



ESTABLISHING A CHARITABLE BAIL FUND IN NEW YORK STATE A STEP-BY-STEP GUIDE

Extreme poverty shouldn't keep anyone in jail, and the inability to come up with five hundred dollars shouldn't force anyone to plead guilty. *But it does.* The sad reality of our criminal justice system is that people who can't pay small amounts of bail often stay in jail while their cases wind slowly through the system, or are forced to plead guilty in a criminal case to get out of jail.

In July of 2012, with the passage of the Charitable Bail Act, which amended Article 68 of New York's insurance law to allow not-for-profit bail funds, New York's legal landscape changed in an important way. Now, nonprofit organizations certified by the Department of Financial Services can post up to \$2000 bail for misdemeanor defendants.

This new law, championed by The Bronx Defenders and The Bronx Freedom Fund, will fill an important gap for people charged with minor crimes who might otherwise languish in jail because of their poverty. Because for-profit bail bond companies profit from fees based on the bail amount, they frequently refuse to write bonds in cases where their fees would be \$200 or less, leaving those at the very bottom of the economic heap – those held on small amounts of bail – without any recourse.

Finally, charitable bail organizations have the potential to serve this important and underserved population. Under the law they can operate in any county in New York State.

In short, a small revolving bail fund managed by a minimal staff can make an enormous impact in hundreds of people's lives.

Before beginning the certification and licensing process, it's important to consider the time and resources of your organization. Licensing can take up to six months, and involves the inherent frustrations of filing with several different state and federal agencies. It will also cost a minimum of \$1050 and up to \$2000, depending on whether your organization is already registered with the state and federal government. You may also want to think about board membership, fiscal sponsorship and funding sources before or during the licensing process.

Do I need to create a Charitable Bail Organization?

Under Article 68 of New York's Insurance Law, any individual or organization that deposits bail or executes a surety bond as a vocation is considered to be engaged in a bail bond business and must be licensed by the Department of Financial Services. So if your goal is to post bail for individuals who cannot afford to post bail, then YES, you need to be certified as a charitable bail fund.

If you've decided to create a charitable bail fund, what follows is a comprehensive step-by-step guide to do just that.

A warning: this may seem daunting at first, but it is mostly a matter of filling out forms, and complying with a complicated oversight structure. The Bronx Freedom Fund is here to help you at every stage of the process. This guide is intended to be a one-stop reference for information on how to:

- 1) register as a nonprofit organization under federal tax laws;
- 2) register as a charity under New York state law;
- 3) obtain a Charitable Bail Organization (CBO) license from New York's Department of Financial Services;
- 4) obtain an individual bail bond agent license from New York's Department of Financial Services; and
- 5) establish procedures and processes for posting bail, although these procedures will vary widely by county and courthouse.

At the end of this guide are most of the forms required for licensing, along with information about how much they cost and where to send them.

I. Register as a 501(c)(3) organization under federal law.

Only nonprofit organizations that are tax-exempt under Section 501(c)(3) of the U.S. tax code can apply for certification as a charitable bail organization. Useful information about applying for recognition of tax-exempt status is available from the IRS website at <http://www.irs.gov/Charities-&-Non-Profits/Application-for-Recognition-of-Exemption>.

The application for tax exemption will require:

Articles of incorporation or other organizing documents filed with New York's Department of State. Once filed, the state department will certify receipt. At the time of incorporation, your organization may also want to establish by-laws. **[Appendix A]**

Form 1023, Application for Recognition of Exemption, available on the IRS web site. The application must describe completely the organization's actual and planned activities. **[Appendix B]**

You should also submit Form SS-4 **[Appendix C]** to receive a federal employee ID number, which will be required for your charitable bail organization application as well as for federal tax purposes.

What do I need to file articles of incorporation?

A proper header: "Certificate of Incorporation of [Organization], under Section 402 of the Not-For-Profit Corporation Law."

Name of the organization

Type of corporation (private or public) *

The purpose for which the corporation is formed.

County of incorporation

The names and addresses of all initial directors

A fee of \$75

If the application is complete, it should be approved around a month after applying.

II. Register as a charity under New York law.

In addition to being recognized as a nonprofit organization under federal law, a charitable bail organization must be registered as a charity under Article 7-A of New York's Executive Law. Your organization must apply for federal tax exemption status before registering with the state. To submit your registration as a charitable organization, you will need to have ready:

Articles of incorporation or other organizing documents filed with New York's Department of State (see above).

Form CHAR410, available at http://www.charitiesnys.com/charities_new.jsp. The form requires basic information about the organization, a specific description of its purposes, and the signatures of two officers. **[Appendix D]**

A \$25 fee if you intend to solicit contributions

III. Apply to DFS for a Charitable Bail Organization certificate.

Once your group is organized and registered as a nonprofit, you can apply to DFS for certification as a Charitable Bail Organization. The forms needed to apply are available on the Department of Financial Services website, dfs.ny.gov, by accessing "Home," "Applications and Licensing," "Insurance Agents and Brokers" and "Charitable Bail Organization Instructions and Applications." **[Appendix E]**

The application should be completed by a director, officer or executive in your organization. With the application you need to include:

A **check for \$1000** made out to the Superintendent of Financial Services

A copy of your organization's articles of incorporation or other founding documents

Proof of 501(c)(3) status and New York registered charity status

Name, residence, SSN and DOB of all directors, trustees and executives

A **director or executive's attestation** to criminal history and child support obligations (attached to the application form)

The director or executive completing the application must also have his or her **fingerprints** taken by MorphoTrust USA, a contractor with the Division of Criminal Justice Services. There are a few steps to getting fingerprints taken:

1. Go to MorphoTrust's website at www.identogo.com and click "Book an Appointment." Choose your state and "Online Scheduling" to make an appointment. The "ORI Code" is NY921270Z. For "Reason for Appointment," select "Principal, Executive or Director of Insurance Company." Appointments are generally available as early as the same week.
2. Fill out the form attached to the CBO application and bring it to your appointment. For "job or license type," select "**Principal, Executive or Director of Insurance Company.**"
3. Bring a **check or money order for the required fee** (this fee is published on the DFS web site and changes every six months – in the past it has been around \$100) and **two forms of photo ID** to your appointment.

After all of these steps are completed, mail your application to the New York State Department of Financial Services, Licensing Bureau, One Commerce Plaza, Albany, NY 12257.

Once granted, certificates are good for a period of five years. After that, the organization has to apply for a renewal.

IV. Apply to DFS for an individual bail bond agent license.

Who to call:

Department of Financial Services
Licensing Services Division
(518) 474-6630

In addition to getting a CBO certificate, all staff who intend to post bail for clients must be licensed as bail bond agents by the New York Department of Financial Services. Even the director or officer who fills out the CBO application must apply separately for an individual bail bond agent license.

After submitting an application to DFS, you may want to contact Licensing Services to ensure that your application has been received. Applications will take several months to process once the application is received.

There are a few steps to apply for a bail bond agent license:

1. **Take the New York State Bail Bond Agent Exam** (available on the exam website as Series 17-59) and receive a passing grade of 60% or higher.

The sixty-question multiple choice exam is administered through Prometric Exams. To register, use the Prometric website's New York Dept. of Financial Services page (www.prometric.com/newyork/ins) or call 800-324-7147. Exams can be scheduled a week or two in advance on a computer testing center in your city and cost \$40. For a list of the material included in the exam, see the Prometric exam content outline, which lists various statutes, vocabulary and legal terms that you should be familiar with. Make sure to save the grade report that is generated at the testing site, since it's required for your application.

2. **Complete the paper application.** After you pass the exam, you will be mailed an application. **[Appendix F]** In addition to completing the application, which you will need to have notarized, you must also provide:

Fingerprints processed through MorphoTrust USA. See the instructions in Part III for processing fingerprints through MorphoTrust.

A background check report. The Department of Financial Services will conduct a background report based on information you provide. You do not need to complete your own background report.

Two notarized form character references. Forms for the character affidavits are provided with the application. Your references cannot be related to you.

Two passport photos.

A surety bond for \$5000.

How do I get a surety bond?

The bond will be for \$5000, meaning that the insurer must pay \$5000 if the applicant violates the terms of his or her license. Your organization doesn't need to pay \$5000; the cost of the bond will usually be under \$200.

If you have an insurance broker, they can help you find a surety company; otherwise, a starting place would be to inquire with established insurance companies or perform a search of registered insurance brokers on the DFS web site. The bond will be issued in the name of the applicant, so part of the process will be a credit check of the applicant.

Before you send in your application, make sure that you have both the bond itself and the surety acknowledgment (a notarized statement from the company that is executing the bond). DFS must send the surety bond to the Attorney General's office before the application will be processed, so if the paperwork is not submitted correctly the entire licensing process will be delayed.

The bail fund will also have to submit **notice informing DFS if it is appointing an additional licensed bail agent**. An officer of the bail fund will need to sign off on the application. (It's not a problem if the applicant and the bail fund officer are the same person.)

3. Mail in your application.

After DFS receives your application and your surety is approved, you will be appointed an examiner. This examiner will contact you by e-mail and mail in order to schedule an interview. Before the interview is scheduled, you may have to provide additional information, including:

State and federal tax returns for the current year and two previous years (or W-2/1099)

Copies of any **professional licenses or registration**

4. Attend your DFS interview. Once the examiner has all the requested paperwork, he or she will schedule the interview. The interview may be scheduled as soon as two weeks after the paperwork is received.

Bring **two forms of government ID** to the interview.

At the interview, be prepared to answer questions about the following:

Employment history of officers and/or employees
Funding of the charitable bail organization
Source of operating budget
Source of bail money
Receipt of any local, state or federal money
Salary of all employees, officer and executives
Policy and procedures of your charitable bail organization
Procedures by which clients are chosen
Procedures for posting bail
Whether money will ever be expected of clients and/or their families
Whether the client's family is liable for bail funds if the client fails to appear

If the interviewers have no objection to your application, they will submit a memo afterwards reflecting their approval to DFS. Your license will be available 3-7 days afterward.

You will have to check the website to be sure your license has been issued. When you see your name, print out a physical copy from the DFS web site.

V. Establish bail fund policies and procedures.

There are certain limits on the activities of a licensed charitable bail organization. When creating policies and procedures for your bail fund, keep in mind the following:

Charitable bail organizations may only deposit bail in the amount of \$2000 or less. They may provide all or part of a defendant's bail obligation.

Charitable bail organizations may only deposit bail for clients charged with one or more misdemeanors who are financially unable to pay bail.

Charitable bail organizations may not execute any bond for a defendant.

Charitable bail organizations may not receive compensation or charge a premium for bail assistance.

Charitable bail organizations may only deposit bail in one county *unless* the organization operates in New York City, in which case it may operate in all five counties.

CBOs CANNOT:

Post bail in a felony case

Charge fees

Post bond

Other important things to consider related to your bail fund's operations include:

Criteria for eligibility. Your organization may wish to establish internal criteria for eligibility more restrictive than the statutory criteria (which specify only that the top charge be a misdemeanor and bail be no greater than \$2000). Established criteria will help standardize decisions about posting bail for clients.

Referral process. Establish a means by which bail fund staff will learn about potentially eligible clients. You may have to decide whether staff will be in the courthouse or reachable by phone, e-mail or otherwise. Will staff be able to interview clients or access their files before posting bail? Determine how and when this will happen.

Location(s) where bail will be posted. Determine all court offices and correctional facilities where bail may be posted and each of their required procedures.

Form by which bail will be posted. Different agencies require different forms of bail. Find out from the court clerk's office and correctional facilities whether they take cash, money orders, certified bank checks, and/or cashiers' checks. Find out also to whom checks should be written.

Procedures for tracking funds. Maintain records of the all bail funds posted and refunded. Determine, if possible, how many clients can be assisted with existing funds.

Follow-up and support mechanisms. Determine how staff will follow up with clients to ensure their appearance in court. Options to consider include regular phone calls, in-person meetings, assistance with transportation costs and childcare, and connection with social services.

It is our hope at The Bronx Freedom Fund that the combined efforts of community and nonprofit bail funds can impact the lives of people caught in the criminal justice system, and be a model for change in bail and pretrial detention across the country. We wish you the best of luck in establishing a charitable bail organization. If you have any questions about this guide or about the licensing process in general, please contact:

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