



Sweepstakes, Contests and Other Promotions: What You Need to Know

**Thomas Federico, Marketing &
Promotions Counsel
February 17, 2012**

Mission of Pro Bono Partnership of Atlanta:

To provide free legal assistance to community-based nonprofits that serve low-income or disadvantaged individuals. We match eligible organizations with volunteer lawyers from the leading corporations and law firms in Atlanta who can assist nonprofits with their business law matters.

Pro Bono Partnership of Atlanta Eligibility & Other Information

- In order to be a client of Pro Bono Partnership of Atlanta, an organization must:
 - ✓ **Be a 501(c)(3) nonprofit organization.**
 - ✓ **Be located in or serve the greater Atlanta area.**
 - ✓ **Serve low-income or disadvantaged individuals.**
 - ✓ **Be unable to afford legal services.**
- *Visit us on the web at www.pbpatl.org*
- Host free monthly webinars on legal topics for nonprofits
 - ✓ To view upcoming webinars or workshops, visit the [Workshops Page](#) on our website

Today's Presentation

- Help you become familiar with some of the legal issues associated with structuring, conducting and advertising sweepstakes, contests, raffles and similar promotions.
- Help you become familiar with some of the lesser known business and fulfillment issues associated with such promotions.

Why It Matters . . .

- **Civil Penalties & Damages!**
 - ✓ Up to \$5,000 penalties per violation
 - ✓ Up to hundreds of thousands of dollars or more, if sued by participants
- **Criminal charges!**
 - ✓ Gambling (such as participating in an illegal lottery) is a misdemeanor
 - ✓ Commercial gambling (such as organizing an illegal lottery) is a felony
- **Injunctions!**
 - ✓ Court ordered halt of the promotion
- **Negative press!**
 - ✓ Damaged reputation
 - ✓ Loss of contributions

Key Terms

- **Lottery/Gambling**
- **Chance**
- **Skill**
- **Prize**
- **Consideration**
- **Rules**

LOTTERY

- **CHANCE + PRIZE + CONSIDERATION = LOTTERY**
 - A lottery is illegal and constitutes gambling in GA!
 - But . . . there are some **exceptions**, which we'll discuss a little later but let's first look at each of these elements . . .

LOTTERY = CHANCE + PRIZE + CONSIDERATION

✓ CHANCE means

- “Odds of Winning”
- Winner selected by a random process

✓ PRIZE means

- Something of tangible value that is awarded to the winner
- Could be worth lots of \$\$\$ or have only nominal value
- Non-tangible items, like bragging rights, are not prizes

✓ CONSIDERATION means

- Something given by participants to play
- Monetary (\$1 raffle tickets or \$10 entry fees)
- Non-Monetary (substantial effort, such as a lengthy survey, certain types of travel, etc.)

LOTTERY = CHANCE + PRIZE + CONSIDERATION

- Here are the exceptions I mentioned . . .
 - Coin Operated Games (so-called “Chuck E. Cheese” exception)
 - Sweepstakes/Raffles (Subtract consideration or add free, alternative method of entry for a sweepstakes) Not-for-profits can charge a fee to buy a raffle ticket by relying on the raffle exception but must obtain a license from their local sheriff.
 - Contests (Subtract chance and add skill/objective criteria)
 - Recreational Bingo (Subtract consideration, i.e., no entry fee; prizes must be nominal non-cash prizes of less than \$15.) This exception applies to any organization, including not-for profits.
 - Note: There are also two special bingo exceptions only for not-for-profits: 1) no entry-fee “bingo sessions” involving senior citizens playing at not-for-profit facilities where the prize for each game is a nominal cash prize of less than \$5 (No license req’d); and 2) entry-fee based bingo games where the prizes exceed \$15 in value (GBI license req’d and there are caps on total prizing value).
- Hey, what about “Casino Nights”?
 - Don’t bet on it! They’re not covered by any exception!
- For more specific information about raffles, bingo and Casino Nights, please visit the “Resources” page of the Pro Bono Partnership of Atlanta website http://www.pbpatl.org/images/stories/Gambling_Website_Article1.pdf

Let's take a closer look . . .

➤ **SWEEPSTAKES** (CHANCE + PRIZE +/- CONSIDERATION)

- How does consumer enter?
 - No Purchase Necessary/Free alternative method of entry (e.g., postcard)
 - Equal dignity (i.e., free entries must be treated the same as paid entries)
 - Online entry, on-pack, door prize/raffle? (collection of personal information? notice of rules*?)
 - *Rules are important for all promotions and we'll discuss them in a little bit . . .
- How does consumer win?
 - Usually by random drawing
- What does consumer win and how does he/she get it?
 - Tax consequences (Winner pays income tax. IRS Form 1099?)
 - Winner documentation (affidavit and liability release)
- Fulfillment
 - Is your organization selecting the winner and fulfilling the prizes? Or will you outsource? If so, have an agreement with the vendor and be mindful of issues like services, payment, failure to perform, indemnification, insurance and sharing of personal information.

Let's take a closer look . . .

➤ **CONTESTS (SKILL + PRIZE +/- CONSIDERATION)**

- How does consumer enter?
 - Online? Mail-in? Other means of entry? (collection of personal information? notice of rules*?)
 - *Rules are important for all promotions and we'll discuss them in a little bit. I promise!
- How does consumer win?
 - Skill; Objective Criteria
 - Qualified judges
 - Tie Breaker (is it based on chance or skill?)
 - What if nobody meets the criteria?
- What does consumer win and how does he/she get it?
 - Tax consequences (Winner pays income tax. IRS Form 1099?)
 - Winner documentation (affidavit and liability release)
- Fulfillment
 - Is your organization selecting the winner and fulfilling the prizes? Or will you outsource? If so, have an agreement with the vendor and be mindful of issues like services, payment, failure to perform, indemnification, insurance and sharing of personal information.

EXAMPLE #1

- You want to host a fundraiser at a local event hall and charge each attendee a \$5 “entry fee” or charge \$1 per raffle ticket for the chance to win one of several prizes, such as a gift basket, dinner at a local restaurant and golf lessons.
 - **CHANCE?** Yes.
 - **PRIZE?** Yes.
 - **CONSIDERATION?** Yes.
 - **EXCEPTION?** Yes, raffle.

EXAMPLE #2

- You want to sponsor a promotion in which students submit poems about your organization's mission and you'll pick the best one. The winner's poem will be featured on your website and newsletter.
 - **CHANCE?** No, assuming objective criteria and judging.
 - **PRIZE?** Yes.
 - **CONSIDERATION?** No.
 - **EXCEPTION?** None needed, if it qualifies as a contest.

EXAMPLE #3

- You run into your friend, Sam, and ask her about her weekend. She mentions that she attended a “Casino Night” fundraiser for a homeless shelter and won \$100, which was great since she only had to pay \$10 to play. Your friend sounded so excited and said that the room was so packed with players and prizes that you’re going to tell your board to start planning your own Casino Night soon!
 - **CHANCE?** Yes.
 - **PRIZE?** Yes.
 - **CONSIDERATION?** Yes.
 - **EXCEPTION?** No. There is no exception for a Casino Night. You’ll need to get rid of one of the three elements. For example, you could get rid of consideration by not charging an entry fee or you could eliminate the prizes.

Rules (finally!)

- Rules are your **contract** with entrants and their contract with you
 - Safeguards your right and safeguards entrants' rights
 - Transparency/Trust in the promotion/brand
 - Breach of contract/damages and negative press
- Clearly and prominently include all **material terms** and make them available prior to entry
 - Eligibility (Age*, Lawful Residency, Location, Ineligibility)
 - *Under age 18 raises parental permission issues and under age 13 raises significant privacy issues.
 - How/when to enter
 - How to win/Odds of winning
 - Prize description w/ Approximate Retail Value; prize substitution? cash value?
 - Indemnification/Release of Liability/Name and Likeness Permission
 - Ownership of submissions
 - Cancellation, suspension or modification of the promotion
 - Collection of personal information
 - Winner documentation (affidavit, release of liability/name and likeness permission)
 - Winner List
- Use full rules and abbreviated rules, as necessary.
 - Online, on-pack, print, television/radio
 - **No Purchase Necessary. Open to legal residents residing in Georgia, USA age 18+. Promotion begins 8:00 am ET 3/1/12 and ends 11:59 pm 3/31/12. Void Where Prohibited. For Official Rules and complete details on prizes, odds of winning, go to www.notforprofitassociation.com. Sponsor: NotForProfit Association, Inc., 123 Fictitious Road, Enigma, Georgia 12345.**

Advertising

- Truthful/Not false or deceptive (Note: Something can be literally true yet still be deceptive!)
 - As mentioned, disclose full rules/abbreviated rules and material terms, as needed.
 - Accurately depict prizes.
 - Accurately state how winners are selected.
 - Be mindful of other issues triggered by artwork and copy in your ads, such as copyright and trademark infringement, right of publicity, right of privacy and implied endorsements.

For More Information

If you would like more information about the services of Pro Bono Partnership of Atlanta, contact us at:

Phone: 404-407-5088

Fax: 404-853-8806

Info@pbpatl.org

www.pbpatl.org