

Charitable Solicitation:

“The Legal Issues Around Asking and Thanking Donors”

January 23, 2013

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- ***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.**
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Agenda

- ***Solicitation – What, Who, How?***
- ***Why do States & the IRS Care?***
- ***Registration to Solicit Donations***
- ***Unlawful Solicitation Activities***
- ***Internet Donations & Registrations***
- ***Acknowledgement of Donations***
- ***Substantiation: Paperwork***

What is “Solicitation?” – The Ask

➤ ***Definition:***

- ⊕ The request or acceptance directly or indirectly of
- ⊕ Money, credit, property, financial assistance, or any other thing of value
- ⊕ To be used for any charitable purpose

➤ ***Receipt of a donation not necessary***

➤ ***Examples:***

- ⊕ Gala tickets, silent auctions, selling goods or services, requesting a donation or sponsorship, grant applications (not to governmental entity), charitable sales promotions

Why Do States & the IRS Care about Charitable Solicitation?

Protecting its citizens from deceptive practices and fraud.

Focus of presentation – Georgia law

Who are “Solicitors?”

- ***Charitable Organizations***
- ***Those Charities Hire to Solicit on their behalf***
 - ⊕ **Paid Solicitor**
 - ⊕ **Solicitor’s Agent**
 - ⊕ **Fundraising Counsel**
- ***Charities should have written contract with solicitors***
 - ⊕ **Contract should require compliance with GA solicitation laws (and any other applicable state)**

Commercial Co-Venture Activities

- ***Commercial Co-venturer is a separate for-profit business that conducts a “charitable sales promotion” for a charity***
- ***Charitable sales promotion" means an advertising or sales campaign where if you purchase for-profit business goods – charity will benefit***
 - ⊕ **Examples:**
 - ✓ *Restaurant A gives 10% of its proceeds from the weekend to Charity X*
 - ✓ *Store B gives \$1 for every coat purchased to Charity Y*
- ***Need a written agreement***

Registering - Georgia

- ***All categories of solicitors must register in Georgia prior to soliciting charitable donations***
 - ⊕ **Charitable Organizations**
 - ✓ *File Form C-100*
 - www.sos.state.ga.us/securities/charitable_organization.htm
 - ✓ *File financial statements, Form 990 or 990EZ, determination letter*
 - ⊕ **Paid Solicitor**
 - ⊕ **Solicitor's Agent**
 - ⊕ **Fundraising Counsel**
- ***Each category above has specific rules that apply to it under the Solicitations Act***

Registering – Georgia (cont.)

➤ **Exemptions:**

- ⊕ List at § 43-17-9
- ⊕ Charities with no paid solicitor & total revenue from contributions less than \$25,000 for both the immediately preceding and current calendar years
- ⊕ Religious and educational organizations

➤ **How often must one register?**

- ⊕ Initial Application; Amendments; Renewals
- ⊕ Charities:
 - ✓ Registration good for 24 months
 - ✓ Renewal must include new financial statements, Form 990 or 990EZ
- ⊕ All others = renewal by Dec. 31st each year

➤ **What are the fees for registering?**

- ⊕ Charities = \$35; renewal \$25
- ⊕ Paid solicitors = \$250; renewal \$100
- ⊕ Solicitor agent = \$50; renewal \$50

Unlawful Solicitation Activities in Georgia

➤ *What solicitation activities are unlawful?*

- ⊕ Untrue, false or misleading statements to GA Sec. of State
- ⊕ Using name, symbol of similar charity to confuse, mislead to acquire donations
- ⊕ Misrepresenting or misleading anyone to believe raising funds for a charity or charitable purposes when not doing so
- ⊕ Identification of sponsors who are not in fact sponsors of the organization
- ⊕ Misappropriating, converting, illegally withholding or failing to account for any charitable contributions solicited

Unlawful Solicitation Activities in Georgia (cont.)

- ***What solicitation activities are unlawful? (cont.)***
 - ⊕ Statement of a false percentage of gross revenues going to the charity
 - ⊕ Not providing proper information to a solicitee
 - ⊕ Not having written agreement with charity that soliciting on its behalf
 - ⊕ Device or schemes to defraud
- ***Penalties***

Registering – Other States

- ***When does a charity need to register in other states?***
 - ⊕ Each state has own law
- ***40 states require charities to register with the state before raising funds.***
- ***Key Question:***
 - ⊕ ***When does a charity have sufficient solicitation activities in connection with another state that it must register in that state?***
 - ✓ *How much contact must the organization have with the state and its citizens?*
 - ✓ *Each state establishes its own thresholds*
 - ✓ *Considerations:*
 - Physical presence in state by charity or solicitor
 - Direct contact with persons in state
 - Indirect contacts with persons in state
 - Type of contacts/solicitations

Solicitation in Other States

➤ *In determining where it must register, a charity must ask:*

“Has my organization purposefully directed a charitable solicitation to a resident of State X?”

- ✓ *If yes, does that state require registration?*
- ✓ *If yes, what kind of a solicitation was it (in person, mail, phone call, email, internet) and does the organization conduct activities or have a presence in that state? Depending on these answers (addressed below), often the organization must register in State X.*

➤ ***A charity must register in every state where it solicits contributions if that state requires registration. Registering only in the jurisdiction where the charity is incorporated is not sufficient.***

Internet Solicitation

➤ **NASCO Charleston Principles**

➤ **Donations via charity's website:**

- ⊕ Does the charity's website allow for on-line donations?
 - ✓ *If yes, does the organization receive contributions on a repeated & ongoing basis or substantial basis through its website from a particular state?*
 - ✓ *If yes – the organization may need to register in that state.*
- ⊕ If the charity's website does not allow for on-line donations:
 - ✓ *Does the charity's website invite further offline activity to complete a donation or does the charity establish other contacts with state (e.g. emails promoting website) and*
 - ✓ *Does the charity receive contributions from state on a repeated and ongoing basis or substantial basis?*
 - *If yes – the organization may need to register in that state.*

Internet Solicitation

➤ ***Donations via charity's website*** (cont):

- ⊕ If offline solicitations ask donor to complete donation on-line or solicit via emails promoting website – must register if you target donors in the state or regularly receive donations from the state.
- ⊕ Do you directly re-solicit donors who donate via your website? If so, the return mail could also trigger registration requirements.

➤ ***Fundraising using social media – the same rules apply as those for fundraising through the charity's website.***

Registering in Multiple States

➤ ***Unified Registration Statement***

⊕ **Multistate filing form**

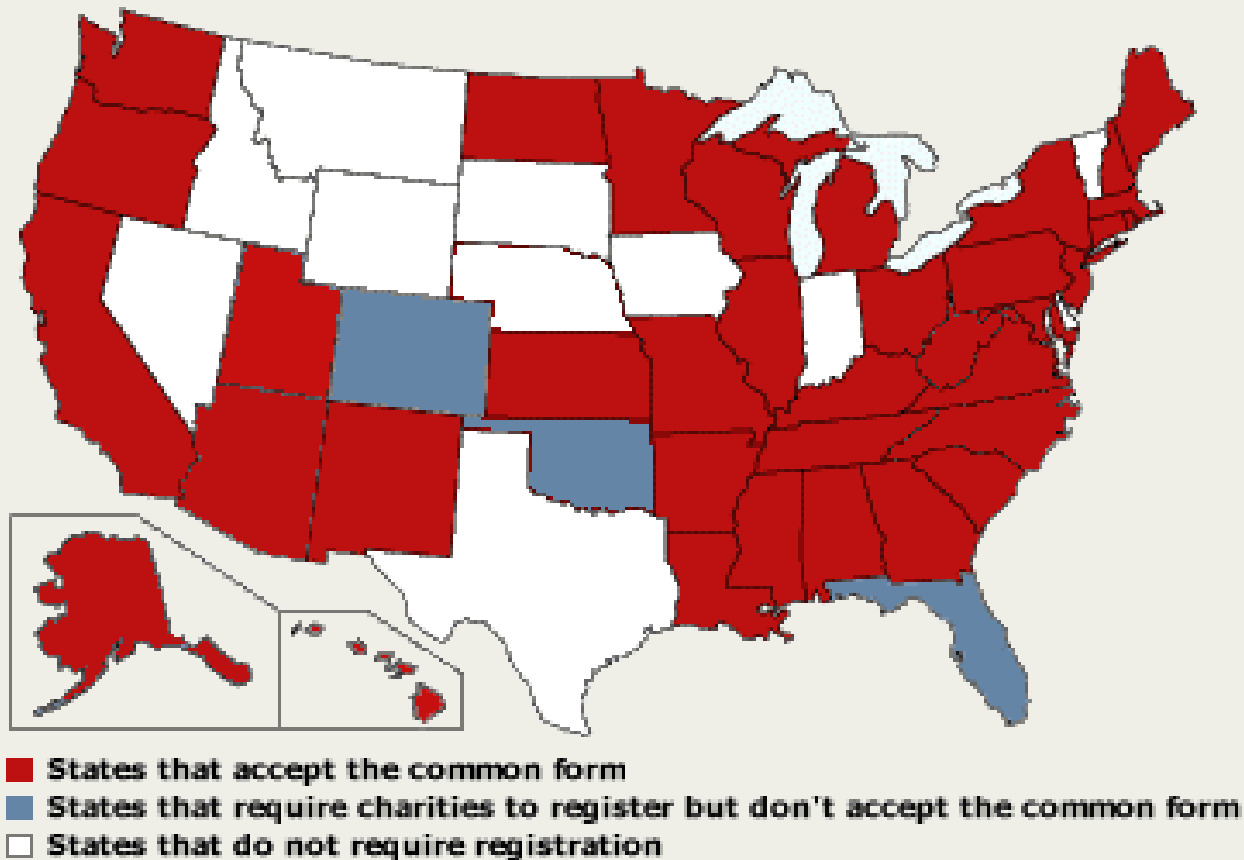
✓ *<http://www.multistatefiling.org>*

⊕ **Alternative to filing each individual form**

⊕ **Some states require additional information**

– **Included in multistate filing information**

Charity Registration in the States



Source: Multi-State Filer Program

Map by Jasmine Stewart, Courtesy of the Chronicle of Philanthropy

Acknowledgements

- ***Personal services are NOT deductible***
- ***Donor cannot take deduction without a receipt, bank record, or cancelled check for a donation of any amount***
 - ⊕ Evidence of donation must state name of charity, date of donation and amount of donation
- ***Donations throughout the year may be bundled into one acknowledgement letter***
- ***For donations of \$250 or more, donor must have a written contemporaneous receipt from the charity acknowledging the contribution***

Acknowledgements (cont.)

➤ ***The acknowledgement should include:***

- ⊕ Name of charity,
- ⊕ Amount of cash contribution or description of non-cash contribution, and
- ⊕ One of the following:
 - ✓ *Statement that no goods or services were provided (if that is the case),*
 - ✓ *Description and good faith estimate of the value of goods the charity provided in return for the donation, or*
 - ✓ *Statement that goods or services provided consisted entirely of intangible religious benefits*

➤ ***Format:***

- ⊕ **May be a letter, postcard, or computer-generated form; if payroll deduction may use Form W-2 or pledge card**
- ⊕ **May be provided as paper copy or electronically (e.g. email)**
- ⊕ **Must be sent no later than January 31st of year following the donation**

Acknowledgements (cont.)

➤ ***Quid Pro Quo Donations – goods/services provided in exchange for donation***

- ⊕ **Written acknowledgement required if payment is over \$75**
- ⊕ **Description and good faith estimate of the value of goods the charity provided in return for the donation on receipt**
- ⊕ **Payment must exceed the value of the goods/services provided in exchange for donation**
- ⊕ **Examples:**
 - ✓ *Dinners/Concerts/Other Events*
 - ✓ *Additional donation above ticket price (e.g. \$30 over \$50 ticket price)*
 - ✓ *Payment for purchase of an item at fmv is not a donation (silent auction)*
- ⊕ **Exceptions: de-minimus gifts or tokens, membership benefits**
- ⊕ **In-kind donations – goods & services – charity should not provide a value on its acknowledgement – donor supplies value**

Acknowledgements (cont.)

➤ ***Un-reimbursed expenses:***

- ⊕ Donor should keep receipt of expense and if expense is greater than \$250, charity should provide a receipt acknowledging the un-reimbursed expense

➤ ***Penalties for Not Meeting Written Disclosure Requirement:***

- ⊕ \$10 per contribution
- ⊕ Not to exceed \$5,000 per fundraising event or mailing

➤ ***Donations of Cars & Automobiles***

- ⊕ Not blue book value
- ⊕ Value = price for which car would change hands
- ⊕ IRS publications & forms:
 - ✓ Donee (charity): Pub. 4302; Form 8282
 - ✓ Donor: Pub. 4303; Forms 8283 and 1098-C

Recordkeeping

- ***Maintain records of fundraising activities***
 - ⊕ Solicitation materials
 - ⊕ Written copy of website solicitation efforts
 - ⊕ Written contracts with paid solicitors, co-venturers, solicitor agents
 - ⊕ Method used and evidence of tracking payments from paid solicitors, co-venturers, solicitor agents
 - ⊕ Activities that included quid pro quo donations including how value of goods/services determined
 - ✓ *E.g., Tickets that state value of goods/services provided*
 - ⊕ Sponsorship packages and value of goods/services provided
- ***Maintain records of donation acknowledgements***
- ***Maintain records of charitable registration filings***
- ***Maintain records of employees and volunteers who solicit donations for the organization***

For More Information:

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

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