Legal Overview for ASAM Chapters

I. Introduction
ASAM Chapters are an integral part of the ASAM structure. However, from a legal standpoint, they are considered to be entities separate from and independent of ASAM and responsible for their own activities. As a legal entity, each chapter has certain obligations under both federal and State law. The purpose of this document is to provide an overview of those legal obligations.

II. Incorporation
Every chapter must be incorporated. The corporate form offers the best protection to the chapter, its officers, directors and members, and to ASAM. Each chapter should become incorporated in the State in which it is located. This is accomplished by completing and filing of a document called a certificate of incorporation or articles of incorporation. This document is filed with a State government agency, usually the Secretary of State. This document also becomes the basic governing document of the corporation and is subordinate only to State or federal law.

The articles of incorporation (or certificate of incorporation) is a simple document of usually no more than four pages which includes basic information such as the name of the chapter, its general purposes, an initial board of directors, etc. Importantly, there also needs to specific language regarding tax-exempt status (see section IX, below).

Whether or not a chapter wishes to seek the assistance of an attorney in the incorporation process is a decision for each chapter. While incorporating is not a complicated procedure, if no one associated with the chapter has ever been through that process, it may be helpful to at least have some guidance. In order to reduce the legal fees, the chapter may want to prepare the articles of incorporation as best as it can prior to meeting with an attorney and simply have the attorney review that document and make any corrections or deletions. Most attorneys also have standard forms and they should not have to spend more than a few hours at the most on preparation and filing. Many State agencies have websites as well from which forms may be obtained. One helpful portal site in this regard is www.findlaw.com. In addition to legal fees, usually there is a filing fee of $100 - $250 to file articles of incorporation. Incorporation can be effected in a short period of time, often in 2-3 weeks. It also should be noted that bylaws, while required by ASAM, need not be filed with a Secretary of State or other government agency.

III. Registered Agent
All corporations must have a registered agent. This person is the official “contact” of the corporation for communications from the State and other third parties. For example, annual report forms (see section VII) are sent to this person. While the role of a registered agent is largely passive and rarely burdensome, it is very important. Significant documents, including notices of lawsuits, often are transmitted to the corporation through the registered agent. If the individual originally designated as the registered agent ceases
involvement with the chapter, but the Secretary of State is not notified of a replacement, these vital documents can go undelivered to the chapter, with potentially adverse consequences. Therefore, chapters should be conscientious in ensuring the registered agent position is held at all times by someone who is responsible and is active in the chapter. As an alternative, there are companies that, for a fee, will serve as registered agents. These companies have the advantage of not being as transient as individuals.

IV. Employer Identification Number
Every chapter must have an employer identification number (EIN), even if it has no employees. This is particularly important with respect to opening and maintaining a bank account. In addition to the fact that most banks now require organizations to have an EIN before they will open an account and process checks for the organization, even absent such a requirement, the only alternative to an EIN would be to use the social security number of one of the officers of the chapter. The disadvantage with this approach is that the bank will consider all funds to be funds of that individual, and will report this to the Internal Revenue Service for tax purposes, resulting in potential tax liability as an individual. In addition, disputes as to the ownership or control of chapter funds may arise if an individual’s social security number is used.

An EIN can be obtained by applying on-line or by filing the Form SS-4. This form is available from the Internal Revenue Service, including in downloadable form from the IRS website, www.irs.gov.

V. Tax-Exempt Status
ASAM is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code. In addition, ASAM has a group ruling that covers all of its chapters. Therefore, there is no need for a chapter to separately apply with the Internal Revenue Service for exemption. Once a chapter is approved by ASAM, it is covered by the group exemption.

However, many States also require that organizations apply with the State for exemption from the State income tax. Other states do not. In most cases, exemption under State law is virtually automatic once federal exemption is secured. Chapters should check with the finance or revenue agency in their State to determine the requirements. It is also possible to obtain exemption from other State taxes, such as sales and property. Again, each chapter should determine the specific rules in their State.

VI. Tax Returns
The annual federal return for tax exempt organizations is the Form 990, and this is available from the IRS website. ASAM does not file this return on behalf of its chapters. While the Form 990 need not be filed unless the average gross revenue for a chapter is $25,000 annually, if this threshold is met, then the Form 990 must be filed. Of course, since no taxes are due, this is an “information” return as opposed to an income tax return. For revenue under $25,000 annually, Form 990-N should be completed. There may also are State tax filing requirements.
VII. Other Filing Requirements
In addition to tax filings, chapters will be required to file an annual report with the appropriate State agency, usually the Secretary of State. This is a simple form that requests basic information, such as the names and addresses of the chapter officers and directors. There is also a modest annual fee (usually no more than $100) which accompanies the annual report when filed. While completing and filing the annual report is not burdensome, it is important. Failure to do so can result in the corporate status of the chapter and the protection and benefits such status affords being revoked.

VIII. Recordkeeping
There are five general categories of records that should be maintained by a chapter.

Corporate records. These include articles of incorporation; bylaws, including all amendments; minutes of all board of directors, executive committee, and membership meetings; and all annual reports filed with the State. These records should be kept on a permanent basis.

Tax records. These include all tax or information returns, as well as any correspondence with the IRS or State or local taxing authorities. As with corporate records, tax information should be maintained on a permanent basis.

Financial records. Budgets, balance sheets, financial statements, bank statements, and canceled checks should be maintained for at least seven (7) years.

Insurance records. Policies should be kept on a permanent basis. Documents related to claims should be maintained for six (6) years following resolution of a claim.

Contracts. Written contracts, such with a meeting facility, should be retained for at least three (3) years following termination or completion of the contract.

IX. Language to be included the Articles of Incorporation of each ASAM Chapter
This corporation is organized, and shall be administered and operated, exclusively to receive, administer, and expend funds for charitable and educational purposes, within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986. [At this point, the specific purposes of the chapter can be set forth].

No part of the net income of the corporation shall inure to the benefit of or be distributable to its directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services actually rendered and to make payments and distributions in furtherance of its exempt purposes. No substantial part of the activities of the corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation, and the corporation shall not participate in or intervene in any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of these Articles, the corporation shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt from tax under Section 501(c)(3) of the Internal Revenue Code of
1986, or by an organization contributions to which are to be deductible under Section 170(c)(2) of such Code. Upon the dissolution of the corporation or the winding up of its affairs, the assets of the corporation shall be distributed exclusively for charitable or educational purposes or to organizations which are then exempt from federal tax under Section 501(c)(3) of the Internal Revenue Code of 1986, and to which contributions are then deductible under Section 170(c)(2) of such Code. [A chapter can name a specific organization here, as the recipient of the chapters funds upon dissolution, such as ASAM].