

Online Charitable Giving: Cal AG's New Guide

09.17.19 | Linda J. Rosenthal, JD



In the past decade or so, charitable giving and fundraising have been turned upside by the swift and dramatic rise of the internet. As quickly as new means of asking for and giving money to charity have developed, legislators and government officials have responded as swiftly as possible to keep up with developments in this brave new electronic world.

The individual states – rather than the Internal Revenue Service – have primary responsibility and authority in connection with all matters relating to charitable solicitations. Among the jurisdictions most active in monitoring these practices is California; its Attorney General, Xavier Becerra, has made it clear since his 2016 appointment and 2018 election that he will continue the aggressive supervision utilized by his AG predecessors, (now) Sen. Kamala Harris, and (former) Gov. Jerry Brown, both within and beyond the borders of the Golden State when warranted.

The California attorney general has broad statutory powers and the support of the Charitable Trusts Section of the California Department of Justice. The agency has an active [website](#) devoted to charities and solicitation issues and publishes helpful guides and other resources for the general public as well as the philanthropy community

There are two publications this year especially worthy of note: the January 2019 revision to the 2008 [Attorney General's Guide for Charities](#) as well as the new [Attorney General's Guide for Online Charitable Giving](#) dated July 2019. We'll focus on the new guide in this post, but we'll cover the revision briefly, too.

Revision of General Charities Guide

The 2019 comprehensive revision of the [Attorney General's Guide for Charities](#) is 113 pages long, and available free online at the agency website. The revision subtitle is "Best practices for nonprofits that operate or fundraise in California." There is also a live webinar discussing the Guide available on the California Department of Justice's [YouTube Channel](#) (where else?) as well as additional

resources on the [Guide for Charities](#) page.

Since it's a broad, "soup to nuts," publication, there is only a single chapter (of 13) relevant to charitable giving and solicitation laws and rules: Chapter 9, "Charitable Fundraising." From pages 66-79, there is a discussion of "the legal issues and requirements under California and federal law governing charitable solicitations, also known as fundraising, charitable fundraising, and the soliciting of donations."

The topics cover "popular fundraising methods" including: mail, telephone, and website solicitations; newspaper and magazine advertisements; special-event ticket sales (bingo and raffles are mentioned, among others); use of collection bins; vehicle donation programs; and product sales. There is also in-depth explanation of special rules related to outside fundraisers and cause-related-marketing campaigns. While the Chapter 9 topic list mentions "online giving platforms," that discussion is left for the smaller but significant new publication in July 2019.

New Online Charitable Giving Guide

This new publication, [Attorney General's Guide for Online Charitable Giving](#), also available online, is much shorter – just 10 pages long. But it's significant because it focuses on the relatively new phenomenon of "charitable fundraising platforms"; that is, sites including – most notably – "Amazon, Benevity, Charity Navigator, CrowdRise, eBay, Facebook, GoFundMe, Google, GuideStar (Candid), Lyft, Overstock, and PayPal."

It also covers the new "partnering platform charity," an example of which is the PayPal Giving Fund, which receives donations and turns them over to a specific charity. "A platform charity like Pay Pal Giving Fund may even use what are called 'donor advised funds' to receive and distribute donations, but this is not required."

This Guide is described by the state agency as "an invaluable resource for the public and charitable fundraising platforms, which promotes informed charitable giving and the protection of charitable assets as online fundraising innovation evolves."

It's organized in four sections:

- Introduction: How and Where Can You Give to Support Charities Online?
- Research Before Donating
- Duties and Best Practices for Charitable Fundraising Platforms
- Conclusion and Legal Notice

The two key audiences for this document are: (1) donors; that is, the "charitable giving public" and (2) the new platforms.

Donor Needs

Section II focuses on the donors' needs: "Although it may be more convenient to donate to or support your favorite charities through charitable fundraising platforms, you should be fully informed as to how the donation process works for these indirect methods of charitable giving."

Among the topics discussed are:

- Who are you giving the donation to?
- Will the charity receive the donation?
- If the charity can't receive your donation, can you choose another charity to receive it (as donations are not refundable)?
- If the charity can receive your donation, how long does it take for the charity to get it? Can you be notified of this?
- How much of your donation does the charity receive?
- Is your donation tax deductible?
- Will the charity receive your contact information?
- Will your donation be used by a charity for the specific purposes described on a charitable fundraising platform?
- Has the charity given permission to the charitable fundraising platform to receive donations through the platform?

Donors are also told that “other material information that should be disclosed (and not only in fine print) include: information on refunds, the process for vetting charities before listing them on platforms or granting them donated funds, and the use of donor advised funds. For instance, if donor advised funds are used to accept donations, platforms should clarify what that means, why and how donor advised funds are used, and whether a donor advised fund is created for each donor.”

New Platforms and Partners

Section III focuses on the “... many companies [that are] unaffiliated with a charity ” but allow you to perform the following on their platforms:

- Select a charity to receive a donation from a list or database of charities;
- Fundraise for charities, sometimes called crowdfunding campaigns or peer-to-peer fundraising, encouraging you to use your personal social media contacts to solicit donations for your favorite charity or cause (e.g., the platform may let you solicit and match donations to celebrate your birthday or another event); or
- Support charities when you make purchases by, for instance, adding a small amount to a transaction that serves as a donation, or a donation is made by the platform or another corporation based on how much you spend online.”

This part of the Guide is chock full of meaty directives including:

- Abide by fiduciary duties
- Only list on platforms charities in good standing
- Let donors choose how their information is shared and responsibly handle their information
- Make the donation process transparent
- Distribute donated funds as quickly as possible
- Provide compliant tax donation receipts
- Obtain prior permission from charities to solicit and receive donations intended for them
- [Comply with] registration and other requirements”

Conclusion

Taking a look at Chapter 9 of the revised Attorney General's Guide for Charities and all of the new Attorney General's Guide for Online Charitable Giving will likely devour most or all of an upcoming weekend, but there's plethora of important information to digest. *Bon appetit.*

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