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Got Resources?

Risk and Reward in Resource Development

Audio Dial-In Information:
U.S. & Canada: 866.740.1260
Access Code: 7853891

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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

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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

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Things don't always turn out the way we expect (hope?) they will

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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*



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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

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What can go wrong?

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

Final—Approved by NASIC Board as advisory guidelines, March 14, 2001

**THE CHARLESTON PRINCIPLES:
GUIDELINES ON CHARITABLE
SOLICITATIONS USING THE INTERNET**

- “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

NEWS | LEGAL REPT

Aquarium to Open BP Sea Otter Exhibit

The exhibit opens as its sponsor deals with an oil spill in the Gulf of Mexico

by JENNIFER LLOYD and ROBERT ROYCEK

Source: www.nbclosangeles.com

Thursday, May 20, 2010

SPONSOR: NEGATIVE EFFECTS

Will oil spill hurt BP-sponsored exhibit?

An aquarium in Long Beach, Calif., will soon open a new sea otter exhibit. But, some worry that both where — what could go wrong? — the company trying to clean up one of the largest oil spills in U.S. history, Ask Shively reports.

<http://marketplace.publicradio.org/display/web/2010/05/20/am-will-oil-spill-hurt-bp-sponsored-exhibit/>

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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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Abercrombie & Fitch

The "Abercrombie & Fitch Emergency Department and Trauma Center" Named at Nationwide Children's Hospital.

The "Abercrombie & Fitch Emergency Department and Trauma Center" will be part of a new main hospital facility, scheduled to break ground in 2008 and open in 2011. Nationwide Children's Hospital operates the third busiest pediatric Emergency Department in the U.S. and houses the first Level I [Pediatric Trauma Center](#) in Ohio. Child magazine has ranked Nationwide Children's Hospital Emergency Services, Trauma Services and Urgent Care Centers as second in the nation in providing outstanding pediatric emergency medical care, with more than 74,000 visits to the Emergency Department in 2005.

Source: www.nationwidechildrens.org/abercrombie-and-fitch

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

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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

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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

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Charity Registration in the States

■ States that accept the common form
 ■ States that require charities to register but don't accept the common form
 □ States that do not require registration

Source: Multi-State Filer Program
Map by Jasmine Stewart, Courtesy of the Chronicle of Philanthropy

Source: www.multistatefiling.org/index.html#yes_states

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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

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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.

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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.

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Disclosure Language

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

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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>. Registration with the Attorney General does not imply endorsement."

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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/online/pubs/buspubs/canspam.shtm

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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."

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Gift Acknowledgements

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

See www.irs.gov – Publication 1771



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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

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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

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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

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Special Topics

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?

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- 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:
 - The nature of the criminal activity.
 - Whether the convicted persons have paid their penalties.
 - 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

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Know the Watchdogs

<http://www.bbb.org/us/Government-Charities/>

Government Agencies

Tools | Print | Bookmark & Share | A | A | A

Federal

- Internal Revenue Service
- Federal Trade Commission

State


- Alabama - Attorney General
- Alaska - Consumer Protection Unit
- Arizona - Secretary of State
- Arkansas - Attorney General
- California - Attorney General
- Colorado - Attorney General
- Connecticut - Attorney General
- Delaware - Attorney General
- District of Columbia - Department of Consumer and Regulatory Affairs
- Florida - Division of Consumer Services

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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

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Thank you!

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