



*This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.*

## **Risks and Rewards of Crowdfunding for Nonprofits**

Crowdfunding has become an increasingly popular tool in a nonprofit's fundraising arsenal, and with good reason. Crowdfunding is essentially a means of asking for online donations to support specific projects and fundraising events. Organizations can pay crowdfunding platforms such as [Crowdrise](#), [PayPal Giving Fund](#), and [Kiva](#), which are fundraising websites specifically geared towards nonprofits, to showcase particular projects and to collect donations on their behalf. Doing so can enable even a small nonprofit to gain national exposure and significantly enhance its funding potential.

With the benefits and popularity surrounding crowdfunding, it is easy to overlook the potential associated legal risks. For every nonprofit currently engaged in or considering engaging in crowdfunding, here are a few of the many factors to consider.

### **Choosing a Crowdfunding Platform:**

- ✓ *Is the crowdfunding platform a §501(c)(3) organization?*

If the organization wants its crowdfunding donors to be able to receive a tax deduction for their donations, the platform itself must be a §501(c)(3) charity in order to accept and process donations. The platform will collect a fee from the organization and then give the remainder of the contributions over to the charity. If the platform is not a §501(c)(3) organization, then the donation is not tax-deductible. Tax deductions are usually a major incentive for donors, and therefore an organization engaging in crowdfunding usually will want to engage a §501(c)(3) platform.

### *Does the crowdfunding platform protect donor information?*

In the age of increasing cybersecurity concerns, nonprofits need to make sure that the crowdfunding platform has a good reputation for managing cyber threats because the platform will be processing sensitive donor information. A nonprofit will also want to avoid any potential issues regarding the misuse of donor data by its platform vendor by ensuring that the vendor has a privacy policy that meets consumer expectations.

- ✓ *What information should my nonprofit receive back from the crowdfunding platform?*

To get the most valuable crowdfunding experience, a nonprofit should include in its contract with its platform vendor that the vendor will provide a list of all donors, the amount of each contribution, and each donor's contact information. All of this insight, in contrast to simply receiving a lump sum from the platform vendor, will aid the nonprofit in future fundraising efforts and in donor retention.

- ✓ *What fee is my nonprofit actually paying for the crowdfunding services?*

Crowdfunding platforms charge nonprofits either a flat fee or a percentage of the proceeds raised in exchange for their services. Organizations need to be aware of the crowdfunding platform's fees prior to engaging in its services to ensure that they are making financially sound decisions and reaping the largest benefits from their campaigns as possible.

### **Charitable Solicitation Registration:**

- ✓ *Does my organization need to register in each state from which it receives an online donation?*

Currently, forty states and the District of Columbia have statutes requiring organizations to register *before* engaging in solicitations in those states. States that require registration generally agree that a nonprofit that makes a phone call to a resident in a state or sends a written request for a donation, even by email (where the charity has acquired the email recipient's physical address through registration, previous donation, etc.), must register in that state. Because most of the statutes were enacted before the Internet age, it is less clear whether a nonprofit must register in each state from which it receives a donation where the only solicitation is via a website, such as a crowdfunding platform.

Although nonbinding in most states, the Charleston Principles drafted by the National Association of State Charity Officials offers some useful guidance. Under these principles, a nonprofit must register in a state if:

- The nonprofit solicits donations through an "interactive website" (any website that accepts credit card payments or directs users to a third-party credit card processor qualifies as interactive); AND the nonprofit either:
  - **Specifically targets individuals** located in the subject state for solicitation OR
  - Receives contributions from donors in the state on a "**repeated and ongoing basis**" through a website OR
  - Receives **substantial contributions** from donors in the state through

a website.

**Example:** Let's say your nonprofit is based in Georgia, and it receives an online donation from an individual residing in California for \$5. If this is the only donation you receive from California, you probably will not need to register in that state. But what if you send newsletters or emails to residents in California to raise awareness about the organization and the crowdfunding campaign? Or, let's say after receiving the donation from the sole California donor, he/she also provides you with an email address, and you send an email soliciting further donations? According to the Charleston principles, you have now specifically targeted someone in California and should register in that state. Alternatively, what if instead of receiving \$5 from the donor, you receive \$50,000, which represents 30% of your organization's annual revenue? This likely will constitute a substantial contribution and trigger mandatory registration.

The important idea to keep in mind when engaging in crowdfunding is that these campaigns are often not the *sole* contact the nonprofit has with potential donors. The organization might send emails and even letters to a state's residents to raise awareness about the crowdfunding campaign and to encourage contributions. It is *this* contact that often triggers that state's charitable solicitation registration requirements. Failure to comply with these requirements can be very costly for organizations. States can impose fines, require the nonprofit to return all solicited funds, and/or order the nonprofit to cease soliciting donations within the state until registration is completed. For further guidance on charitable solicitation, view our webcast at <http://www.pbpatl.org/resources/charitable-solicitation-2>.

✓ **Do state charitable registration requirements apply to crowdfunding platforms?**

It is not only nonprofits that are subject to state charitable solicitation registration; paid consultants hired to fundraise on behalf of an organization must also comply with each state's laws (e.g., paid solicitors and fundraising counsel). Must the crowdfunding platforms themselves, which are being compensated for hosting the fundraising campaigns, also register? Some states have yet to specifically answer this question, and some have declared that the crowdfunding platform must register and follow charitable solicitation reporting requirements. With the rise in popularity of such platforms, it is important for nonprofits to investigate the crowdfunding platform and find out if it is registered in those states that require it.

✓ **What if an individual is fundraising on the nonprofit's behalf?**

Many complications can arise when an individual is raising money on the nonprofit's behalf. The key to avoiding potential issues with tax-deductible charitable solicitations is for the donations to go **straight to the §501(c)(3) nonprofit**, rather than to an individual who then gives the money to the nonprofit. The most efficient way for an

individual to fundraise on behalf of the organization is for the person to set up a fundraising page **through the organization's platform or website**, versus an individual fundraising effort that is then sent to the nonprofit.

### **Quid Pro Contributions:**

- ✓ *What are the legal risks associated with thanking donors by providing them with a small gift in return for their donation?*

Many crowdfunding campaigns will offer donors a small gift in return for their contribution. Gifts such as t-shirts or movie tickets are a great way to thank donors and incentivize contributions. However, before offering such rewards there are a couple of things to consider.

Donations in exchange for goods or services are called **quid pro contributions**. For example, let's say that to spur donations, you inform the public that they will receive a t-shirt with the nonprofit's logo for each donation over \$50. Donor X makes a donation of \$80 and in return you give him a t-shirt valued at \$15.

The IRS requires a nonprofit to provide a written disclosure to each donor who makes a quid pro contribution that exceeds \$75. This written disclosure must:

- Inform the donor that his charitable deduction is limited to the excess of the amount of his contribution over the value of the goods or services provided by the organization (\$65 in the example above); and
- Provide the donor with a good faith estimate of the fair market value of the goods or services he received from the organization (\$15 in the example above).

One exception to this disclosure requirement is when the nonprofit provides goods or services that have an insubstantial value. In 2018, quid pro quo items of insubstantial value include items worth less than \$10.90 with a minimum donation of \$54.50, or when the item is valued at less than 2% of the donation but not more than \$109. The \$10.90, \$54.50 and \$109 amounts are adjusted each year for inflation and are published annually on the IRS website. So, in the example above, assume you gave Donor X a mug, calendar, or bookmark worth less than \$10.90 in return for his \$80 donation. In this case, no disclosure would be required.

For a more detailed analysis on insubstantial items and quid pro contributions, please see our article: [The Rules for Giving Small Items In Return for a Contribution](#), which is updated annually with the IRS' newest requirements.

Also, don't forget that even if your organization chooses to forego offering quid pro quo items, it must still provide written acknowledgments to all donors who can claim deductions of over \$250.

## Intellectual Property:

- ✓ *What visual content can my organization use on its crowdfunding platform?*

The use of graphic images, videos and audio files on the crowdfunding platform can be very powerful in relaying your organization's mission and attracting donors. However, it is important to avoid using content that you did not create and that you do not have permission to use. A common misconception is that material that has been posted online can be used freely. This is often not the case. Copyright and trademark laws apply to online publishing too, and websites are common targets of infringement lawsuits. The absence of a copyright symbol does not mean that a work is unlicensed. Also, crediting the original creator will not alleviate a copyright violation. To protect your organization, use content that you have created yourself or that is free for public use. If you are unsure whether a particular image, photo, music or body of text is protected, avoid using it.

Likewise, before launching your crowdfunding campaign, don't forget to identify all of *your* intellectual property. If you have original artwork, you may want to file a federal copyright registration with the U.S. Copyright office. Also, if your campaign includes a catchy slogan that you want to protect, consider filing a federal trademark application with the U.S. Patent and Trademark Office.

## Conclusion

Crowdfunding can be an invaluable tool for your organization and can allow you to reach a significantly wider pool of potential donors than with traditional means of fundraising. However, to run a successful crowdfunding campaign, it is imperative that your organization understand all of the associated legal risks. Check with legal counsel before jumping into the crowdfunding pool.