

CROWDFUNDING & NONPROFITS

THE CALIFORNIA ATTORNEY GENERAL'S GUIDE FOR CROWDFUNDING SITES, CHARITIES, AND DONORS¹



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¹ Nothing in this guide constitutes legal advice. Consult counsel for legal advice regarding your specific matter.

INTRODUCTION

Crowdfunding sites provide an online place for individuals, businesses, and/or nonprofits to solicit funds. This is a new twist on an old practice. In times of need people have always reached out to their families and friends for help. Crowdfunding sites tap into these connections and make it easier to ask a wider audience for more money without the social friction that accompanies asking for money. These sites provide engaging and easy-to-use interfaces to those who may not have the ability to build their own site. The individual business models vary, but many employ “gamification” techniques (e.g., trackable fundraising goals) and social media integration to encourage donations. Donations are made to the site and then disbursed to the solicitor. In exchange, the sites may take a portion of each donation – usually 5-15 percent.

This guide focuses on the use of crowdfunding sites for charitable solicitations. In order to protect the public and ensure transparency, charitable solicitations are subject to government oversight. Crowdfunding sites are not exempt from regulatory oversight. If a crowdfunding site meets the legal definition of a commercial fundraiser or fundraising counsel then they are required to register with the Attorney General’s Registry of Charitable Trusts and comply with all reporting requirements. Below we discuss applicable laws² so that crowdfunding sites and charities can ensure that they are in compliance. We then discuss best practices for crowdfunding sites and the charities and donors who use them.

HOW CHARITIES USE CROWDFUNDING SITES

CHARITY CREATED PAGE

Instead of building and publicizing their own site, charities can simply set up a page on an existing crowdfunding site. The hope is that people in their social network will also share the charity’s page - thus expanding the possible pool of donors. Donors then follow a link to the charity’s page where they can make a donation (often through a third-party payment processor). The charity will then receive the funds at some later date.

SUPPORTER CREATED PAGE

This model is similar to the one above except, instead of a charity creating its own page, a supporter creates a page to raise money on behalf of their favorite charity. Though this can be an effective fundraising tool, it creates additional risks because the “supporter” may retain funds ostensibly raised for charity. Without an accounting, with supporting financial records, a charity may not become aware of potential diversion of charitable assets.

² The statutes listed are excerpts and do not represent the entirety of applicable law.

APPLICABLE LAW

DEFINITIONS & EXAMPLES

Commercial Fundraisers for Charitable Purposes: A commercial fundraiser is an individual or entity that is paid to solicit donations on behalf of a charity. Commercial fundraisers may be paid a flat fee or percentage of the donations collected in the charity's name.

Government Code 12599.

- (a) "Commercial fundraiser for charitable purposes" means any individual, corporation, unincorporated association, or other legal entity who for compensation does any of the following:
- (1) Solicits funds, assets, or property in this state for charitable purposes.
 - (2) As a result of a solicitation of funds, assets, or property in this state for charitable purposes, receives or controls the funds, assets, or property solicited for charitable purposes.
 - (3) Employs, procures, or engages any compensated person to solicit, receive, or control funds, assets, or property for charitable purposes.

Acts that will likely qualify a crowdfunding site as a commercial fundraiser:

- If the crowdfunding site does more than simply act as a platform by soliciting for one of the site's charity projects (i.e., if the site features a charity on its own social media pages or advertisements and asks its own followers to support it)
- Holding the donated funds itself, as opposed to using a third-party payment processor or financial institution
- Plans, manages, advises, counsels, consults or prepares materials for the solicitation of funds, assets or property but is disqualified as a fundraising counsel for charitable purposes

Fundraising Counsel for Charitable Purposes: Fundraising counsel is an individual or entity that is paid to plan, manage or prepare fundraising campaigns for charities or advise charities on how to raise funds, but does not actually conduct campaigns or receive or control donated funds.

Government Code 12599.1.

- (a) "Fundraising counsel for charitable purposes" is defined as any individual, corporation, unincorporated association, or other legal entity who is described by all of the following:
- (1) For compensation, other than as a percentage of the funds, assets, or property received as a result of a solicitation campaign, plans, manages, advises, counsels, consults, or prepares material for, or with respect to, the solicitation in this state of funds, assets, or property for charitable purposes.
 - (2) Does not solicit funds, assets, or property for charitable purposes..
 - (3) Does not receive or control funds, assets, or property solicited for charitable purposes in this state.
 - (4) Does not employ, procure, or engage any compensated person to solicit, receive, or control funds, assets, or property for charitable purposes.

Acts that will likely qualify a crowdfunding site as fundraising counsel:

- Coaching or giving specific charities advice on how to tailor their pages in order to raise the most money
- Designing the content of a charity's page relating to solicitations

REGISTRATION, REPORTING, & CONTRACTUAL REQUIREMENTS

[Government Code sections 12599 and 12599.1](#) require commercial fundraisers and fundraising counsel, respectively, to [register](#) with the Attorney General's Registry of Charitable Trusts and comply with [all reporting requirements](#). Failure to comply with these registration and reporting requirements are grounds for an injunction and other civil remedies provided by law. These statutes also require commercial fundraisers and fundraising counsel to have contracts with every charity for which they are soliciting/counseling. These [contracts](#) must have very specific terms that are designed for the protection of the charities and charitable funds.

BEST PRACTICES

CROWDFUNDING SITES

- **Evaluate your business model with an eye toward compliance.** Review the applicable law and determine if you need to register. If your business qualifies as a commercial fundraiser or fundraising counsel, you must register. For registration forms and annual reports visit the Attorney General's [website](#).
- **Ensure transparency with charities using your site.** If your site qualifies as a commercial fundraiser or fundraising counsel, inform the charities that are using your site. Commercial fundraisers are required to file annual reports with the Registry of Charitable Trusts detailing the expenses involved in their solicitation and reporting the net proceeds paid to the charities for which they solicited. Charity officials are required to approve and sign off on these annual reports. The failure to file these annual reports may lead to the revocation of the registration for both the charity and the commercial fundraiser.
- **Ensure transparency with donors using your site.** If your site provides fundraising opportunities to charities, as well as individuals and businesses, ensure the differences are clearly marked so that donors can do their own research and so that they will know what donations are tax-exempt.

CHARITIES

- **Ensure that you know what you're getting into.** Charities [can be penalized](#) for using unregistered fundraisers. Do your research and ask the sites if they are registered and if they should be. Never misrepresent the nature/purpose of your solicitation. ([Gov Code, § 12599.6.](#))
- **Ensure transparency with your donors.** Do not make representations or imply that the charity will receive an amount greater than the actual net proceeds reasonably estimated by the charity for its use. ([Gov Code, § 12599.6.](#)) Be upfront and disclose how much of their donation will be kept by the crowdfunding site. Encourage donors to research your charity outside of the site so that they can learn more about your program.
- **Monitor crowdfunding sites even if you do not use one.** Monitor sites to ensure that no one is fundraising on your behalf without your permission.
- **Establish and exercise control over the fundraising activities.** Charities are required to establish and exercise control over fundraising activities conducted for its benefit, including approving written contracts and agreements, and ensuring that the fundraising activities are conducted without coercion. ([Gov Code, § 12599.6.](#))

DONORS

- **Do your research.** Do not assume that the crowdfunding site vetted the organization. You should research the charity independently of the site. You can always contact the charity outside of the site. If there is anything odd about the page (misspellings, bad grammar, broken links) this may be evidence that this could be a scam. If the page is for an individual claiming to be raising money for a charity, ensure that they have received permission to do so from the charity. If privacy is important to you, ask if the site will sell your contact information. Consider using a dedicated email address so that you can easily screen solicitations.