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Charitable Fundraising Registration and Compliance

Frequently Asked Questions

When must an organization register?
By law, organizations are generally required to register prior to conducting charitable solicitation activities within a state. For fundraising consultants, commercial co-venturers and professional solicitors, registration is required prior to the commencement of services. Organizations must renew their registrations each year prior to expiration.

Is registration required in all 50 states?
Generally, charities, unless exempt from the requirements, must register in 39 states, plus DC. In addition, there are a few states that require only specific types of charities to register, such as veteran's organizations. Currently, professional fundraisers must register in 44 states, fundraising counsel in 32 states and commercial coventurers may have to register and or file contracts in 7 states. Specific forms and practices vary by state. Our firm works closely with regulators to make certain we are current with their requirements and file all applications and accompanying documentation properly and professionally.

Are there any groups that are exempt from registration?
Depending on the state, an organization that raises less than $5,000 - $25,000 may be exempt. There are also exemptions given to particular categories of charities. For instance, in many states, schools, hospitals, membership groups and religious organizations are generally exempt. It is important to note that many states continue to re-define which groups are exempt (What is the definition of a "religious organization"? What does it mean to be an exempt "school" in a particular state? What constitutes a "bona fide member"?). A number of states will require the organization to apply for exemption by filing forms and providing other organizational documents. Our attorneys can assist in helping you determine if you qualify for an exemption.

How does a state become aware that an organization is soliciting unregistered in their state?
States discover noncompliance in different ways: (1) when a potential donor makes either an inquiry or complaint to the agency that regulates charities in that state; (2) when one party to a fundraising agreement files it with a state and the other party is not registered; (3) when a state gets its employees names "seeded" into direct mail or telephone solicitation lists that are purchased by charitable organizations; or (4) when they review news and other media sites. The 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 have the right to impose fines and penalties on those who solicit without being registered in their state. States may impose fines for failure to register in previous years; more commonly, some states will require multi-year back filings. In extreme cases, failure to register may result in the revocation of solicitation privileges in the state. In addition, the IRS Form 990, which nonprofits must file annually, asks

questions about your compliance with registration laws in states where you solicit. The 990 is signed by an officer under penalties of perjury.

Do I need to register if I am only making internet appeals on our nonprofit's website?
Although much is written on this subject, you will find little consensus and only three states (Colorado, Mississippi and Tennessee) that have provisions in their regulations. If you are soliciting online (e.g. you have a donate button on your website), you should at least register in the state where you are located. Some states may require you to register if you receive contributions from their residents, even if you are not actively targeting that state. The attorneys at Perlman & Perlman can assist you in analyzing your obligations.

What are the yearly registration fees for a nonprofit?
Registration fees vary from state to state. The fees also depend on the type of entity registering (nonprofit, consultant, etc.) Furthermore, some states' fees are on a sliding scale based on income. A nonprofit should expect to pay $1,700 - $3,600 in filing fees for an initial national registration. In addition, there may be expenses incurred to have an accountant prepare all audited financial statements, which is required by many states when organizations are above certain revenue thresholds.

What documents do I need to provide?
Basic information will be required (e.g. list of officers and directors, mission statement), as well as some corporate documents (e.g. By-Laws, Articles of Incorporation), the organization's completed IRS tax form and, depending on annual revenues, audited financial statements. In addition, any current fundraising and commercial co-venture contracts must be filed and/or disclosed.

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, our firm 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 charitable giving. The nonprofit fundraising registration and compliance department is one department of our firm. 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.

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