

CHARITABLE SOLICITATION REGISTRATION, RENEWAL AND COMPLIANCE: REQUIRED FILINGS AND THE CONSEQUENCES OF FAILING TO COMPLY

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Attorneys, paralegals and compliance officers with a strong corporate focus that are providing services mostly to for-profit clients often find that state **nonprofit** compliance requirements can be challenging and confusing. In addition to dealing with annual state nonprofit *corporate* compliance, there is a second component to state nonprofit compliance – the annual **charitable solicitation registration**. While some of the jargon and form names associated with these two types of compliance are similar and both can take place at the office of the Secretary of State, it's important not to confuse the two to ensure nonprofits meet all of their state compliance obligations.

CHARITABLE SOLICITATION REQUIREMENTS AND EXEMPTIONS VARY WIDELY

The District of Columbia and 39 states currently require some form of charitable registration prior to solicitation of charitable donations by most nonprofit organizations. In addition to one time or annual registration, most of these states require filings in the form of an annual report, renewal, update or some form of compliance filing to remain in good standing with the state charity bureau, usually a division of the Secretary of State or Office of the Attorney General. However, in some of these states, nonprofits are exempt from registration based on the type of charitable activity (*e.g. religious organizations, hospitals, educational institutions and small nonprofits*), but the requirements for exemption vary widely and, in some cases, require an application.

Ironically, some states exempt certain nonprofit organizations from the registration requirement, but then mandate the filing of an exemption application to do so, sometimes requiring an annual filing to maintain the exemption. Furthermore, there are unusual exceptions, such as in Missouri where 501(c)(3) nonprofit organizations are not required to register and in Louisiana, where only charitable organizations that use a professional solicitor are required to register annually.

REQUIREMENTS FOR QUALIFICATION AND A REGISTERED AGENT IN SOME STATES

In a few states, the charitable solicitation registration requirements mandate that a charity also qualify to do business in the state and file the appropriate foreign qualification paperwork with the Corporations Division of the Secretary of State. In these states and in a handful of others, a registered agent is also required to fulfill charitable registration and compliance obligations. In order to maintain foreign qualification status in the states that require this, corporate annual reports must be filed with the Secretary of State.

Figure 1 on the following page details the registered agent and qualification requirements as they relate to state charitable solicitation registration purposes.

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FIGURE 1.

REGISTERED AGENT AND QUALIFICATION REQUIREMENTS FOR STATE CHARITABLE SOLICITATION REGISTRATION					
Qualification Required for Charitable Registration	Registered Agent Required for Charitable Registration ¹	Registered Agent Required for Corporate Qualification	Corporate Annual Report Compliance	Charitable Registration Not Required for Charitable Organizations	Charitable Registration/ Renewal/ Compliance required annually in all other states except DC & GA (which require biennial filings) and for Missouri 501c3, 501c7 and 501c8 organizations that filed for exemption, which are not required to file beyond the initial exemption application.
California ⁵		California	Annual	Arizona ⁶	
Colorado ⁵	Colorado	Colorado	Annual	Delaware	
District of Columbia	District of Columbia	District of Columbia	Biennial	Idaho	
Illinois ³	Illinois ³	Illinois	Annual	Indiana	
	Michigan			Iowa	
	New Mexico ⁴			Montana	
North Dakota		North Dakota	Annual	Nebraska	
Oregon ⁵		Oregon	Annual	South Dakota	
				Texas ²	
				Vermont	
				Wyoming	
¹ Registered Agent in Mississippi & Virginia is optional; Registered Agent in Missouri & Utah need not reside in state					
² Texas: Registration and Registered Agent only required for LETSA, PSSA & VSA registrants ³ Illinois: Not statutorily required, specific procedures must be followed to avoid qualification ⁴ New Mexico: If Registered Agent not appointed, Consent for Service must be filed ⁵ California, Colorado and Oregon will approve charitable registration without first qualifying ⁶ Arizona: Registration required only for veterans organizations					
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ADDITIONAL DOCUMENTS REQUIRED WITH CHARITABLE SOLICITATION COMPLIANCE FILINGS

Documents that must accompany annual charitable solicitation compliance filings usually include the nonprofit's Form 990 (IRS annual return), audited financial statements and/or state-specific financial reports. Documents that must be filed by nonprofit organizations with *initial* registrations (and sometimes annual registrations) can also include:

- Articles and bylaws
- Lists of officers and directors (sometimes with work or home addresses)
- Form 990 and/or audited financial statements
- IRS Determination Letter and/or Application for Exemption (IRS Form 1023 or 1024)
- Professional fundraiser and commercial co-venture contracts

UNIFIED REGISTRATION STATEMENT FORM NOT ACCEPTED “UNIFORMLY” IN ALL STATES

Filing charitable registration and compliance documents can be done with a uniform form known as the **Unified Registration Statement** or URS. However, a careful review of state requirements reveals that several states do not accept this form for the initial registration, many more require the URS to be accompanied by state-specific addendums and 23 states do not accept the URS for annual renewal or compliance purposes. Furthermore, some state registration and renewal forms are easier to complete, are prone to fewer rejections or requests for additional information or offer online filing options that facilitate the filing process and reduce errors. After factoring in the above shortcomings and benefits to using some state forms and filing procedures, the URS is not so “unified” after all.

Figure 2 on the following page details the states that accept or require the use of the URS.

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FIGURE 2. Unified Registration Statement (URS) Required or Accepted for State Charitable Registration and Renewal

URS Not Accepted for Initial Registration		URS Not Accepted for Renewal Registration		URS State-Specific Forms or Attachments Required
Alaska	Mississippi (online URS)	Alaska	Mississippi (online URS)	<u>Arkansas (Initial: Charitable Organization Consent for Service, and Annual Financial Reporting Form)</u>
California (only for Domestic Nonprofits)	Nevada	Arkansas	Nevada	<u>Georgia (Supplement to URS: Control Persons, Affidavit of Citizenship, and Georgia Bureau of Investigation Consent)</u>
Colorado	New Mexico (online)	California	New Mexico	<u>Kansas (Form FS if Form 990 not filed)</u>
DC	Ohio (online)	Colorado	New York	<u>Minnesota (Supplement to URS)</u>
Florida	Oklahoma	DC	North Dakota	<u>New Hampshire Initial (NH nonprofits only): Copy of Conflict-of-Interest Policy</u> <u>Renewal: Appendix to Annual Report Form</u>
Hawaii (online URS)	Oregon (if registering in Oregon only)	Florida	Ohio (online)	<u>North Carolina (Fundraising Disclosure Form required if charity has contract with fundraising consultant, solicitor, coventurers)</u>
Kentucky (unless newly formed)	South Carolina	Georgia	Oklahoma	<u>North Dakota (Initial - Certificate of Authority Foreign Corp - Form SFN 13100)</u>
Maine	Texas ¹	Hawaii (online URS)	Oregon	<u>Tennessee (Summary of Financial Activities - Form SS-6002)</u>
Massachusetts (Domestic Nonprofits only)	Washington	Illinois	South Carolina	<u>Utah (Supplement to URS; also for filers of 990-EZ, 990-PF & 990-N use Statement of Functional Expenses Form)</u>
URS Required for Initial Registration		Maine	Texas ¹	<u>Virginia (Remittance Form – included with Form 102)</u>
Louisiana		Maryland	Washington	
Mississippi (online URS)		Massachusetts	Wisconsin (online)	
		URS Required for Initial Registration		
		Louisiana		
		Mississippi (online URS)		

¹ Texas only requires registration under LETSA, PSA & VSA

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ONLINE FILING OF STATE CHARITABLE REGISTRATIONS

Online filing is available in a handful of states and is required in Colorado, Hawaii and New Mexico. Rhode Island requires all filings to be submitted on CD, (if the Rhode Island Charitable Organizations Application is used). Figure 3 below provides additional details regarding states that accept or require online filing.

FIGURE 3: Online Filing of State Charitable Registrations (Available or Required)

Online Charitable Registration or Renewal Available		Online Charitable Registration and Renewal Required
Alaska	New Mexico	Colorado
Colorado	New York (renewal)	Hawaii
Connecticut	North Carolina	Mississippi
DC	Ohio	New Mexico
Florida	Oklahoma	Ohio
Hawaii	Rhode Island	
Maine	South Carolina	
Michigan	Tennessee	
Mississippi	Utah	
New Jersey	Wisconsin (renewal)	

BUSINESS LICENSING OFFICES AND CHARITABLE REGISTRATIONS

In some states, a licensing office handles charitable solicitation registration and compliance. For example, in Washington, D.C., a Basic Business License/Charitable Solicitation is required to be filed at the business licensing unit of the Department of Consumer and Regulatory Affairs (DCRA). The title of this filing is a misnomer...there is nothing “basic” about it. A more appropriate name for this filing would be “*Complicated Business License*.” The initial registration filing must include all of the following:

- Basic Business License Application
- Certificate of Occupancy
- Certified Resolution

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- DCRA Clean Hands Certification
- Office of Tax and Revenue Registration or Exemption
- Evidence of corporate qualification in D.C.
- Purpose Statement
- IRS Determination Letter

Of course fees, payment methods, due dates, signatures, required notarizations and a variety of other filing factors vary by state. Suffice it to say that nonprofit charitable registration compliance is not an easy task to fulfill or manage.

CONSEQUENCES OF FAILING TO COMPLY: THE IMPORTANCE OF GETTING STATE NONPROFIT COMPLIANCE RIGHT

It is imperative that nonprofit organizations fulfill all state corporate and charitable compliance obligations in a timely and accurate manner. Compliance is not an option; it's the law, and noncompliance, late filings or material false statements in registration and renewal filings can be costly in many ways. Though penalties and late fees vary widely, the states are more uniformly aggressive in terms of enforcement.

Charitable compliance penalties and late fees can be quite onerous. Late fees are often hundreds of dollars and penalties for organizations that solicit charitable donations in a state without registering or renewing are sometimes thousands of dollars. Also, with shrinking state budgets in many states, regulators are redoubling their enforcement and collection efforts.

For example, penalties relating to the violation of **Alabama** law governing charity registration include civil, criminal and monetary penalties up to \$25,000. Other penalties include cancellation of registration and enjoining the charitable organization and other persons from continuing the solicitation or collection of funds. This is especially true when deceit or fraud is involved, which can result in misdemeanor and felony criminal charges and imprisonment.

Failure to submit the annual report on Form RRF-1 annually in **California**, no later than 4.5 months after the end of the organization's accounting period, may result in the loss of tax exemption and the assessment of a minimum tax of \$800, plus interest and/or fines or filing penalties as defined in Government Code section 12586.1.

In **Illinois**, a \$100 late report filing fee is required by Illinois law. Because this is a statutory fine, the state will not waive this fee.

In **South Carolina**, failure to submit an annual financial report by the due date may result in a fine of up to \$2,000.

When a finding is made of a violation of the act or rules of **New Jersey**, in addition or as an alternative to revocation or suspension of a registration, a person may be ordered to pay civil penalties of up to \$15,000 and be required to return contributions.

In **New York**, an organization's registration is automatically revoked if it fails to comply with Article 7-A reporting requirements. The Attorney General may also seek civil penalties of \$1,000 per violation and up to \$100 per day for noncompliance with reporting requirements.

Pennsylvania publishes on its website a list of outstanding cease and desist orders issued against charitable organizations since

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1996. These organizations cannot legally solicit contributions in Pennsylvania until they register with the Bureau of Charitable Organizations or provide the bureau with evidence that they are excluded or exempt from the law. The state also publishes consent agreements and adjudications entered into between the Commonwealth and charitable organizations. On March 8, 2011, a consent agreement was entered into with Cancer Federation, Inc., wherein the charity agreed to pay a \$4,000 fine and agreed to voluntarily surrender its registration as a charitable organization in Pennsylvania for a period of 5 years.

If you fail to renew a registration in **Virginia**, a \$100 late fee is imposed and may result in the issuance of a press release, as provided in Section 57-52 of the Code of Virginia, warning the public that the charity has not complied with the law.

SUMMARY OF POSSIBLE CONSEQUENCES FOR NONCOMPLIANCE WITH STATE CHARITABLE SOLICITATION REQUIREMENTS

In summary, the more damaging consequences of failing to register or meet compliance requirements include:

- Civil and criminal penalties
- Publicly announced cease and desist orders
- Forced return of charitable donations
- Taxation of all charitable donations received
- Loss of ability to raise funds in a state
- Loss of tax-exempt status
- Civil and criminal prosecution of officers and directors

In light of these consequences, it is critically important to make sure state charitable registration and compliance requirements are met. Those responsible need to thoroughly research each applicable state's requirements and carefully fulfill these obligations or **outsource the responsibility to a service company** that has the expertise to provide guidance and ensure that all state registration and compliance obligations are satisfied.

This article is provided for informational purposes only and should not be considered, or relied upon, as legal advice.

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