

# Taking Fundraising Outside the Organization

09.03.15 | Linda J. Rosenthal, JD



Fundraising is central to the success of public charities. It takes an enormous amount of time, effort, and resources to raise the money needed to accomplish an organization's mission.

And it's certainly quite a bundle that's raised. For example, in 2013, total charitable giving in the United States was over \$335 billion.

That's \$335 billion or so that donors expect to go to legitimate organizations for charitable and philanthropic purposes.

With all that money at stake, legislators and government regulators have taken notice.

Although the federal government has an interest in all aspects of the money flowing in and out of 501(c)(3) organizations, the regulation of charitable solicitations is primarily a matter for the states. Especially in the last decade or so, many states, including California, have acted – with comprehensive laws that focus on: (1) registration of charities and their fundraising agents; and (2) certain mandatory disclosures.

## *California's Fundraising Laws*

California's fundraising regulatory scheme has this type of broad reach, touching not only the charities themselves, but outsiders who help them with creating fundraising campaigns, soliciting donations, and holding fundraising events.

There are two statutes governing fundraising:

- **Registration:** In 1959, the legislature enacted the "Supervision of Trustees and Fundraisers for Charitable Purposes Act." It was amended by the Nonprofit Integrity Act of 2004. Codified as California Government Code sections 12580-12599.8, the full text is [here](#).

- Disclosure: “In 1972, the California legislature decided that the best protection against solicitation fraud was a well-informed public. To promote public education about charitable solicitations costs through disclosures to prospective donors, California passed the ‘Charitable Solicitation Disclosure Law.’” Codified as California Business & Professions Code sections 17590 et seq; the full text is [here](#).

#### *Outside Fundraising Help*

According to the California Attorney General, “it appears that relatively few charities use [outside personnel], relying instead on their own staff and volunteers.”

Some groups, though, want or need outside assistance. They connect with independent consultants or companies, described and defined in the Supervision of Trustees and Fundraisers for Charitable Purposes Act.

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*The Act requires charitable organizations to enter into written contracts containing mandatory terms and conditions for every charitable fundraising event where a commercial fundraiser is used. The Act requires charitable organizations to exercise control over fundraising activities conducted for them. The Act imposes on each commercial fundraiser highly detailed requirements for prompt deposit of charitable funds in a bank account in the name of, and controlled by, the beneficiary charitable organization. The Act sets forth twelve prohibited acts in the planning and execution of fundraising by the charitable organization and others, and it gives charitable organizations extensive rights to cancel or void contracts with commercial fundraisers and fundraising counsel.*

#### *Who is Covered?*

First things first: Who is covered under this registration statute? There are three categories, two of which are mentioned above.

- *Commercial Fundraiser*

“Commercial fundraiser” is “an individual, who is not an employee or volunteer of a charity” who solicits charitable donations and who receives or controls donations as a result of a solicitation in California, or who employs any compensated person to “solicit, receive, or control funds, assets, or property for charitable purposes.” The full text of the definition and additional details are [here](#).

- *Fundraising Counsel*

“Fundraising counsel” is any individual or business that – for compensation – “plans, manages, advises, counsels, consults, or prepares material for” charitable fundraising campaigns.

“Fundraising counsel” doesn’t, though, conduct the fundraising campaigns; that is, doesn’t solicit “funds, assets, or property”; doesn’t have control of any of these donations, or hire anyone else to solicit or have possession of any donations. The text of the definition and additional details are [here](#). People who are expressly excluded from this definition of “fundraising counsel” are, for example: attorneys, investment counselors, bankers, and trustees.

- *Commercial Co-venturer*

“Commercial co-venturer” is a “for-profit business that partners with a charity to sponsor an event or promote the sale of a product or service. Based on a written agreement, the charity then receives a portion of the proceeds of the event or sale.” The exact text of this definition and additional details are [here](#). Co-venturers are not required to register with or report to the Attorney General so long as they have a valid contract with, and are accountable to, the charity.

### *Conclusion*

Each definitional section describes the registration and other requirements applicable to each of these three categories, along with the restrictions and limitations.

The most complex rules are reserved for the most controversial category: commercial fundraisers. Regulators are especially concerned about what sometimes are extremely high percentage fees. For constitutional reasons, though, fees that are 50% or higher are not illegal.

In later posts, we’ll discuss the rules for each of these three categories in more depth.