

# Keep It Legal: Fundraising Law

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# Program Goals

This is NOT a program about how to fundraise. Instead, you will:

- Learn basic legal issues involved in fundraising; and
- Build awareness of legal requirements that nonprofits must follow in fundraising.

# State Attorney General's Role

Massachusetts Attorney General's Office, Nonprofit Organizations/Public Charities Division oversees charitable organizations.

Four major goals:

- Protect charitable donors from diversion, waste, nonuse of donated funds;
- Ensure intended beneficiaries receive benefit of funds;
- Maintain integrity and credibility of charitable sector;
- Protect the public from deceptive and fraudulent solicitation practices.

# Charity Registration

- Organizations planning to fundraise **MUST** register with the Attorney General's Office (AGO).
- Registration results in receipt of Certificate of Solicitation
- Renew Certificate of Solicitation every year by filing annual financial reports (Forms PC) with AGO.

Don't Fundraise Without It!

# Charity Registration

- New charities registering before completion of first fiscal year submit to AGO:
  - Charity Registration Form and its \$100 filing fee;
  - Schedule A-2 with its \$50 filing fee;
  - Copy of Articles of Organization (download free of charge from Secretary of State's website);
  - Bylaws;
  - Current list of members of Board of Directors.

**Note:** Fees total \$150 in two separate checks, both payable to Commonwealth.



# Charity Registration

Charities that have existed for some years can—and should—still register!

- Submit Articles of Organization, Bylaws, and Board list as above; AND,
- Forms PC for as long as in existence, up to 4 years:
  - IRS Form 990 or 990-EZ with Schedule A (and any other pertinent attachments) if gross receipts are more than \$5,000
  - Organizations with gross income less than \$5,000 need not submit the Form 990/990-EZ.

# Charity Registration

Only certain organizations are not required to register as charities:

- Organizations that are primarily religious in purpose; and
- Organizations with gross income less than \$5,000 or donations from 10 or fewer donors AND whose activities are carried out by unpaid volunteers.
  - When donations reach \$5,000, the organization must register.

# Beyond Massachusetts

38 states require charities planning to fundraise to register:

- To provide the public with information about charities to which they may donate, and
- To protect the public from fraud and misrepresentation

States vary in their registration requirements.



# Beyond Massachusetts

Organizations are fundraising in other states if:

- You are sending fundraising solicitations to ***addresses in other states*** via postal mail; or
- You are conducting fundraising ***activities*** in other states; or
- You are fundraising via your website with solicitations ***targeted*** into another state; or
- You repeatedly receive donations from another state via your website.

# Beyond Massachusetts

**The *Charleston Principles* provide guidance on fundraising via the Internet.**

Organizations that:

- Solicit contributions through an interactive website AND
- Specifically **target** people physically located in a state, OR
- **Receive** contributions from donors in a state **repeatedly** or on a **continuing** basis or a **substantial** basis, OR
- **Solicit** contributions through **non-interactive** site but **invite** further offline activity or establishes other contacts with states,

Must register in that state.

# Beyond Massachusetts

To register in multiple states, use the *Uniform Registration Statement*.

[www.MultiStateFiling.org](http://www.MultiStateFiling.org)

## The Unified Registration Statement

THE MULTI-STATE FILER PROJECT

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THE MULTI-STATE FILER PROJECT

## The Unified Registration Statement

- [What is the Unified Registration Statement?](#)
- [How do I use the URS?](#)
- [What is the most recent version of the URS?](#)
- [What's in the URS and how can I get it?](#)
  - [PDF version for printing](#)
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- [Which states require registration of charitable soliciting organizations and accept the URS?](#)
- [Which states require registration of charitable soliciting organizations and do not yet accept the URS?](#)
- [How do I print the URS?](#)
- [Who can I contact with questions?](#)

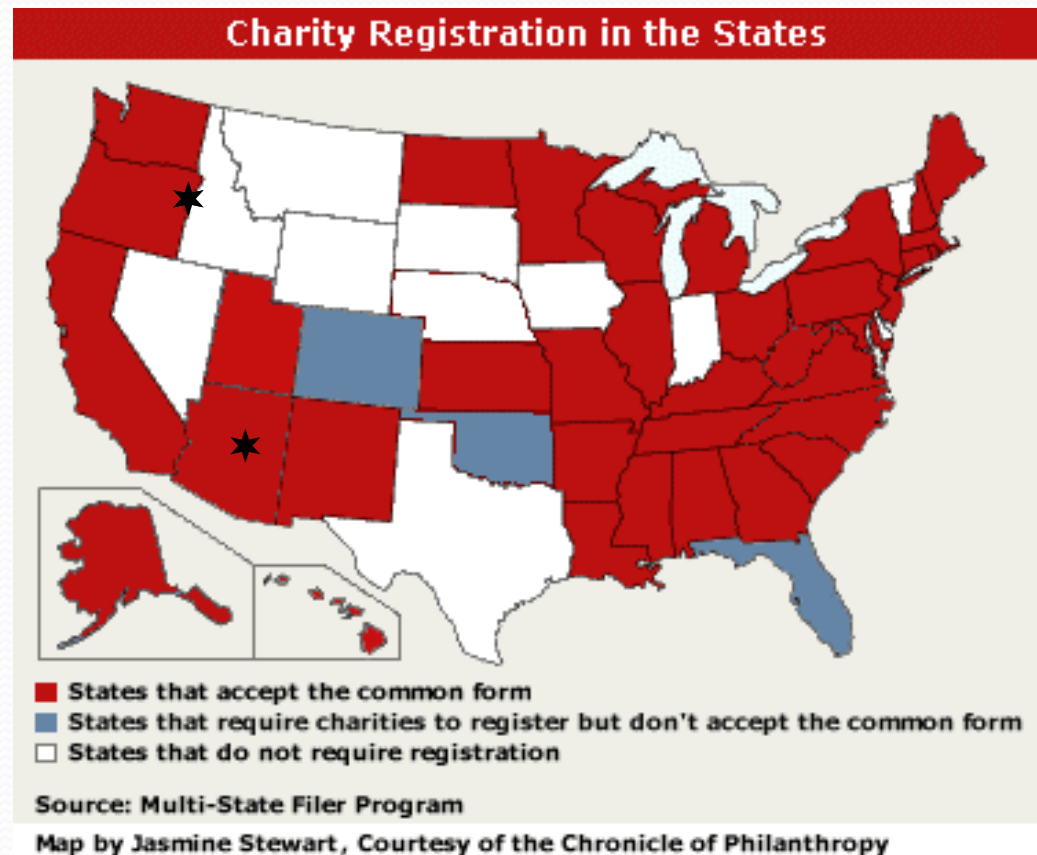
**What is the Unified Registration Statement?**

# Beyond Massachusetts

States Requiring  
Charity Registration  
and *accepting*  
Unified Registration  
Statement (URS)

★ Arizona recently did  
away with charity  
registration.

★★ Rhode Island  
requires registration.



# After the gift...Gift Substantiation

Every fundraiser knows that the most important step after receiving a gift or contribution is to say, “Thank you!”

But IRS wants you to say more than that!

# IRS Gift Substantiation

## Gifts $\geq$ \$250

- Written, contemporaneous acknowledgement (aka, “thank-you letter”) for gifts of \$250 or more from the receiving organization;
- Donor’s responsibility to obtain acknowledgement BUT good donor relations requires that the nonprofit provide it!
- Donor cannot get tax deduction without retaining either the letter or bank record in files (record is NOT sent to IRS).

# IRS Gift Substantiation

Written, contemporaneous acknowledgement must contain:

- Name of organization
- Amount of cash contribution
- Description (but not the value) of non-cash contribution
- And a statement/description, as follows:

# IRS Gift Substantiation

- Statement that no goods or services were provided by the organization in return for the contribution, if that was the case; OR
- Description and good faith estimate of the value of goods or services, if any, that an organization provided in return for the contribution;



# IRS Gift Substantiation

BUT no statement/description required for “Token goods”—low-cost goods provided to donors, e.g., mugs, calendars, T-shirts, etc., bearing organization’s logo or low-cost unordered items like pens and address labels.

# IRS Gift Substantiation

## *The Quid Pro Quo*

Charity must provide a written disclosure to a donor who receives goods or services in exchange for a single payment in excess of \$75 partly as a contribution and partly as payment for goods and services.

Example: Donor buys a ticket to the gala dinner-dance for \$100. Charity must provide a disclosure statement.

# IRS Gift Substantiation

For the \$100 dinner-dance ticket, Charity's disclosure statement must:

- Inform a donor that the amount of the contribution that is deductible for federal income tax purposes is limited to the excess over the value of the goods/services received in exchange, and
- Provide donor with a good-faith estimate of the fair market value of the goods or services.

The cost of the event to the charity is irrelevant!

In dinner dance example, if caterer donated the dinner, the value to the recipient is the same and must be disclosed.

# IRS Gift Substantiation

The disclosure statement must be:

- Provided at the time of solicitation or receipt;
  - Can appear on invitation or in TY after event.
- In writing, and
- In a “manner likely to come to the attention of the donor.”

In other words, if the print is too small, it's insufficient!

Dear Donor,

Thank you for your purchase of a \$100 ticket to our dinner-dance. The amount of your tax-deductible contribution for federal income tax purposes is limited to the excess over the value of the goods/services you received in exchange. The fair market value of this event is estimated to be \$40; therefore, your deductible charitable contribution is \$60.

Sincerely,

Charity

# Miscellany of Points

About charitable gifts...

- Only the actual gift portion of a payment to a charity is deductible.
- Charities that receive a gift of property (vehicles, art, etc.) and sell or otherwise dispose of the property within 2 years of date of contribution must file IRS Form 8282 with copy to donor.
- Amount of deduction for donated vehicle depends on whether the vehicle is used by the charity or sold; if sold without being used, deduction is limited to gross proceeds of the sale.

# Sponsorships

Must distinguish between sponsorship and payment for service.

- Sponsorship is payment made by a business without expectation of substantial return or benefit.
- Advertising involves language (or format, etc.) of a qualitative or comparative nature, price information, endorsement, or inducement.
- A sponsorship payment is a deductible gift.
- Advertising payment is fee for service and not deductible and may incur UBIT. (But remember, the amount beyond fair market value of advertising may be deductible gift.)

# On the Internet

- Same rules apply as in print media.
- BUT the character of a link may change it from sponsorship to taxable advertising.

Examples:

- ★ A simple banner bearing the name of a business—sponsorship.
- ★ An eye-catching, blinky banner—advertising! The blinking is an inducement to look, buy.
- ★ Clickable names in a list to acknowledge donors—not advertising.

# Raffles and Gaming

- Raffles are governed by state law; MA AGO oversees charity raffles and gaming, but MA Lottery Commission collects tax.
- Must be nonprofit in existence at least 2 years; registered with AGO, if charity.
- Only charity's volunteers (i.e., unpaid) may sell raffle tickets. No one may be paid for time/effort involved in promoting or operating the raffle.
- Obtain permit from city or town in which held.
- Funds derived from raffle must be used for the purpose specified in the permit application, which must be charitable, educational, etc.



# Raffles and Gaming

## Raffle Permits

- Valid for one year;
- Allow unlimited number of raffles;
- Allow up to 3 casino nights.
- Lottery Commission collects the tax on raffles and casino nights
  - On issuance of permit, Lottery Commission is notified and will send tax forms.
  - Tax is 5% of gross proceeds.

# Raffles and Gaming

“Qualified Nonprofits” that may hold raffles or gaming events include:

- Veterans' organization chartered by Congress;
- Church or religious organization;
- Fraternal or fraternal benefit society, such as an Elks Club or union;
- Educational or charitable organization;
- Civic or service club; or
- Other club or organization operated exclusively for nonprofit purposes.

# Raffles and Gaming

## What is a **raffle**?

- “A chance to win is sold to participants and the winner or winners are selected from the chances actually sold.”
- A silent auction is NOT a raffle!  
(no payment except by “winning” bidder)
- A door prize is NOT a raffle!  
(no payment at all)

## **Gaming** includes:

- Casino or Las Vegas nights (also referred to as "bazaars")
  - Games of chance, such as roulette, craps, blackjack and poker (including Texas Hold'em) played for a prize.

# Raffles and Gaming

- Stricter regulations apply if the cost of a raffle ticket is more than \$10 or any prize exceeds \$10,000. (See 940 CMR 12.00)
- Strict regulations govern all casino nights or Las Vegas nights (called “bazaars” in the statutes)(See 940 CMR 13.00) including:
  - Reporting requirements
  - Police presence
  - Rules governing who may play and who may operate/promote the event

# Raffles and Gaming

...From IRS perspective

- Raffles and gaming generally constitute Unrelated Business Income (UBI) and may be subject to tax.
- May be related income for some non-501(c)(3) orgs.
- Online raffles may violate federal law!

# Fundraising by Non-charities

Each solicitation by or on behalf of a non-charity must contain

“an express statement (in a conspicuous and easily recognizable format), that contributions to the organization are not deductible for federal income tax purposes.”

- Applies to non-charities with:
  - Gross receipts over \$100,000 per year,
  - Solicitation is part of a coordinated fundraising campaign that is soliciting more than ten persons during the year, AND
  - Solicitation is made in written or printed form, by television or radio, or by telephone.
- Heavy penalties for failure to disclose may apply--\$1,000/day up to maximum \$10,000.

# Fundraising & UBTI

Unrelated Business Income Tax (UBIT) is an issue in some types of fundraising.

Income is taxable if:

- Derived from trade or business activities unrelated to exempt purpose, that is regularly carried on (less deductions directly connected with carrying on the activity).
- Exceptions apply!

\$1,000 is the taxable threshold; amounts greater than this must be reported on IRS Form 990-T.

# Fundraising & UBTI

## Exceptions:

- Business or trade is conducted by volunteers.
  - Example: museum gift shop run by volunteers
- Business or trade is primarily for convenience of members, students, parents, officers, etc.
  - Hospital cafeteria
- All merchandise to be sold is donated.
  - The “thrift shop” exception.

Because the law is subject to many more nuances & exceptions, consult an accountant for your ORG’s specific situation!



# Special Event Fundraising

Implicates many of the topics we've discussed:

- Solicitation of ticket purchases considered charitable solicitation.
- Raffles
- Auctions (silent or live)
  - No charitable deduction for right to use property (e.g., someone's personal vacation home—owner gets no deduction)
  - No charitable deduction for gift of services
  - No charitable deduction for value of item purchased at auction (only for amount in excess, if any)
- *Quid pro quo* disclosures

# Restricted Gifts

Recall that AGO has oversight of charitable giving to ensure charitable gifts are used for the purpose they were given. Accordingly charities must be alert to ***restrictions on charitable gifts***.

A donor-restricted gift is a gift to a charity that is restricted by the donor as to its use.

**Example:** Donor sends check with note, “Please find enclosed my check for your scholarship fund.”

This gift may only be used by the charity for the scholarship fund.

# Restricted Funds

Restricted Funds are set aside for a specific purpose.

Board-restricted funds are funds restricted by the Board of Directors of the charity for a certain purpose. Such restrictions may be removed by the Board.

Unrestricted funds may be used for any purpose.

Why do these distinctions matter?

# Restricted Gifts

Nonprofits must be aware of restricted funds because the charity itself may or may NOT be able to remove the restriction, depending on WHO restricted it!

- Board members and staff must use care to ensure that restricted gifts are properly handled.
- Restrictions placed by donors are legally binding.
- Restricted gifts must be accounted for separately.
- Talk to your accountant or lawyer!

# Restricted Gifts

- Board-restricted funds may be unrestricted by act of the Board.
- Donor-restricted funds may ONLY be unrestricted by written consent of the donor OR by action of the Attorney General's Office or by a Court.

# Restricted Gifts

- To make gifts available for operating expenses, don't state a specific use for the funds received as a result of the solicitation but keep the gift's use as broad as possible.

**Example:** “Your gift will support the work of ABC Charity, Inc.”

- Charity's Board of Directors may restrict gifts; e.g., “Resolved: 10% of every gift received will be added to the building fund.”

# Recognizing a Restricted Gift

- Formal Gift Instrument – a formally executed document specifying the terms of a gift, such as a Will, Trust, Gift Agreement, or other document.
- BUT anything that specifies how the gift is to be used may be deemed a gift instrument; e.g., memo line on the check, an email, a handwritten note enclosed with a check, etc.
- Grants are restricted funds.

# Recognizing a Restricted Gift

- The solicitation materials that resulted in the gift may be deemed to create a restricted gift.

Example: If charity's fundraising campaign letter says that "gifts will support children's educational programs", all funds raised as a result of that letter are restricted to the charity's children's educational programs.



# Recognizing Restricted Gifts

## When do problems arise?

- When charities embark on major gift programs.
- When a donor thinks you didn't use the gift for its intended purpose!
- Old restricted funds cause problems, too; consult an accountant or attorney familiar with charitable giving.
  - Example: The scholarship fund set up “back in the day” by long deceased donor to send girls to school for “housewifery”. ORG must go to court with assent of AGO to alter or eliminate the restriction.

# Resources

- [Mass.gov/ago/charities](http://Mass.gov/ago/charities)
- [IRS.gov/charities](http://IRS.gov/charities)
- IRS Pub. 1771 Charitable Contributions – Substantiation and Disclosure Requirements
- IRS Pub. 4221 Compliance Guides
  - 4221-PC for charities;
  - 4221-NC for other tax-exempt entities

IRS guides are at <http://www.irs.gov/Forms-&-Pubs>

- Bruce Hopkins, *Fundraising Law Made Easy*, Wiley, 2009.

# Resources

- National Assn. of State Charity Officials (NASCO), *Charleston Principles*, available at <http://www.nasconet.org/wp-content/uploads/2011/05/Charleston-Principles-Final.pdf>
- [Afpnet.org](http://afpnet.org) (Association of Fundraising Professionals)
- [Nonprofitlawblog.com](http://nonprofitlawblog.com)
- [Boardsource.org](http://boardsource.org)

# Upcoming Programs

- **501(c)(3): What it Means & How to Get It**  
Wednesday, April 29 at 6:00 pm
- **Annual Reporting for the Small Nonprofit**  
Wednesday, May 6, at 6:00 pm
- **Employee Handbooks in the Nonprofit Context**  
Friday, June 12, at 8:30 am