

CHARITABLE SOLICITATION GUIDANCE

FOR NONPROFITS AND MINISTRIES

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Introduction

Charitable solicitation is more complex than just asking for donations. In fact, there are a number of essential regulatory procedures that nonprofits* must stay up to date with to stay within the laws of charitable solicitation. Currently, 39 states and the District of Columbia have charitable solicitation laws requiring a nonprofit organization to register prior to soliciting or accepting donations from residents in that particular state. To ensure that your nonprofit organization is following the law, keep the following information in mind as you plan and develop fundraising activities for your organization.

**These rules and regulations do not apply to churches or houses of worship.*

Registration Prior to Solicitation

Most states define solicitation as an appeal to the public for charitable donations by any means (mail, phone, email, etc.) except for donations on the charity's website. Of the 39 states (including the District of Columbia) requiring registration, most have nationwide annual donation thresholds which determine whether or not a nonprofit is required to register in that particular state. These thresholds range from \$1,500 to \$50,000 annually. So, even nonprofits with limited donors and contributions may be required to register in one or more states.

The majority of state agencies overseeing charitable solicitation activities are becoming much more diligent in enforcement of state charitable solicitation laws. Failure to register or delayed registration can result in significant late filing fees, penalties, and, in some cases, administrative action taken against a charitable organization. If you solicit contributions in multiple states, make sure your organization is in compliance with ALL states charitable solicitation statutes. DON'T wait for one or more states to "catch you."





"Donate Now" Button

The fact that a charitable organization's website has a "donate now" button raises an interesting and evolving question since websites are accessible in all 39 states that have charitable solicitation registration requirements. While this issue can be complex, simply having a "donate now" button on your website is generally considered by most states to be "passive solicitation," and thus is not subject to follow the usual solicitation requirements. It appears that for most states at the time being, if a nonprofit is only "passively" soliciting without actively targeting donors, registration will not be required.





Fundraising Professionals

If your charitable organization employs the services of a fundraising professional (Professional Fundraising Counsel or Professional Solicitor) the fundraising professionals must also be properly registered and file copies of their contracts with state oversight agencies as required by state law. It is advisable for a nonprofit organization to seek advice from legal counsel prior to signing a contract with any fundraising professional. Legal counsel can review the proposed written contract to ensure that it contains all information required by state law as well as assist in confirming that the fundraising professional is properly registered and in compliance with all states requiring such registration.



Commercial Co-Ventures

All commercial co-ventures that are conducting charitable sales promotions for your organization need to be properly registered, have the required bonds, and file copies of all contracts and other required forms with all states where commercial co-ventures are required to register.



Timely Filed and Accurate Federal Returns

IRS 990 returns must be accurate, complete, and free of falsifications, misrepresentations, and omissions. It is also important that all 990 returns are filed in a timely manner with the IRS.

Fiscal Records

Your organization should keep true and accurate fiscal records, even if it is exempt from state registration requirements.



Maintaining Registration

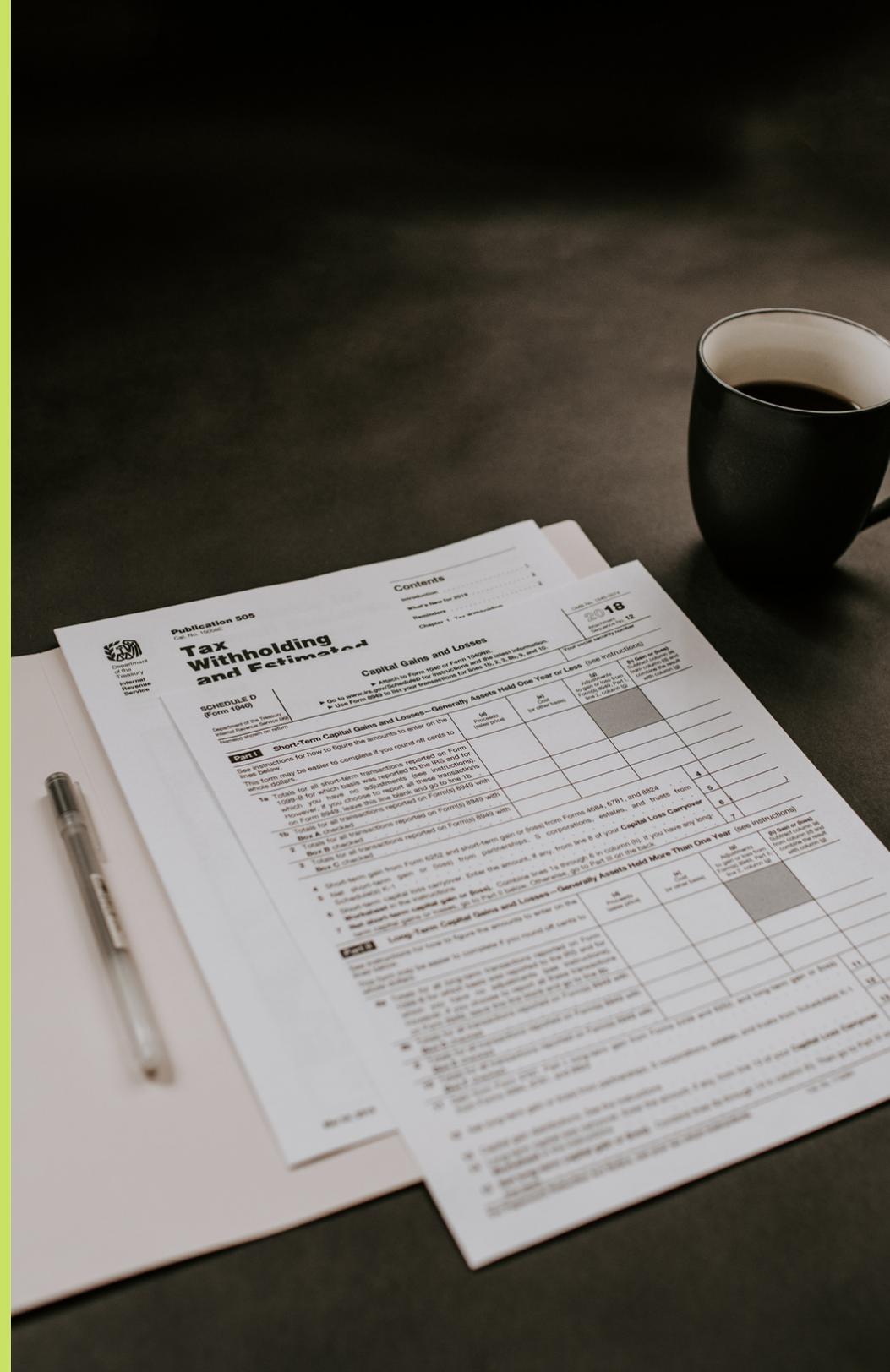
Once registered, all states require annual filings in order to maintain charitable registration. Although most states allow an extension of time to file the annual reports, extension requests should be filed well in advance of the annual report due date.

Accuracy and Honesty of Solicitation Materials

Your organization's solicitation materials should be truthful and free of false statements, misrepresentations, and/or omissions. Pay special attention to each state's requirements in this area.

Examples of deceptive solicitation conduct include, but are not limited to, misrepresenting the amount of proceeds a charity will receive, using or exploiting registration to imply state endorsement, and using a name, symbol, or action that leads others to believe proceeds will be used for charitable purpose when that is not the case.

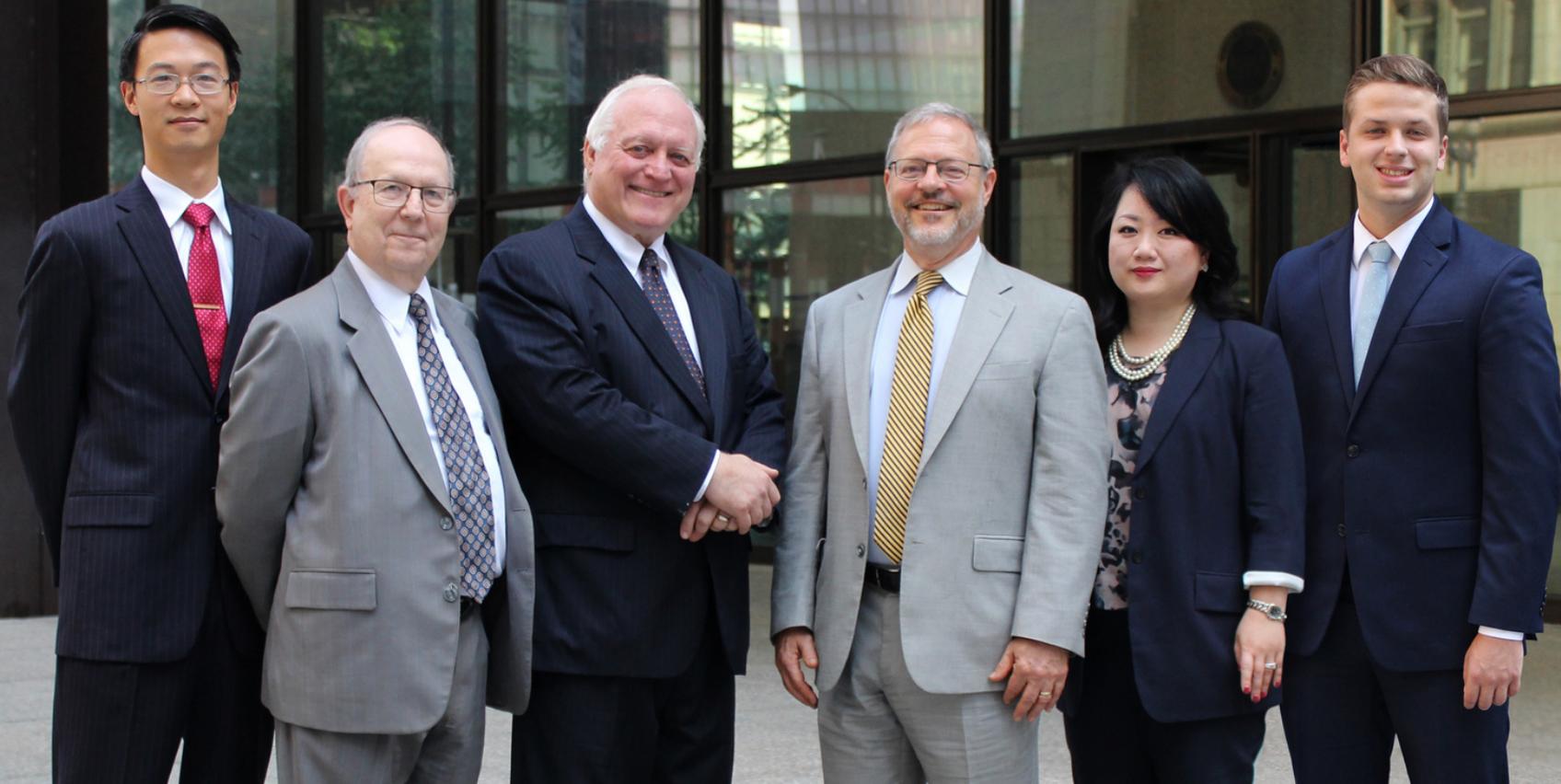
In addition, your organization's solicitation materials must contain proper disclosure statements as required by state statutes.



This guide provides a brief overview of the complex matter of multi-state charitable solicitation registration. Please contact Mauck & Baker if you have questions or wish to discuss registration for your nonprofit organization.

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