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### Legal Alert: Is Your Certificate of Incorporation Still Accurate?

A certificate of incorporation enables a nonprofit organization to exist as a legal entity. A nonprofit organization that acts in ways that are not authorized by the certificate may be unable to enforce its contracts, and its officers and directors may face legal liability. As a result, it is important to update the certificate to reflect major changes in the corporation's activities and governance. Here are some issues we frequently encounter. If any of them describe your organization, consider seeking legal counsel.

- The organization's services, service area, or client population have changed since the organization was founded.

*Check to make sure the new activities are within the scope of the certificate's "purposes clause". Look for language on the certificate that states, "The corporation is formed for the purpose of..."*

- The organization was founded as a membership corporation, but there are no longer any members with the power to elect the board of directors.

*Until 1970, all New York nonprofits were required to have members who played a role in corporate governance. Today, charitable nonprofits are no longer subject to that requirement. If your charitable nonprofit does not have such members, check to make sure there is no membership requirement in the certificate.*

- The organization engages in legislative advocacy but the certificate bans lobbying.

*501(c)(3) nonprofits that are public charities are allowed to lobby as long as that activity is no more than an insubstantial part of their activities. However, some older certificates completely ban lobbying. If this describes your organization, consider amending the certificate.*

- The organization's address has changed and no one has informed the Secretary of State.

*It may be necessary to file a certificate of change to update the location of the corporation's office, mailing address, or designation of its registered agent.*

For New York corporations, amended Certificates of Incorporation are filed with the New York Department of State. It may be necessary to obtain the consent of the Charities Bureau or a state agency prior to filing.

Lawyers Alliance staff are available to help qualified nonprofits review and amend their certificate of incorporation and other governance documents. Please contact Program Associate Jessica Perelman at [jperelman@lawyersalliance.org](mailto:jperelman@lawyersalliance.org), (212) 219-1800 ext. 278, or visit [www.lawyersalliance.org](http://www.lawyersalliance.org) for further information.

***This alert is meant to provide general information only, not legal advice.***

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