

# Soliciting for Charitable Contributions in Washington – An Overview

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Washington, like many other states, regulates charitable solicitations. This overview covers the basics of Washington’s law. It is designed to assist board members, fundraising staff, and anyone planning to seek contributions for a charitable purpose in Washington State with understanding how the state statute and regulations may affect their activities. Additional advice from knowledgeable professionals may be necessary to determine how the law applies in specific cases.<sup>1</sup>

<b>Do you need to think about Washington’s Charitable Solicitations rules?</b>	
Do you make (or plan to make) any sort of appeal that asks Washington residents to support a charitable cause?	Then <b>yes</b> .
Do you (or will you) pay fees to any person, organization, or contractor to solicit charitable contributions for that cause?	Then <b>yes</b> .

If you can confidently answer “no” to both of those questions, then the rules probably do not apply to you or your organizations.

If you do make any sort of charitable appeal, then you will need to observe all the requirements for fundraising that are specified in the Charitable Solicitations Act (RCW 19.09) and summarized in the box on page 4.

You will also need to register with the Charities Program in the Office of the Secretary of State and provide an annual solicitation report unless both of these things are true:

- No-one receives any salary or fees for performing the activities for which the funds are raised and
- The total amount raised in a year does not exceed \$25,000.

## The Bottom Line

Nearly every “charity” that operates in, or solicits a contribution from anyone in, Washington State is covered by the rules. Many organizations don’t know this and run a risk of embarrassment, even penalties.<sup>2</sup>

**If you think something about your operations means that your activities are excluded, read the next few paragraphs to check whether that’s true or not.**

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<sup>1</sup> The text of the Charitable Solicitations Act is available at <http://apps.leg.wa.gov/RCW/default.aspx?cite=19.09>. Information from the Charities Program in the Office of the Secretary of State is available at <http://www.sos.wa.gov/charities>

<sup>2</sup> The Charitable Solicitations Act (RCW 19.09.020(3)) defines a “charity” very broadly. An organization (or an individual) is a “charity” if it or anyone else makes charitable appeals to the public for support of its activities. For these purposes, a “charity” does not have to be a formal organization; neither does it have to be recognized in any way by the Internal Revenue Service or any other government body. All “charities” in this sense must comply with the Charitable Solicitations Act even if not required to register and report on their activities. Violations of the Charitable Solicitations Act may be prosecuted as gross misdemeanors.

### Exceptions

- When all the money raised goes to the named individual. A campaign for a person suffering from a disease or struck by a disaster is not required to register or report (but such contributions are usually not tax deductible from Federal income tax). Such campaigns, like all others, must avoid all of the prohibited activities (listed on page 4).
- Churches and “integrated auxiliaries” do not have to register or report.<sup>3</sup> Other sorts of religious activities – including both those associated with a specific church and independent religious organizations – usually do. As with all fundraising, churches may not engage in any of the prohibited activities listed on page 4.
- Political parties and games of chance as defined by the Washington Gambling Commission are regulated in other ways.
- Commercial promotions with a charitable component (“a portion of the net proceeds from your purchase will be contributed to...”) are not covered by the requirement to register and report – unless the firm making the offer is in the fundraising business.<sup>4</sup>
- If you pay a fee to any person or organization to make charitable solicitations on your behalf, the law requires registration and reporting. Paying a fee for professional services (auditing, legal advice, etc.), though, is not the same and does not, in and of itself, mean that the charitable solicitations rules apply.
- Grantseeking is not solicitation. Requesting money from a foundation or corporation that has a regular procedure for accepting and reviewing requests for contributions is not included in the solicitation activities regulated by Washington State.<sup>5</sup>
- Fund-raising Counsel — individuals and firms who are paid a flat fee or rate and provide advice about fundraising or solicitations but do not solicit funds or receive and process donations — are not regulated by Washington state and do not need to register or report on their activities.
- Renewal notices to current members are not charitable solicitations, but campaigns to bring new members into an organization on the basis of a charitable appeal are.

### Gotchas!

- Whether you ask matters. Whether anyone responds doesn’t. The rules apply to requests for support, not to donations received – unsuccessful fundraising campaigns count.
- Where the donors live matters. Where you operate doesn’t. Anyone who solicits charitable donations from Washington residents may be covered by Washington’s rules.<sup>6</sup>
- Tax status (“nonprofit” or “for-profit”) doesn’t matter. Asking for donations does. Any sort of request for support that suggests a “charitable” purpose or goal may be covered by the rules.
- “Revenue” includes all the money given on your behalf, not just the “net proceeds.” If you put on an event (for example, a fundraising gala), the total receipts for the event, not just the surplus you can apply to your charitable work, must be counted as revenue. This calculation may affect whether or

<sup>3</sup> The term “integrated auxiliary” is pretty technical. There is more discussion of its meaning on page 7.

<sup>4</sup> “Commercial coventurer” is the technical term in the Charitable Solicitations Act for an organization making this kind of an appeal. The list of prohibited activities on page 4 does apply to this sort of promotion

<sup>5</sup> Washington is unusual in this respect. In other states where charitable solicitation is regulated, grantseeking may be a charitable solicitation. Note, also, the expenses of grantwriting are considered fundraising expenses for accounting purposes and must be reported as such on the federal Form 990 and in other financial reports.

<sup>6</sup> Organizations in other states that do not directly appeal to Washington residents can usually disregard an occasional contribution from a Washingtonian. This topic is discussed in “The Charleston Principles” published by the National Association of State Charities Officials at <http://www.nasconet.org/Charleston Principles, Final.pdf>.

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not the \$25,000 threshold has been crossed. The logic applies even if some of the costs of the event are paid by someone else (for example, a sponsor pays the venue and you don't receive any part of the payment). It's true for all sorts of events – fun runs, auctions, casino nights, benefits, any occasion that includes raising money for your cause.

- “Revenue” means the total. It's not just the amount that comes from Washington, or from donations. It includes program service fees or payments, gifts of property, in-kind gifts (of clothing or appliances), receipts from sales, grants from foundations, and government contracts.
- Unsolicited donations count. Even if you never ask for a donation from anyone, if you receive \$25,000 or more in contributions you are required to register and report using the forms from the Charities Program in the Secretary of State's office.
- You may pay a “fee” even if you never receive the money! Ordinarily, an organization with no paid staff or consultants would not be covered. But some common forms of charitable support may have an unexpected consequence. For example, if you encourage donors to make gifts that are explicitly designated to come to you through a combined fund-raising campaign, the campaign organization routinely holds back a portion of the original amount to cover its costs. When you receive only a portion of the amount donated, you have paid a fee and the Charitable Solicitation rules may apply to you.
- “Independent” fundraisers may be covered too. No-one is allowed to solicit charitable contributions on your behalf without your permission; any sort of request for donations that indicates anything will support your charitable activities means that the rules may apply to you in addition to whoever is making the request.
- Fundraising for veterans, police, firefighters and certain other groups requires permission from a specified officer of the benefitting organization. If you appeal for funds for any such group, you need to look closely at what is expected of you.

### Who is Responsible for Observing the Charitable Solicitation Act?

Everyone who makes charitable appeals to Washington residents. There is a “de minimis” rule that excludes charitable organizations that receive less than \$25,000 in contributions per year and have no paid staff or consultants. Both must be true for the exclusion to apply. Everyone who solicits charitable contributions for any sort of compensation is responsible for complying with the law.

### What does the Act Require?

- [Avoiding prohibited activities](#)
- [Registration](#)
- [Reporting](#)
- [Disclosure](#)
- [Compliance](#)

### Prohibited activities

Everyone who makes charitable appeals to Washington residents must avoid certain prohibited activities; see the box below. (The rules also prohibit raising funds in Washington State by any person or organization barred from fundraising activities by any jurisdiction within the past 10 years.)

The prohibitions in the box on the next page apply, it's worth noting, to churches and to raising money for a named individual, even though such solicitations are exempt from the registration and reporting requirements.

## PROHIBITED ACTIVITIES

*Pursuant to RCW 19.09.100*

- Including any statement that is false, misleading, or deceptive in a fundraising appeal.
- Suggesting or claiming that a contribution will be tax deductible when an applicable IRS determination letter has not been received.
- Misrepresenting or concealing the identity of the recipient of the funds being raised.
- Suggesting or claiming volunteer status if any sort of compensation is or will be paid.
- Suggesting or claiming employee status with a charitable organization when that is not true.
- Misrepresenting the connection between the organization for which funds are being raised and any governmental unit.
- Representing that tickets to any event will be donated for use by another person unless the tickets are distributed as represented prior to the event.
- Violating any local government regulation applicable to fundraising.
- Suggesting that registration or reporting as required by the Charitable Solicitations Act indicates approval by the state of Washington or any state official.
- Telephoning donors or potential donors before 8 am or after 9 pm.
- Harassing, intimidating or tormenting anyone in connection with a charitable appeal.
- Raising money for or on behalf of an organization that is required to register and has not.
- Making a solicitation that does not comply with provisions of the Charitable Solicitations Act.

## Registration

Charitable organizations (or “charities”) raise money for charitable purposes or receive money raised by others (often “commercial fund raisers” – see below), usually in addition to revenue received in other ways. Charitable organizations must register with the Charities Program in the Office of the Secretary of State before initiating fundraising – whether directly or through others – and must renew the registration annually for as long as any fundraising directed to Washington residents continues.

Commercial fund raisers contract with charitable organizations to raise money on their behalf. Commercial fund raisers must register and provide proof of a \$15,000 surety bond with the Charities Program in the Office of the Secretary of State before initiating any fundraising activities involving Washington residents.<sup>7</sup>

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<sup>7</sup> Washington’s term “commercial fund raiser” is not common in other places where charitable solicitations are regulated. Here’s is the definition from RCW.10.09.020 (5): “‘Commercial fund raiser’ or ‘commercial fund-raising entity’ means any entity that for compensation or other consideration within this state directly or indirectly solicits or receives contributions for or on behalf of any charitable organization or charitable purpose, or that is engaged in the business of or is held out to persons in this state as independently engaged in the business of soliciting or receiving contributions for such purposes.” This definition includes many sorts of activities. For example, a special events consultant who seeks

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Fundraising contracts that govern the work that commercial fund raisers do for charitable organizations must be filed with the Charities Program in the Office of the Secretary of state before the commencement of the campaign. The list of required elements in such a contract (shown on page 7) is a useful outline for questions to be addressed while negotiating with potential contractors.

“Multistate filers” are charitable organizations that undertake fundraising in multiple states and therefore must register and report in multiple states. Washington accepts the Unified Registration Statement developed by the Multi-state Filer Project and the National Association of State Charities Officials (<http://www.MultiStateFiling.org>). A supplemental form is required for completing the Washington State registration.

### Reporting

Charitable organizations use the same form for initial registration and for renewing their registration and reporting each year. A blank copy of the form can be downloaded from the Secretary of State’s website. An officer must sign this form before it is submitted.

- Every organization that files a Form 990 with the IRS must provide a copy of its IRS Form 990 to the Charities Program.<sup>8</sup>
  - Supplemental financial reporting is required in the registration and reporting document whether a copy of the IRS Form 990 is provided to the Secretary of State or not.
- Organizations with average revenue greater than \$1 million over the past three years must provide a Form 990 prepared by an experienced professional or certify that their Form 990 has been reviewed by an independent third-party who is familiar with completing this form correctly.<sup>9</sup> “Review” means scanning for omissions and obvious sorts of errors; it does not mean checking the underlying data for accuracy. The filing organization is solely responsible for the accuracy of its Form 990.
- Organizations with average revenue greater than \$3 million over the past three years must also provide audited financial statements.
  - The requirement to provide audited financial statements is waived if no more than \$500,000 of the organization’s revenue averaged over the past three fiscal years is cash or cash equivalents.
- When the \$1 million or \$3 million thresholds are exceeded because of an extraordinary gift, the organization may request a waiver from the requirements concerning review of the Form 990 and the submission of audited financials.

Commercial fund raisers update identifying and corporate information annually in a report, signed by an officer, which also includes:

- A list of other states in which the firm (or individual) is registered as a fundraiser.
- A list of the charitable organizations on whose behalf funds were raised during the reporting year.

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sponsors for a fundraising gala or receives and processes admission fees for an event making any charitable appeal is probably a commercial fund raiser in the sense of this definition.

<sup>8</sup> A caution: Schedule B, the attachment to the Form 990 that lists donors and donations, is not a public document when attached to the return filed with the IRS by a public charity; it should not be included with the copy of the Form 990 sent to the Secretary of State’s office because once filed there it is a public document and may be inspected by anyone.

<sup>9</sup> The Secretary of State’s office has a form for making this certification on its website at <http://www.sos.wa.gov/assets/charities/IndependentReportForm.pdf>

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- A “Solicitation Report” that shows the total amounts received and the total amounts paid over to the charitable organizations.
- An optional supplemental statement providing information about the firm and its fundraising activities that will be available to the public.

### Disclosure

The reports and forms filed by charitable organizations and commercial fundraisers are public documents and may be reviewed by anyone who asks to see them at the Charities Program office in Olympia.<sup>10</sup>

The Secretary of State publishes an annual “Commercial Fundraiser Activity Report” showing the total amount of money each reporting commercial fund raiser raised during the reporting period. The report lists each fund raiser’s clients; the aggregate amount raised from the public; and the net amount received by the clients (charitable organizations). This report does not provide details that would allow analysis of the funds received and fees paid by individual charitable organizations.

### Compliance

Beginning July 1, 2010, a portion of the fees for filings related to the Charitable Solicitations Act will be deposited in an Education Fund to support activities that increase understanding of and compliance with the requirements for operating a nonprofit organization in Washington State. The commitment of funds to this purpose was authorized in HB 2576, passed during the 2010 Legislative Session.<sup>11</sup> Plans for these educational activities will be developed by the Charities Advisory Council that works with the Office of the Secretary of State in consultation with the staff of the Charities Program and the Office of the Attorney General. The program will be implemented as funds for the purpose become available.

In addition to the registration, reporting and contract filing requirements described above, the rules require both fundraising charitable organizations and commercial fund raisers to follow set procedures in several key areas.

A Soliciting Charitable Organization must:

- Arrange for the board of directors (or a board committee) to review and accept the required registrations and reports prior to submission to the Charities Program. An officer must sign the reporting form.
- Assure the accuracy and completeness of every document and report it files. There is an administrative penalty of up to \$1,000 which may be imposed in the case of errors or omissions.
- Avoid all the prohibited practices (described in the box on page 4) and ensure that all agents and contractors do so as well.
- Include information about how to contact the Charities Program in the Office of the Secretary of State in printed fundraising materials and provide it on request to prospective donors.

A Commercial Fund Raiser must:

- Obtain a \$15,000 surety bond prior to doing any fundraising in Washington State.
- Identify any subcontractors involved in fundraising activities in Washington State.

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<sup>10</sup> By federal law, of course, an organization’s three most recent Form 990s, as filed with the Internal Revenue Service, must be provided to anyone who asks; they are also posted online at <http://www.guidestar.org>

<sup>11</sup> The text of HB 2576 as passed by can be read at <http://apps.leg.wa.gov/documents/billdocs/2009-10/Pdf/Bills/House%20Passed%20Legislature/2576-S2.PL.pdf>. The fees for the Education Fund are listed in Section 11.

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- Include all the provisions summarized in the box on the next page in all contracts for fundraising services.

### **REQUIRED CONTENTS FOR FUNDRAISING CONTRACT AGREEMENTS**

Pursuant to RCW 19.09.097 and WAC 434-120-240

#### **ALL WRITTEN CONTRACT AGREEMENTS MUST CONTAIN THE FOLLOWING PROVISIONS:**

- The contract shall include a requirement that both the commercial fundraiser and charitable organization comply with the law.
- The contract shall permit officers of the charitable organization reasonable access to the commercial fundraiser's financial records relating to that charitable organization.
- The contract shall permit officers of the charitable organization reasonable access to the commercial fundraiser's operations, including without limitation the right to be present during any telephone solicitation.
- The contract shall permit the officers of the charitable organization reasonable access to the names of all the fundraiser's employees or staff who are conducting fundraising or charitable solicitations on its behalf.
- The contract shall specify the amount of raised funds that the charitable organization will receive, or the method of computing that amount.
- The contract shall specify the amount of compensation of the commercial fundraiser, or the method of computing that amount.
- The contract shall indicate whether the commercial fundraiser's compensation is fixed or contingent.
- The contract shall include terms relating to the amount, or percentages of amounts, to inure to the charitable organization.
- The contract shall include terms relating to limitations placed on the maximum amount to be raised by the fundraiser, if the amount to inure to the charitable organization is not stated as a percentage of the amount raised.
- The contract shall specify the costs of fundraising that will be the responsibility of the charitable organization, regardless of whether paid as a direct expense, deducted from the amounts disbursed, or otherwise.
- The contract shall specify the manner in which contributions received directly by the charitable organization, not the result of services provided by the commercial fundraiser, will be identified and used in computing the fee owed to the commercial fundraiser.
- The contract shall specify which party will maintain the donor list.

— From the website of the Secretary of State See

<http://www.sos.wa.gov/assets/charities/RequiredContentsforFundraisingContractAgreements.pdf>

### **Appendix: Further discussion of the term “Integrated Auxiliary”**

As discussed on page 2, “churches” and “integrated auxiliaries” of churches are exempt from registering and reporting under Washington’s Charitable Solicitations Act.

Here is a paraphrased definition of the term “integrated auxiliary” (a technical term found in the Internal Revenue Code) provided by Chip Watkins of the law firm of Webster, Chamberlain & Bean in Washington, DC:

An “integrated auxiliary” is (1) a separately organized affiliate of a church, (2) that is exempt under §501(c)(3), and is either (3a) a men’s or women’s organization, seminary, mission society, or youth group, or (3b) “internally supported.” An organization is “internally supported” unless it both (4a) normally makes goods, services, or facilities available to the public for more than a nominal or insubstantial charge; and (4b) normally receives more than half of its support from governmental sources, public solicitation of

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contributions, and receipts from the conduct of business(es) related to its exempt purposes. For more detail, see The Code of Federal Regulations (26 CFR §1.6033-2(h)).<sup>12</sup>

Mr. Watkins added these additional cautions:

(1) Some organizations might qualify as integrated auxiliaries, but have never raised the issue with the IRS. If an organization's leadership now knows that it qualifies as an integrated auxiliary (because it has gone through the process to persuade Washington State that it is), it could run into trouble with the IRS if it stops filing Form 990 without first asking the IRS to re-classify it as an integrated auxiliary. The Exempt Organizations Master File is normally coded to show that the organization is required to file Form 990, and when it fails to do so, the IRS will start to assess penalties for late or non-filing. While it has usually been possible to persuade the IRS that the organizations were properly classified as integrated auxiliaries, and the penalties were abated, the EOs in question incurred substantial—even though fully justified—legal fees.

(2) Most charities should not try to establish IRS classification as an integrated auxiliary without the assistance of knowledgeable legal counsel. In this area as in many others, the advice of counsel is often necessary to protect organizations from getting tripped up by potholes they do not see.

Note: The Charities Program of Washington State generally relies on the IRS discussions of the question in determining when an organization should be considered a church.

The IRS has a publication on the federal tax rules as they apply to churches and other religious organizations available online at <http://www.irs.gov/pub/irs-pdf/p1828.pdf>.

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<sup>12</sup> An outline of the evolution of the IRS regulations describing integrated auxiliaries, by Chip Watkins, is available at [http://www.tess.org/docs/Discussion\\_of\\_Integrated\\_Auxiliaries-CWatkins.pdf](http://www.tess.org/docs/Discussion_of_Integrated_Auxiliaries-CWatkins.pdf).