Risk and Reward

• Resource development, like other activities, is fraught with risk
• The key is balancing risk and reward
  ▪ Calibrating your “appetite” for risk
  ▪ Cultivating the board-staff partnership for risk oversight
  ▪ Consider risk before you leap

The Environment

• It’s an increasingly competitive and transparent world out there!
  ▪ A growing number of charities are looking for funds
  ▪ Large and small donors have many places to turn for information about your nonprofit:
    ➢ Search engines, watchdog groups, your Form 990, and lastly... what you provide directly
Things don't always turn out the way we expect (hope?) they will

Predicting vs. Anticipating the Future

- “Predicting the future is about creating and presenting one view of how the future will unfold.”
- “Anticipating and preparing for the future is about looking at multiple views of how the future might unfold.”

- Randy Park, *The Prediction Trap*

Key Concepts

- Fundraising is a regulated activity = legal obligations and penalties
- Fundraising is a public activity that impacts your image and your reputation
- Fundraising should be consistent with your mission
- Fundraising requires accountability and oversight
- Good governance requires paying attention to the organization’s resource development strategies
What can go wrong?

• Risk of criminal or financial penalties for failure to follow state registration requirements

"An entity that is domiciled within a state and uses the Internet to conduct charitable solicitations in that state must register in that state. This is true without regard to whether the Internet solicitation methods it uses are passive or interactive, maintained by itself or another entity with which it contracts, or whether it conducts solicitations in any other manner."

Source: www.nasconet.org/Charleston-%20Principles,%20Final.pdf

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Rub Off

• The actions of a funder/funding partner might negatively impact the reputation of a nonprofit

Source: www.nbclosangeles.com
http://marketplace.publicradio.org/display/web/2010/05/20/ann-will-oil-spill-hurt-bp-sponsored-exhibit/

What could go wrong?

• Poor message management can negatively impact the nonprofit’s relationship with its donors
   How are you ensuring consistency? E.g., what you say is what you do?
   Is there any material on your website that is inconsistent with your one-to-one donor appeals?

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Is there anything legally wrong with renaming the trauma center? (No)

Fundraising is a regulated activity in all states.

39 states require registration PRIOR to any solicitation activity

10 states do not require registration:
Idaho, Indiana, Iowa, Montana, Nevada, North and South Dakota, Texas, Vermont, Wyoming

Do we really need to register?

Yes. Especially if you raise funds from residents of New Jersey, New York, Pennsylvania, Florida and California

The Uniform Registration Statement can be used in multiple states and the following website is a great resource: www.multistatefiling.org

The most recent version of the URS is v. 4.01, which was released in May 2010

Only three states that require registration do not accept the URS: Colorado, Florida and Oklahoma
Other Registration Challenges

- Commercial Co-Ventures: Partnering arrangements with another entity that results in sharing the revenue from sales
- Joint Fundraising - who registers? Who gets what share of the revenue raised? What if your partner pulls the plug?
- Are you on “the list”?
  - Check your state’s list and make sure your organization is on it.
- Penalties for late filing

What about a “Donate here” button on our website?

The Internet makes it possible to solicit residents of any state, from anywhere. Registration is a business decision that involves weighing the risks of penalties against the benefits of registration.
Many states require that financial statements be provided

**Commonwealth of Virginia:**
57-55.3. Disclosure regarding financial statement required.
- Every charitable organization, required to be registered pursuant to § 57-49, and every professional solicitor, required to be registered pursuant to § 57-61, soliciting contributions from prospective contributors, shall disclose to the potential donor contemporaneously at the point of a written request or on a written receipt for donations made in response to an oral request that a financial statement is available from the State Office of Consumer Affairs in the Department of Agriculture and Consumer Services upon request.

Disclosure Language
Many states also require that each written solicitation include specific language about the charity’s registration with that state.

Example: New Jersey
- “Information filed with the Attorney General concerning this charitable solicitation and the percentage of contributions received by the charity during the last reporting period that were dedicated to the charitable purpose may be obtained from the Attorney General of the State of New Jersey by calling (973) 504-6215 and is available on the internet at [http://www.state.nj.us/lps/ca/charfrm.htm](http://www.state.nj.us/lps/ca/charfrm.htm). Registration with the Attorney General does not imply endorsement.”
Other Risks?

- Fraudulent fundraising: misleading or untruthful solicitations
  - Madigan v. Telemarketing Associates, Inc., the Court held that "consistent with our precedent and the First Amendment, States may maintain fraud actions when fundraisers make false or misleading statements designed to deceive donors about how their donations will be used."

- Using photos of clients without authorization
- Failing to adhere to donor restrictions
- Email solicitations or telephone calls that annoy and turn off donors as well as violate federal CAN-SPAM Act. See FCC regulations:
  - www.ftc.gov/bcp/conline/pubs/buspubs/canspam.shtm

Using Professional Fundraisers: What’s the Big Deal?

- Contracts with outside fundraisers - make it clear that they are independent contractors
- Registration of professional fundraisers with the state may be required
- All eyes are on fundraising costs. Choose fundraising professionals with care
- Perception…perception…perception
- **AFP Standard of Professional Practice** No. 21:
  - "Members shall not accept compensation or enter into a contract that is based on a percentage of contributions; nor shall members accept finder’s fees or contingent fees."

Gift Acknowledgements

- What the IRS requires
- What donors expect
- What are the risks?

Gift Agreements

- Establish what gifts the charity will and will not accept
- Clarify restricted or unrestricted nature of a gift
- Keep in mind that whether or not a charity has a written policy for acceptance of “non-standard” gifts is now reportable on the IRS Form 990

Annual Funds, Capital Campaigns, and other special campaigns

- What do you do when the original purpose for the gift is no longer possible?
- What special risks are involved in annual funds?
- Capital campaigns – if we build it, will “they” come?
- Special fundraising risks – internet advertising, auctions, corporate support and respecting donor privacy

Donor Bill of Rights

- Association of Fundraising Professionals
  - See www.afpnet.org
  - “The Top 10 Mistakes in Fundraising Campaigns”
    - #3 Weak leadership from board an/or campaign leaders
    - #7 Taking donors for granted once a gift is closed
- Donor privacy and anonymous donors
- Transparency
- Gift Acknowledgments
Q. If an organization agrees to name a building as donor recognition and the donor subsequently is convicted of a crime, may the organization revoke the donor recognition by removing the name from the building?

- Neither the AFP Code nor the Donor Bill of Rights speaks to the question of illegal activity by a benefactor, so it would not be a violation of either document either to remove the donor’s name or leave it in place. Factors to consider:
  1. The nature of the criminal activity.
  2. Whether the convicted persons have paid their penalties.
  3. Whether the terms of the gift are silent on the subject of whether and how a naming right can be revoked.

Source: www.afpnet.org/Ethics/EnforcementDetail.cfm?ItemNumber=4013&token=2085

Know the Watchdogs

BBB – Wise Giving Alliance

FUND RAISING AND INFORMATION MATERIALS

A local United Way is often the main source of a group's or an agency's annual fund drives. The United Way needs written, clear, and informative materials to help them launch a successful drive. Materials should:

1. Be accurate, complete, and consistent with the United Way's mission, goals, and objectives.
2. Be easily understood by the reader. Materials should be written in clear, concise language that is easy to understand.
3. Be concise and to the point. Avoid using jargon or technical terms that the reader may not understand.
4. Be visually appealing. Use attractive graphics, images, and layout to enhance the reader's experience.

Resources on Fundraising

- **Nonprofit Genie.** View Frequently Asked Questions [www.genie.org](http://www.genie.org), click on "FAQs", then on "Fundraising"
- **Association of Fundraising Professionals** [www.afp.org](http://www.afp.org)
  - FAQs About Fundraising Ethics
- **Evangelical Council for Financial Accountability** [www.ecfa.org](http://www.ecfa.org)
Checklist...

1. Follow charitable solicitation registration requirements
2. Be aware of IRS prohibitions against private benefit
3. Partner with care
4. Establish policies for gifts, donor relations and outside fund raising professionals

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5. Manage your messages to stakeholders
6. Manage donor expectations
7. Pay attention to the charity watchdogs
8. Ask your donors... what they think
9. Strive for consistency and transparency
10. Remember that you may need to take MORE risk

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Next Month’s Webinar

- Cyberspace Risk: What You Don’t Know Could Hurt You
- November 3, 2010 – 2:00 pm Eastern

www.nonprofitrisk.org
Thank you!

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