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Charitable State Solicitation Registrations: A Compliance Guide

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Presenters



Jacqueline Pimentel-Gannon

Partner

The Faegre Drinker Biddle & Reath, LLP

317.569.4838

jacqueline.pimentel-gannon@faegredrinker.com



Nicole Fishback

Managing Director

FORVIS, LLP

317.383.3760

nicole.fishback@forvis.com

Agenda

- Charitable Solicitation Registration
- Form 990, Schedule G
- Charitable Acknowledgement Letters & Noncash Gifts

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Charitable Solicitation Registration



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Charitable Solicitation Statutes

- State-level laws
- Rationale
 - Protection of donors
 - Protection of legitimate charitable organizations
- Purposes served
 - Allow the public to get basic information about organizations so donors can make informed decisions about charitable giving
 - Help protect state residents from fraud & misrepresentations in charitable solicitations

Registration – Who Must Register?

- Generally, nonprofit organizations that conduct charitable solicitations must register
 - Registration is required in states
 - That have charitable registration laws
 - In which the nonprofit organization solicits
 - When?
 - *Before* the organization begins soliciting in the state
 - Where?
 - With the appropriate state agency
 - Most frequently the AG or SOS office
- Professional solicitors

What Constitutes “Solicitation”?

- “Solicit” & “solicitation” are very broadly defined
- Charitable solicitation methods include
 - In-person
 - Telephone
 - Radio & television ads
 - Mailings
 - Emails
 - Websites (“Donate Now” button)
 - Social media

Exemptions

- Under certain circumstances, some organizations are exempt from registration
- Potential exemptions for
 - Small nonprofits (25K–50K)
 - Religious organizations
 - Hospitals
 - Educational institutions
 - Membership nonprofits (social clubs)
 - Political groups not asking for money
 - Appeals for a specific person
 - Other
 - YMCA, Red Cross, Boy Scouts

Exemptions

▪ Note

- Exemptions are not automatic
 - Exemption can require an active request
 - Some exemptions require a periodic (generally annual) renewal
- Each exemption depends on activities by the nonprofit & each state's definition of the particular exemption
 - Example – “Educational institutions” in some states are only exempt if solicitations are confined to members of the student body & institutional alumni
 - Example – Some states define “religious organization” as those that do not file Form 990

Registration

- Uniform Registration Statement
 - Don't be misled by the title
 - Limited use as many states do not accept the filing or require additional supplementary filings
- Each nonprofit requires a state-by-state analysis because the CSR requirements & process vary by jurisdiction
- Each state (& DC) has its own registration form & asks for different information & accompanying documents
 - Registration forms require different information
 - Differences in supporting documents required
 - Registration fees
 - Renewal requirements

Registration

- Fees
 - Can be flat amount or based on amount of organization's contributions
 - Range widely (for initial registration flat fees, \$10 in CO to \$412.50 in DC; up to \$2,000 in MA for the largest nonprofit organizations)
 - Fees for renewals also charged
- Information typically requested on CSR forms (beyond contact info)
 - Names of officers/executive personnel
 - Any professional fundraisers engaged, along with contracts
 - List of states where registered
- Documents commonly required by states to register
 - Governing documents (Articles/Charter & Bylaws)
 - IRS determination letter/Form 1023
 - Form 990
 - Certificate of Good Standing
 - Audited financial statements

Registration

- Online submission of CSR forms
 - Required in some states
 - AK, CO, DC (& paper), HI, MS, NV, NJ, NM, NY, ND, OH, WI (& paper)
 - Optional in some states
 - AL, CT, FL, GA, ME, NH, NC, OK, PA, RI, SC, TN, UT, WA, WV
 - Not available in some states
 - CA (renewal online), DC (in part), IL, KS, KY, LA, MD, MA, MN, MO, OR (renewal online), VA, WI (in part)
 - Other
 - Submission of CSR forms is via email in MI & AR

Websites

- Most states apply the Charleston Principles to determine registration requirements
 - Is the website interactive (accepts credit card donations or uses PayPal)?
 - Are residents of certain states targeted?
 - Do you receive contributions from a given state on an ongoing, repeated, or substantial basis?
 - Note
 - These are guidelines, not rules
 - Notably, DC, FL, IL, & NY do not follow the Charleston Principles
- Always register in the state of domicile
- Email is treated like a mail campaign
- Facebook/Social Media with an interactive donation site is treated like a website

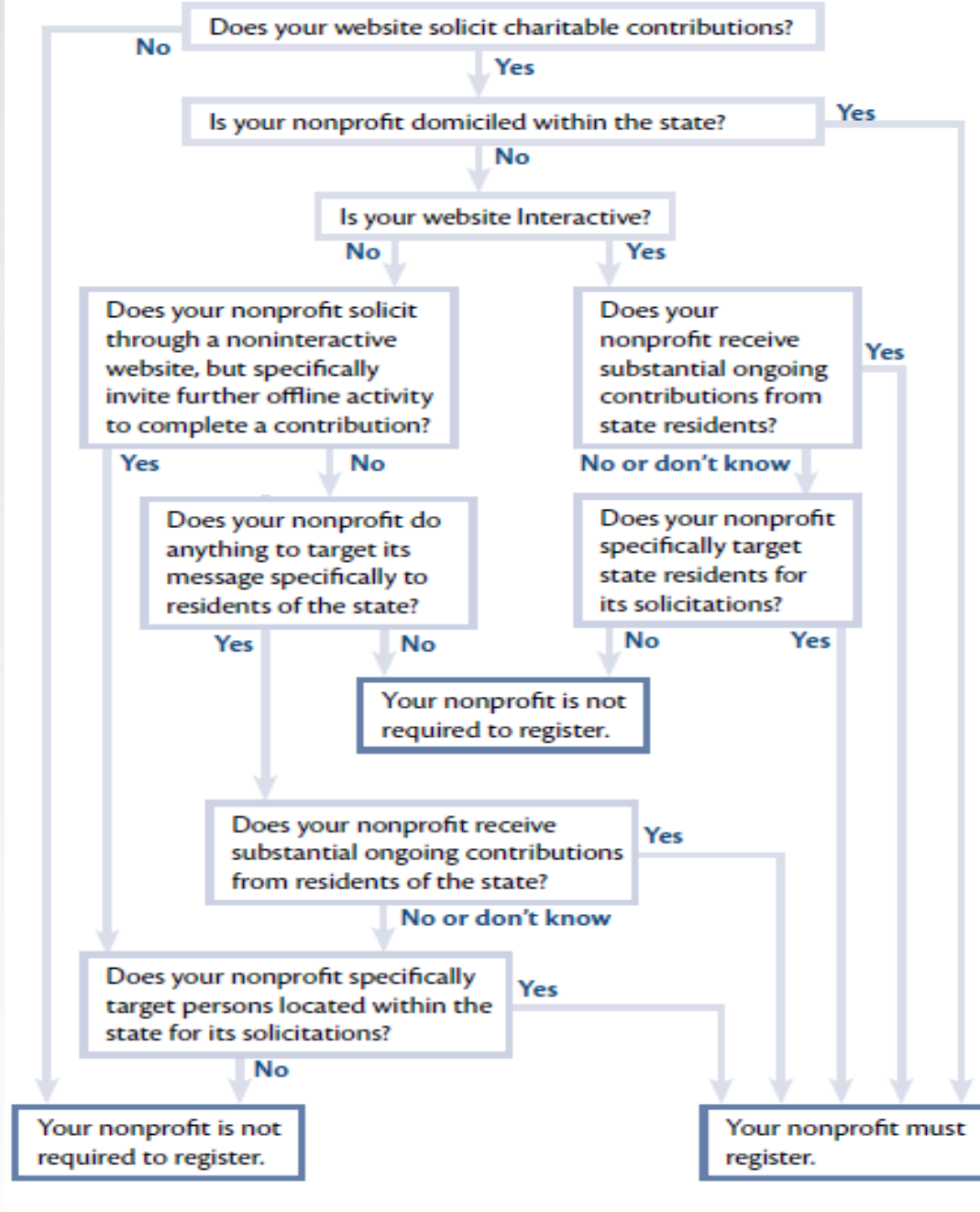
Charleston Principles

- Recommendations released by the National Association of State Charity Officials in 2001
- Guidelines for how state authorities should handle internet fundraising
- Nonbinding, but many states follow them
 - States that follow Charleston Principles
 - AK, AR, CA, CO, CT, HI, KY, MD, MA, MI, MN, MS, MO, NH, NJ, NM, NC, OR, PA, SC, TN, VA, WA, WV, WI
 - States that do not follow Charleston Principles
 - AL, DC, FL, GA, IL, KS, LA, ME, NV, NY, ND, OH, OK, RI, UT

The Charleston Principles Flowchart

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Source: Nolo's Nonprofit Fundraising Registration: The 50-State Guide © 2022

Disclosure Requirements

- In addition to registration, about half the states require nonprofit organizations to make certain disclosures in connection with their solicitations
- Disclosure obligations vary by state
 - Can be as simple as having to provide financial information about contributions & disbursements upon request
 - Can be as specific as requiring explicit language to be included in every written solicitation
 - Example – Florida requires the following statement be conspicuously displayed in every printed solicitation, written confirmation, receipt, or reminder of a contribution

"A COPY OF THE OFFICIAL REGISTRATION AND FINANCIAL INFORMATION FOR _____ (REGISTRATION NO. CH _____), MAY BE OBTAINED FROM THE DIVISION OF CONSUMER SERVICES BY CALLING 800-435-7352 OR VISITING THEIR WEBSITE AT WWW.FRESHFROMFLORIDA.COM. REGISTRATION DOES NOT IMPLY ENDORSEMENT, APPROVAL, OR RECOMMENDATION BY THE STATE."
- The following states currently have some kind of disclosure requirement
 - AR, CO, DE, FL, GA, IL, IA, ME, MD, MI, MN, MS, NV, NJ, NY, NC, OH, OR, PA, RI, TX, VA, WA, WV, WI

Consequences of Noncompliance

- Assessment of Fines & Penalties
 - Currently, states are not imposing maximum penalties but that could change
 - Professional Fundraiser/Fundraising Counsel cannot assist unregistered charities in most states without incurring penalties
- Potential of civil & criminal penalties in some states
- Barred from soliciting in a jurisdiction, losing the ability to raise funds

Charitable Registration Process

- Review of current or planned fundraising activities
- Determination that soliciting will be occurring in other states
- For each state in which you are soliciting
 - Prepare registration forms
 - Gather required supplemental information
 - Submit executed forms & applicable fee
 - Confirm registration is accepted
 - Note time frame of required renewal
 - Complete & submit renewal applications & information when due
- Ongoing: monitor state laws nationwide to confirm compliance with CSR

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Form 990, Schedule G



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Form 990, Schedule G

- Requirements, Form 990 Part IV
 - Professional fundraising services
 - Fundraising or special events
 - Gaming

17	Did the organization report a total of more than \$15,000 of expenses for professional fundraising services on Part IX, column (A), lines 6 and 11e? <i>If "Yes," complete Schedule G, Part I. See instructions</i>
18	Did the organization report more than \$15,000 total of fundraising event gross income and contributions on Part VIII, lines 1c and 8a? <i>If "Yes," complete Schedule G, Part II</i>
19	Did the organization report more than \$15,000 of gross income from gaming activities on Part VIII, line 9a? <i>If "Yes," complete Schedule G, Part III</i>

Form 990, Schedule G

- Fundraising Activities

Part I **Fundraising Activities.** Complete if the organization answered “Yes” on Form 990, Part IV, line 17. Form 990-EZ filers are not required to complete this part.

1 Indicate whether the organization raised funds through any of the following activities. Check all that apply.

- | | |
|--|---|
| a <input type="checkbox"/> Mail solicitations | e <input type="checkbox"/> Solicitation of non-government grants |
| b <input type="checkbox"/> Internet and email solicitations | f <input type="checkbox"/> Solicitation of government grants |
| c <input type="checkbox"/> Phone solicitations | g <input type="checkbox"/> Special fundraising events |
| d <input type="checkbox"/> In-person solicitations | |

2a Did the organization have a written or oral agreement with any individual (including officers, directors, trustees, or key employees listed in Form 990, Part VII) or entity in connection with professional fundraising services? Yes No

Form 990, Schedule G

- Paid Fundraisers

b If "Yes," list the 10 highest paid individuals or entities (fundraisers) pursuant to agreements under which the fundraiser is to be compensated at least \$5,000 by the organization.

	(i) Name and address of individual or entity (fundraiser)	(ii) Activity	(iii) Did fundraiser have custody or control of contributions?		(iv) Gross receipts from activity	(v) Amount paid to (or retained by) fundraiser listed in col. (i)	(vi) Amount paid to (or retained by) organization
			Yes	No			
1			<input type="checkbox"/>	<input type="checkbox"/>			
2			<input type="checkbox"/>	<input type="checkbox"/>			
3			<input type="checkbox"/>	<input type="checkbox"/>			

Form 990, Schedule G

- State Registrations

3 List all states in which the organization is registered or licensed to solicit contributions or has been notified it is exempt from registration or licensing.

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Charitable Acknowledgement Letters & Noncash Gifts



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Charitable Acknowledgement Letters



- Substantiation rules
- Contemporaneous
- Written
- IRS Publication 1771

Charitable Acknowledgement Letters

- Charitable organization's name
- Amount of cash contribution
- Date of contribution
- Description (but not value) of a noncash contribution
- Statement that no goods or services were provided by the organization in return for the contribution, if that was the case
- Description & good-faith estimate of the value of goods or services the organization provided in return for the contribution, if any
- A statement that goods or services the organization provided in return for the contribution, if any, consisted entirely of intangible religious benefits

Charitable Acknowledgement Letters

- Quid Pro Quo Contribution
 - Gifts of \$75 or more
 - Donor receives goods &/or services
- Inform donor of limited deductible amount
- Provide good-faith estimate of the FMV of goods & services
- Penalty of \$10 per contribution

7 Organizations that may receive deductible contributions under section 170(c).
a Did the organization receive a payment in excess of \$75 made partly as a contribution and partly for goods and services provided to the payor?
b If "Yes," did the organization notify the donor of the value of the goods or services provided?

Charitable Acknowledgement Letters

- Example Statements
 - Thank you for your cash contribution of \$300 that ABC Foundation received on July 31, 2022. No goods or services were provided in exchange for your contribution
 - Thank you for your cash contribution of \$350 that ABC Foundation received on August 1, 2022. In exchange for your contribution, we gave you a book with an estimated fair market value of \$20
 - Thank you for your contribution of ... that ABC Foundation received on July 31, 2022. No goods or services were provided in exchange for your contribution

Charitable Acknowledgement Letters

- Court Cases
 - David P. Durden, et ux. v. Commissioner (TC Memo 2012-140)
 - Betty J. Kendrix v. Commissioner (TC Memo 2006-9)
 - 15 West 17th Street LLC v. Commissioner

Noncash Gifts – Form 8283

- Gifts over \$500
- Gifts over \$5,000
- Qualified Vehicle
- Publicly traded securities

Section B. Donated Property Over \$5,000 (Except Publicly Traded Securities, Vehicles, Intellectual Property or Inventory Reportable in Section A)— Complete this section for one item (or a group of similar items) for which you claimed a deduction of more than \$5,000 per item or group (except contributions reportable in Section A). Provide a separate form for each item donated unless it is part of a group of similar items. A qualified appraisal is generally required for items reportable in Section B. See instructions.

Part I Information on Donated Property

2 Check the box that describes the type of property donated.

- | | | |
|--|--|---|
| a <input type="checkbox"/> Art* (contribution of \$20,000 or more) | e <input type="checkbox"/> Other Real Estate | i <input type="checkbox"/> Vehicles |
| b <input type="checkbox"/> Qualified Conservation Contribution | f <input type="checkbox"/> Securities | j <input type="checkbox"/> Clothing and household items |
| c <input type="checkbox"/> Equipment | g <input type="checkbox"/> Collectibles** | k <input type="checkbox"/> Other |
| d <input type="checkbox"/> Art* (contribution of less than \$20,000) | h <input type="checkbox"/> Intellectual Property | |

* Art includes paintings, sculptures, watercolors, prints, drawings, ceramics, antiques, decorative arts, textiles, carpets, silver, rare manuscripts, historical memorabilia, and other similar objects.

**Collectibles include coins, stamps, books, gems, jewelry, sports memorabilia, dolls, etc., but not art as defined above.

Noncash Gifts – Form 8283

- Donee Acknowledgement Requirement

Part V Donee Acknowledgment

This charitable organization acknowledges that it is a qualified organization under section 170(c) and that it received the donated property as described in Section B, Part I, above on the following date ► _____

Furthermore, this organization affirms that in the event it sells, exchanges, or otherwise disposes of the property described in Section B, Part I (or any portion thereof) within 3 years after the date of receipt, it will file **Form 8282**, Donee Information Return, with the IRS and give the donor a copy of that form. This acknowledgment does not represent agreement with the claimed fair market value.

Does the organization intend to use the property for an unrelated use? ► Yes No

Name of charitable organization (donee)	Employer identification number	
Address (number, street, and room or suite no.)	City or town, state, and ZIP code	
Authorized signature	Title	Date

Noncash Gifts – Form 1098-C

- Due to donor in 30 days
- Qualified Vehicle
 - Motor Vehicle
 - Boats
 - Airplanes
- Penalties



Sale of Certain Noncash Gifts – Form 8282

- Items valued over \$5,000 – except publicly traded securities
- Due 125 days after disposition
- Penalties

Form 8282 (Rev. October 2021) Department of the Treasury Internal Revenue Service	Donee Information Return (Sale, Exchange, or Other Disposition of Donated Property) ► Go to www.irs.gov/Form8282 for latest information.	OMB No. 1545-0047 Give a Copy to Donor
Parts To Complete <ul style="list-style-type: none"> • If the organization is an original donee, complete <i>Identifying Information</i>, Part I (lines 1a–1d and, if applicable, lines 2a–2d), and Part III. • If the organization is a successor donee, complete <i>Identifying Information</i>, Part I, Part II, and Part III. 		
Identifying Information		
Print or Type	Name of charitable organization (donee)	Employer identification number
	Address (number, street, and room or suite no.) (or P.O. box no. if mail is not delivered to the street address)	
	City or town, state, and ZIP code	

QUESTIONS

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