

New Laws, New Rules in 2016 for California Nonprofits

01.07.16 | Linda J. Rosenthal, JD



On New Year's Eve, there are champagne toasts and doomed-to-failure resolutions to lose weight. At the stroke of midnight, there are also new laws on the books that affect California nonprofits. Some of them apply *only* to nonprofits; others, for instance, cover *all* employers in the state, including nonprofits.

New Laws and Rules Just for Nonprofits

Attorney General Regulations

After a lengthy period of review and controversy, the California Attorney General went ahead and adopted stringent new amendments to the regulations under the California Supervision of Trustees and Fundraisers for Charity Purposes Act.

The full text of the new regulations is [here](#).

Members of the philanthropy community have identified "[several provisions that are particularly troubling](#)."

Specifically –

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Section 999.9.3 of the regulations provides that, if an entity that is required to register with the California Attorney General's Registry of Charitable Trusts has had its registration suspended or revoked, “[m]embers of the board of directors or any person directly involved in distributing or expending charitable assets [while the organization is suspended or revoked without the written approval of the Attorney General] may be held personally liable” for the amounts of such expenditures. The same Section goes on to provide that “[t]he Attorney General may direct a registrant whose registration has been suspended or revoked to distribute some or all of its charitable assets...to another charitable organization or into a blocked bank account.

The Attorney General's Office sees these revised regulations as procedural changes only. Critics, however see them as substantive policy modifications, and are “...concerned with the question of whether these regulations represent the beginning of a general trend in the regulation of the nonprofit sector” that includes “excessive discretionary enforcement authority or that fail to differentiate between the failure to file a required registration form and a true abuse of charitable assets.”

Dissolution Rules

When a California Nonprofit Corporation decides to close operations, there is a set procedure for winding down operations, dissolving the entity, and distributing any remaining assets. The ordinary procedure involves several procedural steps with multiple California agencies: the Attorney General, the Secretary of State, and the Franchise Tax Board. The rules are explained on the California Attorney General's website, [here](#).

There is a new, alternative procedure, effective January 1, 2016, that applies to inactive nonprofit corporations which are eligible for administrative dissolution under a recent statute, AB 557. They can be automatically or voluntarily dissolved.

There are now 3 ways a nonprofit corporation can be dissolved:

- Automatic Dissolution: The Franchise Tax Board can automatically dissolve a corporation that is suspended or forfeited for at least 48 months and no longer operates. (There may be a backlog and some delay, though, because of the anticipated volume.)

- Short Form Dissolution: The Secretary of State will allow a short form dissolution for eligible corporations that act within 24 months of filing the articles of incorporation.
- Voluntary Dissolution: The Franchise Tax Board will develop a form (in 2016) for a corporation to request administrative dissolution.

There will be additional information and guidance as new procedures are developed.

Additions to Charitable Solicitations Rules

Under existing law, the Supervision of Trustees and Fundraisers for Charitable Purposes Act, “generally regulates charitable corporations, trustees, and other legal entities holding property for charitable purposes, commercial fundraisers for charitable purposes, and fundraising counsel for charitable purposes, among others, over which the state or the Attorney General has enforcement or supervisory powers.”

Assembly Bill 556 was signed into law on September 21, 2015, effective January 1, 2016. There are changes, by way of amendments to, the charitable solicitation rules in sections 12596, 12599, and 12599.1 of that Act:

- “*Commercial fundraiser for charitable purposes*”: Definition expanded to include “any individual, corporation, unincorporated association, or other legal entity that plans, manages, advises, counsels, consults, or prepares material for, or with respect to, the solicitation in this state of funds, assets, or property for charitable purposes, as specified”; it also excludes from that definition “a trustee, a charitable corporation, specified financial institutions, or an escrow agent or caging company, as defined, that receives or controls funds as a result of a solicitation for charitable purposes.
- “*Fundraising counsel for charitable purposes*”: Lists conditions “under which a fundraising counsel for charitable purposes is deemed to receive or control funds, assets, or property. The bill would require an individual, corporation, unincorporated association, or other legal entity that does not meet the qualifications of fundraising counsel for charitable purposes to be deemed a commercial fundraiser for charitable purposes.”

“Existing law requires an individual or entity who for compensation solicits funds or property for charitable purposes to disclose that the solicitation is being conducted by a commercial fundraiser for a charitable purpose and the registered name of the commercial fundraiser.” Under new law, “the disclosures, if printed or if presented electronically” must be in “at least 12-point type, and be clear and conspicuous.”

Assembly Bill 556 also authorizes the AG “to bring an action for a violation of these provisions at any time within 10 years after the cause of action accrued. The bill would also authorize the Attorney General to bring an action for civil liability against a person who aids or abets a violation of these provisions at any time within 10 years after the cause of action accrued.

Enforcement of Charitable Trust

The California Attorney General has jurisdiction over charities and property held in charitable trust in this state. “Existing law requires the Attorney General to establish and maintain a register of charitable corporations, unincorporated associations, and trustees subject to these provisions and of the particular trust or other relationship under which they hold property for charitable purposes.”

In addition, “[e]xisting law provides that one who wrongfully detains a thing is an involuntary trustee thereof for the benefit of the owner, and that one who gains a thing by fraud, or other wrongful act is an involuntary trustee of the thing gained for the benefit of the owner.”

“This bill would authorize the Attorney General to bring an action for a violation of these provisions at any time within 10 years after the cause of action accrued.” It would also authorize the AG to “bring an action for civil liability against a person who aids or abets a violation of these provisions at any time within 10 years after the cause of action accrued.”

There is an analogous provision specifically directed at directors and officers of nonprofit public benefit corporations; the assets of these corporations are held in charitable trust for the general public.

Under existing law, “the Nonprofit Corporation Law, sets forth standards of conduct for directors and officers of nonprofit public benefit corporations and provides that it is a crime for any director or officer of any corporation among other things, to knowingly engage in specified acts relating to fraud, to make materially false reports, to receive or acquire possession of the property of the corporation, or to falsify the books or accounts of the corporation.” The AG is, under this bill, authorized “to bring an action for a violation of these provisions at any time within 10 years after the cause of action accrued” and “to bring an action for civil liability against a person who aids or abets a violation of the standards of conduct for directors and officers of nonprofit public benefit corporations at any time within 10 years after the cause of action accrued.”

Limited Expansion of Raffle Rules

In California, raffles are permitted as charitable fundraisers – but only subject to strict rules. A key restriction is that at least 90% of the proceeds must go to the charitable cause. We explained in “It’s Just a Raffle: What’s the Big Deal?” that the winner is limited to no more than 10% of the money raised.

In other states, there's a popular raffle activity – the 50/50 raffle – that is conducted by major league sports team to benefit several community organizations. Proponents of this type of raffle finally won over legislators (and Governor Brown, apparently) to allow this type of 50/50 raffle in California under the same conditions; that is, sports league fundraisers for the community. We reported this development in "[Surprise Change to Charity Raffle Rules in California](#)"

New Laws For All Employers

We've made a point in several earlier posts – like [here](#) and [here](#) – of emphasizing that nonprofits that have employees are subject to almost all of the laws that every employer in California must follow. In "[Gender Equality \(and Nonprofits\): California's Bold New Law](#)," we reported on a piece of legislation passed by the California legislature among the avalanche of legislative measures in September 2015. Beginning January 1, 2016, the Golden State now has a mandate of "equal pay."

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The Fair Pay Act is a landmark piece of legislation in the ongoing struggle for fair and equal pay for women. Its goal is to eliminate the well-documented 26 percent pay disparity that exists across the economy between men and women doing the same job. The new law requires equal pay, regardless of gender, for “substantially similar work” and prohibits retaliation against employees who invoke the law and/or discuss wages with their coworkers. See Lab C §1197.5, as amended by Stats. 2015, ch 546, SB 358 (effective January 1, 2016).

Conclusion

Here's wishing you a prosperous and meaningful New Year – totally in compliance with all applicable rules and regulations!