Understanding the Laws Governing Charitable Fundraising

David A. Levitt and Stephanie L. Petit
Adler & Colvin
San Francisco CA 94105
(415) 421-7555
www.adlercolvin.com
www.nonprofitlawmatters.com
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)