

# Handbook for Nonprofits

An operational resource for board members of charitable organizations



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Charitable Law Section

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OHIO ATTORNEY GENERAL’S GUIDE FOR CHARITABLE ORGANIZATIONS

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**INTRODUCTION**

Charitable organizations play a critical role in strengthening communities throughout the state. They often take on noble causes and harness the energy and commitment of donors and volunteers in support of their important missions.

Making positive contributions to society as a whole by helping lead a charitable organization carries great rewards. But it also carries great responsibilities.

In exchange for the favorable tax arrangements granted to charities, these organizations must take care to use their resources in support of a charitable purpose. However, sometimes these efforts are thwarted by theft, fraud and a lack of serious attention to the operations and governance of those organizations.

One of the most time-honored responsibilities of attorneys general is to look after the interests of those who may not be able to speak up for themselves. This obligation is the underpinning for the various requirements related to nonprofit registration, filing and governance.

When charities fail to act responsibly, the entire community suffers because resources aren't directed to help the individuals and causes that should be benefitting. And other nonprofit organizations often suffer because their donors and volunteers wonder if their contributions are being used appropriately.

The regulation of nonprofits is essential to donors, volunteers, granting agencies, the community and nonprofits. Charity regulations help prevent fraud, provide confidence for donors and create legal mechanisms to ensure funds are not used for personal gain.

## CHAPTER 1: CHARITABLE ORGANIZATION BASICS

### ESTABLISHING A CHARITABLE ORGANIZATION

There are many different paths that individuals can decide to follow in setting up a charitable organization. Discussing the various options with a lawyer can help provide a more thorough understanding of the risks and benefits of incorporating or pursuing a specific tax status.

A common first step for many charities is filing articles of incorporation with the Ohio Secretary of State's Office. The articles of incorporation must describe the purpose of the organization, list names and addresses of the group's directors and name a statutory agent who will serve as a contact person for various types of official documents. During this process, the Ohio Secretary of State's Office will let organizers know if the name of the entity is already in use by another group. Explanations about all of the requirements can be found at [www.sos.state.oh.us](http://www.sos.state.oh.us).

Additionally, a code of regulations must be developed to outline the various processes, procedures and rules that will govern the organization. This document states the duties of officers, rights of members, budget processes and other administrative and governance issues. Care must be taken in developing these documents because they will serve as the primary resource for organizations seeking tax-exempt status from the Internal Revenue Service (IRS).

After its initial filing with the Ohio Secretary of State, an organization must file a Statement of Continued Existence every five years. This filing, which must be signed by a director, officer or three members, verifies that the organization is still actively engaged in its work. Failure to file this statement can result in the Secretary of State canceling the articles of incorporation. The Ohio Secretary of State's Office provides a mailed reminder for this, making it essential to keep the office informed of any address changes or changes in the statutory agent.

The IRS is the only entity that defines an organization's tax status. Many nonprofit organizations choose to seek a 501(c)(3) status, which enables donors to deduct donations they contribute to the organization. There are other benefits from this status, and discussions with a lawyer can provide a better understanding of the various options available.

The IRS applies several criteria when determining whether 501(c)(3) tax-exempt status should be granted. The exemption is granted for organizations that operate exclusively for a purpose that falls into one or more of these categories: charitable, religious, educational, scientific, literary, fostering sports competition or preventing cruelty to children and animals. The organization must be operated for the benefit of the identified purpose and earnings cannot benefit private shareholders or individuals. A substantial part of the organization's activities cannot be to influence legislation.

If organizations are granted tax-exempt status, they will receive a determination letter from the IRS announcing the decision. This document will be important to retain and may be needed for future filings and business. The IRS has many publications and resources available in the charities and nonprofit section of its Web site at [www.irs.gov/charities](http://www.irs.gov/charities).

## LIVING UP TO THE RESPONSIBILITIES

Running a tax-exempt nonprofit organization is an important responsibility — for the staff and volunteers. The organization was formed to promote or support a particular charitable purpose, such as providing assistance to the sick or aged, enhancing educational opportunities for children, providing training in the arts or any number of services that many in the community depend upon. Therefore, the leaders of these organizations must be able to demonstrate that the significant tax benefits they are receiving from their tax-exempt status are benefiting their designated charitable purpose.

Charitable organizations are required to file an annual information return with the IRS. This return, Form 990, is a public document that provides valuable information about the accomplishments, revenues and expenditures of each filing organization. The public can access this tax document in order to analyze how the organization spends its money and what types of programming the organization provides.

Consumer education efforts have been helpful in teaching potential donors how to inform themselves about the groups they support and whether the organizations expend a substantial amount on administration rather than on work related to their charitable mission. Organizations must provide a copy of their Form 990 to anyone who requests it. Additionally, the Guide Star website provides the Form 990s of charitable organizations across the country ([www.guidestar.org](http://www.guidestar.org)).

Nonprofit organizations, unless they qualify under IRS exemptions, must file an annual Form 990 return. The IRS also can revoke the tax-exempt status of organizations that run afoul of their responsibilities in pursuing charitable causes. Organizations should regularly check with the IRS to monitor changes in the annual filing responsibilities.

Board members play a very important role in the operation of the non-profit. Board member training is offered at the Attorney General's Office through webinars and through various speaking engagements. Please see the Guild for Charity Board Members at the following link: <http://www.ohioattorneygeneral.gov/files/Publications/Publications-for-Non-Profit/Charity-Guide-for-Board-Members.aspx>.

## CHAPTER 2: STATE REGISTRATION AND OVERSIGHT OF CHARITABLE ORGANIZATIONS

### OVERVIEW

In Ohio, the authority of the Ohio Attorney General to regulate nonprofit organizations rests in common law, which can be traced back centuries, and in specific statutes passed by the Ohio General Assembly. The prime focus of charitable oversight is to ensure that charitable causes and beneficiaries are protected and that assets are not being diverted for personal use.

Ohio's General Assembly, like those of many other states, has developed a registration and filing requirement for many charities. This system provides transparency and information for members of the public interested in exploring details about charities.

These filings are public record available for citizen review, and citizens with questions about charities are encouraged to contact the Ohio Attorney General's Office to ensure the organization is in compliance with the various requirements. The information in these reports also assists investigators in the Ohio Attorney General's Office in responding to allegations of fraud and other improprieties.

The filing and registration requirements are embodied in two different statutory provisions — the Ohio Charitable Trust Act (ORC 109) and the Ohio Charitable Organizations Act (ORC 1716). Each of these sections includes specific exemptions and requirements, and some organizations may be subject to both requirements. It is important to carefully read and determine which requirements apply to any organization.

The Ohio Attorney General's Office requires charitable organizations to comply with their filing requirements through its online system that can be found at [www.OhioAttorneyGeneral.gov](http://www.OhioAttorneyGeneral.gov). Representatives from each charity create accounts in the system that enables them to make changes to the data on file about the group and complete required filings.

The Attorney General's Office recommends at least three people from each organization have accounts in the system to ensure multiple representatives receive important notifications. For new organizations that have never registered in the past, the first user from the group needs to provide organizational details and information. The system is designed to display data already on file for registered organizations.

Each person who uses the online system will receive email reminders about filing deadlines and will receive notifications each time anyone makes changes to the organization's data. Users can be connected to multiple organizations, enabling lawyers, accountants and others to stay in the loop for several groups.

The system is designed to be user-friendly and intuitive. Orange question marks throughout the system provide additional guidance for those with questions about particular requests for information. Additionally, there is a user guide that provides in-depth information on the filing system.

The system poses questions to the organization representatives and, based on that person's responses,

determines what information is needed to ensure proper compliance under both the Trust and Solicitation acts. The system also calculates what fees, if any, are owed.

Much of the information for the filings can be drawn from the IRS 990 form, such as the listing of board members, revenues, assets, and program and total expenses. It is helpful to have the IRS 990 form available when completing the filing.

For organizations that have never registered or filed in Ohio before, additional documents will need to be uploaded. Documents required to complete the registration process include: articles of incorporation, bylaws or governing documents, and a federal tax exemption determination from the IRS granting tax exempt status.

For the first time, the public can check the Attorney General's website for general information about groups and whether organizations are in compliance with the registration requirements. Using the Research Charities function on the website, prospective donors and others can use this information to make wise decisions about contributions. Charities can also refer potential donors to the website for confirmation of compliance with state registration rules.

A team of account clerks works with charity representatives to assist them in complying with the filing requirements. Charities are urged to contact the office with questions about their filing status by calling 1-800-282-0515.

## **THE OHIO REGISTRATION PROCESS - REGISTRATION SIMPLIFIED**

The Charitable Law Section works with nonprofit officials to get their groups in compliance. Contact an account clerk in the Charitable Law Section at 1-800-282-0515 for additional assistance.

### **How do I access the online charitable registration system?**

There is a link to the online charitable registration system from the web page dealing with charitable registration issues and can be found <http://www.ohioattorneygeneral.gov/charitableregistration>.

### **What kinds of charitable organizations have to file with the Ohio Attorney General's Office?**

In general, Ohio 501(c)(3) organizations and 501(c)(4) health-care organizations must register under the Ohio Charitable Trust Act unless they meet one of eight exemptions. Other organizations that operate for a charitable purpose may also be required to register. Out-of-state entities may be required to register if they have assets in Ohio or a majority of the governing body is in this state. After filing the initial registration with the office, the organization must file an annual financial report. A sliding scale for fees is based on the organization's assets.

Nonprofits that intend to solicit contributions from Ohioans must register and submit financial reports with the Attorney General's Office each year under the Charitable Organizations Act. Ohio 501(c)(3) organizations that have been in operation for two or more years are not required to file under the Charitable Organizations Act if they have properly filed under the Charitable Trust Act each year. The fee is based on the amount of contributions received each year.

There are circumstances when Ohio charities might be required to file under both provisions. The online charitable registration system automatically determines for users what information is required based on the responses provided to questions.

### **How can I check if my charity is properly registered?**

Organization representatives can log into the online charitable registration system and view a to-do list which will list any filings or activities that are due for the organization. If there are no activities listed, the organization is current. Additionally, consumers can conduct searches for specific organizations, find basic contact information, and learn whether that organization is properly registered. [www.ohioattorneygeneral.gov/CharitableSearch.aspx](http://www.ohioattorneygeneral.gov/CharitableSearch.aspx).

### **Who from my charitable organization should register to use the online registration system?**

Multiple people can be connected to an organization's charitable filings, and it is suggested that several people from each group register to use the online registration. Because of the turnover of volunteers or staff, leaders far too often can overlook the group's filing responsibilities. Because the system provides email reminders to everyone associated with the organization, the chances of annual filings being forgotten are reduced. This should also help reduce the risk of encountering late fees. Organization leaders should also remember to register new email addresses when there are changes to ensure that the reminders and other notifications are properly directed. Lawyers, accountants, and other advisers for a charity may also want to register in connection with the organization.

### **What do I need to use the online charitable registration system and how do I get started?**

All that is needed to complete filings requirements is access to the internet and an email address. Requesting an account is easy, and multiple people connected with the organization can have accounts. The system uses the organization's Employer Identification Number (EIN); users must know the EIN to access that organization's records. Those completing the filing should have handy the basic information about the organization, such as contact information, financial data, and other information included in the IRS 990 return.

#### **What information and documents are required for charitable reporting?**

The online charitable registration system makes determinations about what information or documents must be provided based on responses to questions. Many of the responses can be found on the organization's informational 990 filings with the IRS. For organizations that have never registered before, a copy of the IRS determination letter of exempt status is required, along with a copy of the articles of incorporation, bylaws, constitution, trust agreement or other creating documents. These documents can be either uploaded into the online charitable registration system, or mailed to:

*Ohio Attorney General's Office  
Charitable Law Section  
150 E Gay St, 23<sup>rd</sup> Floor  
Columbus, Oh 43215*

#### **What are the advantages to having an online charitable registration system?**

The online charitable registration system is designed to simplify the process and take the guesswork out of the filing requirements by eliminating confusion over which forms are required and which statutory provisions apply. Based on responses provided, the system will automatically make determinations about what information, documents, or fees might be needed. Because users must provide email addresses when registering with the system, filing reminders and confirmations can be sent to everyone connected with the organization. Because the information is being collected electronically, it can be more readily provided to the public through an online search tool. Organizations will now have the ability to tell potential donors to use the online research charity tool on the web page to verify that the group is compliant with its filing requirements. Online filings are an efficient way to enhance transparency of operations and enhance the level of oversight provided to the charitable sector, increasing the level of public confidence in Ohio's charitable organizations.

#### **I handle the filings for multiple charitable organizations. How will the system work for me?**

Users of the online charitable registration system can gain access to the accounts of multiple organizations by providing the EIN of the group. Each time users log into the system, they will be asked to select which organization they want to access.

#### **What kind of support can I find to make the online charitable registration system easy for me.**

The online charitable registration system is designed to take the guesswork out of the charitable filing requirements since the system produces questions based on the responses provided. It is designed to be simple and intuitive. A user guide is provided on the Attorney General's website:

<http://www.ohioattorneygeneral.gov/charitableregistration>, which will provide additional assistance.

Additionally, users can contact the Ohio Attorney General's office for assistance by calling 800-282-0515, or email a question to [CharitableRegistration@OhioAttorneyGeneral.gov](mailto:CharitableRegistration@OhioAttorneyGeneral.gov), or submit a question or concern through the help function within the system.

**I don't have a computer. How can I take care of my charitable organization's filing responsibilities?**

Public libraries, schools, community centers, and other public locations often have computers available for citizens to use. The system is designed to be simple and intuitive and a reference guide is available to walk users through the system. Organizations may also consider recruiting board members or volunteers who can assist in the online filing. Young people and those involved in community service may be good prospects for providing assistance on charitable filings, as well as the online 990 filings required by the IRS. Veteran leaders of the organization could provide the detailed information about the organization while a volunteer completes the online filing.

**If I am a subsidiary or chapter of a national charitable organization, do I need to register?**

A parent organization is one that has been specifically recognized by the IRS and is permitted to file a group tax return on behalf of its chapters, branches, and/or affiliates. If you are a chapter, branch, or affiliate of a parent organization, you should have documentation from the parent organization that confirms that you are in good standing and that your financial reports are included in the federal group return. If you do not have the appropriate documentation or the parent organization is not properly registered with us, then your organization is responsible for filing individual registration documents on behalf of the chapter or division.

**How do I determine the date a trust was funded?**

Trusts may be funded in advance of or following the death of a beneficiary. Please indicate the date that funds were made available to the trust.

**THE OHIO REGISTRATION PROCESS - FEES FOR CHARITABLE REGISTRATION AND REPORTING**

The fee schedule for Ohio groups registering under the Ohio Charitable Trust Act is based on the group's assets:

<b>Assets</b>	<b>Fees</b>
Less than \$25,000	\$ 0
\$25,000–\$100,000	\$ 50
\$100,000–\$500,000	\$100
\$500,000 or more	\$200

There is a \$200 late fee assessed for groups failing to submit fees by the deadline. The date of the online submission or the postmark date for checks mailed to our office are used to determine timeliness.

For groups soliciting in Ohio and registering under the Charitable Organizations Act, the fee schedule is based on the amount of contributions received:

<b>Contributions</b>	<b>Fees</b>
Less than \$5,000	\$ 0
\$5,000–\$25,000	\$ 50
\$25,000–\$50,000	\$100
\$50,000 or more	\$200

All checks should include the organization's EIN and be written to the Treasurer, State of Ohio. The

online charitable registration system will automatically calculate the fees due.

## **THE OHIO REGISTRATION PROCESS - ANNUAL FILING**

### **How often should I access the online charitable registration system?**

Organization representatives should access the system whenever updates to the address, contact information, or other important information about the organization changes. When logging in to view the information, users should pay attention to the to-do page which lists any activities that are due for the organization. Organization representatives will need to complete a filing annually.

### **How will I know if someone has made a change to the information filed for my organization?**

Email notices will be sent to all email addresses connected with each organization every time a change or filing is completed. The system will also provide email reminders and confirmations to all users connected with an organization. For these reasons, we suggest that multiple people with each organization should have accounts in the online charitable registration system so that details about filing requirements can be widely shared among leaders of the organization. This will prevent notices from falling through the cracks when individuals are no longer active with the group.

### **When are the deadlines for filing charitable reports**

The annual filings are due on the 15<sup>th</sup> day of the fifth month following the close of a fiscal year. For example, if a group's fiscal year ends Dec. 31, the filing is due on May 15. The office does not grant extensions but abides by extensions granted by the IRS. If an organization has requested and received an IRS extension, the Ohio filing will be due on the same date as the IRS deadline.

For organizations planning to solicit within the state, the registration process must be completed prior to soliciting gifts. For new Ohio organizations, registration is required within six months of the creation of the trust and prior to soliciting. Determinations on when groups have submitted materials are based on the time and date of the online submission, unless checks and other materials are mailed to the office. When groups elect to mail a check instead of paying online, the submission date will be based on the postmark date on the envelope. Late fees may be assessed for materials mailed after the due date. For this reason, it is best to submit payments online.

### **How will I know if my charitable organization is current with its filing requirements?**

Organizations can monitor the to-do page in the online charitable registration system. If no tasks or activities are shown, the organization is current on its filings. Organizations and the public can find information about an organization's compliance through the web page <http://www.ohioattorneygeneral.gov/CharitableSearch.aspx>. Consumers can search for an organization and find basic contact information and a notation about whether the group is properly registered.

### **How do I tell you that I filed for an extension with the IRS?**

The Ohio Attorney General's automatically grants any IRS extension; therefore, you do not need to let us know that you filed for an extension with the IRS and you cannot do this within the online system. We will still send reminders regarding upcoming deadlines, but you can disregard those reminders if you requested an extension.

### **What changes within my charitable organization require updates to the Attorney General's Office?**

Any amendments to an organization's creating documents should be filed immediately with the

Charitable Law Section. Changes in the address, telephone number, officers, amendments to the IRS 990 forms, and other pertinent details also should be shared with the Attorney General's Office.

**A donor has asked our charitable group for verification of registration. How do I provide that?**

The new online charitable registration system has simplified that process. Instead of using the "Verification of Registration with the Ohio Attorney General" form, organizations and the public can find information about an organization's compliance online at

[www.ohioattorneygeneral.gov/CharitableSearch.aspx](http://www.ohioattorneygeneral.gov/CharitableSearch.aspx). Consumers can search for specific organizations and find basic contact information and a notation about whether the group is properly registered.

Additionally, organizations can monitor the to-do page in the online charitable registration system. If no tasks or activities are shown, the organization is current on its filings.

**THE OHIO REGISTRATION PROCESS - DETERMINATION OF EXEMPTION**

**How do I know if my charitable organization might be exempt from any of the filing or registration requirements?**

Through the online charitable registration system, organizations can submit a request for a determination from the office about whether it qualifies for an exemption from charitable filing requirements. So that legal staff in the Ohio Attorney General's office can make a determination on whether an exemption is appropriate, supporting documentation such as bylaws and other information must be uploaded into the system or mailed to the office. The requesting organization will receive an email and a letter granting or refusing the exemption, and that information will be entered into the organization's file. Failure to provide supporting documentation within one month of the request will result in a rejection of the request. Materials can be mailed to:

*Ohio Attorney General's Office  
Charitable Law Section,  
150 E Gay St, 23<sup>rd</sup> Fl  
Columbus, OH, 43215*

You can also email the materials to [CharitableRegistration@OhioAttorneyGeneral.gov](mailto:CharitableRegistration@OhioAttorneyGeneral.gov) or documents can be uploaded into the online charitable registration system when the request is made.

**What types of organizations are exempted from the various charitable filing requirements?**

The most common exemptions under the Charitable Trust Act are:

- Parent-teacher associations; fraternities; and alumni, booster, or social clubs organized and operated in conjunction with and for the benefit of students of primary and secondary schools
- Churches
- Schools that maintain regular faculty and curricula and maintain a location where students attend
- Qualifying charitable remainder trusts or trusts with revocable charitable interests
- Charitable trusts with neither assets nor a majority of the governing body in Ohio

**Common exemptions under the Charitable Organizations Act include:**

- Churches
- Educational institutions if the contributions sought are confined to alumni, faculty, trustees, students, and their families
- Booster clubs operating for the benefit of students of public primary or secondary schools

- Public primary and secondary schools when solicitations are limited to alumni, faculty, or the population of the school district

### **CHAPTER 3: NONPROFIT FUNDRAISING AND PROFESSIONAL SOLICITATION**

#### **OVERVIEW**

The nonprofit sector is incredibly diverse. Ohio's charities range from small organizations run entirely by volunteers on very limited budgets to large complex organizations with enormous staffs and multimillion-dollar budgets.

The missions of these organizations vary broadly and cover myriad areas of interest. Neighborhood mentoring programs, performing arts organizations and major medical research complexes all fall within the nonprofit sector. And while their work and challenges differ, they all must follow some of the same statutory requirements that come along with holding the favorable tax status granted to public charities.

Charities generate revenue in many ways. The largest source of revenue within the sector comes from fees charged for services, such as hospital charges or school tuition. But this category of revenue is not applicable to many nonprofits that have to rely on financial gifts from donors.

Most charities rely on donations to some extent, and there are numerous strategies used to attract financial gifts. Financial gifts to a 501(c)(3) organization that the Internal Revenue Service has designated as a public charity are generally tax-deductible for the donor. That tax deduction may motivate some donors to make gifts. Other contributors are driven by the personal rewards derived from supporting organizations that improve the community, provide assistance to the less fortunate or advance an important cause.

#### **FUNDRAISING METHODS**

Nonprofit organizations use several common fundraising methods. And while the various methods are aimed at raising revenue, they also help the organization increase community awareness of their services and build a larger network of supporters.

As in all consumer transactions, it is important to ask questions when deciding whether to make a financial gift to a charity. Consumers too often are duped into supporting sympathetic causes that don't really benefit substantially from the gift. Information below addresses consumer protection issues and suggests specific questions that potential donors should ask.

**Telemarketing:** A common approach used by many nonprofits, this strategy involves calling members of the public to request a contribution. The caller may be a volunteer, charity staff member or paid solicitor. Sometimes special gifts are offered to the potential donor. Donors often are asked to mail in a check or to provide a credit card number over the phone, or a courier may be sent to the home or office to pick up the gift. Sometimes the potential donor feels highly pressured to contribute. Consumers should exercise caution — especially in high-pressure situations — by asking questions, calling the organization back and taking the time to make a well-considered decision before financially supporting a group. Well-run charities want donors to ask questions and feel good about the informed investment donors are making in the work of the organization.

**Direct mail:** With this approach, either the charity or a professional consultant hired by the charity prepares the mailings, which generally provide information about the organization and its programs.

This allows the potential donor to take time in considering a gift, creating less pressure for an immediate response. Potential donors can easily contact the charity to ask questions prior to mailing a check.

**Online and social media fundraising:** This is one of the newest approaches to fund development thanks to emerging technologies that permit secure transactions over the Internet. Some organizations accept gifts through their Web pages, and may generate e-mails and other tools to drive potential donors to their site to make credit card transactions and other types of gifts. Often volunteers can create their own special pages to recruit team members and share experiences related to the charitable causes. Some organizations make use of text messages campaigns in which donors can text to a specific number and a donation will be made that shows up as a charge on that person's cell phone bill.

**Special events:** Charities that use this common fundraising strategy sell tickets for admission to galas, concerts, bazaars or other entertainment events. There often are items for sale or auction at these events, and sale proceeds benefit the charity. It can be important to ask questions about what percent of the ticket or sales proceeds will benefit the charity. There often are significant expenses involved in producing these events, and those expenses generally come out first, reducing the level of support for the charity. But often these events help the charity establish visibility in addition to raising revenues. For income tax purposes, donors cannot deduct the portion of an event ticket used for meals or other services received by the donor.

**Sales:** Baked goods, magazines, advertisement space in programs, candles, wrapping paper and other items are among items commonly sold by many charitable organizations. Some sales efforts extend through the entire year, while others may be for a limited time. Consumers might consider asking how much the charity receives for each unit sold or making a donation rather than buying items that aren't truly needed.

**Door-to-door solicitations and street collections:** While such approaches are quite common, many municipalities have restrictions and license requirements for these types of activities. Consumers should feel comfortable rejecting requests or asking questions when the requests are made.

**Canisters, vending machines and donor boxes:** Often found in businesses, such items sometimes are not owned or placed by a charity, but are distributed by a for-profit enterprise that keeps most of the proceeds, contributing only a small amount to the charity. Checking with the charity identified on the container can clarify questions.

**Cause-related marketing:** This is a term used for partnerships between nonprofits and commercial interests. In these arrangements, consumers are alerted that the business will make a gift to a particular charity for every purchase of a special item or service sold. Sometimes the charity receives only a small percentage of the sale and sometimes there is a cap on the amount that will be forwarded to the charity. If a donor is motivated to make a purchase because of the connection to a charity, he or she should ask very specific questions about the nature of the relationship and how much the charity will receive.

**Bingo:** Many charitable organizations in Ohio pursue this option. More than \$1 billion annually is spent on licensed bingo games in this state. Ohio law permits only specific types of organizations to engage in this type of charitable gaming, which is regulated by the Ohio Attorney General's Office. Licenses are required for all bingo fundraisers and the sale of instant bingo tickets. Licenses are not required, however, for raffles, which are defined as a form of bingo under Ohio law.

Gambling events: Charities sometimes hold events such as Texas Hold'em tournaments, which Ohio law permits only if volunteers staff the events and they are held at authorized locations. Roulette and craps are prohibited. Charities considering such events should consult with their county sheriff to inquire about the legalities of their plans since violations of Ohio's gambling statutes bring criminal penalties.

Workplace giving: Some charities conduct campaigns that permit donors to have charitable gifts deducted from their paychecks and forwarded on to the charities. United Way, the Combined Federal Campaign or other federations of nonprofits are common examples.

Grant writing: This is a major activity for some nonprofits. Foundations, governmental units, businesses and other grant-making organizations solicit proposals and applications from nonprofits. Sometimes grants are awarded to fund specific programs or initiatives. Generally there are requirements for regular accountings, financial reports and evaluation studies on the effectiveness of the project.

Planned giving: This specific type of fund development arrangement can involve estate planning, bequests, the purchase of annuities and other financial tools. Potential donors usually involve their lawyers and financial advisers in making these types of charitable gifts.

#### **KEY PLAYERS IN FUNDRAISING EFFORTS**

Organizations can follow a variety of paths in putting together a fundraising strategy. Many organizations use volunteers to organize and implement plans to raise revenue. Some have fundraising or development staff members who are paid to oversee the activities, recruit volunteers and handle logistics. Others contract with consultants and businesses. Many use some combination of the two. It is important to note that all forms of charitable gaming must be conducted by unpaid volunteers.

Expenses generally are associated with all fundraising efforts. For instance, the costs of printing and postage are expenses in direct mail campaigns. Food, space and equipment rental might necessitate expenses for special events. The salary and expenses of development staff also would fall into this category, as would decisions to outsource development efforts to professional solicitors, who retain a portion of the gifts received.

Consumers should feel free to ask questions about how much of their gift will support the charitable programming of the organization. This sort of data is reported in the annual 990 tax return that charitable organizations are required to file with the IRS. Understanding how a charity spends its funds can be an important part of being a wise donor. Potential donors may make different decisions if they knew that only 2 percent of their donation would go to support the programming work of a particular organization, for instance.

The U.S. Supreme Court has ruled that it is an unconstitutional restriction of free speech to require nonprofits to cap the percentage of fundraising expenses. The court ruled that fundraising activities can often serve to inform the public about a group's mission and that it can become difficult to separate educational costs from fundraising costs.

## **REQUIREMENTS FOR PROFESSIONAL SOLICITORS AND FUNDRAISING COUNSEL**

In an effort to protect consumers, most states require professional fundraisers to register their campaigns with a state office. This enables consumers to more readily check on the legitimacy of a solicitation and learn what percentage of the funds raised go back to the charity or are retained by the solicitor. The registration process is intended to reduce fraudulent charitable appeals and limit the number of donors victimized by dishonest schemes.

The Ohio Attorney General's Charitable Law Section is responsible for registering professional solicitors and fundraising counsel. Ohio statutory requirements for these individuals can be found in Ohio Revised Code 1716.

In general, professional solicitors are defined as people or companies seeking contributions and other items of value on behalf of charities and receive compensation or a portion of the proceeds. Telemarketing companies and direct mail houses are the largest category of professional solicitors, but many small companies and even individuals are professional solicitors.

Fundraising counsel is hired by a charity to plan, manage, consult or prepare materials related to solicitation. Fundraising counsel does not actually request the donation.

Both professional solicitors and fundraising counsel are required to annually register with the Ohio Attorney General's Office by April 1 of each year. In addition to a registration application, they also must obtain a \$25,000 surety bond and pay a \$200 fee.

Prior to working on behalf of a specific charity, solicitors must file a solicitation notice outlining the dates and details of the campaign, the percentage of funds raised that have been promised to the charity and a copy of the contract with the charity. Within 90 days of the close of the campaign lasting less than a year, the solicitor must file a financial report form that includes the revenues and expenses of the campaign and how much the charity received. For campaigns that last longer than one year, annual financial reports are due on the anniversary of the campaign launch. This data is compiled annually by the Ohio Attorney General's Office and included in a public report on solicitation activities.

## **STEMMING SOLICITATION FRAUD**

Unfortunately, fraudulent and dishonest charitable fraud schemes have bilked donors across the country over the years. For that reason, federal and state agencies have implemented various requirements for professional solicitation in an effort to ensure that consumers and charities are better protected.

Sometimes solicitors have raised funds for non-existent charities or created charities themselves so they could directly benefit from the funds raised. In other instances, solicitors keep an inordinate amount of the funds raised, passing through only small percentages of funds to charitable causes while representing to the public that the charity retained most of the donations.

In an effort to stem abuses, states have instituted registration processes that require solicitors to be

bonded. When solicitors fail to follow the rules, their bonds can be revoked.

In addition to the various reporting requirements, solicitors must follow specific rules in making contact with potential donors. Whether through telephone, personal, mail or other contact, solicitors must identify themselves using the name that is on file with the Ohio Attorney General's Office and stating the campaign is being conducted by a professional solicitor. The solicitor also must disclose the name and address of the charity as it is on file with the office.

If the potential donor asks how much of each contribution goes to the charity, the solicitor must disclose the percentage promised under the contract between the charity and the solicitor.

Consumers also should know that if they receive invoices for pledges they do not recall making, they should contact the Ohio Attorney General's Office. Donors are not obligated to pay charitable pledges and should not feel bullied into making a gift. Additionally, consumers are not obliged to pay for unsolicited gifts they might receive through the mail, such as mailing labels or notepads.

Violating any of the requirements in Ohio Revised Code 1716 could lead to a wide array of penalties. Courts can order injunctions, damages and penalties for violations. Fraudulent activities also can lead to criminal charges.

The various requirements are aimed at protecting consumers and the charities that should benefit from the generosity of donors.

The Ohio Attorney General's Office asks that Ohioans who have experienced fraudulent solicitations contact the office and file a complaint so that other consumers won't be harmed.

## **CONSIDERATIONS IN HIRING SOLICITORS**

Hiring professional fundraisers is an important strategy for many nonprofit organizations. Some organizations may lack the staff and expertise to conduct fundraising on their own. They may find that professional fundraisers have databanks and specialized equipment that make hiring them seem more cost effective than trying to develop those assets internally.

Because solicitors represent the organization to the public, it is important that nonprofits approach these arrangements seriously and carefully. The integrity and reputation of an organization can suffer greatly if the solicitation efforts are unprofessional and raise concerns among potential donors.

When considering hiring professional fundraisers, charities always should talk with multiple service providers before finalizing a relationship. The names of all registered solicitors in Ohio can be found on the Ohio Attorney General's Web page, or nonprofit leaders can contact the office for updated information.

Nonprofits also can contact the Ohio Attorney General's Office for information on other campaigns that specific solicitors have handled for other organizations. Ask for a copy of the contract and review the materials the solicitors used. Contact other nonprofits for feedback on how their experiences with their solicitors have gone.

In developing the contract arrangements with a solicitor, be certain there is clarity about what specific services the solicitor will provide. Ask to see and approve all scripts and materials the solicitor prepared. Discuss how the cash and donations will be handled and processed. Determine whether the names and contact information for all donors will be supplied, so the organization can cultivate a relationship with them independent of whether that specific solicitor is retained. Numerous required elements of a contract are listed in Ohio Revised Code 1716. It also can be helpful to have an attorney review the contract before signing.

It is important to have ongoing communication with the solicitor and to receive regular reports and accountings. It also can be useful to visit the solicitor's office and listen to outgoing telephone calls if telemarketing is a part of the services provided. Some solicitors keep tape recordings of calls that can be monitored.

It also can be important to obtain and review bills and invoices from third-party vendors to make certain those bills are properly paid.

At the close of the campaign, it is important to review the results and determine whether the solicitor provided all promised services.

It is vital that nonprofits only hire professional fundraisers who are properly registered with the Ohio Attorney General's Office. The nonprofit also needs to ensure that the solicitor will file all of the appropriate notices and final financial reports connected with the campaign.

Nonprofits place the reputation of their organization in the hands of others when they hire outside fundraisers. These can be fruitful and productive relationships, but they deserve the investment of time and attention to make certain that the efforts enhance the charitable mission of the organization.

## **CHAPTER 4: TIPS FOR BEING A WISE DONOR**

### **DONOR TIPS**

Unfortunately, some consumers fall victim to solicitation schemes that end up ripping off both the donor and the charitable purpose that should have benefitted from the generosity of givers.

Regardless of whether professional solicitors are involved, consumers should pay attention to what groups they are supporting with their charitable contributions and ask wise questions. Often the biggest problems develop as a result of telephone solicitations.

Potential donors can take several steps to help reduce their chances of falling prey to solicitation fraud.

Ask lots of questions: Representatives of legitimate campaigns are eager to answer questions about the work of the organization because they want people to identify with their efforts. If the caller doesn't want to answer, hang up.

Some questions to ask:

- What is the full name of the charity and how long has it been in existence?
- Who is making the call — a volunteer, staff person or solicitor?
- How will the gift be used and what is the purpose of the organization?
- What percentage of the gift actually supports the charitable work of the organization rather than fundraising expenses?
- Can I get written information to review before making a gift?
- Is the charity and its fundraiser registered with the Ohio Attorney General's Office?
- How can I contact the charity if I want to discuss this fundraising campaign?
- Is the gift tax-deductible and is the organization a 501(c)(3)?

Know how your money will be used: The single most important question centers on understanding how a \$1 gift will be used. How much will go to the solicitor? After a portion of the gift gets to the nonprofit, how much of it is used for administrative and fundraising expenses? How much of a \$1 gift is actually spent on the underlying charitable mission that is inspiring your choice?

Be wary about giving a credit card number over the telephone: There are risks in sharing your credit card number with strangers who contact you unexpectedly. It is safest to make your gifts through checks. Another alternative is to contact the charity yourself to provide credit card information so that you can be certain that the financial information doesn't fall into the wrong hands.

### **RESEARCH CHARITIES BEFORE GIVING**

Learning about an organization and its activities can help donors make wise giving decisions. One source of information is the Research Charities function on the Ohio Attorney General's web page. Basic information about all charities that are registered in Ohio appears after typing in an organization's name. Potential donors will also learn whether an organization is current with its state registration

requirements when using this tool which can be found at [www.OhioAttorneyGeneral.gov](http://www.OhioAttorneyGeneral.gov).

Other good sources of information include:

The IRS's Exempt Organizations Selection Check can be used to verify if an organization has a valid 501(c)(3) or other tax-exempt designation. The IRS also lists organizations that have had its tax exempt status revoked.

Private watchdog organizations often review data and reports on organizations and may grade them based on various spending standards and other procedures. Some of those groups are Wise Giving Alliance, Council of Better Business Bureaus or local BBB offices which can be contacted through Charity Watch, and Charity Navigator.

The organization's IRS Form 990 return can be viewed on [www.guidestar.org](http://www.guidestar.org). A free registration process is required to access the reports. The 990 will include information on how the group raises and uses its funds, and other operational details about the group. Important details to pay attention to include what percent of expenditures are used on program expenses rather than management and fundraising expenses. Descriptions of programs and expenses are often revealing, as well as reported information about travel and compensation levels. Self-dealing transactions between the charity and one or more of its directors should also be examined.

Talking to friends and family is another good strategy for vetting charitable organizations. If nobody has heard of the organization and its contributions to the community, additional research is warranted.

Check to see if the organization is registered with the Attorney General at:

<http://www.ohioattorneygeneral.gov/Services/Non-Profits/Research-charities> .

If you need additional information about a charity or want to file a complaint about a questionable organization, call the Attorney General's office at 1-800-282-0515 or file a complaint online at <http://www.ohioattorneygeneral.gov>.

#### **WARNING SIGNS THAT SHOULD RAISE CONCERNS**

- The request is to support an organization that sounds suspiciously like another better-known charity. This is a common rip-off ploy, so consumers need to make certain that their gift will go to the right charity.
- High-pressure tactics are used. Consumers should hang up the phone if the caller is intimidating and trying to exert strong pressure to get a gift. Hanging up the phone is not rude in these situations; it is appropriate to end the call.
- The caller asks for the check to be made out to an individual or a company different from the charity. Only make donations to the charity itself, and write a check so there will be a record of the gift.
- The caller says you are guaranteed to win a prize if you make a gift. This is another common rip-off scheme.
- The caller says a courier will immediately pick up the donation from you. Legitimate fundraisers

generally are happy to get your gift through the mail.

- You receive an invoice for a gift you never pledged to make. Some fraudulent solicitors send out mailings that resemble bills stating that a payment is due even if a pledge was never made. Consumers are not obligated to honor charitable pledges and should never make a payment on a gift they did not promise. Consumers also do not have to pay for mailing labels and other gifts they might receive through the mail that they did not request.

## **WHAT TO DO WHEN YOU HAVE CONCERNS**

There are many options. Consumers can check with the charity to verify a campaign is under way and even send the gift directly to the nonprofit. Consumers also can check with the Ohio Attorney General's Office at 800-282-0515 to see if the solicitation campaign is registered. Check to see if a charity is registered at: <http://www.ohioattorneygeneral.gov/Services/Non-Profits/Research-charities>.

The Ohio Attorney General's Office also accepts complaints from consumers about fraudulent and misleading charitable solicitations. When consumers call to express concerns, the Charitable Law Section may investigate the situation. Solicitations that are misleading and fraudulent can become the focus of litigation and even criminal charges. These legal actions often result in the recovery of funds intended to support charitable organizations.

If you believe you might have received an inappropriate solicitation, contact the Ohio Attorney General's Office through the statewide toll-free number at 1-800-282-0515 or visit the Web site at [www.OhioAttorneyGeneral.gov](http://www.OhioAttorneyGeneral.gov) and complete a complaint form online. Consumers also can mail information about fraudulent solicitations Ohio Attorney General's Office, Charitable Law Section, 150 E. Gay St., 23rd Floor, Columbus, OH 43215.

When Ohioans share information about fraudulent fundraising activities, it helps protect others from being victimized and ensures that the good work of legitimate charities is protected.

## **DEVELOP A DONOR PLAN**

The best way to ensure that your charitable gift-giving makes a difference is to decide in advance what kinds of donations you plan to make for the year. Identify some of the causes and groups that you feel most strongly about, develop a budget for your charitable donations and send those gifts directly to the organizations.

This type of planned giving allows consumers to identify priorities in advance instead of responding to emotional and persuasive requests. When telemarketing calls come, it makes it easier to ask for written materials to consider at a later date when you make your giving plan for the year.

## **CHAPTER 5: REDUCING THE RISK OF THEFT**

### **AVOIDING EMBEZZLEMENT**

The reputations of charities everywhere suffer when headlines announce theft or misappropriation of assets at community nonprofits. Not only is that organization affected, but the confidence citizens have in other charities declines, jeopardizing future donations and support for all groups.

Nonprofit board members play a crucial role in ensuring sound governance and administration practices are in place to help protect assets and ensure that the group's mission is being honored.

Charities throughout the country rely on the good-faith efforts of invaluable volunteers and, if they are large enough to have them, paid staff members as well. Most people are honest and committed, but sometimes even longtime volunteers and employees can find themselves in situations that tempt them to steal from the organization.

Theft happens in large and small organizations, and often it involves individuals who are widely respected and valued within the organization. This sometimes occurs during times of economic difficulties for the individual, out of spite, for revenge or even because of substance abuse issues. Often there is no rational explanation, other than perhaps greed. However, one thing is well-known: The number 1 contributing factor to theft is having access to the assets.

Unfortunately, valuable organizations — and, ultimately, those they serve — suffer when such incidents occur.

The Association of Certified Fraud Examiners reports that a typical organization loses 7 percent of its annual revenues to fraudulent activity. If that figure is applied to Americans' more than \$300 billion in charitable gifts annually, an estimated \$21 billion is lost each year.

The adoption and ongoing review of written policies help protect the organization, board members, staff and volunteers. All should find the development of such procedures a comfort, rather than a threat.

It is important that the focus be kept on the processes, not the people. Nonprofits should approach the examination of procedures without considering the trustworthiness of the specific individuals involved. The procedures should be based on objective standards about how to best protect the organization's interests.

While it is impossible to guarantee the prevention of theft, nonprofits should take steps to reduce the likelihood of problems and ensure a quick response if problems do arise.

Some charitable board members rely solely on an annual audit to provide assurances that the organization is safe from fraud. But in truth, the audit process rarely uncovers fraud because its primary goal is to ensure that financial statements provide an accurate fiscal picture. Fraud is most often uncovered through diligent oversight, whistleblowers, internal audits or sheer luck.

Developing internal controls, audit processes, and written policies and procedures — and ensuring that they are being followed — are some of the most important duties of board members. In fact, failure to address these issues can constitute a breach of fiduciary duties, jeopardizing the organization’s future and even risking personal liability to board members who recklessly and intentionally fail to act.

Lawyers, accountants, business leaders and other community leaders often are willing to provide guidance on the creation of internal controls and board governance policies. Additionally, numerous books, resources and training organizations can provide assistance if needed. Board members must take the time to analyze the specific needs and goals of the organization and work to constantly improve activities in these areas.

### **STEPS TO LIMIT EXPOSURE**

Here are some important actions nonprofit organizations should consider to limit exposure to theft. Some focus on the importance of the separation of duties so that no single person has sole access to and control over the collection, depositing and reporting of financial information — the root problem in most instances of theft. Other tips reinforce the importance of regular and effective oversight activities by the board or audit committee. It is the board’s responsibility to ensure a system of checks and balances is in place.

An organization’s size and complexity should be considered when assessing needs. There is no single fool-proof formula to eliminate theft. But the surest recipe for disaster is to ignore the issue.

#### **Require dual signatures**

Requiring multiple signatures on checking and investment accounts for checks written above an established amount can provide some measure of control. The approved signatories should be individuals who are independent of each other. In selecting approved signatories, avoid selecting individuals who are family members, close friends or related by supervisory structures. Having blank checks signed in advance in order to promote convenience is a risk. Organizations also should investigate using safety checks that cannot easily be scanned or altered. For hand-written checks, gel pens rather than ink pens are safer. If your organization pays its bills electronically, consider granting online access to the accounts to someone not authorized to pay bills.

#### **Reconcile bank statements**

Someone who is not authorized to sign checks should reconcile all bank statements monthly. Each check should be compared against appropriate purchase orders and receipts to verify the expenditures were authorized and the goods or services were received. Arrangements also could be made to have the bank send multiple statements, one to the charity office and one to the home address of the board treasurer. This can reduce the risk of tampering with bank statements to hide fraudulent activities.

#### **Limit use of cash**

Cash is particularly tempting, and the more organizations can limit the need to handle it, the better. However, this is not possible for many charitable organizations. Two people should count cash at events and a third should deposit the funds in the bank. Counts should be recorded, verified and reconciled. Ensuring cash deposits are routinely made rather than leaving money in the office is vital. Cash and checks should be safely locked up prior to deposit. If the group sells refreshments, for instance, consider

having a ticketing system in which vendors don't handle cash, just tickets. This approach will centralize the cash collection process.

#### **Establish check-handling procedures**

A common theft scheme in charities is for volunteers or staff members to divert checks made out to the organization into other accounts that they personally open. While somewhat costly, using lockbox services in which donors mail checks to a lockbox at a bank, for instance, allows the checks to be automatically processed without going through volunteer or staff hands. Developing internal systems to monitor and track incoming mail that might contain checks is an important consideration. Stamp incoming checks with "Deposit Only," but don't include bank account numbers. Some who receive canceled checks have been known to fraudulently make use of the bank account data. And it is important to ensure that there is a regular, segregated system for recording and depositing all checks received regularly. Checks should be safely locked away prior to prompt deposit.

#### **Work from vendor lists**

A common ruse used by some insider thieves is to submit phony invoices. To limit the success of this type of scam, organizations should consider making purchases only from an approved list of vendors. Before vendors can be added to the list, various verifications and research should be done to ensure that the business is legitimate. Consider including a "right-to-inquire" clause in the contract so that the vendor's internal records can be inspected if fraud is suspected.

#### **Develop payroll controls**

Another common scam involves ghost employees. There should be coordination between the human resources and finance functions to ensure that when employees leave, they are taken off the payroll. The only names on a payroll should be those of current employees. There should be limitations on who is authorized to add or eliminate names from payroll. Outsourcing this function to payroll processors can help eliminate this threat.

#### **Establish expense reimbursement policies**

This area is ripe for abuse in all organizations, making the establishment of reimbursement policies especially important. Pre-approval of expenses should be encouraged, and reimbursement requests must be accompanied by receipts and other forms of documentation. The issuance and use of corporate credit cards should be discouraged as they often are a source of problems. If cards are permitted, they should be closely reviewed to ensure legitimacy and documentation by someone not authorized to use the cards. The board or one of its committees should regularly review the expenses of the executive director.

#### **Match physical, recorded inventories**

Many organizations lose resources through the loss of equipment and goods. Physical inventories should be taken regularly and matched against recorded inventories. These inventory efforts should include computers, cell phones, office equipment and similar items.

#### **Set and follow budgets**

All organizations should have an annual budgeting process. While staff members often prepare the budget, the board must review, approve and monitor it. Often a finance committee of the board is best positioned to do this. Budgets should encompass the entire organization as well as separate operating segments. At each board meeting, the board should review revenue and expenses and evaluate actual results compared to the projected budget levels. Some variations can be expected, but the board needs

to understand the variations and develop plans to address problematic variations. Board members also should ensure that funds whose uses are restricted — ex., by grants,— are used only for those purposes.

#### **Employ competitive bidding**

Board members face serious risks when they fail to exercise a duty of loyalty to the nonprofit. When charitable contracts are routinely sent to specific businesses, including those board members are involved with, consumers can legitimately question whether sound business decisions are being made that further the cause of the charity rather than board members' personal interests. In fact, conflict-of-interest policies are vital and can protect board members from possible criminal and civil action. Competitively bidding out services and purchases above a certain threshold can reduce problems. It also is important to ensure that vendors aren't engaged in collusion and that insiders aren't seeking kickbacks.

#### **Monitor grant administration**

Many organizations can find themselves in trouble with government and private auditors over the improper use of grant funds and designated charitable gifts that can only be expended in ways defined by the donor. In the area of grants, there often are specific requirements on allowable and unallowable costs, overhead expenses, procurement and record-keeping. The board should ensure that all of the requirements are understood and followed.

#### **Consider background and credit checks**

Organizations may want to consider requiring criminal background and credit checks for staff and volunteers in a position to divert resources from the organization. Too many times, groups are victimized by a staff or board member who has engaged in theft at other organizations in the past. Through a partnership between the Ohio Attorney General's Office and the Ohio Bureau of Motor Vehicles, Ohio and FBI background checks are available through many BMV sites across the state. Locations are listed at [www.OhioAttorneyGeneral.gov/WebCheck](http://www.OhioAttorneyGeneral.gov/WebCheck). Additional information is available through the Ohio Attorney General's Help Center at (800) 282-0515. Background checks also are available through local law enforcement and other agencies.

#### **Require vacations and rotation of duties**

Problems sometimes are not uncovered because the embezzler never takes a vacation or time off, and others are unable to get a full picture of what is going on with the finances. When vacations, mandatory work breaks and rotation of duties are enforced, problems often can be discovered more quickly.

#### **Change passwords, combinations and locks**

Volunteers and staff members come and go. Be certain to routinely change passwords on bank and financial accounts and change locks and combinations routinely so that people who leave the organization can no longer access valuable data.

#### **Establish whistleblower policies**

Boards should develop a whistleblower policy and ensure there are easy ways for staff and volunteers to report concerns about fiscal management issues.

#### **Consider insurance coverage**

Many nonprofits obtain insurance coverage to protect the organizations' board, staff and volunteers from liability. This coverage will not protect board members who intentionally commit fraud or personally benefit from lax policies. And while coverage may not prevent theft, insurance carriers

sometimes provide customers with ongoing training and tips on strengthening internal controls. And if a loss does occur, the coverage may help the organization restore lost funds.

#### **Assess internal controls**

The audit committee should consider doing surprise visits or audits to check how well the processes and procedures are being followed. Checking for required documentation on check requests, testing the cash management policies and examining payroll records can be helpful. There should be ongoing discussion and consideration of risk assessments to ensure policies address any gaps. The board also should ensure that there is a document retention and destruction policy in place that protects the group's business records. This could become important should investigations occur later.

#### **Recruit new audit committee members**

Organizations can benefit from getting new and fresh perspectives on audit committees. This helps prevent or detect schemes that can extend for many years because there were never new individuals serving in an auditing role.

#### **Look for warning signs**

The board should be alert for warning signs of possible trouble:

- Feedback from people handling the collection of funds and financial reporting
- Changes in record-keeping methods
- Overall complexity of the operations
- Unwillingness to share financial information with interested parties
- Significant changes in revenue and/or expense levels from previous years
- Audit results
- Complaints
- Bounced checks
- Late or non-existent financial reports to the board
- Unpaid invoices
- Sudden, unexplained changes in lifestyles of employees or volunteers

#### **Develop a fraud action plan**

Boards should consider in advance how they will respond if problems arise. Sometimes the clear pronouncement of a policy favoring criminal prosecution for theft serves as a deterrent.

#### **WHAT TO DO WHEN SUSPICIOUS ACTIVITY IS UNCOVERED**

Charity board members need to be very thoughtful in how they respond to suspicious activities. Gathering the facts before accusing someone of an impropriety is a sound strategy and can help reduce the risk of defamation lawsuits. Yet, at the same time, there is a need to protect the organization's assets and ensure that the loss of funds is stopped.

Seeking counsel from lawyers, accountants, insurance companies, bankers and authorities would be wise. Local law enforcement officials and the Ohio Attorney General's Charitable Law Section (1-800-282-0515) also may be interested in addressing the situation.

Once management believes it has enough evidence to approach a volunteer or staff member about possible theft, there should always be a witness to the discussion. Because that person may have valuable information and evidence, he or she should be asked to immediately surrender any charitable property and to leave the building immediately without taking any personal property with them.

Personal items can be returned to them after any evidence and records in the workspace have been secured. Freezing accounts and changing computer passwords can be helpful in securing funds until the breadth of the situation is determined. When volunteers may have records and materials at their homes, develop a strategy in advance to try to recover property and records belonging to the organization.

Keeping notes of the evolving situation and discussions can be important later. Always copy important documents and safely store the originals.

Depending on the scope of the problem, the board may want to determine if and how information about the incident would be shared. Depending on the details, sometimes the lost funds, or a portion of them, can be recovered through restitution, insurance or other means.

Theft can result in a volunteer or staff member pocketing a small amount of cash or taking millions through a complex scheme. Either situation is painful and disappointing. But using the situation as a learning opportunity by reconstructing the details and reviewing policies and procedures can help prevent it from happening again.

## **CHAPTER 6: FILING COMPLAINTS WITH THE OHIO ATTORNEY GENERAL'S CHARITABLE LAW SECTION**

### **HOW TO FILE A COMPLAINT**

Ohioans are a generous people. Their volunteer efforts and financial gifts to charitable causes enhance the quality of life for all of us, and oversight of charitable trusts protects that quality of life.

Providing oversight of charities is one of the most ancient duties of the Attorney General. Rooted in Great Britain's Elizabethan period, this responsibility was viewed as an important component of ensuring that charitable assets are properly used and that someone is charged with the duty of speaking out about abuses and fraud.

That important duty and voice has survived over the centuries. The Ohio Attorney General has broad authority, both in common law and statutory requirements, to be a voice that ensures that charitable interests are protected and properly used.

The Ohio General Assembly has developed a registration process for nonprofits and professional solicitors that helps the Attorney General in this effort. But soliciting feedback and concern from the public is a key way that potential problems are identified.

The office is grateful when citizens take time to file complaints that can identify potential fraud, theft and other abuses that endanger the charitable missions of nonprofits or cause charitable assets to be diverted from their original purpose. The following information outlines the complaint process.

Ohioans are a generous people. Their volunteer efforts and financial gifts to charitable causes enhance the quality of life for all of us, and oversight of charitable trusts protects that quality of life.

### **FREQUENT QUESTIONS ABOUT FILING A COMPLAINT**

File a complaint online at: <http://www.ohioattorneygeneral.gov> (or print out a complaint form and mail it in). Complaints can also be filed by contacting the Help Center at 800-282-0515.

#### **What happens when the office receives a complaint?**

Each complaint received by the office is closely evaluated to determine if the issue addresses a matter related to the misuse of charitable assets, fraud or other matters that the Charitable Law Section handles. Sometimes the issue may be referred to other agencies for action. Other times the complaint stems from a personal dispute that centers more on unhappiness with a particular service provided by a nonprofit. Generally, those problems don't fall within the authority of the Charitable Law Section.

#### **What types of complaints might get referred to other agencies?**

When a complaint deals with the jurisdiction of another entity, the section will forward the complaint letter to that office and notify the complainant. The section receives a lot of complaints about alleged gambling activities, and those complaints are routinely referred to local law enforcement agencies,

which have the authority to enforce the gambling laws.

Some complaints about whether purchased services or items were acceptable might be appropriate for the Ohio Attorney General's Consumer Protection Section. A call to the AG's Office at 800-282-0515 can direct citizens to resources in that area. Other times, citizens may have to turn to private counsel to dispute transactions or dissatisfaction.

What type of issues is the Charitable Law Section looking for in citizen complaints? The most common issues that the Charitable Law Section takes action on fall in a couple of primary areas:

- Bingo and charitable gaming
- Professional solicitation and nonprofit fundraising
- Misuse of charitable funds by nonprofits that fail to properly govern themselves
- Professional solicitation and nonprofit fundraising
- Misuse of charitable funds by nonprofits that fail to properly govern themselves

**Bingo:** Specific types of nonprofit organizations are permitted to use bingo, a form of gambling, as a way to raise funds for charitable purposes. The Ohio Attorney General's Office licenses bingo. The office routinely fields complaints about organizations that are not properly accounting for bingo revenues or failing to use those monies to support charitable efforts. Sometimes theft and fraud is involved. Investigations of these complaints can lead to the loss of a bingo license, possible criminal charges or civil actions aimed at the recovery of charitable funds. Complaints about fraudulent bingo activities are taken seriously since those activities diminish the important charitable work of other groups.

**Professional solicitation and nonprofit fundraising:** Professional solicitors are for-profit companies and individuals that raise charitable funds on behalf of nonprofit organizations. There are specific registration and reporting requirements for professional solicitors. Violations of Ohio law in failing to register and file financial reports is a serious matter for professional solicitors. These provisions were adopted by the Ohio General Assembly to protect citizens from fraudulent activities by solicitors who may fail to turn over gifts to the intended charity or keep a substantial portion of the gift through methods not foreseen by the charity that is to benefit from the donations.

Whether professional solicitors, volunteers or nonprofit staff members ask for donations, none are permitted to use fraudulent approaches to attract financial gifts. Lies about how the funds will be used, how much will actually go to the nonprofit and other dishonest representations given over the phone or in written materials are violations of the law and are vigorously investigated by the Ohio Attorney General. Citizens should ask plenty of questions to ensure they understand where their charitable gifts are going. Tips for researching charities can be found on the Ohio Attorney General's website.

**Misuse of charitable funds by nonprofits that fail to properly govern themselves:**

Nonprofit board members have several legal responsibilities, including the duties of care, loyalty, compliance and the duty to maintain accounts. Failure of board members to adequately get engaged in the activities of the organization can result in the squandering of charitable assets. Additionally, problems can result when there are significant conflicts of interest affecting staff and board members. Charitable assets and objectives may suffer when personal enrichment results from inattention and fraud, and these issues are routinely investigated by the Ohio Attorney General's Office.

For more information about the duties and responsibilities of charity board members, a separate

publication, titled Guide for Charity Board Members, can be found at: <http://www.ohioattorneygeneral.gov> or obtained through the Ohio Attorney General's Help Center at (800) 282-0515.

**Other areas of investigation:** It often is difficult to foresee the various schemes and issues that can result in investigations in the Charitable Law Section. Citizens should feel free to contact the office with concerns about activities that jeopardize charitable objectives because of fraud, theft, deception and other breaches.

#### **How can a complaint be filed?**

Citizens can file complaints in multiple ways. Complaints can be submitted online through the Ohio Attorney General's Web site. A form can be printed off the Web page and mailed in. Additionally, staff in the Ohio Attorney General's Help Center can assist in the filing of complaints when calls are made to (800) 282-0515.

#### **What should be included in a complaint?**

Providing as much information as possible helps investigators better understand the nature of the issue. Complaints should contain information about what happened, who was involved and when and where activities occurred. Including copies of solicitations, canceled checks, correspondence and other documents can be helpful. Providing specific information about statements that might have been made also is important, depending on the nature of the complaint. Providing information about how to get back in touch with the complainant is important in case there are additional questions.

#### **Are complaints confidential?**

Under Ohio's public records statute, complaints filed with the Charitable Law Section are public records that must be disclosed when requested.

#### **Can an anonymous complaint be submitted?**

Some people choose to submit complaints without including their names or contact information. These individuals often follow up with the office later by telephone to talk to an investigator in case additional information is needed. If you are concerned about your identity being revealed, you may call the Charitable Law Section and speak to an investigator or duty lawyer about options that might protect your anonymity.

#### **Will I find out what happens with the investigation of my complaint and whether action is taken?**

Probably not. Under Ohio law, investigations of charitable trusts are confidential and it may not be possible to provide information to the complainant. Staff investigators or lawyers may get in touch with the complainant if additional information is needed. Complainants will receive a written acknowledgement from the office confirming receipt of the information.

The complaint may result in litigation, a settlement of some sort or negotiations with the target of an investigation. Sometimes, because of lack of actionable evidence, the complaint information may be filed and acted on when additional complaints or supporting information becomes available.

Unfortunately, the complainant may never know the outcome. But be assured that each complaint is closely analyzed and highly valued and appreciated.

#### **What will the office do with the complaint that is submitted?**

When staff lawyers and investigators determine that they have the authority to investigate a specific complaint, a variety of steps may be taken. Reviews of finances and documents may take place, and

interviews with various witnesses may be held. Staff will carefully weigh the various options that can be taken at the conclusion of investigations.

**What options does the Ohio Attorney General have in responding to complaints?**

The Ohio Attorney General has broad authority in providing oversight to the charitable sector. In the past, the Ohio Attorney General has actively assisted in the prosecution of those who have committed fraud or stolen from charitable endeavors. Sometimes, lawsuits are filed that seek the recovery of funds that should have been used for charitable objectives. Sometimes efforts are undertaken in cooperation with the Internal Revenue Service and the Federal Trade Commission, federal agencies with responsibilities in some of these areas dealing with charities.

Informal negotiations with nonprofit officials or solicitors also can be productive. These discussions may result in financial settlements or promises to stop particular activities. Other times, these negotiations may result in closely working with an organization to ensure that they adopt appropriate governance and oversight practices.

While complaints are an important tool for the Charitable Law Section, an equally important focus is on prevention. For that reason, the section provides regular training programs aimed at helping nonprofits establish policies and practices that reduce the likelihood of problems. Proactive prevention reduces the possibility that citizens are victimized and helps protect charitable assets in the long run.

**How can citizens help the Charitable Law Section in its efforts to protect charitable trusts?**

Citizens also can warn their friends about the need to ask questions and make wise decisions about charitable gifts. Because fraud in the charitable sector impacts the public's perception about the integrity of all charities, the public has an interest in reducing and preventing fraud in all nonprofit groups. Leaders within the charitable sector can help elevate the visibility of the legal responsibilities of board members and the importance of board governance. When charitable leaders become aware of problems in other organizations or potentially sham charities, they should contact the Charitable Law Section or file a complaint. When solicitations are made, leaders should ask lots of questions and contact the office when questionable responses are given.

When the Charitable Law Section receives complaints from the public, they can more readily and quickly take action and reduce the level of harm that might result from wasted or lost resources that might have otherwise been used by a respectable organization that provides valuable services.

**For more information:**

Nonprofit organizations and the donors who support them make a significant contribution to the quality of life in our communities. For questions or additional information about any of the information in this handbook, please contact:

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