

How Third-Party Fundraising Protocols Are Essential for Nonprofits



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We match eligible organizations with volunteer lawyers from the leading corporations and law firms in Atlanta who can assist nonprofits with their business law matters.

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- Be located in or serve the greater Atlanta area.
- Serve low-income or disadvantaged individuals.
- Be unable to afford legal services.

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Agenda



- Definition of Third-Party Fundraising
- Risks Associated with Third-Party Fundraising
- Managing The Risks With Third-Party Fundraising Protocols and an Agreement

Have you ever...



Had an individual, business or group want to host a fundraiser or event to raise funds for your **Nonprofit**?

Back to Basics

- A **third-party fundraiser** is a non-affiliated group or individual who is the organizer of an event that benefits a **Nonprofit**, where a **Nonprofit** has no fiduciary responsibilities and little or no staff involvement



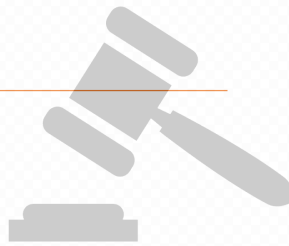
What are the Risks of Third-Party Fundraising Events for a Nonprofit?

- If a **Nonprofit's** name is associated with a fundraiser, it may appear to the public and governmental agencies that it is the **Nonprofit's** Event.
- There are many state and federal laws a **Nonprofit** must comply with when conducting fundraising activities. It is important for **Third-Party Fundraisers** to be aware of these requirements.
- There are some fundraising activities that only **Nonprofits** may partake in, and **Third-Party Fundraisers** may not.



What are the Risks?

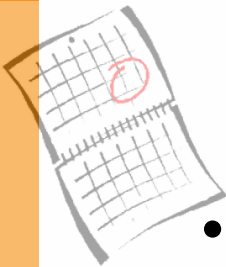
- A **Third-Party Fundraiser** may inadvertently break the law or any applicable rules and regulations
- A **Third-Party Fundraiser** may not comply with gaming laws and could be charged with illegal gambling; often only **nonprofits** may engage in some limited gaming activities
- A **Nonprofit's** trademarked and copyrighted materials may be used inappropriately, including the improper use of a **nonprofit's** name
- A **Nonprofit** may be inappropriately dragged into liability-related litigation if something goes wrong with the Event



What are the Risks?



- An Event may occur where a **Nonprofit** is not registered for charitable solicitation, potentially resulting in fines/penalties
- An Event may not be something the **Nonprofit** is proud of if it does not align with the **Nonprofit's** objectives
- An Event may conflict with the **Nonprofit's** own events
- Donors may not be able to deduct donations if they are not given directly to the **Nonprofit**
- A **Nonprofit** may not receive donor information for the future
- A **Nonprofit** may end up running the Event itself



What can a **Nonprofit** do?

- A **Nonprofit** can have protocols in place for **Third-Party Fundraisers** to follow
- This encourages third-party fundraising while reducing risks from such activities
- Third-party fundraising protocols generally address:
 - Event Application and Approval
 - Requesting Donations for the Event
 - Gaming Events
 - Marketing and Promotion
 - Marks and Logos
 - Event Expenses
 - Management of Event Protocols
 - Indemnification and Liability
- A **Nonprofit** can have a written agreement with the **Third-Party Fundraiser** for following the protocols

An Event Application Should Include:

- Name of the **Third-Party Fundraiser** and Contact Person
- Address and Phone Number
- Event Description (including start / end date, time, location)
- Marketing of Event
- Estimated Number of Attendees
- Revenue Generation
- Proposed Budget
- Contribution of Net Proceeds and Beneficiaries
- Number of the **Nonprofit's** Volunteers Needed
- Targeted Donors



Event Approval



- Event approval is specific to dates and times listed on an Event Application
- The Event and the **Third-Party Fundraiser** must complement the mission and image of the **Nonprofit**, which has the sole discretion to deny applications that do not complement it and refuse funds raised at unapproved Events
- A **Nonprofit** may withdraw approval for an Event, before or during the Event, if the **Nonprofit** determines the Event is harmful to it

Requesting Donations

- If targeting specific donors, a **Third-Party Fundraiser** must provide the **Nonprofit** with a list of targeted donors on the Fundraising Event Application and must obtain prior written approval before approaching specific donors – whether in-kind or cash
- This avoids repeated “asks” of a **Nonprofit’s** regular donors



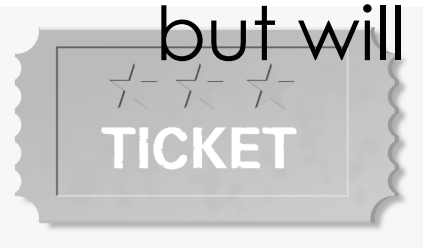
Gaming Events

- Georgia law is strict regarding raffles and gaming events, even for charitable purposes

- A **Third-Party Fundraiser** may not organize an Event that includes **lotteries, gambling, fortune telling** and **raffles/drawings**



- A **Nonprofit** can obtain a gaming license, but will not obtain one on behalf of **Third-Party Fundraisers**



Marketing and Promotion

- The Event should not be represented as an event sponsored or organized by the **Nonprofit**
- Promotions for the Event should reflect the **Nonprofit** only as a beneficiary
- A **Third-Party Fundraiser** must maintain high standards in promoting, producing and executing the Event, for the protection and enhancement of the **Nonprofit**



Marketing and Promotion

- A **Nonprofit** should tell the **Third-Party Fundraiser** how to reference the **Nonprofit** in publicity and promotional materials for the Event
- All promotional materials related to the Event, and any information that will be distributed, published or sent out by the **Third-Party Fundraiser** using the **Nonprofit's "Marks,"** should be reviewed and approved by the **Nonprofit** in writing prior to distribution

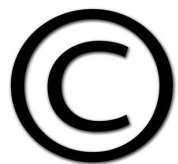


Protecting **Nonprofit's** Marks

- “**Marks**” = **Nonprofit's** name, logo, trademarks, written materials and photos - essentially the Intellectual Property of the **Nonprofit**



- **Marks** are the sole property of **Nonprofit**
- Creating a license to use a **Nonprofit's** Marks
 - A **Third-Party Fundraiser's** use of the **Marks** will not create in its favor any right, title, proprietary rights or interest
 - If a **Nonprofit** approves the Event, a **Third-Party Fundraiser** will be granted a **revocable, non-exclusive, non-assignable** license to use the **Marks**



License to Use Marks

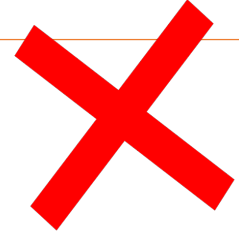


- A **Third-Party Fundraiser's** use of the **Marks** must not in any way diminish or be injurious to their value
- The term of the license: from the date the **Nonprofit** approves the **Third-Party Fundraiser's** proposal → the ending date of the Event, or shortly thereafter
- A **Nonprofit** may terminate the license, at any time, if it determines that the Event or the **Third-Party Fundraiser's** use of the **Marks** is, or will be, injurious to the **Marks**



License to Use Marks

-
- A **Third-Party Fundraiser** must not:



- Alter the **Marks** in any way;
- Sublicense the **Marks** to any other person;
- Use the **Marks** in connection with any telemarketing or door-to-door solicitations; or
- Use the **Marks** in conjunction with terminology that is contrary to the **Nonprofit's** mission.

License of Marks

- **Third-Party Fundraisers** must submit a proof for approval prior to distribution, broadcast or publications of any materials relating to any Event, which contain a **Nonprofit's** name, initials or **Marks**



Deductibility of Donations

- In order for a donor to be able to take a tax-deduction for a donation, the donation must be made directly to a §501(c)(3) organization.

- If a **Third-Party Fundraiser** has all checks made payable to it, and not the **Nonprofit**, or uses its own credit card payment processing and provides one lump sum to **Nonprofit**, individual donors may not take a deduction.



Managing Event Income & Expenses

- A **Third-Party Fundraiser** may not open bank accounts in the name of the **Nonprofit**
- A **Third-Party Fundraiser** must follow the budget that was submitted and approved with its application
- Expenses incurred for conducting the Event are the sole responsibility of the **Third-Party Fundraiser**
- Expenses should be kept to a minimum
 - Rule of Thumb: no more than 25% of gross revenue



Managing Event Income & Expenses

- A **Third-Party Fundraiser** should retain all Event expense receipts
 - If all Event proceeds go directly to the **Nonprofit**:
 - A **Third-Party Fundraiser** can submit reasonable receipts for reimbursement per the budget
 - If a **Third-Party Fundraiser** receives proceeds:
 - It should take out expenses from proceeds as long as it follows the budget
 - It should maintain receipts for accounting of income and expenses of Event and provide a copy to the **Nonprofit**
 - It should provide a list of donors to the **Nonprofit**



Managing Event Income & Expenses

- A **Third-Party Fundraiser** should:



- Provide **Nonprofit** with all net proceeds from the Event, to which **Nonprofit** is entitled pursuant to the Fundraising Event Application and Agreement, within 30 days after the Event
- Provide a written accounting setting forth the total amount raised by the Event and the total expenses incurred (including itemization and supporting documentation for any expenses in excess of \$200) within 30 days after the Event

Indemnification and Liability

- A **Nonprofit** should NOT assume any legal or financial liability associated with the Event, nor should it indemnify a **Third-Party Fundraiser**, or any party involved with the Event, for any liability, damage, expense or other costs arising out of, or in any manner related to, the Event



Indemnification and Liability

- A **Third-Party Fundraiser** must indemnify, defend and hold the **Nonprofit** and any of its employees, directors, officers, representatives, agents and volunteers harmless from, and against, any liability, damage, expense or other costs arising out of, or in any manner related to, the Event



Indemnification and Liability

- A **Third-Party Fundraiser** should obtain and maintain all requisite insurance coverage, licenses and permits in full force during the Event
- A **Third-Party Fundraiser** must show proof of proper insurance for the Event to the **Nonprofit**



Additional Tips

- A **Third-Party Fundraiser** should:
 - Comply with all applicable federal, state and local laws during the planning, promotion and conduct of the Event, including all applicable IRS regulations
- Make sure it is clear that:
 - A **Third-Party Fundraiser**, and any of its employees or representatives, are NOT agents of the **Nonprofit**
 - This agreement / relationship does NOT create a joint venture, partnership or other similar relationship between the **Nonprofit** and a **Third-Party Fundraiser**



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