

# Crowdfunding: What California Charities Should Know

07.21.16 | Linda J. Rosenthal, JD



It seems like a perfect marriage: the internet and charitable fundraising. A lightning-speed way to pitch alerts about causes – often in times of emergency – for which generous people in your own backyard as well as around the globe can help with the click of a mouse.

It should be no surprise, then, that crowdfunding is exploding in popularity. “The nonprofit and charity sector has particularly benefited from the growth of this financing method.”

But, as in the case of any hasty union, it’s wise to slow down just a bit, get directions, and avoid driving off in the dark and over a cliff.

## *Crowdfunding: What Is It?*

Let’s start with crowdsourcing; that is, “soliciting ideas, services or contributions from an online population.”

The crowdsourcing concept has been around since the earliest days of online activity. As technology advanced, especially in the last decade, it spawned innovative variations including crowdfunding. Described as a “subset of the online crowdsourcing universe,” it “involves collecting money to help start a business, fund a charity, or provide financial assistance to a person in need.”

There are securities laws and other restrictions on people in business asking for start-up funds or venture capital about which profit-making, crowdfunder wannabes must learn.

There are limits as well as in the charitable arena. What’s called “donation crowdfunding” has been remarkably successful recently for many 501(c)(3) organizations. We’ve written about three of them in earlier posts; the San Diego Opera, Sweet Briar College in Virginia, and the Girl Scouts of Western

Washington.

But the bottom line about this exciting new form of online fundraising technique is that it is – plain and simple – fundraising. It is charitable solicitation, notwithstanding the apparently ad hoc nature of many of the appeals. And charity regulators – at all levels of government and in all jurisdictions where a virtual funding appeal may land – are keenly interested in charitable solicitations and solicitors.

## *California Crowdfunding*

For California charities, the Office of the California Attorney General is the key regulatory agency focused on charitable solicitations:

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.

The Attorney General's Office has issued several helpful publications on a variety of topics, including "Crowdfunding & Nonprofits: The Attorney General's Guide for Crowdfunding Sites, Charities, and Donors."

Crowdfunding sites provide an online place for individuals, businesses, and/or nonprofits to solicit funds. This is a new twist on an old practice. In times of need people have always reached out to their families and friends for help. Crowdfunding sites tap into these connections and make it easier to ask a wider audience for more money without the social friction that accompanies asking for money.

This general expression of approval and support is qualified, though, by the reminder that "[i]n order to protect the public and ensure transparency, charitable solicitations are subject to government oversight. Crowdfunding sites are not exempt from regulatory oversight."

More particularly, "[i]f a crowdfunding site meets the legal definition of a commercial fundraiser or fundraising counsel then they are required to register with the Attorney General's Registry of Charitable Trusts and comply with all reporting requirements."

See our earlier post: *The Charitable Oversight Role of the California Attorney General: An Introduction*, along with several more about fundraising registration requirements, and outside solicitors including "commercial fundraisers" and "fundraising counsel."

In addition to requirements imposed on the outside firms and personnel, California law mandates supervisory duties on the charities for which this solicitation work is performed.

Failure of any organization or person to strictly follow the rules may result in serious consequences.

Among the "best practices" recommended for the charities themselves are:

- "Ensure that you know what you're getting into. Charities can be penalized for using unregistered fundraisers. Do your research and ask the sites if they are registered and if

they should be.”

- “Never misrepresent the nature/purpose of your solicitation. (Gov Code, § 12599.6.)
- “Ensure transparency with your donors. Do not make representations or imply that the charity will receive an amount greater than the actual net proceeds reasonably estimated by the charity for its use. (Gov Code, § 12599.6.) Be upfront and disclose how much of their donation will be kept by the crowdfunding site.

## *Conclusion*

In later posts, we’ll highlight some additional risks and pitfalls that go along with the crowdfunding phenomenon, particularly:

- Requirements to register under charitable solicitation laws of other jurisdictions in which your new online donors reside; and
- Compliance with all federal charitable donation substantiation rules.

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