

Compliance with Charitable Solicitation Laws

Most charitable organizations engaging in solicitation are subject to state solicitation laws. The goal of these laws is to require charitable organizations to inform states that they plan to solicit donations from residents of that particular state.

Charitable solicitation laws are intended to protect residents of a particular state from fraudulent solicitations and prevent misappropriation of charitable funds. In practice, the registration process can be confusing, especially when organizations are faced with registering in multiple states, all of which have different registration requirements and regulations. Significant penalties can be levied against organizations that fail to register when required.

This article will provide an overview of laws regarding charitable solicitation and registration requirements.

Solicitation Defined

Solicitation is generally any request to give money or property (1) in connection with an appeal for charitable purposes, (2) in which the name of the charity is used as an inducement for making a gift, or (3) in which any statement is made that the gift will be used for charitable purposes, although it is defined differently amongst the various states (for example, some states consider a "Donate Now" button on a website to be solicitation, whereas others do not).

Registration

There are some additional issues to take into consideration related to charitable solicitation and registration.

Who Should Register

Some states have no charitable solicitation laws, whereas others require only commercial fundraisers to register to solicit in their states, and still others require charities themselves to register if soliciting in their particular states. Almost all states require registration when a charity sends any type of correspondence (mail, e-mail, postcard) to a resident of a particular state requesting that they make a donation, but some states consider solicitations via the internet to be solicitations for which entities need to register in a particular state.

Also, charitable solicitation laws are not limited to states. Cities and counties in some states require registration as a condition to charitable solicitation within their jurisdictions. California has a number of cities and counties in which organizations might need a license to solicit. For example, Los Angeles requires that a minimum of 15 days before the start of a fundraising event, an organization should file with the LA Police Commission (Charitable Services Section) and provide its articles of incorporation, bylaws, and a determination letter; the organization should also file a post-event report.

Not all charitable organizations are bound by filing and registration requirements. Typical filing exemptions in various states include churches and religious organizations, private foundations, educational institutions, governmental entities, and healthcare organizations. In most states, though, charitable organizations are required to notify the state that they have satisfied a recognized a filing exemption and are thus exempt from registration or filing requirements in that particular state.

Registration Process

Typically, registration entails submitting a registration fee and a good deal of paperwork, including documents showing a statement of charitable purposes, how the organization intends to solicit in the state, and how the organization intends to use the solicited funds, as well as organizational documents such as articles of incorporation, bylaws, and an IRS determination letter. Organizations will also have to submit a copy of their most recent Form 990, a copy of their most recent audited financial statements or financial reports, and a listing of their Board of Directors. In rare cases, organizations will even be asked to supply their Executive Director's employment history for the past 10 years. Registration fees vary widely amongst the states which require registration. Five states do not charge a registration fee and 32 states charge \$100 or less to register.

Registration is usually with the Attorney General or Secretary of State, although this can vary from state to state. For example, in Florida registration is with the Department of Agriculture and Consumer Services, and in the District of Columbia it is with the Department of Consumer & Regulatory Affairs/Office of Tax and Revenue.

Renewal Requirement

Registration is only the initial step in complying with solicitation laws. Most states also require annual renewal filings that typically include the most recent Form 990 (see Part VI, Line 17 and Schedule G, Part I, Line 3 of Form 990 and Part VII-A, Line 8 of Form 990-PF) and audited financial statements or most recent financial reports. Annual filing fees range from \$0 to \$2,000 depending upon annual gross receipts and other factors.

Compliance Challenges

Compliance with charitable solicitation laws can be difficult for a number of reasons, but mainly due to the multitude of different state (and other jurisdiction) requirements. Organizations deal with a patchwork of inconsistent registration requirements, including different filing thresholds and filing deadlines. For example, some states take the position that the existence of a web site that accepts donations is considered a solicitation in that state. Also, some states do not have broad charitable solicitation registration rules. Texas, for one, requires registration only for charities purporting to benefit public safety personnel or veterans, and although Missouri requires registration, most 501(c)(3) entities are exempt.

Regulations regarding annual renewal and disclosure filings are also widely varied. Many states have different due dates for filing of annual reports, and most states require a copy of the most recent Form 990, but not all. In addition, some states accept federal extensions, and some states require the filing of that particular state's extension form.

Consequences of Failure to Comply

Despite the difficulties, organizations should find a way to handle compliance because failure to comply with solicitation laws can be costly. Penalties for failing to register or submitting annual filings in a timely fashion are usually monetary. For example, Florida imposed a \$10,000 fine on a Tampa charitable organization that failed to register to solicit, New Jersey imposed a fine of \$17,500 on an in-state entity for failure to register, and Georgia imposed a \$25,000 fine for failure to register (although that fine was mistakenly imposed on an organization that was exempt in Georgia). Other penalties might include being barred from soliciting in the state for a given period of time.

Special Considerations for Entities with Affiliates and Partners

Additional regulations apply to certain affiliates and partners of charitable organizations, such as commercial co-venturers and professional fundraisers.

A commercial co-venturer is anyone who is regularly and primarily engaged in commerce and who conducts a charitable sales promotion with a charitable entity. This promotion represents that the purchase or use of goods/services offered by the commercial co-venturer will benefit a charitable organization or purpose. The general legal requirements for commercial co-venturers include a written contract between the charitable organization and the commercial co-venturer describing the goods and services to be offered, the geographic area of the promotion, the beginning and ending dates of the promotion, and how financial records of the promotion will be kept; filing of the written contract with the state Attorney General prior to the launching of the charitable sales promotion; keeping detailed accounting records of the charitable sales promotion; and providing disclosure statements in the charitable sales promotion advertising, such as the maximum amount which will be donated to charity.

Professional fundraisers who directly solicit the general public on behalf of a charitable organization for a fee are required to register in most states.

Unified Registration Statement (URS)

There are initiatives underway to simplify and clarify the registration process. For example, the Unified Registration Statement (URS) represents an effort to consolidate the information and data requirements of all states that require registration of charitable organizations performing charitable solicitations within their jurisdictions. The National Association of State Charities Officials (NASCO) and the National Association of Attorneys General organized the URS effort with the goal of standardizing, simplifying, and economizing compliance with the state charitable solicitation rules. An easier and less time consuming alternative to filing all of the respective registration forms produced by each of the cooperating states, the URS allows charitable organizations to complete either the applicable state registration forms or only the URS. It is thus very beneficial for those charitable organizations soliciting donations on a national basis. Currently, a majority of states requiring registration accept the URS, although a couple of states have stopped accepting it in recent years, and specific requirements are still different state by state.

To complete the URS, simply fill it out following its accompanying instructions, leave state-specific items and signature lines blank, photocopy it, and then fill in the state-specific material and provide signatures based on the regulations of each given state (for example, be sure to determine whether a particular state requires a notarized signature). When submitting the URS, attach the required support documents (a good number of states require particular attachments and supporting documents for their state registration filing, which somewhat defeats the purpose of the unified statement) and include a check for the applicable registration fee. For more information on the URS, see www.multistatefiling.org.

The Charleston Principles

The Charleston Principles are non-binding guidelines that provide guidance regarding the state registration requirements for charities that use a website to solicit contributions. If an entity is domiciled within a state and uses the internet to conduct charitable solicitations in that state, it should register if that state requires registration. If an entity is domiciled outside of a state, it is deemed under the Charleston Principles to meet the requirements of charitable registration if: its non-web activities would require it to be registered, the entity solicits contributions through an interactive site, and either it specifically targets persons physically located in the state for solicitations, or receives contributions from the state on a repeated or ongoing basis or a

substantial basis through its site, or solicits contributions through a non-interactive site but does so through a targeted campaign or an ongoing basis.

For example, organizations would probably be required to register if they were soliciting “targeted” donations over the Internet via a website specifically targeting residents of a particular state or even if just generally soliciting donations via an interactive website.

The maintenance or operation of a website that does not contain a solicitation of contributions (but only gives information concerning an organizations programs and activities) will not typically trigger a registration requirement, even if voluntary contributions are received. However, solicitation for the sale of products or services where a portion of the amounts paid for a service or product is to be provided to a charitable organization or charitable purpose are covered under these guidelines.

For More Information

For more information about charitable solicitation laws, see www.councilofnonprofits.org, the website of the National Council of Nonprofits, which provides useful guidance on solicitation requirements, professional fundraising, consultant registration, and links to various resources. NASCO's website, www.nasconet.org, also provides links to the various state charity offices (including contact information) and websites, as well as useful guidance.