

## Fundraising and Charitable Solicitation

*Part of a series of MANP documents created to enhance understanding of the rules and regulations governing Maine's nonprofit organizations*

### Purpose

- To provide a summary of the federal, state and local regulations nonprofits are subject to when soliciting funds from the public.

### Introduction

Charitable organizations and professional fundraisers who solicit funds from the public are subject to federal, state and local regulations. State governments are the primary regulators of charitable fundraising.

### Federal Fundraising Regulations

#### Record Requirements

Federal fundraising regulations require charitable organizations to keep records of the following:

- The total amount of contributions, gifts and grants received.
- The names of and amounts given by large contributors (donors whose contributions in the past 4 years have been greater than or equal to 2% of the organization's total contributions). However, because a small contributor may eventually become a "large" contributor, it is a good idea to keep track of all contributions.
- How funds raised are spent, broken down into program, administration and fundraising expenditures.

#### Disclosure Statements

The IRS requires organizations to inform prospective donors about the extent to which their contributions are legally tax deductible. It is no longer sufficient to state, "Contributions are deductible to the extent permissible by law." Disclosure statements should indicate the specific fair market value. For example, if your organization hosts a dinner-dance fundraiser with a fair market value of \$45 a ticket but you charge \$100, you must disclose that \$55 of the ticket price is a tax-deductible charitable contribution. This pertains to cash contributions only; your organization does not need to offer an appraisal amount for the contributions of goods.

Maine Fundraising Regulations for Nonprofits

Maine requires all nonprofit corporations to register as either a **Charitable Organization** or an **Exempt Charitable Organization**. Any organization that is not Exempt, must also file an Annual Fundraising Activity Report or AFAR.

## Definition of "Charitable Organization"

The state of Maine defines a "Charitable Organization" as any person or entity registered by the Department of Professional and Financial Regulation that is, or claims to be, organized or operated for any charitable purpose and solicits, accepts, or obtains contributions from the public for any charitable purpose. A chapter, branch, area office, or any person who solicits contributions for any charitable purpose within Maine for a charitable organization whose headquarters are out of state is also considered a charitable organization.

## Exempt Charitable Organizations

The Charitable Solicitations Act exempts certain kinds of organizations from registering as charitable organizations. These include religious organizations, organizations that primarily solicit within their membership (and whose solicitation activities are conducted by members), educational institutions (whose curricula are approved by the Department of Education), and nonprofit hospitals. Your organization must re-apply for exemption annually by November 30th. More specifically, Exempt Organizations are:

- Organizations that solicit primarily within their membership, with solicitation activities being conducted by the members.
- Persons soliciting contributions for the relief of any individuals specified by name at the time of the solicitation, when all of the contributions collected, without any deductions whatsoever, are turned over to the named beneficiary for that individual's use.
- Organizations that do not intend to solicit and receive, and do not actually solicit or receive, contributions from the public in excess of \$10,000 during a calendar year, or do not receive contributions from more than 10 persons during a calendar year, if all fund-raising activities are conducted by persons who are unpaid for their services, and if no part of the assets or income inures to the benefit of, or is paid to, any officer or member.
- Educational institutions, the curriculums of which in whole or in part are registered or approved by the Department of Education, either directly or by acceptance of accreditation by an accrediting body recognized by the Department of Education, and organizations operated by the student bodies of such institutions.
- Hospitals that are nonprofit and charitable.

Exempt Charitable Organization Registration requires the following, due by November 30<sup>th</sup> Annually:

- \$10 Fee
- Completed Application

- List of directors/officers
- IRS Determination letter
- Copy of any financial statement, report or return filed with the IRS
- Statement of organizational purpose

**Download the exemption application online:**

[http://www.maine.gov/pfr/professionallicensing/professions/charitable/exempt\\_organization.htm](http://www.maine.gov/pfr/professionallicensing/professions/charitable/exempt_organization.htm)

Registering as a Charitable Solicitor

*The Charitable Solicitations Act*

(<http://janus.state.me.us/legis/statutes/9/title9ch385sec0.html>)

requires charitable organizations that do not qualify for exemption to register in order to legally solicit contributions in the state of Maine. Charitable organizations that intend to conduct charitable fundraising are required to register and re-register annually. The registration is due annually by November 30<sup>th</sup>.

Charitable Organization Registration requires the following, due by November 30<sup>th</sup> Annually:

- \$50 in fees
- Completed Application
- List of directors/officers
- IRS Determination letter

*Download the registration form on the Maine Charitable Solicitations website:*

<http://www.maine.gov/pfr/professionallicensing/professions/charitable/organization.htm>

Annual Fundraising Activity Report for Charitable Solicitors

Registered Charitable Organizations must file an Annual Fundraising Activity Report (AFAR) due annually by September 30<sup>th</sup> for the prior calendar year. This form requires organizations to report the names of Professional Fundraisers, Professional Fundraising Counsel and Commercial Co-venturers employed, if any. It also requires the reporting of the total funds raised through solicitation (not your total revenues), the amount retained by the organization and the amount paid to professionals. The form is due annually, no later than September 30<sup>th</sup>, and may be filed separately from the renewal application, which is due on November 30<sup>th</sup>, or together with the application on September 30<sup>th</sup>.

*Note:* Charitable organizations must keep complete records of all fundraising activities for possible inspection by the Attorney General for three years after the conclusion of each fund-raising activity.

*Download the AFAR on the Maine Charitable Solicitations website:*

<http://mainegov-images.informe.org/pfr/professionallicensing/professions/charitable/pdf/CharitableOrganizationAnnualFundraisingActivityReport.pdf>

Maine Fundraising Regulations for Consultants and Others

## Professional Fundraisers

An entity that performs fundraising services for a fee on behalf of a charitable organization must register with the Department of Professional and Financial Regulations, as either a “professional fundraising counsel” or a “professional solicitor.” A person employed by a charitable organization to conduct fundraising is not considered a professional solicitor unless his or her salary is based on funds raised.

Maine defines a Professional Solicitor as:

*“...any person or entity licensed by the Department of Professional and Financial Regulation who, alone or through employees or agents, solicits contributions from the public on behalf of a Charitable Organization in exchange for a fee or other remuneration. "Professional Solicitor" does not include a bona fide employee, bona fide salaried officer, attorney, and accountant or investment counselor of a Charitable Organization.”*

Maine defines a Professional Fundraising Counsel as:

*“any person who is retained, for compensation, by a charitable organization to plan, manage, advise or provide consultation services with respect to the solicitation in this State of contributions, but who does not solicit contributions, has neither custody nor control of contributions and does not directly or indirectly employ, procure or engage any person compensated to solicit contributions. A bona fide nontemporary salaried officer or employee of a charitable organization is not considered to be a professional fund-raising counsel. An attorney, investment counselor or banker who advises any person to make a contribution to a charitable organization is not, as the result of such advice, a professional fund-raising counsel.”*

**Note important changes per 2006 revisions to Maine’s Charitable Solicitations Act::**

- Professional Fundraising Counsel are no longer required to carry a \$25,00 surety bond as originally stated in Maine’s Charitable Solicitations Act.
- Individuals who contract with charitable organizations to provide grant-writing services are not required to register as Professional Fundraising Counsel.

## Commercial Co-venturers

If a commercial organization sponsors special events to raise money for charitable organizations and receives a fee for its services, it must register as a commercial co-venturer. A commercial organization that is benefited in goodwill only is not required to register, so long as the charity supervises and controls the proceeds from the special event. In order to register, it will have to pay a \$100 filing fee and post a \$25,000 bond.

**Note:** Per changes made to the Maine Charitable Solicitations Act in 2006, businesses who donate less than \$10,000 annually to Charitable Organizations do not need to register as commercial co-venturers.

## Records

A charitable organization shall maintain accurate and complete books and records of all fund-raising campaigns and shall keep those books and records available for inspection by the Attorney General or by the office for 3 years after the conclusion of each fund-raising campaign.

All contracts entered into between a professional solicitor, a professional fund-raising counsel or

a commercial co-venturer and any charitable organization, whether or not the organization is exempted, must be in writing, and a true and correct copy of each contract must be filed by the professional solicitor, professional fund-raising counsel or commercial co-venturer who is a party to the contract with the Office of License and Registration before services are performed under the contract.

#### Disclosure Rules

##### **Mandatory disclosures for charitable organizations:**

- A charitable organization that solicits on its own is required to disclose its name and address to potential contributors at the time of the solicitation, and *prior to requesting contributions*.

##### **Mandatory disclosures for a professional charitable fundraiser:**

- In addition to providing the name and address of the charitable organization, professional fundraisers also must provide the name and address of the professional fundraising counsel, professional solicitor or commercial co-venture. They must also include the statement: "(insert name) is a professional charitable fundraiser."

#### Multi-state Fundraising Regulations

If your organization fundraises outside the state of Maine, you must consult the regulations specific to the state(s) in which you fundraise. Most states, including Maine, require organizations to register before beginning fundraising activities. You can minimize the effort by using the Uniform Registration Statement (URS) for Charitable Organizations, which is accepted by many states in lieu of their state form.

For more information about the URS and in multi-state filing: [www.multistatefiling.org](http://www.multistatefiling.org)

#### Internet Solicitations

Be forewarned that the current regulatory environment supposedly governing interstate online solicitations is on shaky ground. However, the federal courts have confirmed the rights of states to regulate charitable solicitations in general. Some argue that an organization should register with any state with which it has a substantial connection if it wishes to solicit funds online, whether directly or through an arrangement with an online fundraising service. A "substantial connection" might include a state in which an organization maintains facilities, or to which an organization's employees travel regularly on organization business.

Under this arrangement, your organization can register within your home state as a charity, and in states with which it has substantial connections as a "foreign" charity.

For more information see...

- National Association of State Charity Officials (NASCO)  
<http://www.nasconet.org/Charleston%20Principles,%20Final.pdf>
- Nonprofit Quarterly Article  
<http://www.nonprofitquarterly.org/content/view/130/28/>

#### Accepting Online Donations

If you are going to accept donations online by credit card, you generally must obtain a "merchant services" account from a bank or third party service provider. Currently, some organizations that use their websites to solicit donations provide the written authentication from the charity

**organization via email.**

Additional Resources

**Charitable Solicitations FAQ:**

<http://www.maine.gov/pfr/professionallicensing/professions/charitable/faq.htm>

**Maine Department of Professional and Financial Regulation, Office of Licensing and Registration**

**#35 State House Station**

**Augusta, Maine 04333-0035**

**Phone: (207) 624-8624.**

**TTY: (888) 577-6690**

**Fax: (207) 624-8637.**

<http://www.maine.gov/pfr/professionallicensing/index.shtml>

**State of Maine Attorney General Consumer Law Guide:**

<http://www.maine.gov/ag/consumer/index.shtml>