

NONPROFIT INTEGRITY ACT OF 2004

SUMMARY OF KEY PROVISIONS

Effective January 1, 2005

Applies To

■ Charities

■ Commercial Fundraisers

■ Fundraising Counsels

■ Unincorporated Associations

■ Trusts

Attorney General
Bill Lockyer

October 2004

1. Charitable Organizations Have 30 Days, Instead Of Six Months, To Register And File Articles Of Incorporation With The Attorney General's Registry Of Charitable Trusts *[Government Code section 12585]*

▶ Charitable corporations, unincorporated associations and trusts must file with the Attorney General articles of incorporation, or other documents governing the organization's operations, (e.g., articles of association or trust instrument) within 30 days after initial receipt of property.

2. Independent Audit Of Annual Financial Statements Now Required For Charities With Gross Revenues Of \$2 Million Or More *[Government Code section 12586(e)(1)]*

▶ Charitable corporations with gross revenues of \$2 million or more must prepare annual financial statements audited by an independent certified public accountant (CPA). The statements must use generally accepted accounting principles. The independent CPA must follow generally accepted auditing standards.

▶ If the accounting firm and CPA performing the audit also provides non-audit services to the nonprofit, the accounting firm and CPA must follow the independence standards in the Yellow Book issued by the U.S. Comptroller General.

▶ The audited financial statements must be made available for inspection by the Attorney General and the public no later than nine months after the close of the fiscal year covered by the financial statement.

▶ The audit requirement applies to charitable corporations, unincorporated associations and trustees required to register and file reports with the Attorney General, whenever such organizations accrue \$2 million or more in gross revenue in any fiscal year.

▶ The \$2 million-threshold excludes grants received from governmental entities, if the nonprofit must provide an accounting of how it used the grant funds.



3. Charities With Gross Revenues Of \$2 Million Or More Must Establish And Maintain An Audit Committee [*Government Code section 12586(e)(2)*]

- ▶ Requirements for an audit committee apply only to charitable corporations that must register and file reports with the Attorney General, whenever such organizations accrue \$2 million or more in gross revenue in any fiscal year.
- ▶ \$2 million-threshold excludes grants received from governmental entities, if the nonprofit must provide an accounting of how it uses the grant funds.
- ▶ Governing boards must appoint an audit committee. The audit committee may include persons who are not members of the governing board.
- ▶ The audit committee cannot include staff members, the president or chief executive officer, the treasurer or chief financial officer of the organization. If an organization has a finance committee, members of that committee may serve on the audit committee, but cannot comprise 50 percent or more of the audit committee.
- ▶ The audit committee, under the governing board's supervision, is responsible for making recommendations to the board on the hiring and firing of independent certified public accountants (CPAs). The audit committee can negotiate the independent CPA's compensation, on behalf of the governing board.
- ▶ The audit committee must:
 - Confer with the auditor to satisfy committee members that the financial affairs of the nonprofit organization are in order;
 - Review the audit and decide whether to accept it; and
 - Approve non-audit services by the independent CPAs accounting firm, and ensure such services conform to standards in the Yellow Book issued by the U.S. Comptroller General.

4. Executive Compensation By Charitable Corporations, Unincorporated Associations And Charitable Trusts Must Be Review And Approved [*Government Code section 12586(g)*]

- ▶ Charitable corporations and unincorporated associations must have their governing board or authorized board committee review and approve the compensation of the Chief Executive Officer or President, and the compensation of the Chief Financial Officer or treasurer, to ensure that the payment is "just and reasonable."

▶ All trustees of a charitable trust must review and approve any executive compensation to ensure it is “just and reasonable.”

▶ The review and approval must occur at the time of initial hiring, when the term is renewed or extended, and when the compensation is modified.

▶ Compensation includes benefits.

5. Commercial Fundraisers Must Notify Attorney General Before Starting A Solicitation Campaign *[Government Code section 12599(h)]*

▶ Commercial fundraisers for charitable purposes must report to the Attorney General’s Registry of Charitable Trusts the start of a solicitation campaign or event. This notice must be filed not less than 10 working days prior to the start of a solicitation campaign or event.

▶ If proceeds are intended for victims of disasters or emergencies, the commercial fundraiser must file the required disclosure report no later than the date on which the campaign begins. The report must include:

- The Identity of the commercial fundraiser;
- The name of the organization for whom donations are being solicited;
- The name of the person directing and supervising the fundraiser’s work within the commercial fundraising company; and
- Projected start and end dates for the commercial fundraiser’s work.

6. Commercial Fundraisers Must Have Written Contracts With The Charitable Organizations For Whom They Are Working *[Government Code section 12599(i)]*

▶ For every solicitation campaign or event produced by a commercial fundraiser for a charitable organization, there must be a written contract between the fundraiser and the charitable organization.

▶ The written contract must contain or state:

- The charitable purpose for which the solicitation campaign or event is being conducted.
- The respective obligations of the commercial fundraiser and charitable organization.

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- If the commercial fundraiser will be paid a fixed fee, the amount of the fee and a good faith estimate of what percentage of the total contributions the fee will comprise. The contract must clearly set forth the assumptions on which the good faith estimate is based.
 - If the commercial fundraiser will be paid a percentage fee, the percentage of total contributions the charitable organization will retain. If the solicitation involves the sale of goods or services, or sale of admission to an event, the contract must state the percentage of the purchase price the charitable organization will retain. The percentage must be calculated by subtracting from total contributions and sales receipts not only the commercial fundraiser's fee, but also any additional fundraising costs the charitable organization must pay.
 - The effective date and terminate date of the contract, and the date the solicitation will start in the state.
 - A provision setting forth the requirement that all contributions received by the commercial fundraiser must, within five working days of receipt, either be deposited in a bank account controlled by the charitable organization or delivered in person to the charitable organization.
 - The charitable organization controls and approves the content and frequency of any solicitation.
 - The maximum amount the commercial fundraiser plans to pay individuals or entities to secure any person's attendance at, or approval, sponsorship or endorsement of, a fundraising event.
 - Provisions specifying that the charitable organization has a right to cancel the contract without liability for 10 days following the date the contract is executed. The organization may cancel the contract with 30-days notice and payment for services provided by the commercial fundraiser for up to 30 days after the notice is served.
 - Provisions specifying that after the initial 10-day period, the charitable organization has a right to cancel the contract for any reason without liability if the commercial fundraiser or its agents make material misrepresentations, harm the charitable organization's reputation or are found to have been convicted of a crime arising from charitable solicitations.
 - Any other information required by regulations adopted by the Attorney General.
- The contract must be signed by the commercial fundraiser's authorized contracting officer and an official of the charitable organization authorized to sign by the governing board.

7. Charitable Organizations Can Void Contracts With Unregistered Commercial Fundraisers *[Government Code section 12599.3(a)]*

- ▶ Contracts between commercial fundraisers for charitable purposes and charitable organizations are voidable unless the commercial fundraiser is registered with the Attorney General's Registry of Charitable Trusts prior to the start of the solicitation campaign or event.

8. FUNDRAISING COUNSEL MUST NOTIFY ATTORNEY GENERAL BEFORE STARTING SOLICITATION CAMPAIGN

[Government Code section 12599.1(e)]

- ▶ Fundraising counsel must file a notice with the Attorney General's Registry of Charitable Trusts not less than 10 working days prior to the start of a solicitation campaign or event; or if the purpose is to raise funds for victims of disasters or emergencies, no later than the date on which the campaign begins.
- ▶ The form of notice will be specified by the Attorney General's Registry of Charitable Trusts.
- ▶ The information that must be reported includes: the commercial fundraiser's name, address and telephone number; the name, address and telephone number of the organization with whom the fundraising counsel has contracted; the name, address and telephone number of the person who will direct and supervise the work of the fundraising counsel; and the projected dates when the contract will begin and end.

9. Fundraising Counsel Must Have Written Contracts With Charitable Organizations *[Government Code section 12599]*

- ▶ For every solicitation campaign or event, there must be a written contract between the fundraising counsel and the charitable organization. The contract must be signed by the fundraising counsel's authorized contracting officer and an official of the charitable organization authorized to sign by the governing board.
- ▶ The written contract must contain or state:
 - The charitable purpose for which the solicitation campaign or event is being conducted.
 - The respective obligations of the fundraising counsel and charitable organization.

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- A statement that the fundraising counsel will neither solicit, receive nor control donated funds, assets and property, or employ any other person to do so.
- A statement that the charitable organization exercises control and approval over the content and frequency of solicitation.
- A clear statement of the fees and any other forms of compensation that will be paid to the fundraising counsel.
- The effective date and terminate date of the contract, and the date the solicitation will start in the state.
- Provisions specifying the charitable organization's right to cancel the contract without liability for 10 days following the date the contract is executed; and right to cancel the contract after the initial period by giving 30-days notice and payment for services provided by the fundraising counsel up to the effective date of the notice.
- Any other information required by regulations adopted by the Attorney General.

10. Charitable Organizations Can Cancel Contracts With Commercial Fundraisers *[Government Code sections 12599.3(b)(f)(g)]*

- ▶ Charitable organizations have the right to cancel a contract with a commercial fundraiser without liability for 10 days following the date the contract is executed.
- ▶ Following the initial 10-day period, charitable organizations have the right to cancel a contract with a commercial fundraiser by providing 30-day notice. The charitable organization is liable for services provided by the commercial fundraiser up to 30 days after the notice is served.
- ▶ Following the initial 10-day period, a charitable organization has the right to cancel a contract with a commercial fundraiser without liability if the commercial fundraiser or its agents make material misrepresentations during a solicitation, harm the charitable organization's reputation during a solicitation, or are found to have been convicted of a crime arising from fundraising activities.

11. Charitable Organizations And Commercial Fundraisers For Charitable Purposes Have Specific Obligations When Fundraising *[Government Code sections 12599.6(a)(b)(c)(d)(e)]*

- ▶ Charitable organizations and commercial fundraisers cannot misrepresent the purpose of a charitable organization, or the nature or purpose of the beneficiary of a solicitation.

▶ Charitable organizations must establish and exercise control over fundraising activities conducted for their benefit. This obligation includes approving all written contracts and agreements, and assuring fundraising activities are conducted without coercion.

▶ Charitable organizations cannot enter into any contract or agreement with a commercial fundraiser that is not registered with the Attorney Generals Registry of Charitable Trusts.

▶ Charitable organizations cannot raise funds for any charitable organization required to be registered with the Attorney Generals Registry of Charitable Trusts unless the charitable organization is so registered or, if not, agrees to register prior to the start of a solicitation.

▶ Commercial fundraisers must, within five working days, either deposit in a bank account controlled by the charitable organization or deliver personally to the charitable organization all contributions received on behalf of the charitable organization.

12. Charitable Organizations And Commercial Fundraisers For Charitable Purposes Are Prohibited From Engaging In Misrepresentation And Certain Other Acts When Soliciting Donations

[Government Code section 12599.6(f)]

▶ The following acts are prohibited in the planning, conduct or execution of solicitation campaigns:

- Operating in violation of the Supervision of Trustees and Fundraisers for Charitable Purposes Act [Govt. Code sec. 12580 et seq.], regulations and orders issued by the Attorney General.
- Committing unfair or deceptive acts, or engaging in fraudulent conduct.
- Using any name, symbol, emblem or other information that falsely suggests or implies a contribution is for a particular charitable organization.
- Falsely telling donors that a contribution is for a charitable organization or will be used for a charitable purpose.
- Telling donors that a person sponsors, endorses or approves a charitable solicitation when that person has not agreed in writing to have their name used for such a purpose.
- Misrepresenting that goods or services have endorsements, sponsorships, approvals, characteristics or qualities they do not have.
- Misrepresenting that a person has endorsements, approvals, sponsorships, status or affiliations they do not have.

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- Misrepresenting that registration with the Attorney General's Registry of Charitable Trusts constitutes an endorsement or approval by the Attorney General.
- Representing that a charitable organization will receive an amount greater than the reasonably estimated net proceeds from a solicitation campaign or event.
- Issuing cards, stickers, emblems, plates or other items that can be used for display on a motor vehicle, and which suggest an affiliation with, or endorsement by, public safety personnel or a group of public safety personnel.
- Representing that any portion of contributions solicited by a charitable organization will be given to another charitable organization unless the second charitable organization provides prior written consent for such use of its name.
- Representing that tickets to events will be donated for use by another person or entity unless: the charitable organization or commercial fundraiser has obtained written commitments from charitable organizations that they will accept a specific number of donated tickets; and the donated tickets, when combined with other ticket donations, do exceed either the ticket donations received from charitable organizations or the total capacity of the event site.

13. Commercial Fundraisers Must Keep Records Of Solicitation Campaigns For At Least 10 Years [Government Code section 12599.7(a)]

- ▶ Commercial fundraisers must maintain for at least 10 years following each solicitation campaign records that contain:
 - The date and amount of each cash contribution.
 - The date, amount, name and address of each non-cash contributor.
 - The name and address of each employee or agent involved.
 - Documentation of all revenue received and expenses incurred.
- For each account into which the fundraiser deposited revenue, the account number and name and location of the bank or other financial institution in which the account was maintained.

Charities, Commercial Fundraisers, Fundraising Counsels, Unincorporated Associations and Trusts with Questions About the New Law Can Contact
The Attorney General's Charitable Trust Staff by e-mail:

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