

Understanding the Laws Governing Charitable Fundraising

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Topics

- State Regulation of Charitable Solicitations
- Online Fundraising
- Disclosures and other requirements
- Commercial Fundraisers, Fundraising Counsel, and Commercial Co-Venturers
- Crowdfunding and social media



State Regulation of Charitable Solicitations

- Charities must register in advance to solicit donations in most states
- Solicitation is broadly defined. Usually includes oral, written, or online requests for contributions
- An organization need not be physically present in a state to engage in solicitation activities that require registration



Why do states have these rules?

- Transparency and accountability
- Consumer protection: informed decision making by donors
- Protection of charity:
 - Use of name with knowledge and permission
 - Required terms in contracts with commercial fundraisers and fundraising counsel



Where do you need to register?

- An organization should register in its state of incorporation, each state in which it has a physical presence, and each state in which it targets residents or receives contributions from residents.
- Charities may choose to register nationwide rather than analyze its sources of income and donations received from residents in various states



Online Fundraising

- Charleston Principles (2001): nonbinding
- Register where charity is domiciled
- Just having a website accessible in the state probably not enough
- Look into registration requirements (and register if required) anywhere you are “actively soliciting” or receiving \$\$ in a repeated, ongoing or substantial basis



Required Disclosures

- Name and address of the organization that will utilize funds for charitable purposes
- If there is no organization, the manner in which the money collected will be utilized for charitable purposes
- If not tax-exempt, the non-tax-exempt status of the organization



Required Disclosures

- % of the gift or purchase price deductible under federal and state law. (If not deductible: “This contribution is not tax deductible.”)
- 10 point (or larger) type
- CT-694 required if certain conditions met, including collected more than \$1m in CA



Exceptions to Disclosure Requirements

- Non-sale solicitations by a volunteer; need only provide:
 - Charity name and address
 - Charitable purpose
 - Financial info about charity may be obtained at [charity's address]
- Solicitations by a volunteer under 18



Exceptions to Disclosure Requirements

- Solicitations to membership
- Solicitations on premises
- Certain disclosures not involving personal contact (e.g., radio, Internet if under 60 seconds), but must send the info later if donation/purchase made



Commercial Fundraisers

Any person who for compensation:

- Solicits funds, assets or property in CA for charitable purposes; or
- As a result of solicitation, receives or controls funds, assets or property; or
- Employs, procures, engages any compensated person to solicit or control funds, assets, or property for charitable purposes; or



Commercial Fundraisers (cont'd)

- Is paid by a percentage of funds raised to help with planning or managing fundraising
- Excludes charity employees and trustees



Commercial Fundraiser Initial Registration

- Must register on Form CT-1CF with the AG before solicitation or holding funds
 - \$350 fee
 - Must post bond or cash deposit
 - Asks about common officers, directors with charity
- Charity may not use a commercial fundraiser who isn't registered



Commercial Fundraiser Annual Registration

- Must file annually with AG on Form CT-2CF
 - Must account for all funds collected
 - Line 4 (other fundraising expenses paid) must be completed by charity
 - Asks about common officers, directors, trustees with charity



Commercial Fundraiser Notice Before Solicitation

- Must file with AG on Form CT-10CF at least 10 “working days” before the solicitation campaign begins
- Requests basic information about the fundraiser, the charity, and the campaign
- Exception for disaster solicitations



Commercial Fundraisers: Written Contract

- Required for every solicitation campaign or event
- Must be signed by an official authorized by the charity's governing body



Commercial Fundraisers: Contract Requirements

- Charitable purpose;
- Obligations of both parties;
- Fee arrangement;
- Effective, start, and termination dates;
- 5-day deposit of contributions requirements



Commercial Fundraisers: Contract Requirements (cont'd)

- Charity must control content and frequency of solicitation
- Maximum payments to sponsors or endorsers
- Cancellation rights (which include charity's right to cancel within 10 days of signing without penalty; may otherwise cancel with 30 days notice or anytime if CF behaves badly in certain ways)
- Voidable if CF not registered with AG



Fundraising Counsel

- Person who for compensation (other than as a percentage of funds) plans, manages, advises, counsels, consults, or prepares materials re: the solicitation of funds, assets or property in CA for charitable purposes; and
- Does not solicit for charitable purposes; and
- Does not receive or controls funds, assets or property; and
- Does not employ, engage any paid person to solicit, receive, or control funds, assets, or property



Fundraising Counsel (cont'd)

One is deemed to receive or control funds, etc. if:

- Has the right to approve or veto any payment from an escrow account of the funds
- Maintains an interest in an account where funds are deposited
- Has right to access funds if held by a caging company



Fundraising Counsel (cont'd)

One is deemed to receive or control funds, etc. if:

- Has an ownership or management interest in another entity that receives or controls the funds solicited (excluding federally insured financial institutions)
- Receives any direct or indirect financial benefits from another that receives or controls the funds, etc., solicited (other than the charity)



Not Fundraising Counsel

Various exclusions, including:

- attorney, investment advisor, banker giving professional advice
- A charity
- Anyone whose annual compensation for fundraising counsel activities is \$25,000 or less



Fundraising Counsel: Initial and Annual Registration

- Must register on Form CT-3CF with the AG before working with a charity, and annually
 - \$350 fee
 - Asks about common officers, directors with charity
- Charity may not use an FC who isn't registered



Fundraising Counsel Notice Before Services Provided

- Must file with AG on Form CT-11CF at least 10 “working days” before providing services to charity
- Requests basic information about the filer, the charity, and the services provided
- Exception for disaster solicitations



Fundraising Counsel: Written Contract

- Required for each service to be performed by fundraising counsel for the charity
- Must be signed by an official authorized by the charity's governing body



Fundraising Counsel: Contract Requirements

- Charitable purpose;
- Obligations of both parties;
- Fee arrangement;
- Effective, start, and termination dates;
- Statement that fundraising counsel will neither solicit, receive nor control donated funds, assets and property, or employ any other person to do so



Fundraising Counsel: Contract Requirements (cont'd)

- Charity must control content and frequency of solicitation
- Cancellation rights (which include charity's right to cancel within 10 days of signing without penalty; may otherwise cancel with 30 days notice or anytime if FC behaves badly in certain ways)
- Voidable if FC not registered with AG



Commercial Co-Venturer

- Any person who, for profit, is regularly and primarily engaged in trade or commerce other than in connection with charitable fundraising; and
- Represents to the public that the purchase or use of goods, services, any thing of value will benefit a charity or be used for a charitable purpose



Commercial Co-Venturer: Registration and Reporting

- Registration - Form CT-5CF
 - \$350
 - Asks about common directors/officers with charity
 - Financial report - Form CT-6CF
- Or, can have a written contract*



Commercial Co-Venturer Contract Requirements

- Signed by two officers of the charity
- Entered into prior to representing to the public that the purchase/use will benefit charity
- Must transfer funds/assets received for charitable purposes within 90 days
- Provides written accounting to charity/trustee



Other Charity Obligations

- Charity must establish and exercise control over its fundraising activities, including approval contracts and “ensuring” fundraising conducted without coercion
- Charity can’t misrepresent the purpose of the charity or the solicitation



Crowdfunding and Social Media

- Technology and social media are changing every day
- Creative people continually are developing new ideas to generate money for charitable causes (and/or to sell products)
- The challenge is applying existing laws to new ideas and keeping up with innovations in raising money



Crowdfunding: Key Questions

- Who is doing what? (see contracts; flow of funds)
- Does the transaction involve a commercial fundraiser, fundraising counsel, a fundraising charity, or a commercial co-venturer?
- Is each party properly registered?
- Are the disclosures accurate and adequate?
- Is there oversight and transparency? How are charitable assets protected?
- Does geography matter?



Crowdfunding: Other Issues

Federal Tax Law

Eligibility for charitable income tax deduction

Are donations restricted?

Use of donor advised funds

Receipts/donor information

Other Considerations

Use of name – protection of brand and goodwill



Crowdfunding Hypo #1:

- Platform X offers an online platform with the potential to reach a large number of prospective donors.
- Platform X charges a fee, in addition to other third party fees, for services such as payment processing.
- Charity A sets up a fundraising page on Platform X and receives contributions through the platform.



Crowdfunding Hypo #2:

- John Smith sets up a fundraising page on Platform Y to support Charity B.
- John Smith does not take a fee and does not notify Charity B of his fundraising activities.
- Donors visit the fundraising page and make contributions.
- The contributions are sent via the platform to Charity A, which makes grants to other charities, including Charity B.
- Donors receive receipts from Charity A for their contributions to Charity A.



What's Next?

- Will Charleston Principles be revisited?
- Multi-state single registration portal being worked on:
<http://www.statecharityregistration.org/>
 - Currently, only has Georgia and Connecticut
 - More to be added early next year
 - Charitable registration only so far (no coventurer, commercial fundraiser yet)

