

# **Charitable Solicitation:** *Registering, Acknowledging & Substantiating Donations*

***Presented by:***

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# Agenda

- ***Registration to Solicit Donations***
- ***Internet Donations & Registrations***
- ***Acknowledgement of Donations***
- ***Acknowledging Quid Pro Quo Donations***
- ***Corporate Sponsorship – Donations***
- ***Substantiation: Paperwork***

# Registering - Georgia

## ➤ ***Solicitations Act – GA***

- ⊕ O.C.G.A. § 43-17- 1 through 23 (2008)

## ➤ ***Who must register?***

- ⊕ Charitable Organizations who solicit funds in GA

- ✓ *File Form C-100*

- [www.sos.state.ga.us/securities/charitable\\_organization.htm](http://www.sos.state.ga.us/securities/charitable_organization.htm)

- ✓ *File financial statements, Form 990 or 990EZ, determination letter*

- ⊕ **Paid Solicitor**

- ⊕ **Solicitor's Agent**

- ⊕ **Fundraising Counsel**

- ⊕ **Commercial Co-venturer Activities**

## ➤ ***Each category above has specific rules that apply to it under the Solicitations Act***

## Registering – Georgia (cont.)

### ➤ **Exemptions:**

- ⊕ List at § 43-17-9
- ⊕ Charities with no paid solicitor & total revenue from contributions less than \$25,000.00 for both the immediately preceding and current calendar years

### ➤ **How often must one register?**

- ⊕ Initial Application; Amendments; Renewals
- ⊕ Charities:
  - ✓ Registration good for 24 months
  - ✓ Renewal must include new financial statements, Form 990 or 990EZ
- ⊕ All others = renewal by Dec. 31<sup>st</sup> each year

### ➤ **What are the fees for registering?**

- ⊕ Charities = \$35; renewal \$25
- ⊕ Paid solicitors = \$250; renewal \$100
- ⊕ Solicitor agent = \$50; renewal \$50

## Registering – Georgia (cont.)

### ➤ ***What acts are prohibited under the Act?***

⊕ **O.C.G.A. § 43-17-12**

⊕ **Examples:**

- ✓ *No untrue, false or misleading statements to Sec. of State*
- ✓ *No using name, symbol of similar charity to confuse, mislead to acquire donations*
- ✓ *No identification of sponsors who are not in fact sponsors of the organization*
- ✓ *No statement of a false percentage of gross revenues going to the charity*
- ✓ *Not providing proper information to a solicitee*
- ✓ *Not having written agreement with charity that soliciting on its behalf*
- ✓ *No device or schemes to defraud*

### ➤ **Penalties**

# Registering – Other States

## ➤ *When do you need to register in other states?*

- ⊕ Each state has own law

## ➤ *Unified Registration Statement*

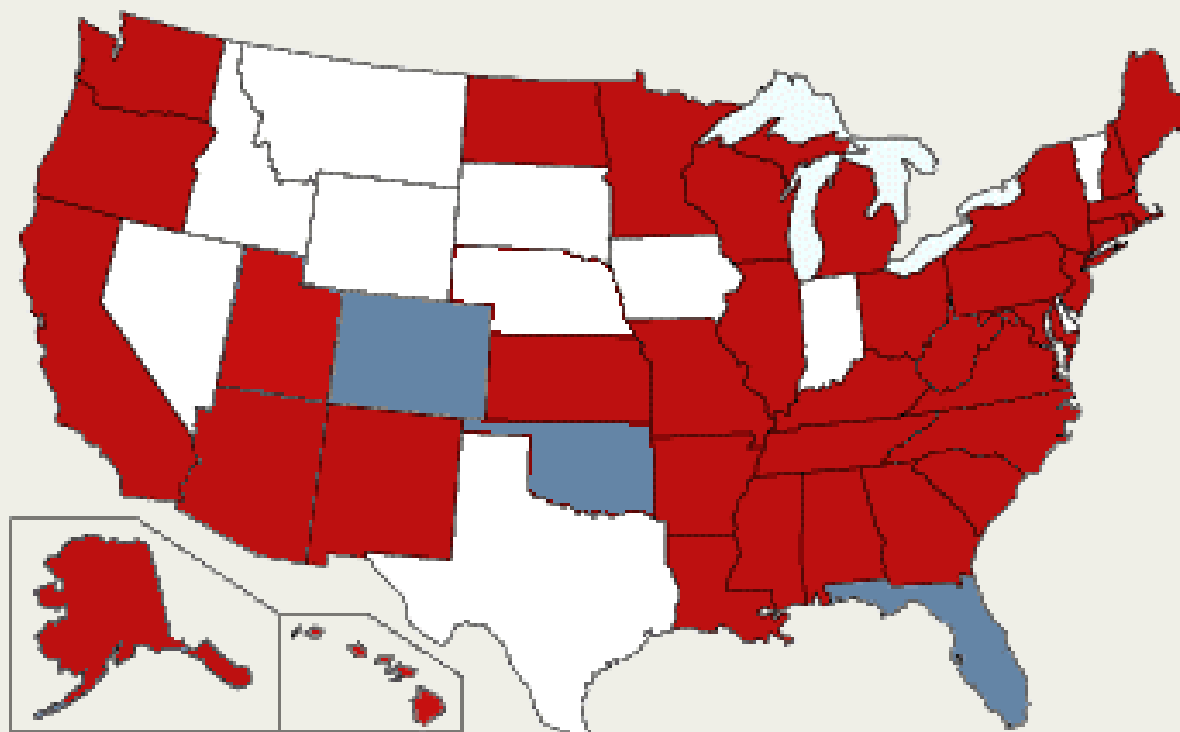
- ⊕ Multistate filing form

  - ✓ <http://www.multistatefiling.org>

- ⊕ Alternative to filing each individual form

- ⊕ Some states require additional information –
  - Included in multistate filing information

## Charity Registration in the States



- States that accept the common form
- States that require charities to register but don't accept the common form
- States that do not require registration

Source: Multi-State Filer Program

Map by Jasmine Stewart, Courtesy of the Chronicle of Philanthropy

# Internet Solicitation

➤ *Internet Fraud – a main focus of FBI*

➤ *Key Question:*

⊕ *How do federal and state courts and regulatory agencies obtain jurisdiction over entities participating in online activities?*

✓ *How much contact must the organization have with the state and its citizens?*

✓ *Each state establishes its own thresholds*



# Charleston Principles & Internet Solicitation

## ➤ **NASCO Board – Advisory Guidelines**

### ➤ **Principles**

#### ⊕ **Sufficient Contacts in state – must register**

- ✓ *Domiciled (i.e. principal place of business) in state = must register*
- ✓ *Not domiciled, but non-internet activities in state require registration*

### ➤ **Website Solicitation**

#### ⊕ **Interactive website & either**

- ✓ *(a) specifically target persons physically located in state (knew or reasonably should have known person a resident of the state) or*
- ✓ *(b) receives contributions from state on a repeated & ongoing basis or substantial basis through its website*

#### ⊕ **Non-interactive website**

- ✓ *that either invites further offline activity to complete donation or establishes other contacts with state (e.g. emails promoting website) &*
- ✓ *receives contributions from state on a repeated & ongoing basis or substantial basis*

# Charleston Principles & Internet Solicitation (cont.)

## ➤ **Email Solicitation**

- ⊕ Soliciting via email = soliciting via telephone or direct mail
- ⊕ Knew or reasonably should have known person a resident of the state

## ➤ **Internet Solicitation:**

- ⊕ Commercial co-venturers (“cause marketing”) and professional fundraisers’ websites must follow same principles

## ➤ **Exceptions:**

- ⊕ ISP that merely processes process online transactions
- ⊕ Admin., supportive, and technical service providers who do not solicit
- ⊕ Similar companies that do NOT receive compensation based on amount of funds raised

## ➤ **Still murky waters as each state still does its own thing – so check <http://www.multistatefiling.org>**

## **Substantiation & Acknowledgement**

- ***Personal services are NOT deductible***
- ***Donor cannot take deduction without a receipt, bank record, or cancelled check for a donation of any amount***
  - ⊕ Evidence of donation must state name of charity, date of donation and amount of donation
- ***Donations throughout the year may be bundled into one acknowledgement letter***
- ***For donations of \$250 or more, donor must have a written contemporaneous receipt from the charity acknowledging the contribution***

## Substantiation & Acknowledgements (cont.)

### ➤ *The acknowledgement should include:*

- ⊕ Name of charity,
- ⊕ Amount of cash contribution or description of non-cash contribution, and
- ⊕ One of the following:
  - ✓ *Statement that no goods or services were provided (if that is the case),*
  - ✓ *Description and good faith estimate of the value of goods the charity provided in return for the donation, or*
  - ✓ *State that goods or services provided consisted entirely of intangible religious benefits*

### ➤ **Format:**

- ⊕ **May be a letter, postcard, computer-generated form, if payroll deduction may use Form W-2 or pledge card**
- ⊕ **May be provided as paper copy or electronically (e.g. email)**
- ⊕ **Must be sent no later than January 31<sup>st</sup> of year following the donation**

## Substantiation & Acknowledgements (cont.)

### ➤ *Quid Pro Quo Donations – goods/services provided in exchange for donation*

- ⊕ Written acknowledgement required if payment is over \$75
- ⊕ Description and good faith estimate of the value of goods the charity provided in return for the donation on receipt
- ⊕ Payment must exceed the value of the goods/services provided in exchange for donation
- ⊕ **Examples:**
  - ✓ *Dinners/Concerts/Other Events*
    - Ticket \$50, cost of dinner \$25
    - Ticket \$100, fmv of ticket \$40
  - ✓ *Additional donation above ticket price (e.g. \$30 over \$50 ticket price)*
- ⊕ **Exceptions: tokens, membership benefits**
- ⊕ **In-kind donations – goods & services – charity should not provide a value on its acknowledgement – donor supplies value**

# Substantiation & Acknowledgements (cont.)

## ➤ ***Un-reimbursed expenses:***

- ⊕ Donor should keep receipt of expense and if expense is greater than \$250, charity should provide a receipt acknowledging the un-reimbursed expense

## ➤ ***Penalties for Not Meeting Written Disclosure Requirement:***

- ⊕ \$10 per contribution
- ⊕ Not to exceed \$5,000 per fundraising event or mailing

## ➤ ***Donations of Cars & Automobiles***

- ⊕ Not blue book value
- ⊕ Value = price for which car would change hands
- ⊕ IRS publications & forms:
  - ✓ Donee (charity): Pub. 4302; Form 8282
  - ✓ Donor: Pub. 4303; Forms 8283 and 1098-C

# Corporate Sponsorships

## ➤ ***Qualified Sponsorship v. Advertising***

⊕ **Advertising = unrelated business income**

⊕ **Corporate Sponsorship Rules**

✓ *Acknowledgement of Sponsor: name & logo*

- No statements endorsing products
- If website/email acknowledgement, no language endorsing or inducing site visitors to purchase or use sponsor's products

✓ *No other "substantial return benefit"*

- Substantial return benefit could = substantial private benefit = loss of exemption
- Insubstantial value = all goods and services received from the charity by the sponsor must NOT exceed 2% of sponsorship payment for year

## Corporate Sponsorships (cont.)

- ***How does this relate to donation acknowledgements?***
  - ⊕ **What is given to the Corporate Sponsor from the nonprofit?**
    - ✓ *Tickets to events, books, etc.*
- ***The sponsor must receive a proper acknowledgement for its donation.***
- ***What amount should be stated on the sponsor's donation receipt?***



# Corporate Sponsorship (cont.)

## ➤ *Examples:*

1. Sponsor donates \$10,000 and receives 10 gala tickets & a banner on the charity's website
2. Sponsor donates \$2,500 and receives 200 free passes into the charity's facility
3. Sponsor donates \$1,000 and receives a website link to the sponsor's products

# Quick Corporate Sponsorship Checklist

- If you answer no for any question below, the sponsorship income may be unrelated business taxable income or constitute private inurement/benefit.
- What type of benefit is the sponsor receiving?
  - ⊕ Tangible return benefit.
    - ✓ *Are all benefits received by the sponsor in total less than 2% of the total of its donation?*
    - ✓ *If the organization uses the cost-deduction method:*
      - Do sponsorship materials indicate that the cost of the item will be deducted from the charitable donation?
      - Does the acknowledgment reflect the deducted amount?
      - Is the organization keeping records that verify the cost of the benefit received?
  - ⊕ Use or acknowledgment of the sponsor.
    - ✓ *Are all statements limited to the sponsor's name, logo, slogan, or products?*
    - ✓ *Are all statements relating to value, price, endorsement and/or quality, removed?*
- Does the organization prohibit limiting the sale or availability of competing products, services or facilities in connection with the activity?
- Is the sponsor's donation is contingent (if at all) only on the event actually occurring and not on the degree of exposure the event produced?

# Recordkeeping

- ***Maintain records of fundraising activities***
  - ⊕ Solicitation materials
  - ⊕ Written copy of website solicitation efforts
  - ⊕ Written contracts with paid solicitors, co-venturers, solicitor agents
  - ⊕ Method used and evidence of tracking payments from paid solicitors, co-venturers, solicitor agents
  - ⊕ Activities that included quid pro quo donations including how value of goods/services determined
    - ✓ *E.g., Tickets that state value of goods/services provided*
  - ⊕ Sponsorship packages and value of goods/services provided
- ***Maintain records of donation acknowledgements***
- ***Maintain records of charitable registration filings***
- ***Maintain records of employees and volunteers who solicit donations for the organization***

# What is Pro Bono Partnership of Atlanta?

- Free legal assistance for nonprofit organizations in Metro Atlanta
- To be eligible, the organization must be:
  - ⊕ Nonprofit and 501(c)(3) tax-exempt (or seeking that status)
  - ⊕ Primarily serving the poor & disadvantaged
  - ⊕ Unable to pay for legal services without significant impairment of program resources
- Visit us on the web at [www.pbpatl.org](http://www.pbpatl.org)