



presents

Understanding Charitable Solicitations Registration

Learn what it is, when to file, and the impact website donations have.



Copyright Notice

Copyright © 2017

Published by Foundation Group, Inc.
1321 Murfreesboro Pike, Suite 610
Nashville, Tennessee 37217

All rights reserved. Except as permitted under U.S. Copyright Act of 1976, no part of this publication may be reproduced, distributed, or transmitted in any form or by any means, or stored in a database or retrieval system, without the prior written permission of the publisher.

Visit our website at www.501c3.org

Table of Contents

1. Copyright Notice

2. Introduction

3. About The Author

4. Overview

5. An Overview of Charitable Solicitations

6. Is All Fundraising Considered Charitable Solicitation?

7. Website Donations & Their Impact on Charitable Solicitations Registration

8. We Can Help!

9. About Foundation Group

Introduction

Thank you for downloading this eBook. We hope it brings you value as you navigate the complex world of state nonprofit compliance.

Kudos to you for looking to expand your understanding of your nonprofit's compliance requirements. It is often the first step in ensuring your nonprofit is build to last!

But working with Charitable Solicitations can be difficult. Our goal with this eBook is to educate you about this filing, which is required for the majority of 501(c)(3) organizations

Objectives

Here's what you'll learn:

- Who governs Charitable Solicitations
- Multi-State Registration
- What types of fundraising is considered solicitation
- The impact of online donations
- And much more...

We love nonprofits, and those who run them. Whatever type of organization you represent, we wish you the best of success!

Warm regards,

Greg McRay, EA
Founder & CEO

About The Author

Greg McRay, EA



Greg McRay is the founder, President, and CEO of Foundation Group. Since its beginnings in 1995, Greg's vision has been to provide our nonprofit clients with the very best counsel and assistance that can be found. That vision is fulfilled in FG's comprehensive, consulting-based approach to helping new nonprofits get up and running, as well as the ongoing compliance services that we provide to existing nonprofits.

A frequent writer and presenter, he specializes in the areas of nonprofit formation, compliance and leadership. Over the course of his career, Greg has served on numerous nonprofit boards of directors, as well as being an advisor and presenter to others.

Greg is licensed by the Internal Revenue Service as an Enrolled Agent and can represent our clients across the country at any level of IRS examination.

A coffee fanatic, avid motorcyclist and outdoor enthusiast, he resides with his family in Mt. Juliet, Tennessee.

Overview

Wouldn't it be great if your nonprofit never had to think about filing paperwork again, once you are incorporated and your 501(c)(3) status is secured? Well, as you can imagine, that simply isn't the case. As it is, the majority of states keep tabs on nonprofits soliciting for funds within their borders.

One of the least understood compliance issues facing nonprofits is charitable solicitations registration. Consequently, this also makes it the filing that an organization is most likely to be delinquent concerning. And that's a recipe for trouble...trouble that is unnecessary and totally preventable if nonprofits take the time to understand this critical compliance requirement.

Currently, 41 states plus Washington, DC require charities to register with the state division of charities prior to soliciting the public for donations.

In this eBook, we will be tackling three major topics: 1) What is Charitable Solicitations, 2) Is All Fundraising Considered Charitable Solicitations, and 3) Website Donations and Their Impact on Charitable Solicitations Registration

An Overview of Charitable Solicitations

Who Governs Charitable Solicitations Registration?

Charitable solicitations registration is a state compliance issue, not federal. Currently, 41 states plus Washington, DC*, require charities to register with the state division of charities prior to soliciting the public for donations. Your particular state's agency may be called something else, but chances are, your state requires registration. In most states with a mandatory filing requirement, it is the state Attorney General's office that governs this. In others, it is the Secretary of State's office. There are even a handful of states, like our home state of Tennessee, where both state agencies have a hand in it.

Regardless of which agency oversees the regulations, it is essential to be current. Failure to do so can result in hefty fines and even serious embarrassment for your nonprofit. We've seen states name-and-shame particularly egregious cases of non-compliance. That's the last thing you need your donors to see!

What Is The History?

The necessity to register with a state in order to seek donor support goes back at least 30 years into the 1980s. Over time, more and more states saw the need to directly regulate fundraising activity, primarily in order to provide a certain level of protection to donors. By the early 2000s, the vast majority of states had such requirements in place.

The percentage of nonprofits that were compliant with these regulations lagged behind the laws for many years. As recently as the early part of this decade, compliance nationally was below 50%. This was due to a number of factors, including a lack of awareness among nonprofits, especially smaller, volunteer-driven ones, plus an overall poor job by most states in making charities aware of

the requirements. Add to that the lack of data-sharing between state agencies, all of which resulted in poor compliance numbers. The past few years has seen a dramatic change in this equation, as data-sharing is now the norm, and an exponential increase in states getting the message out. It is harder than ever for a nonprofit to escape state scrutiny for long.

What Is It?

Simply put, charitable solicitations registration is the process of filing a registration application with a state in order to be approved to solicit contributions from the public. In some states, this is a one or two-page endeavor with limited disclosure. In many others, is a substantial application, requiring budget projections, the disclosure of board of directors information, and even copies of your IRS Form 990 or 501(c)(3) determination letter. More than half of the states will not allow you to register prior to receiving IRS 501(c)(3) status.

It's Not One-and-Done!

Unfortunately, it doesn't end with initial registration. Nearly all states involved require an annual renewal that is at least the disclosure equivalent of the original registration.

What About Multiple States?

I'm glad you asked! State registration requirements are not just for charities based in that particular state. If you are soliciting funds in any state with a registration requirement, you must register in that state. For example, let's suppose you are a Florida-based charity and you want to begin targeting potential supporters in neighboring Georgia. Even if you are properly registered in Florida, your nonprofit will still have to comply with Georgia's registration requirements.

It is entirely possible for medium-to-large charities to find themselves with what we call an "all-state" registration requirement. Most nationally-known charities are already in that boat. Obviously, the complexity of complying with over 40 states with very different rules from each other is very daunting.

Donations are the lifeblood of most charities. Making sure your nonprofit stays in compliance with registration rules is not only smart, it's the law.

Is All Fundraising Considered Charitable Solicitation?

When it comes to fundraising, what constitutes a charitable solicitation? In other words, when does the “ask” really become an “Ask” that requires a nonprofit to register with a particular state’s Division of Charities? We are frequently asked by new clients whether or not their current level of fundraising activity puts them in a situation of needing to register their organization. Simply put, it’s pretty much any level!

Essentially, any fundraising overture made toward a person individually, a group of people, or to the public at large, that asks for a donation is considered a solicitation. This can be verbal in the case of face-to-face contact, a request for financial support in a group setting, or maybe as part of a presentation to a conference audience. It may be a written solicitation if we’re talking about a direct mail campaign. Also, it could be visual. Think media advertising, websites, or social media posts. Whichever way it is delivered, it is probably considered a solicitation.

This is also true for fundraising events, like golf tournaments and silent auctions. They, too, are a form of solicitation. Even if your event is dual-purpose...both program-related and fundraising...it still likely constitutes a solicitation.

So, Which Comes First...Solicitation or Registration?

Without question, the answer is *registration*! Each of the 41 states that require charities to register in order to solicit donations expects registration to proceed any fundraising activity.

Now, as we mentioned in the first installment, nonprofits are only required to register in states where they are actively soliciting. If your nonprofit is only going to directly seek donor support in your home state, register there. Once fundraising activity begins to expand to other jurisdictions, only then does it make sense to expand your footprint of registrations. Just don’t forget to do it. As we stated before, penalties for noncompliance are painful reminders to follow the rules.

What About Unexpected Donations?

This is another frequently asked question by clients. Assume your charity is incorporated and operating in California. You have IRS 501(c)(3) status, and you're properly registered with California to solicit California donations. Without asking for it, a check for \$1,000 shows up in your nonprofit's PO Box from an unknown donor in Georgia. But, your organization is not registered in Georgia. Is that a problem? Well, not yet.

Simply getting an unsolicited donation from a resident of a state in which you are not registered does not constitute as solicitation. But, the moment you reach out to that donor and encourage them to give again, no matter how informally or subtly, it is *now* a solicitation. This is a tricky situation. Obviously, you will want to thank the donor. But do you include a new ask? First, is it worth risking a solicitation without registration? No, probably not. By the same token, is it worth following the rules and registering in a state just for the purpose of courting one donor? Maybe, or maybe not. I guess it depends on how significant the potential future donation could be, or how important it is to nurture that donor relationship. That's a subjective call for the organization to make.

Wrapping Up

Understanding that practically all fundraising activity, however incidental, constitutes solicitation is the first step in making sure your organization maintains proper compliance in this critical area.

Website Donations & Their Impact on Charitable Solicitations Registration

Prior to the widespread availability of broadband internet, you rarely saw website (e-commerce) donation capabilities. That's all changed now. With the advent of template-based website hosting like Wordpress, Squarespace, Wix, or GoDaddy's website builder, even the smallest nonprofit can have a professional looking web presence. Many of these website hosts include basic e-commerce tools at little or no cost. Throw in a credit card merchant account or Paypal, and you have everything you need for people to donate through your website.

But, is that considered soliciting...at least for the purpose of having to register your nonprofit in all states that require it? Probably not, but the devil is indeed in the details.

Charleston Principles

As online donation setups started coming onto the scene, the various state charity regulators realized they had to address electronic giving. NASCO, the National Association of State Charity Officials, met in Charleston, SC in 2001 and issued what became known as the [Charleston Principles](#). The purpose was to help states develop a more standardized approach to regulating Internet-based fundraising and solicitation. These principles are nonbinding, but they serve as a guide for the way most states interpret such solicitation.

In general, the Charleston Principles assert:

With regard to nonprofits in their own state of incorporation (domicile):

1. An entity should always register in their own state, period. It doesn't really matter if the solicitation is considered active or passive, or conducted by a third party. If you are a California charity, register in California.
2. For the record, an entity is domiciled within a particular state if its principal

place of business is in that state.

With regard to nonprofits soliciting outside their state of incorporation:

1. An entity that is not domiciled within a state must register in accordance with the law of that state if:
 - a. Its non-Internet activities alone would be sufficient to require registration;
 - b. (1) The nonprofit solicits contributions through an interactive website; and (2) Either the organization:
 - i. Specifically targets persons physically located in the state for solicitation, or
 - ii. Receives contributions from the state on a repeated and ongoing basis or a substantial basis through its website.; or
 - c. (1) The entity solicits contributions through a site that is not interactive, but either specifically invites further offline activity to complete a contribution or establishes other contacts with that state, such as sending e-mail messages or other communications that promote the website.

A Practical Example

Let's say Georgia Charity, Inc., a Georgia-incorporated 501(c)(3) public charity, has an online donation page on its website. There are no geographical restrictions on its website visibility, so anyone in the world can access it. So far, no one has interacted with their website yet, and Georgia Charity has not conducted any other fundraising activity. What should they do now?

At a minimum, Georgia Charity needs to register in the state of Georgia.

Remember: Always register in your own state.

A few weeks later, they receive their first online donation from a state outside of Georgia. Does this transaction automatically mean they need to register in that state? Not necessarily. First of all, if the state is one of the 10 that do not have a formal registration process, then naturally the answer is, no. If it is a state with a registration process, and assuming there hasn't been any other activity in that state, the Charleston Principles indicate that registration shouldn't be necessary. But even so, keep in mind that the Charleston Principles are merely guidelines for the states to follow. There are a few states that would require registration in this situation, even in the absence of other activity.

Now let's say Georgia Charity sends a thank you letter to the online donor (a best-practice idea, by the way!). Also, in that letter, they include a request that the donor consider additional gifts in the future. That is a textbook, direct solicitation that

should trigger a need for Georgia Charity to register in that other state...preferably before the letter is sent.

The Future of Online Giving and Registration

As technology rapidly changes, the states are running to keep up with the electronic donation frontier. The Charleston Principles were first published way back in 2001 and, in many ways, are woefully obsolete. Back then, few people even had broadband, and no one could have ever imagined smartphones and Star Trek-style instant knowledge carried around in our pockets. Google was a three-year-old company at the time!

Needless to say, changes are coming. NASCO has this as a topic of discussion at its annual conference every year. It is quite possible that in the future, any online solicitation activity may result in the need to register in every registration state. With that in mind, NASCO is currently working on an online, multi-state registration project that would make easier to comply in all jurisdictions. Realistically, this is years away from launch, but progress is being made, however slowly.

At a minimum, it is critical to know what is required of your nonprofit. Don't chance the embarrassment and expense of getting penalized for noncompliance. Learn what your nonprofit needs to do and act accordingly.



We Can Help!

We hope this ebook helped you in getting a better understanding about Charitable Solicitations Registration.

Foundation Group works with hundreds of nonprofits each year, assisting them with Charitable Solicitation Registration & Renewals, as well as other compliance needs.

Click the link below to learn more about how FG can help your nonprofit!

[LEARN MORE](#)

About Foundation Group



Foundation Group specializes in formation and compliance services for nonprofit organizations. We are a leader in helping nonprofits to start well and to achieve lasting success!

Since 1995, our team of dedicated professionals have helped launch over 16,000 startup nonprofits...and have maintained a 100% IRS 501(c)(3) approval rate. The variety and complexity of our client portfolio lets you know that no matter the organizational type or situation you have, Foundation Group has a solution for you.

To view our full library of articles, please visit our website at www.501c3.org.

(888) 361-9445

1321 Murfreesboro Pike, Suite 610

Nashville, Tennessee 37217

Thank you,

The Foundation Group Team