

Crowdfunding Regulation in CA: What's Next?

01.18.19 | Linda J. Rosenthal, JD



Crowdfunding for charitable purposes and beneficiaries has exploded in popularity in recent years.

"It seems like a perfect marriage: the internet and charitable fundraising."

It's 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."

See, for instance, our earlier posts on "donation crowdfunding" about Sweet Briar College in Virginia, and the Girl Scouts of Western Washington."

The bottom line, though, about this exciting new form of online fundraising technique is that it is – plain and simple – fundraising. Notwithstanding the sometimes ad hoc nature of these appeals, they are "charitable solicitations" and charity regulators – at all levels of government – take an interest in charitable solicitations and solicitors."

Existing Crowdfunding Regulation

In California, as around the United States, interested stakeholders, lawmakers, and regulators are working to create an atmosphere in which these online donations can flourish in a way that protects the donors and charitable beneficiaries and conforms to existing principles of charitable-solicitation regulation and oversight.

The Attorney General's Office has issued a helpful publication titled Crowdfunding & Nonprofits: The Attorney General's Guide for Crowdfunding Sites, Charities, and Donors. It opens with a general expression of support and approval: "Crowdfunding sites provide 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. [These] 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."

There is a reminder, though 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, the AG reminds participants that, if a site meets the statutory definition of a “commercial fundraiser” or “fundraising counsel,” it must register with the Attorney General’s Registry of Charitable Trusts and comply with the reporting requirements in those statutes. In addition to imposing requirements on outside crowdfunding firms and personnel, California law imposes supervisory duties on the charitable organizations for which the crowdfunding appeals are made. There are serious consequences for failure of any organization or person to strictly follow these rules.

The California Attorney General’s Office list certain “best practices” for participating charities, including: (1) don’t use unregistered fundraisers; (2) don’t misrepresent the nature or purpose of the solicitation; and (3) disclose how much of a donor’s contribution will be kept by the site.

Legislative Action on Crowdfunding

In *CA Considers a Charity Crowdfunding Bill*, earlier this year we reported that legislators attempted – not for the first time – to pass legislation on this activity. The bill introduced in the 2018 Regular Session of the California Legislature, AB 2556, was crafted in coordination with PayPal and the crowdfunding industry.

Reaction was positive to the extent that interested stakeholders want to see legislative action, but there was early consensus that the particulars of the measure needed some reconsideration and refinement.

AB 2556 never made it out of committee, while stakeholders including the California Association of Nonprofits sought input on how to improve this (or a future) bill.

Call for Cooperation

Now that the particulars of AB 2556 are officially off the table, CalNonprofits and others are continuing to explore the parameters of useful legislation and approval: “Crowdfunding sites provide 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. [These] 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.”

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These Principles assert that "all parties must protect the integrity of the relationship between donors and nonprofits," including assurances that donors' money will go to designated charities in a timely manner.

For these reasons, online platforms must:

- Explain at point of donation who gets the money and if it's tax deductible
- Ensure that the donor has control over personal information
- Disclose all fees before donation
- Transfer funds to designee nonprofit within 30 days
- Confirm to donors the donation was received by donee
- If designated charity can't be found, ask donor for alternate recipient
- Provide publicly available annual report
- Engage with charitable organizations and government regulators as this field evolves

Conclusion

CalNonprofits concludes its letter by asking for continued cooperation and input to develop proposals for legislation.

— *Linda J. Rosenthal, J.D., FPLG Information & Research Director*