

## Do We Need to Tell Anyone We're About To ....?

05.24.16 | Linda J. Rosenthal, JD



California charitable corporations are poked and prodded by a maddening number of federal, state, and local government agencies.

It's not, however, pointless meddling and duplication of effort. Each agency has its own statutory responsibilities.

In Audits and More Audits, we focused on the investigatory role of the California Attorney General's Office.

By way of brief review, "[t]he Attorney General has the duty to protect donors to charity, charities themselves and the beneficiaries of charities...." It "represents all the public beneficiaries of charity, who cannot sue in their own right." This role is "different from that of the IRS and Franchise Tax Board." In California, it is the Office of the Attorney General which "has primary responsibility for regulating, enforcing and supervising organizations and individuals that administer and/or solicit charitable funds or assets in California."

### *What Gets Their Attention*

The Charitable Trusts Section of the AG's Office does this work. Within this Section are the Legal and Audits Unit and the Registry of Charitable Trusts. In its helpful Guide to Charities, these friendly folk give some hints about what gets their attention. "Some of the problems frequently investigated by the Attorney General include:

- self-dealing transactions by insiders, including loans and excessive compensation
- substantial losses of funds or assets in a single year
- losses from speculative investments

- unauthorized and unfair sale or conversion of the charity or assets for profit or to a profit-making agency
- Illegal use of money
- Channeling funds and assets away from their intended, charitable purposes to unauthorized, non-exempt purposes
- Possible criminal activities”

Matters the AG’s office stays out of include: “internal labor disputes, contested elections, disagreements between directors and members over policy and procedures, and most legal actions between charities and third parties regarding contracts or torts.”

If you have any of those, you’re advised to hire a lawyer to “review legal rights and remedies.”

### *What You Have to Report*

Now, getting back to the title: “Do We Need to Tell Anyone We’re About To ....?”

The answer is yes; there are certain types of activities that you are required to tell them about ahead of time, either for “notice” alone or for advance approval or consent. You can’t just sit back and wait until the government comes to you (if ever) to ask for information and inspect records and documents.

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*California law requires that directors of public benefit corporations either give written notice to, or obtain consent from, the Attorney General before taking certain actions that will have a significant impact on the corporation and its assets.*

The following discussion applies specifically to public benefit corporations; that is, the category that is roughly equivalent to 501(c)(3) of the Internal Revenue. (Other nonprofit corporations have separate requirements.)

- *Voluntary Dissolution:* Corp. C. secs. 6615 and 6716. Requires prior notice or waiver of notice by Attorney General; 30 days
- *Merger:* Corp. C. sec. 6010. Requires prior notice; 20 days
- *Sale or Disposition of All or Substantially All Corporate Assets:* Corp. C. sec. 5913. Requires prior notice; 20 days
- *Sales of Transfers of Assets by Public Benefit Corporations Operating Health Facilities:* Corp. C. secs 5914 and 5920, Title 11 California Code of Regulations, section 999.5; Approval required

- *Conversion of Public Benefit Corporation to Mutual Benefit, Religious or Business Corporation:* Corp. C. sec. 5813.5; “No conversion of public benefit corporation that has any assets to any form of proprietary corporation (e.g., a business, mutual benefit, or a cooperative corporation) without prior written consent of Attorney General. Requires certification that all charitable assets will be transferred to another charity as a condition to consent.”
- *Self-Dealing Transactions:* Corp. C. sec. 5233; “Directors may give written notice to the Attorney General of self-dealing transactions. Such notice has the effect of shortening the statute of limitations for bringing a civil action to challenge self-dealing.” May also seek approval.
- *Loans to Directors, Officers:* Corp. C. sec. 5236; Prior written consent required, with certain exceptions for residential loans; “court approval may be sought as an alternative.”

### *Conclusion*

Precisely because any of these decisions “will have a significant impact on the corporation and its assets,” it’s critical to carefully consider these moves in consultation with professional advisors.