

Fair and Reasonable Consideration: Non-cash Consideration

Any non-cash consideration to be received by the corporation in the transaction needs confirmation of value. Such confirmation may be by submission of a third party valuation or, in some instances, acceptable evidence of costs associated with the building and delivery of in-kind consideration such as a new facility. Non-cash consideration may also include, but is not limited to, anticipated future payments based on a partnership or joint venture interest. The value of any future payments, including ground lease payments, should be analyzed showing the net present value using an appropriate discount rate. Please note that anticipated future payments resulting from a joint venture or partnership arrangement are considered speculative and should not form the basis of a seller’s fair and reasonable consideration analysis.

Fair and Reasonable Consideration: Security

If the corporation is entering into a development transaction in which the purchaser or a third party plans to build and deliver real property back to the seller, adequate security and assurances need to be evidenced in the documentation. Such security and assurances can take the form of escrow arrangements, guaranties, letters of credit, performance bonds, construction timetables with default provisions and adequate remedies, as well as appropriate provision for conducting the corporation’s activities during construction.

Option Contracts

Option contracts require Attorney General or court approval at the time the option is exercised. The Charities Bureau discourages the use of option or other contingent contracts, especially if they may be exercised over a long term.

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 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.

Verified Petition to the Attorney General or the Court

A verified petition to the Attorney General or to 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 must 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 property that is the subject of the transaction. N-PCL § 511(a)(4). For sales, a copy of the deed must be attached as an exhibit. Include a statement as to whether the deed contains restrictions.
- A copy of the contract or lease must be attached as an exhibit. If the contract has been assigned or will be assigned prior to closing, the assignment agreement must also be attached as an exhibit.
- A statement of the fair value of the property. N-PCL § 511(a)(4). A copy of the appraisal must 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). In addition, a copy of the corporation's most recent annual financial report or audited financial statements must be attached as an exhibit. If the corporation does not have annual financial reports, it should prepare a current schedule, certified by its Treasurer, of all assets, liabilities, income and expenses of the corporation and attach it as an exhibit. In certain circumstances, the Attorney General may decide that financial statements certified by an independent accountant are required. If the Petition is brought before the end of the fiscal year, then a financial report to date should be included.
- The consideration to be received by the corporation. N-PCL § 511(a)(5). If the consideration is less than the appraised value of the property, include a documented explanation.
- 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 must be attached as an exhibit. Documentation to support the payment of debts, expenses or other use of proceeds must be attached as an exhibit (evidence of debt, invoices and a closing statement.)
- A statement as to whether dissolution of the corporation is contemplated. N-PCL § 511(a)(5).
- 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). The statement must also 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, must be attached as an exhibit. If any board members have voted against the transaction, provide a brief explanation of the basis for such votes.
- 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). The total number of members, the number of members present at the meeting, the vote pro and con, and the number that constitutes a quorum must be included. A copy of the membership resolution, certified by the secretary, must be attached as an exhibit. If any members have voted against the transaction, provide a brief explanation of the basis for such votes.

- A statement of any unusual or extraordinary circumstances of the transaction that will assist in the Attorney General’s and/or court’s review.
- 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.
- A statement as to whether or not an application to the Attorney General or the court for similar approval was made previously, 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 lease, 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 property to be sold is located elsewhere. N-PCL §§ 510(a)(3) and 511(a).

If the application for approval of the transaction is 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 in the county where the corporation’s principal address is located. 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.

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, the sale price, the name of the purchaser and the address of the property must be included. For leases, the amount of rent, the term of the lease, the name of the lessee and the address of the property must be included.

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 placed 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.

NOTE – Effective November 1, 2018, registration with the Charities Bureau must be done online. The instructions and the portal for registration are posted on the Charities Bureau's website, www.charitiesnys.com.

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.

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 other disposition
- ___ 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, 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
- **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
Not-for-Profit Corporation Law

Index No.

-----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.

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

****Include the verification set forth on page 17.
Verification**

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 :
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

**Include the verification set forth on page 19.

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) :

Index No.

Pursuant to Sections 510 and 511 of the
Not-for-Profit Corporation Law

-----X

ADD BODY OF ORDER WITH RECITATIONS

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

E N T E R:

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 :
-----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 to (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.

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.

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
28 Liberty Street – 19th Floor
New York, NY 10005
212-416-8401

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

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

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 (trusts & estates matters - 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)

RESTATED
CERTIFICATE OF INCORPORATION
OF
THE NEW YORK BAR FOUNDATION
PURSUANT TO THE NOT-FOR-PROFIT CORPORATION LAW
OF THE STATE OF NEW YORK

1. The name of the Corporation is The New York Bar Foundation formerly Foundation of the New York State Bar Association, Inc. (hereinafter referred to as the "Corporation").

2. The date on which the Certificate of Incorporation was filed by the Department of State of New York was June 28, 1950.

3. The Certificate of Incorporation as heretofore amended is restated without further amendment to read in full as follows:

"1. The name of the Corporation is THE NEW YORK BAR FOUNDATION (hereinafter referred to as the "Corporation").

2. The purposes for which the Corporation is formed are:

(a) To take and hold by bequest, devise, gift, grant, purchase, lease, or otherwise, either absolutely or jointly with any other person or persons or corporation, for any of the purposes hereinafter set forth, any property, real, personal or mixed, or any undivided interest therein without limitation as to amount or value, to convey, sell or otherwise dispose of

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such property, and to invest, reinvest, and deal with the same in such manner as in the judgment of the directors will best promote the purpose of the Corporation, subject to such limitations, if any, as are or may be prescribed by statute, but without and free from restrictions applicable to trustees or trust funds.

(b) To apply its income and, if the Corporation so decides, all or any part of its principal for any or all of the following educational and charitable purposes: to advance legal research and education; to improve the administration of justice; to promote professional ethics and responsibility and service to the public; to cultivate the preservation of the history and traditions of the law, the courts and the legal profession; to encourage better public understanding of our legal heritage; to aid in making legal institutions more responsive to the public interest; and to sponsor studies, conferences, publications, and any and all other means of discourse, communication and exchange of ideas appropriate to the foregoing; PROVIDED, HOWEVER, that no part of the net income of the Corporation shall inure to the benefit of any private member or individual and that the Corporation shall not engage, nor shall any of its funds, property or income be used, in carrying on propaganda or otherwise attempting to influence legislation.

(c) The Corporation, in furtherance of its corporate purposes set forth above, shall have all the powers enumerated in Section 202 of the Not-For-Profit Corporation Law, subject to any limitations provided in the Not-For-Profit Corporation Law or any other

statute of the State of New York, and provided that nothing herein shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in Section 404(b), (c) or (e) to (P) of the Not-For-Profit Corporation Law of the State of New York.

3. The existence of the Corporation shall be perpetual.

4. In the event of any merger, consolidation, dissolution or the winding up of the affairs of this Corporation and after the payment of its just debts and liabilities, the remaining assets of this Corporation will be paid over, subject to the written approval of a Justice of the Supreme Court of the State of New York, to one or more organizations which shall then be exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provisions of any subsequent Federal tax laws).

5. The Corporation shall be a Type B Corporation under Section 201 of the Not-For-Profit Corporation Law of the State of New York.

6. The territory in which the operations of the Corporation will principally be conducted is the State of New York.

7. The office of the Corporation is to be located in the City and County of Albany.

8. The post office to which the Secretary of State will mail copy of any Notice required by law is:

The New York Bar Foundation
One Elk Street
Albany, New York 12207"

4. The foregoing Restated Certificate of Incorporation was authorized by vote of more than a majority of the Board of Directors at a meeting duly

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