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ATTORNEY GENERAL'S GUIDE FOR DONORS

I. Charities and Fundraising

Over 25,000 charitable organizations, ranging in size and complexity, from universities and health care systems to neighborhood social service agencies and youth sports associations, are active in Massachusetts. These charities provide a diverse array of services many of which benefit our communities.

Many of these organizations do not generate significant revenues from the services they render and all rely, to varying degrees, on the generosity of donors, most of which are individuals.

People donate to charity largely because they believe that making a donation will help those less fortunate, or will promote the advancement of an important cause. Charitable giving can foster a sense of community – the feeling that, even as mere individuals, we can contribute to the betterment of society as a whole.

Charities can use fund raising not only as a means of generating revenue, but also as a means of building name recognition, stimulating interest in their causes, educating the public about the services they provide, and recruiting new members and volunteers.

While some charities use their own staff to conduct fundraising campaigns, many find using professional solicitors to be a more effective way to raise funds and get their message out to the public. In addition, many smaller charitable organizations may not have enough employees or volunteers to conduct their own solicitation drives, and only through the use of a professional solicitor can they effectively publicize their causes while raising necessary funds.

II. Fundraising Methods and Professional Fundraisers

A. Fundraising Methods

Professional solicitors and charitable organizations employ a number of different fundraising methods. The most common are telemarketing, direct mail, entertainment events, door-to-door solicitation, sweepstakes and collection canisters (or "honor boxes"). Charities also raise funds by conducting gaming events such as raffles and bazaars (also known as "Las Vegas nights"). However, there are very specific regulations governing such activities.

Telemarketing, involves calling members of the public on the telephone to request a contribution. Sometimes telemarketers offer a product to the donor in exchange for a donation as an incentive to give, although this practice often reduces the amount of the donation the charity ultimately receives. Telemarketers may be volunteers or they may be paid employees. Individuals who agree to make donations are generally asked to mail in a donation, although some charities and fundraisers send couriers to pick up the donations. As with any type of fundraising, donors should ask questions about the organization and the fundraising campaign itself (a list of sample questions is provided in the next section).

Direct mail is another popular method of raising funds. Either the charity itself or a professional consultant hired by the charity may prepare the mailings. Potential donors are generally asked to mail their donations to the charity. In this situation, the donor has fewer opportunities to ask questions, but may receive more information in the written materials. A potential donor will likely feel far less pressures to give, in the absence of a person on the telephone and will have more time to make an informed decision. A potential donor who would like to find out more about the charity before he or she makes a contribution should not hesitate to contact the charity and ask questions.

Many charities sponsor entertainment events, as a method of raising funds. Charities sell tickets for admission to the event, but they may also use the event to ask for regular donations apart from ticket sales. In either case, a portion of the ticket price or donation will be used to pay for both the production of the event and fundraising costs. Before purchasing a ticket or making a contribution, the donor should find out what percentage is used to produce the event and pay any fundraising expenses, and what percentage the charity will keep.

Similarly, some solicitations involve the sale of products or the publication of an advertising book. Here, also, a portion of the donation covers the cost of the product or advertising book.

Raffles and bazaars, including charity poker events, are becoming increasingly popular as fundraising methods. As gaming events, they are subject to a number of regulations. Only certain types of nonprofit organizations may hold a raffle or bazaar. Organizations that hold raffles or bazaars must obtain a permit from the city or town clerk and have it approved by the chief of police before holding the event. Neither a professional solicitor nor an individual may conduct a gaming event for charity; qualified members of the charitable organization benefiting from the event must be responsible for conducting it.

Paid solicitors conducting door-to-door solicitations must inform potential donors that they are paid solicitors. This may be done by written notice or by a clearly displayed badge or sign. Many cities and towns also require door-to-door solicitors to be registered with the local police. Donors should check with their local police department to make sure that charities and their solicitors have registered where required. A potential donor should always feel comfortable asking the person to leave and should not be pressured by the solicitor to give in the absence of the opportunity to make an informed decision.

Canisters, honor boxes, and vending machines are most frequently seen in local variety stores, restaurants, or grocery stores. Canisters usually bear a label that names the beneficiary and asks you to give to their cause. Honor boxes and vending machines, while similar to canisters, also offer a small candy item in exchange for a donation. Many people erroneously assume that the charities themselves set out the canisters, boxes and vending machines, and that the money

received belongs to the charities. In reality, a for-profit enterprise unconnected with a charity generally manufactures the containers, and then sells them to individuals who place and maintain them. Often, the person who owns the container keeps most of the money, with the charity receiving only a small monthly amount. While the amount of money a person may place in a canister or honor box may be small, the overall amount of money raised is significant.

B. Professional Fundraisers

There are three types of professional fundraisers defined by Massachusetts law:

- 1) Professional fundraising counsels advise charities on how to raise funds but do not conduct any of the actual fundraising.
- 2) Professional solicitors develop a fundraising campaign's goals, procedures and methodology and then conduct the actual solicitation.
- 3) Commercial co-venturers are for-profit businesses that do not primarily engage in fundraising activity, but they will advertise an event or sale of a good or service to the public from which there will be a charitable benefit. The for-profit business and the charitable nonprofit organization then divide the proceeds from the fundraising activity.

Simply because a charity has not hired a professional solicitor, however, does not mean that your entire donation goes toward a charitable purpose; many larger charitable organizations retain permanent employees to conduct their fundraising, and so a portion of the revenue generated may still go to pay for the solicitation drive itself. Thus, some charitable organizations that do not hire professional solicitors may have fundraising costs similar to those that do.

A charitable organization may employ professional solicitors because the professional solicitor tends to maintain extensive "donor lists," and are able to draw from a large pool of individuals. For smaller charities, this is helpful because donors are less likely to give to smaller, more obscure charity than they are to a large and well-known one.

Hiring a professional fundraiser involves little overhead on the part of the charity itself and may be a cost-effective fundraising strategy, even if it means the charity must give over a significant percentage of the funds raised to the professional fundraiser.

For some charities that use a professional solicitor, the solicitor's campaign may only be a part of the charity's overall fundraising income for the year. Often the opportunity to expand the donor base by engaging a professional solicitor who will make calls beyond the existing donor base is a valuable way to add to their base.

C. Applicable Law

There is no law regulating the percentage of donated funds that professional fundraisers may keep. A Massachusetts law to that effect did exist prior to 1988. In that year, the United States Supreme Court ruled, in **Riley v. National Federation of the Blind**, that states cannot prescribe the percentage of funds that a charity may spend on its fundraising. The Supreme Court reasoned that fundraising often involves education and awareness programs, and other similar activities, making it difficult to separate "educational costs" from the "fundraising costs."

As a result, the Supreme Court held that imposing a state limit on the costs of fundraising would impermissibly infringe on the ability of charities to engage in free speech, and also that states may not require the charity or solicitor to affirmatively disclose how much of the solicited funds will be used to pay fundraising costs. As a practical matter, then, a donor who wants to know how much of his or her donation will be devoted to the charitable purposes stated in the solicitation should ask questions during the actual solicitation.

Under Massachusetts law, however, professional solicitors must disclose their professional fundraising status and are prohibited from deceiving the public during their fundraising efforts. This law is known as the Charitable Solicitation Act ([M.G.L. c. 68](#)), and is actively enforced by the Attorney General's Office (AGO).

The AGO regularly receives complaints from members of the public who have been contacted by professional solicitors. If the AGO determines that the Charitable Solicitation Act has been violated, it will bring suit against the charitable organization and its professional solicitor.

III. Tips for Informed Giving

Take your time and learn as much as possible about the charity. Call the charity directly, or visit its website if it maintains one. Be aware that charities with similar purposes may have similar names. Verify that the charity you give to is the charity you think it is.

A. Questions to Ask During Solicitation

- 1) What is the name of the charitable organization that will benefit from the donation?
- 2) Is a professional solicitor conducting this specific campaign? If so, what is the name of the professional solicitor? If not, how much of your donation goes toward paying for the cost of the solicitation campaign?
- 3) What is the purpose of the organization, and for what purpose will it use the donation?
- 4) How much of the donation is given to the charitable organization, and how much does the solicitor receive as a fee?

IMPORTANT: Under the terms of an increasing number of solicitation contracts, the solicitor turns over 100 percent of the revenue raised and the charity then pays the solicitor its fee, plus an array of expenses associated with the fundraising campaign. Thus, the telephone solicitor may reply that 100 percent of the funds raised go to the charity without revealing the percentage remaining for charitable purposes after the fundraising expenses have been paid. If this proves to be the case, you should ask how much the charity receives after all expenses have been deducted.

- 5) Does the caller have any written information about the charitable organization?
- 6) Are the charity and the professional fundraiser registered with the Attorney General's Office?

B. Tips for Handling Direct Solicitations

- 1) When being solicited either by a charitable organization or a professional solicitor, do not be afraid to ask the caller a lot of questions. Legitimate charities will welcome your questions and be able to provide you with accurate information; the same goes for professional solicitors.
- 2) Never give your credit card number unless you feel extremely confident about the validity of the charitable organization and the professional solicitor. Whenever possible, make all donations by check, and make the check directly payable to the charity, not to an individual or professional fundraiser.
- 3) Keep accurate records of your charitable donations so that you will have an easier time determining the amount you gave if the charity asks you for a donation again next year.
- 4) Write down the address and telephone number of the charitable organization, and if you have any doubts about its legitimacy, call the charity directly.
- 5) Try not to feel pressured. If you want some time to look into the charity before making the donation, take that time and tell the solicitor that he or she will have to wait until you are ready. Ask about the types of services the charity provides, and the geographic area in which the charity operates. Many charities solicit nationwide but do not necessarily provide services in your local area.
- 6) If a solicitor leaves you with an uneasy feeling, do not hesitate to call the charity to verify what you were told, and call the Attorney General's Office or the Better Business Bureau. If the caller does not identify himself as a solicitor, ask if he is. If the caller is not a professional solicitor, ask for the person's name and relationship to the charity.
- 7) Written material is always helpful. Annual reports will show the donor how the organization allocates its money: how much for fundraising, administration or program services. Brochures are not as helpful, but will at least give the donor a basic idea of what types of services the organization provides.
- 8) Call the Attorney General's Office to make sure that the charitable organization and the professional fundraiser are both registered and are in compliance with all filing requirements. Organizations that are not registered and in good standing with the Division are prohibited from soliciting within the Commonwealth of Massachusetts.
- 9) Donors should take special care when solicited by a police or firefighter organization. Individuals and small businesses are frequently solicited for funds to support "local" police and firefighter organizations. In exchange for a contribution, the donor may receive tickets to a show or an advertisement in a publication. Donors should realize that it is generally not the police or fire department that will benefit from the donation, but rather a police or firefighter organization, such as a union or other fraternal, membership-only group. These groups usually use professional solicitors, and donors should find out whether they are speaking with a member of the organization or with its solicitor.

Potential donors should also be aware that the funds collected might be used for a variety of purposes. Some groups are very active in their communities, and use the funds for anti-drug programs or scholarships. Others use the funds for union purposes only, such as legal expenses incurred during union bargaining.

Above all, donors should not feel threatened or intimidated by the solicitation, or pressured to make a donation, despite the supposed authority of the organization making the solicitation.

IV. Sources of Information

Many places provide additional information about charities and professional fundraisers. The Attorney General has more than 22,000 charities registered with the Division of Non-profit Organizations/Public Charities. Registration does not imply that any particular charity has the endorsement of the Attorney General or the Commonwealth of Massachusetts. Registration does indicate that the charity files annual financial reports.

The financial reports themselves contain information on income and expenses, including program and fundraising expenses, and also list the solicitation methods a charity uses, including professional fundraisers. They are available for public inspection from 10:00 a.m. to 4:00 p.m. at the Attorney General's Division of Non-Profit Organizations/Public Charities, located on the 11th Floor of the Saltonstall Building, at 100 Cambridge Street in Boston. You can reach the Division by telephone at (617) 727-2200, ext. 2101, to find out if a charity is registered before coming in to look at the file.

If you would like to receive information about a charity, but are unable to come to Boston in person to view the organization's file, you can submit a written request for information from the file of a particular charity. Specify the information you would like in a letter or telephone call to the Division of Non-Profit Organizations/Public Charities. The cost for copies is \$0.25 per page, and they will be sent to you with an invoice within several days.

If you want more information about a local charity, consider calling your local Better Business Bureau as well as the Attorney General. In addition, your local police department may have received information or complaints about the solicitation from other individuals in your area.

If you want more information about a national charity, contact the Council of Better Business Bureaus Philanthropic Advisory Service at (703) 276-0100 or visit them online at www.give.org. You can also visit Guidestar.org, an online database containing information about tens of thousands of charitable organizations.

Like charities, all professional fundraisers that solicit in Massachusetts are required to register with the Attorney General's Office and must submit copies of their contracts as part of the registration process. In addition, they must submit a \$10,000 surety bond, a description of their relationship with the charity, and a year-end financial accounting of the proceeds actually raised through the solicitation. All of these materials are public records and are available for public inspection at the Non-Profit Organizations/Public Charities Division. Additionally, the Non-Profit Organizations/Public Charities Division has compiled in the 2006 Telemarketing Report, which includes the financial results of all registered fundraising campaigns conducted in Massachusetts that made use of a professional solicitor during calendar year 2006.