

## CHARITABLE SOLICITATION IN WASHINGTON

Washington's Charitable Solicitations Act (RCW 19.09) applies to all fundraising done for charitable purposes from the general public. If you are going to engage in any fundraising of that sort, it will be necessary to register with the Charities Division in Olympia (see Chapter 43) whether you are incorporated or not.

## THE PROJECT

- The project's mission and purpose must be consistent with the exempt purposes of the sponsor (WAPI).
- The board of the sponsor (WAPI) is ultimately responsible for the behavior of the project and its personnel.
- Donations may be made to the sponsor (WAPI) and earmarked for the project. If the sponsor (WAPI) is eligible to receive tax-deductible donations, the donor may take any permitted tax deduction.
- The sponsor (WAPI) may provide many administrative services—
  - human resources,
  - accounting and payroll,
  - planning, public relations, etc.
- Financial and other types of reporting will consolidate the activities of the project with all the other activities of the sponsor (WAPI) for most purposes; separate reports may be prepared for use internally and by the project.
- Fiscal sponsorship agreements usually provide for payments by the project to the sponsor (WAPI) based on some measure of the sponsor (WAPI)'s services to the project.
- There may be a time limit, or the sponsorship agreement may end when the project obtains federal tax-exempt status on its own.
- **Projects often have their own letterhead, use conventional personnel titles (such as executive director), and otherwise appear quite independent to outsiders.**
- There may be a policy panel that oversees and gives direction to the project; the members of this panel may provide the prototype for the board of directors that will lead the project if and when it becomes independent.
- Care should be taken to fully specify the relations between this panel and the board of the sponsor (WAPI).
- See Chapter 56 for further discussion of fiscal sponsor (WAPI)ship.

### Chapter 43. Charitable Solicitation in Washington

a. Generally

Charitable Solicitation in Washington is governed by the Charitable Solicitations Act (“CSA”), Chapter 19.09 RCW, and the Consumer Protection Act (“CPA”), Chapter 19.86 RCW. The CSA is a specific statute that regulates charitable solicitations and the organizations that conduct charitable solicitations. The CSA regulates the activities of persons and entities that raise money—or say they raise money—from the public for charitable purposes. The CPA is a statute of general applicability that protects consumers from unfair or deceptive acts or practices in trade or commerce, which includes unfair or deceptive acts or practices in the context of charitable solicitations. Violations of the CSA are per se violations of the CPA. A person or entity that violates the CSA may face a civil action alleging violations of both statutes.

The purpose of this Chapter is to set forth the most prominent fundraising requirements for charitable organizations in the state of Washington. This Chapter is not a complete statement of the law regarding charitable organizations or solicitation activities (including its application to other organizations and individuals), nor is it a substitute for seeking the advice of an attorney regarding any legal questions you may have.

Many other states have similar regulations, which should be reviewed carefully before you undertake charitable solicitations outside Washington.

b. Overview of the Charitable Solicitations Act

The CSA regulates charitable organizations so as to provide information to the public about charitable organizations that engage in fundraising in order to prevent deceptive and dishonest practices and the improper use of contributions that are intended for charitable purposes. The CSA regulates charitable organizations and commercial fundraisers. It requires these organizations to (1) register and file annual reports with the Secretary of State, and (2) make certain disclosures when soliciting for charitable contributions. The CSA also prohibits fundraisers and commercial co-venturers from misleading consumers.

c. Regulation of Charitable Organizations Under the CSA

(i) Definition of “Charitable Organization”

The CSA defines “charitable organization” as an entity that solicits or collects contributions from the general public where the contribution is purported to be for a charitable purpose. A “charitable organization” does not include commercial fundraisers, commercial co-venturers, or fundraising counsel. RCW 19.09.020(2). Churches and their integrated auxiliaries also are not charitable organizations, but they must comply with RCW 19.09.100(12), (15), and (18). RCW 19.09.020(2) (these statutory provisions bar deceptive solicitations, require that anyone soliciting on behalf of another organization must be sure the other organization is properly registered, and forbid any form of harassment of donors and

potential donors). Religious organizations that are not churches or their integrated auxiliaries are charitable organizations. RCW 19.09.020(15). The CSA broadly defines “charitable purpose.” The definition includes, but is not limited to, the generally accepted meaning of assisting the poor and the needy—it also includes educational, environmental, religious, literary, recreational, social, patriotic, legal defense, benevolent, and humanitarian purposes. RCW 19.09.020(3).

Here are some examples of charitable organizations and of entities that are not charitable organizations under the CSA:

- Any individual or entity that solicits charitable contributions from the public is a charitable organization. This includes for-profit businesses or loose associations of people. It also includes firefighters’ unions that ask members of the public to purchase tickets to an event to benefit their members.
- Organizations that raise money for charitable causes from the public and donate all of the money to those causes are not charitable organizations if they do not solicit charitable contributions from the public.
- An organization that solicits contributions only from its members is not a charitable organization if membership in the organization is determined by the payment of dues, fees, or other assessments that confer bona fide rights, privileges, professional standing or other direct benefits, in addition to the right to vote, hold office, or elect officers. “Membership” does not include those who become members of the organization upon making a contribution as a result of a solicitation.
- Organizations that maintain websites or send email messages that solicit or accept charitable contributions from Washington residents are charitable organizations. However, some passive website holders may not constitute charitable organizations for purposes of the CSA if it is obvious that the appeal for charitable contributions is not directed to Washington residents.

(ii) Definition of “Solicitation”

The CSA defines “solicitation” as (1) any appeal for a contribution from the general public where there is an appeal for a charitable cause or a charitable purpose; and (2) any offer to sell goods or services where an appeal is made for a charitable cause or purpose, the name of a charitable organization is used to help make the sale, or if it is stated or implied that all or part of the sales proceeds will benefit a charitable cause or purpose. RCW 19.09.020(18).

Not Charitable	Charitable
<p>Grant applications are not charitable solicitations. WAC 434-120-025(22)(e)(i).</p> <p>Bingo, raffles, and amusement games regulated by the Gambling Commission are not charitable solicitations. WAC 434-120-025(22)(e)(ii).</p>	<p>A telephone call in which the caller says, “Please buy a ticket to the Peter Frampton concert to benefit disadvantaged youths,” is a charitable solicitation.</p> <p>A letter that asks for a contribution to the United Way is a charitable solicitation.</p>

Sales of goods or services that constitute the basis for the charitable organization's activities for which tax-exempt status was granted, such as Seattle Repertory Theatre's ticket sales, are not charitable solicitations. WAC 434-120-025(22)(e)(iii).	<p>A website that describes a program to help homeless people find work and explains how to make a donation is a charitable solicitation.</p> <p>A postcard asking for donations of used clothing and household items to benefit the disabled is a charitable solicitation.</p>
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(iii) Registration and Reporting Requirements.

All charitable organizations must register with the Secretary of State unless they are exempt from the CSA. RCW 19.09.065. Exempt organizations are

1. charitable organizations that raise less than \$25,000, if the organization's fundraising activities are conducted exclusively by volunteers (no commercial fundraisers) and none of the officers or members receive compensation in any form (including distribution of assets) from the organization, RCW 19.09.076; WAC 434-120-100(c);
2. political organizations; and individuals or entities that appeal for funds on behalf of specific individuals named in the solicitation only if all of the proceeds of the solicitation are given to or expended for the direct benefit of the named individual, RCW 19.09.076.

Charitable organizations must provide the information requested by the Secretary of State. Among other things, they must report financial information, including revenue and the total amount applied to charitable purposes, costs, and expenses, and solicitation information. RCW 19.09.075; WAC 434-120-103, -105.

All charitable organizations must register before conducting solicitations. Charitable organizations must renew their registrations and file reports annually. Conducting solicitations without current registration is a violation of the CSA and may result in legal action. RCW 19.09.065.

d. Regulation of Commercial Fundraisers Under the CSA

A "commercial fundraiser" is a person or entity in the business of conducting charitable solicitations on behalf of others in exchange for compensation or other consideration. RCW 19.09.020(5).

“Fundraising counsel” or “consultants” are not commercial fundraisers. “Fundraising counsel” or “consultants” are retained by charitable organizations under written contract to provide services such as advice and counseling regarding charitable solicitation activities, and do not engage in any fundraising activities on behalf of others. RCW 19.09.020(10).

Commercial fundraisers must register and file reports annually with the Secretary of State using the required forms.

Commercial fundraisers must file information pertaining to the charitable organizations with which they contract, financial information regarding the total value of the contributions received, and solicitation information. RCW 19.09.079; WAC 434-120-200,

-215.

A commercial fundraiser must post a bond of at least \$15,000 and file a copy of the bond with the Secretary of State, if it meets one of the four following criteria: (1) the commercial fundraiser directly or indirectly receives contributions from the public on behalf of a charitable organization; (2) the commercial fundraiser is compensated based on the amount of funds raised or the amount to be raised, on the number of solicitations made or to be made, or on a similar method; (3) the commercial fundraiser incurs or is authorized to incur expenses on behalf of a charitable organization; or (4) the commercial fundraiser had not been registered with the Secretary of State in the last accounting year. RCW 19.09.190.

Commercial fundraisers must register before conducting any charitable solicitations.

They must renew on an annual basis.

e. Contracts Between Charitable Organizations and Commercial Fundraisers

The CSA requires written contracts between charitable organization and commercial fundraisers. RCW 19.09.097. The contract must be filed with the Secretary of State before the commercial fundraiser commences solicitation activities on behalf of the charitable organization. The contract must contain the following provisions:

- A requirement that both parties must comply with the law.
- A provision that allows the officers of the charitable organization (1) reasonable access to the fundraiser’s financial records pertaining to the charitable organization, (2) the ability to be present during telephone solicitations, and (3) the names of all of the commercial fundraiser’s employees or staff who are conducting the solicitations.

- A statement of the amount of funds that the charitable organization will receive or the method of computing the amount, the commercial fundraiser's compensation or the method of computing that amount, and whether the compensation is fixed or contingent.

f. Solicitation Requirements

The CSA applies broadly to appeals for support of charitable organizations or causes as commonly defined; there are a few specific exceptions, discussed below. "Solicitation" in this context refers to any form of request for a contribution or donation, including most invitations to become a "member" or "supporter" of an organization or cause. Therefore, anyone making a solicitation (including formally organized groups and ad hoc efforts) must

comply with the solicitations rules regardless of whether they must register with the Secretary of State.

There are several provisions of the CSA that do not apply to churches and their affiliate auxiliaries; however, they must comply with RCW 19.09.100(12), (15) and (18) (see below).

When making a solicitation, the solicitor must disclose the following:

- The name of the individual who is making the solicitation;
- The name of the charitable organization and the city of its principal place of business; and
- If requested by the solicited person, the Secretary of State's toll-free number (1-800-332-GIVE).

If the solicitation is by telephone, the disclosures must be made during the solicitation but before asking for a commitment of a contribution, and in writing to any solicited person that makes a pledge within five working days of the pledge. If the solicitor sends any written material before the contribution is received, the disclosures must be made in that written material. RCW 19.09.100(3).

Commercial fundraisers making a solicitation must disclose the following:

- The name of the individual making the solicitation;
- The full name of the commercial fundraiser;

- The name of the charitable organization and the city of its principal place of business; and
- If requested by the solicited person, the Secretary of State's toll-free number (1-800-332-GIVE).

Disclosures required in solicitations by advertisement or mass distribution (e.g., posters, brochures, publications, audio or visual broadcasts, automatic dialing devices) include:

- The solicitation is conducted by a commercial fundraiser, if it is;
- The notice of solicitation is on file with the Secretary of State; and
- Additional information can be obtained by calling the Secretary of State's toll-free number (1-800-332-GIVE). RCW 19.09.100(4).

Anyone using a vending machine or container to solicit must make these disclosures:

- The name of the charitable organization for which the funds are solicited;
- The name, business address, and telephone number of the individual and fundraiser responsible for collecting the funds in the containers or vending machines; and
- This statement: "This charity currently is registered with the secretary's office under the charitable solicitations act, registration number . . . ." RCW 19.09.100(5).

Organizations whose names are similar to government entities are required to make these additional disclosures:

- Whether the organization is or is not part of any government unit; and
- The true nature of its relationship with the government unit. RCW 19.09.100(8).

g. Prohibited Representations

The CSA prohibits the following representations:

1. That a solicited contribution is tax deductible unless the charitable organization has received tax-exempt status from the IRS. RCW 19.09.100(7).
2. That the person conducting the solicitation is a volunteer or words of similar meaning or effect that create the impression that the person soliciting is not a paid solicitor unless that person is not paid for his or her services. RCW 19.09.100(7).
3. That the person conducting the solicitation is a member, staff member, helper, or employee of the charitable organization or words of similar effect that create the impression that the person is not a paid solicitor if the person is employed, connected, or paid by a commercial fundraiser. RCW 19.09.100(7).
4. Any statement that is false, misleading, or deceptive. All solicitations, advertising material, and promotional plans must fully and fairly disclose the identity of the entity on whose behalf the solicitation is made. RCW 19.09.100(12).
5. A commercial fundraiser shall not represent that tickets to any fundraising event will be donated for use by another person unless all of the following requirements are met:
  - a. The commercial fundraiser has a written commitment from people stating that they will accept the donated tickets and the number they will accept;
  - b. The commercial fundraiser retains the written commitments for three years and makes them available to the Secretary of State, Attorney General, or county prosecutor on demand;
  - c. The contributions solicited for donated tickets do not exceed the amount representing the number of ticket commitments on file; and
  - d. The commercial fundraiser gives all of the tickets to the people who made the written commitments to receive them no later than seven calendar days prior to the ticketed event. RCW 19.09.100(6).
- h. Prohibited Conduct

The CSA also prohibits the following conduct as part of charitable solicitation:

- Using the words “police,” “sheriff,” “firefighter,” or similar words in a solicitation unless the highest ranking official in a bona fide police, sheriff or firefighter department or organization has authorized that use in writing. RCW 19.09.100(9).
- Using the name of a nationally known or federally chartered military veterans’ service organization in a solicitation unless the highest ranking official of that organization in Washington State has authorized that use in writing. RCW 19.09.100(10).



- Leading the public to believe that registration with the Secretary of State constitutes state endorsement or approval of the charitable organization or the solicitation activities. RCW 19.09.100(14).
  
- Harassing, intimidating, or tormenting conduct during a telephone solicitation. RCW 19.09.100(18).
  
- Making a telephone solicitation before 8:00 a.m. or after 9:00 p.m. Pacific time. RCW 19.09.100(17).
  
- Failing to comply with Chapter 19.09 RCW or local regulations regarding charitable solicitation. RCW 19.09.100(11).
  
- Soliciting on behalf of any charitable organization or for any commercial fundraiser that is not registered with the Secretary of State, unless the organization is exempt from registration. RCW 19.09.100(15).
  
- Soliciting on behalf of a charitable organization or for a commercial fundraiser that has been, or whose officers, directors, or principals have been, convicted of a crime involving charitable solicitations in any state or foreign country within the past ten years, or subject to a permanent injunction, administrative order, or judgment pursuant to RCW 19.09.080 or .090 within the past ten years. RCW 19.09.100(13).

i. Record Keeping

The CSA requires that all charitable organizations and commercial fundraisers maintain accurate books and records at their business location. The records must be retained for three years after the period for which they relate expires. Contracts between charitable organizations and commercial fundraisers must be maintained for three years after the period to which they relate expires. RCW 19.09.200.

Charitable organizations, or commercial fundraisers who solicit on their behalf, must keep records of the following contributors for three years following the contributions:

- Each contributing entity that collects individual contributions from an employee or member group or a business and turns them over to a charitable organization as a single sum.
  
- Each corporation that contributed.

- Each individual who contributed more than \$25. WAC 434-120-135.

All records, contracts, and contributor lists must be made available to the attorney general or the county prosecutor upon demand.

Commercial fundraisers must submit financial statements to the Secretary of State, attorney general, or county prosecutor upon demand. The statements shall include, without limitation:

- The gross amount of the contributions pledged and the gross amount collected.
- The amount retained by the commercial fundraiser and the amount given or to be given to charitable organizations and the details of distribution.
- The aggregate amount paid and to be paid for solicitation expenses.
- The amounts paid and to be paid to charitable organizations.
- Copies of annual reports. WAC 434-120-255.

j. The Consumer Protection Act

As stated above, the CPA prohibits unfair and deceptive acts or practices. RCW

19.86.20. The CPA applies to fundraising activity regardless of whether the activity is covered by the CSA, if the activity is in trade or commerce. Violations of the CSA are per se violations of the CPA. RCW 19.09.340.

Under the CPA, the attorney general may bring an action to enjoin unfair or deceptive acts or practices, including acts prohibited by the CSA. The court may award civil penalties of up to \$2,000 per violation. The court may award attorneys' fees to the prevailing party.

RCW 19.86.080. A private litigant may also bring an action under the CPA to enjoin unfair or deceptive acts or practices and, in addition, the court may award treble damages. The court may award attorneys' fees to the prevailing party. RCW 19.86.090.

## Chapter 56. Fiscal Sponsorships

Many public and private donors will give money only to tax-exempt organizations so that they can take a charitable deduction for their donations on their federal income taxes.

**WAPI only supports 501(3) charities** : Frequently, organizers of projects that have not been qualified as tax-exempt (and may never be) and thus cannot offer donors the advantage of a tax deduction can establish a “fiscal sponsor (WAPI)ship” with a tax-exempt entity in order to attract donations for a particular project that may be tax-advantaged to the donor. Historically, the term “fiscal agency” was used to describe this type of relationship. The term is now disfavored by the IRS and should not be used. For a discussion on whether to seek fiscal sponsorship for your organization, see Chapter 2.

In a fiscal sponsorship, the tax-exempt entity (the sponsoring organization) agrees to receive and disburse funds for the project on behalf of the non-tax-exempt entity (the sponsored organization). Checks are made out directly to the sponsoring organization, which runs the funds through its books and includes the funds as part of its income on its reports to the IRS, and disbursements are then made to or on behalf of the sponsored organization. An administrative fee is usually paid to the sponsoring organization.

In Revenue Ruling 68-489, 1969-2 C.B. 210, the IRS set forth the following guidelines for a fiscal sponsorship to ensure that such arrangements are not used to circumvent laws governing charitable giving:

- the sponsored project must further the sponsoring organization’s own charitable purpose;
  - the sponsoring organization should determine not only that the project will further a specific charitable purpose of the sponsoring organization but also that the
  - sponsored project will not engage in any other activities that might jeopardize the sponsoring organization’s tax-exempt status. For example,
    - political activities should be prohibited and
    - lobbying restricted during the term of the fiscal sponsorship.
- the sponsoring organization must maintain records establishing that the funds were actually used for such purposes; and
  - the sponsoring organization should establish procedures for ongoing oversight, for example by requiring
    - periodic reports regarding the use of any funds disbursed for the sponsored project.
- the sponsoring organization must retain “complete control and discretion” over the use of the funds. In other words, the sponsoring organization becomes legally and financially responsible for the project it agrees to sponsor.
  - **WAPI can only sponsor 501(3) organizations**: sponsoring organization cannot be a mere conduit through which otherwise nondeductible donations are made to the sponsored organization. If a check is made to the sponsoring organization with a requirement that it be disbursed for the sponsored project, the IRS deems that a

donation has been made to the nonexempt sponsored project and no deduction is allowed. To avoid this “pass through” characterization, the sponsoring organization must have discretion to refuse to disburse funds if the sponsored project engages in any prohibited activities or uses the funds for purposes other than the agreed-to project.

All parties should realize that in a fiscal sponsorship there are actually two levels of granting.

- In the first level, the donor agrees to make a grant to the sponsoring organization, usually provided certain conditions are satisfied.
- In the second level, the sponsoring organization agrees to support the sponsored project, again provided certain conditions are satisfied. Thus, the sponsoring organization is responsible for satisfying any requirements of the original donor, and the sponsored project is responsible for satisfying the requirements of the sponsoring organization.

There should therefore be two agreements,

- one between the original donor and the sponsoring organization,
  - The agreement between the original donor and the sponsoring organization should, among other things, provide that the sponsoring organization has “complete discretion and control” over the funds. Where there is no written agreement, the sponsoring organization should send an acknowledgment or receipt stating that the funds will be used on behalf of the project (less an administrative fee) so long as the project continues to further the sponsoring organization’s own charitable purposes.
- the other between the sponsoring organization and the organizers of the sponsored project. The agreement between the sponsoring organization and the organizers of the sponsored project should be in writing and should set forth:
  - A description of the project and the charitable purpose it furthers;
  - Any performance requirements for the project;
  - Prohibited and restricted activities of the project;
  - When and how donations will be solicited and whether there will be any restrictions on solicitations (to avoid situations where multiple requests are made to the same source);
  - When and how donations will be remitted to the sponsoring organization and disbursed to the sponsored project;
  - Responsibility for providing acknowledgments and receipts to donors;
  - The extent to which the sponsoring organization and the project will be identified in promotional materials;
  - Clarification of employment and/or supervisory relationships for any personnel involved in the project;
  - Timing and nature of financial reports from the sponsoring organization to the sponsored project;

- Timing and nature of project reports from the sponsored project to the sponsoring organization;
- The amount of any administrative or other fees charged by the sponsoring organization (either as a fixed fee or a percentage of funds received);
- The duration of the fiscal sponsorship;
- Indemnification and insurance provisions; and
- Events of and remedies for default (including specifically the ability of the sponsoring organization to cease making disbursements or demand return of funds if the grant conditions are not satisfied).