

Fundraising + Charitable Solicitation

This white paper is part of a series of MANP documents created to enhance understanding of the rules and regulations governing Maine's nonprofit organizations.

Last updated July 3, 2014 to Reflect Changes Effective as of August 1, 2014
A summary of these changes is available at www.NonprofitMaine.org/Blog.

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.

Maine Fundraising Regulations for Nonprofits

Before soliciting contributions from the general public, Maine requires many charitable nonprofits to be licensed as a **Charitable Organization**, renew their license annually and file an Annual Fundraising Activity Report or AFAR. The following is provided as a summary of the state's rules and requirements. For full exposition of the law, please visit the Office of Professional and Occupational Regulation's website (<http://www.maine.gov/pfr/professionallicensing/professions/charitable/index.html>).

Definition of "Charitable Organization"

The state of Maine defines a "charitable organization" as any person or entity, including any person or entity organized in a foreign state, that is or holds itself out to be organized or operated for any charitable purpose and that solicits, accepts or obtains contributions from the public for any charitable purpose and by any means, including, but not limited to, personal contact, telephone, mail, newspaper advertisement, television or radio. Status as a tax-exempt entity does not necessarily qualify that entity as a charitable organization. For purposes of this chapter, an organization established for and serving bona fide religious purposes is not a charitable organization.

Definition of “Exempt Charitable Organizations”

The Charitable Solicitations Act exempts certain kinds of organizations from registering as charitable organizations. Specifically, Exempt Organizations are:

- ▶ Organizations that solicit primarily within their membership, and do not contract with professional solicitors (see definition on page 3).
- ▶ 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 \$35,000 during a calendar year, or do not receive contributions from more than 35 persons during a calendar year, **if** the charitable organization does not contract with professional solicitors, 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.

Registering as a Charitable Organization

Exempt Charitable Organizations no longer have to register or renew with the State; however, it is an Exempt Charitable Organization's responsibility to monitor its fundraising. Within 30 days of failing to meet qualifications for exemption it must register as a charitable organization as outlined below.

Charitable Organizations that do not qualify for exemption are required by The Charitable Solicitations Act (www.mainelegislature.org/legis/statutes/9/title9ch385sec0.html) to register *and renew annually* by November 30th in order to legally solicit contributions in the state of Maine.

The **initial registration** requirements include:

- ▶ \$50 fee
- ▶ Completed application
- ▶ Articles of Incorporation or similar certificate of existence
- ▶ List of directors/officers
- ▶ List of individuals responsible for custody and distribution of contributions
- ▶ Organization's budget for the current fiscal year
- ▶ Mailing address and license number of any professional solicitors or professional fundraising counsel, if applicable
- ▶ Disclosure of, and the final disposition document pertaining to, any disciplinary or court action taken against the applicant for certain transgressions

Download the Charitable Organization Registration Form from the Maine Charitable Solicitations website.

<http://www.maine.gov/pfr/professionallicensing/professions/charitable/forms.html>

The **renewal** requirements include:

- ▶ \$25 fee
- ▶ Completed application
- ▶ Annual Fundraising Activity Report (See Below)
- ▶ Disclosure of, and the final disposition document pertaining to any disciplinary or court action taken against the applicant for certain transgressions
- ▶ Any changes since the original application

A renewal form will be e-mailed to licensed charitable organizations approximately 60 days prior to expiration.

Annual Fundraising Activity Report for Charitable Solicitors

Registered Charitable Organizations must file an Annual Fundraising Activity Report (AFAR) due annually by November 30th for the prior calendar year. This form requires organizations to report the names of Professional Solicitors hired, 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.

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 fundraising activity.

Download the AFAR on the Maine Charitable Solicitations website:

<http://www.maine.gov/pfr/professionallicensing/professions/charitable/forms.html>

Maine Fundraising Regulations for Consultants and Others

Professional Solicitors

An entity that meets the definition of a “professional solicitor” must register with the Department of Professional and Financial Regulations. 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.”

Records

A charitable organization shall maintain accurate and complete books and records of all fundraising 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 fundraising campaign.

All contracts entered into between a professional solicitor and any charitable organization, must be in writing, and a true and correct copy of each contract must be kept on file by the professional solicitor and charitable organization.

The Attorney General or the Director of the Office of Professional and Occupational Regulation may request at any time:

- ▶ Any contracts entered into between a professional solicitor and any charitable organization covering current campaigns and those completed over the prior three years;
- ▶ Up to the three most recent federal IRS Forms 990 + Schedule A, 990-EZ, or 990-N; and
- ▶ The most recent audited financial statement, and if one does not exist, a balance sheet and an income and expense statement covering the most recent fiscal year.

Disclosure Rules

Mandatory disclosures:

- ▶ Any entity or person that solicits contributions from a prospective donor is required to disclose its name and address to potential contributors at the time of the solicitation, and *prior to requesting contributions*.

Additional Resources about Working with Fundraising Consultants

- ▶ Raising Funds? What You Should Know About Hiring a Professional: www.business.ftc.gov/documents/bus32-raising-funds-what-know-about-hiring-professional
- ▶ MANP Guide to Working with Consultants: www.NonprofitMaine.org/WorkingWithConsultants

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. Many states, including Maine, require organizations to register before beginning fundraising activities. The Multi-state Filer Project is a project organized by the National Association of State Charity Officials and the National Association of State Attorneys General. It contains helpful information about specific state laws and hosts the Uniform Registration Statement (URS) for Charitable Organizations, which is accepted by many states, **NOT including Maine**, in lieu of their state form. The Multi-state Filer Project's website is not always current, so it is essential that you check with the individual state's regulating office for the most current rules and regulations.

- ▶ For more information about the URS and multi-state filing: www.multistatefiling.org.

- ▶ Barbara Welch Consulting, a Maine consulting firm, has produced a spreadsheet summarizing the requirements of each state for registration and reporting by charities. Like the Multi-state Filer Project, Barbara Welch does not guarantee the currency of the information. www.barbwelch.com/tools/

Guidance on Interstate + Internet Solicitations

Be forewarned that the current regulatory environment governing interstate online solicitations is a work in progress. However, the federal courts have confirmed the rights of states to regulate charitable solicitations in general. The Charleston Principles (www.nasconet.org/wp-content/uploads/2011/05/Charleston-Principles-Final.pdf) from the National Association of State Charity Officials (NASCO) were created as a guide to states as to when charities, and their fundraisers, fundraising counsel and commercial co-ventures may be required to register, or may be subject to enforcement action, and in what jurisdictions, with regard to charitable solicitations via the Internet.

NASCO recommends that States not enforce registration requirements on charities whose only contact with the state is through the Internet. When the solicitation shifts from “passive exposition” to “active solicitation” registration requirements are triggered. This shift could be thought to have happened when an organization establishes a substantial connection with a state, 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 business, or in which they specifically target contributors or receive contributions on a repeated, ongoing or substantial basis. Under this arrangement, a charity can register within its home state as a charity, and in states with which it has substantial connections as a “foreign” charity.

NASCO’s Rules of Thumb Examples:

Passive Exposition	Active Solicitations
Donate Button on Website	Online Fundraising that targets individuals in other states
Contributions from Summer Residents	Substantial Connection with Other State
Unsolicited Contributions from Occasional Out of State Individual	Solicited Contributions from Residents of other States

It is important to note that NASCO has no authority to enforce their recommendations and it is up to each individual state to decide how to regulate charitable solicitations within their borders.

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 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." If your organization receives a contribution of \$250 or more, or provides goods or services to donors who contribute \$75 or more, there are special disclosure requirements that are explained very well in the IRS's Publication 1771 (www.irs.gov/pub/irs-pdf/p1771.pdf). For organizations that accept donations of vehicles, there are specific rules explained in the IRS's Publication 4302 (www.irs.gov/pub/irs-pdf/p4302.pdf).

These IRS publications include sample language organizations can use in their acknowledgement letters as well as when it is the organization's responsibility to provide details about the fair market value of an item and when it is the donor's responsibility.

Additional Resources

- ▶ Charitable Solicitations FAQ:
<http://www.maine.gov/pfr/professionallicensing/professions/charitable/faq.html>
- ▶ Maine Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation
#35 State House Station
Augusta, Maine 04333-0035
Phone: (207) 624-8624.
TTY: (888) 577-6690
Fax: (207) 624-8637.
www.maine.gov/pfr/professionallicensing/index.shtml
- ▶ State of Maine Attorney General Consumer Law Guide:
www.maine.gov/ag/consumer/index.shtml