



## Charitable Fundraising Registration and Compliance

### *Frequently Asked Questions*

#### **When must an organization register?**

Organizations are required to register when conducting charitable solicitation activities within a state that has a registration requirement. Typically, registration is required before the solicitations begin. For fundraising consultants, commercial co-venturers, and professional solicitors, registration is required prior to the commencement of services. Thereafter, organizations generally must renew their registrations each year.

#### **Is registration required in all 50 states?**

Charities, unless exempt from the requirements, may be required to register in up to 41 states, plus DC. A few states require only specific types of charities (e.g. veteran organizations) to register. Professional fundraisers must register in 43 states, fundraising counsel in 28 states, and commercial co-venturers may have to register and/or file contracts in as many as 7 states. Forms and practices vary by state. Our attorneys can help you determine your registration obligations based upon the nature and extent of your activities. Perlman & Perlman works closely with regulators to make sure all applications and accompanying documentation are filed correctly and on time.

#### **Are there any groups that are exempt from registration?**

Depending on the state, organizations that raise less than \$5,000 - \$25,000 may be exempt. There are also exemptions given to particular categories of charities (e.g., hospitals, religious organizations, schools). The application of the various exemptions will vary from state to state. Several states require the organization to apply for an exemption. Our attorneys can help you to determine whether you qualify for any exemptions.

#### **How does a state become aware that an organization is soliciting unregistered in their state?**

States locate noncompliance in different ways: (1) when a potential donor makes either an inquiry or complaint to the state agency; (2) when one party to a fundraising agreement files it with a state and the other party is not registered; (3) when state employees names are "seeded" into direct mail or telephone solicitation lists that are rented by nonprofits; (4) through information sharing with other states; or (5) when they review news and other media sites. States are increasingly seeking other ways to uncover noncompliance.

#### **If I have been soliciting contributions prior to becoming registered, will I incur any penalties?**

All states *can* impose fines and penalties on those who solicit unregistered. States may impose fines for failure to register in previous years; more often, states will require multi-year filings. Failure to register may result in the revocation of solicitation privileges in the state and/or a cease and desist order. Also, board members may be held liable as fiduciaries. And finally, the IRS Form 990 must be filed annually, if you raise over \$25,000; it asks questions about compliance and must be signed by an officer under penalties of perjury.

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**Do I need to register if I am only making internet appeals on our nonprofit’s website?**

Organizations that accept donations through their website should be registered to solicit in the state in which they are located. Solicitations which ask individuals to donate (e.g. direct mail, TV, or radio solicitations) other than through their website require registration in the state (even when the donation is made online). Some states require registration based on the amount and/or quantity of donations they receive online from residents of those states.

**What are the yearly registration fees for a nonprofit?**

Costs vary from state to state. What category the organization falls into will influence the fee (nonprofit, consultant, etc.) Furthermore, some states have sliding scales based on revenue. A nonprofit should expect to pay \$1,700 – \$3,600 for an initial national registration. In addition, there may be expenses incurred to have an accountant prepare the financial audit which is required in many states above certain revenue thresholds.

**What documents do I need to provide?**

Basic information (i.e. list of officers and directors, mission statement) is required, as well as some corporate documents (i.e. By-Laws, Articles of Incorporation), the organization’s completed IRS tax exempt application, acknowledgment and annual filing and financial statements, which, depending on revenues, may need to be audited. In addition, any current fundraising and charitable sales promotions contracts must be filed.

**Do I need a registered agent?**

There are currently four jurisdictions (Colorado, Michigan, North Dakota and Washington, DC) that require soliciting organizations to have a registered agent if they do not have an office in the state. A registered agent is a legal representative who is entitled to receive official communications. Other states will accept an individual within the organization and/or the state’s Secretary of State as the registered agent. If needed, Perlman & Perlman can make arrangements for you to obtain a registered agent in the applicable jurisdictions.

**Is anyone qualified or able to assist me with drafting or negotiating fundraising contracts?**

Yes. Perlman & Perlman is a law firm with extensive experience in philanthropy and fundraising compliance. The firm’s attorneys can assist you with preparing and negotiating fundraising contracts as well as other legal matters.

*The information provided in this document does not constitute legal advice, and is not intended to substitute for legal counsel.*