

# A Second Way to Get Noticed by the California Attorney General

05.05.15 | Linda J. Rosenthal, JD



Great news! You've formed your nonprofit organization in California and you've just sent in your application for federal tax exemption.

So you rush right out and ask for donations, right?

Wrong.

That's the second way that your organization can get an invitation from the California Attorney General's office to explain yourself.

What's the first way?

Take a look back at two earlier posts. In [\*The Charitable Oversight Role of the California Attorney General: An Introduction\*](#), we launched an overview of the Attorney General's regulatory authority over any organization or person in California holding assets for charitable purposes. Then in [\*A Recipe For How To Get Noticed by the California Attorney General\*](#), we introduced the first way that you can surely get noticed by this important agency: misuse charitable funds and assets.

## *The State Wants To Know About Your Fundraising*

In a nutshell, as a charitable organization, you're going to have various governmental agencies poking around in your affairs. We identified the Internal Revenue Service as the poker-in-chief, but that doesn't diminish the important, concurrent role that the State of California has in making sure that the public trust is protected.

California, like most other states, takes a keen interest in what you're doing – or in what you're not doing, but should be (doing) – especially in the area of fundraising. This includes not only

organizations and trustees, but also commercial fundraisers who solicit on behalf of charities.

Here's how the [Attorney General's Office](#) summarizes its role: "The Attorney General regulates charities and the professional fundraisers who solicit on their behalf. The purpose of this oversight is to protect charitable assets for their intended use and ensure that the charitable donations contributed by Californians are not misapplied and squandered through fraud or other means."

And – just a head's up – when it comes to fundraising, you may not have **only** the State of California to worry about. The other 49 U.S. jurisdictions are concerned about their citizens, too, and they take notice when an out-of-state organization solicits their people for charitable donations.

And – here's an important point that many organizations haven't yet grasped: You may be liable to follow the charitable registration and solicitation laws of one or more other states **not only** if you actively send letters there or hold events or operations there. Your website – with its obvious national, and even international reach – may trigger compliance duties with these other states.

But California's fundraising oversight laws are somewhat different (and tougher) than other states, so we'll start there.

### *Registration Rules*

The first part of the fundraising rules (and the [Attorney General's oversight](#)) involves registration.

"[Newly formed California public benefit corporations and other types of charitable organizations](#)" are required to register with the California Attorney General's Registry of Charitable Trusts **within 30 days** after initial receipt of assets, and renew the registration each year.

Here's the [key difference](#) between California and most other states: In this state, you must register 30 days after you first receive any money or property for charitable purposes. The registration requirement is triggered by your receipt of charitable assets – even if you don't rush right out and conduct an active fundraising campaign. (In many other states, the registration requirement begins when you start soliciting funds.)

There are some exemptions to registration for certain categories of organizations, but these, too, are more limited than in other states. A key difference is that here there is no exemption for small charities. Otherwise, the following types of organizations do not have to register (or apply for an exemption):

- nonprofit religious organizations
- nonprofit educational institutions
- nonprofit hospitals
- licensed health care service plans
- federal or state or agencies
- religious corporations holding property for religious purposes,
- political committees reporting to the California Secretary of State, and
- cemetery corporations.

Also, any out-of-state organization that raises funds here, or does business or owns property in California, is subject to California solicitation registration rules. Here's what "doing business" means under the California fundraising laws: sending out mail solicitations into California, and advertising in publications or by any other means from outside this state. It can also include having an office in California, or officers or employees who do some work in this state, or who conduct charitable programs here.

There are some common-sense exceptions: If an organization's only contact with California is (1) grant-making to organizations, programs, or people here, or (2) having bank or investment accounts in this state, then the registration requirement does not apply.

### *How and When to Register*

A California nonprofit (or out-of-state organization subject to California's rules) should immediately file the Initial Registration Form (CT-1) with the [California Attorney General's Office Registry of Charitable Trusts](#), pay the filing fee which is currently \$25, and include these documents:

- articles of incorporation and all amendments
- bylaws
- IRS Form 1023 (or Form 1023-EZ) if submitted to IRS
- IRS determination letter, if received from IRS.

This is the initial registration that must be renewed each year, regardless of the organization's size or the amount of its charitable assets or receipts. The renewal is made by filing the [Annual Registration Renewal Fee Report \(RRF-1\)](#). It's due 4-½ months after the close of the organization's fiscal year. If you obtain an extension of time to file your annual IRS Form 990, 990-EZ, or 990-PF, that extension will be honored by the Registry of Charitable Trusts for purposes of filing the renewal registration and accompanying IRS forms.

For larger organizations, there's one more requirement. All registered charities with gross annual revenues of \$2 million or more must prepare and file annual financial statements audited by an independent certified public accountant.

What happens if you don't timely file these forms? The penalties and consequences are serious. You can:

- lose your state tax exemption;
- be billed \$800 plus interest; and
- rack up \$25 late fees each month the delinquency continues.

And this is the harshest result: your directors, officers, trustees, and even return preparers responsible for the filing failures are *personally on the hook* for payment of all penalties and late fees. They can't use the charitable assets of the organization to pay these amounts.

### *Conclusion*

There's much more to California's comprehensive laws, regulation, and oversight of fundraising and fundraisers. Stay tuned. In the meantime, the Attorney General's website provides some [good](#)

information and explanations about charitable fundraising and solicitation in California.

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