

## **AMENDMENTS TO FLORIDA'S SOLICITATION OF CONTRIBUTIONS ACT**

In the wake of recent abuse, the commissioner of Florida's Department of Agriculture and Consumer Services, Adam Putnam, determined it was time to increase the oversight and compliance obligations of Florida's charitable organizations. Effective July 1, 2014, changes made during the 2014 legislative session to Florida's Solicitation of Contributions Act became law. The Department of Agriculture and Consumer Services is currently still in the process of implementing these changes. The following is a brief summary of the changes to the Solicitation of Contributions Act.

### **CHARITABLE ORGANIZATIONS AND SPONSORS**

#### **Registration/Solicitation Requirements**

Charitable organizations or sponsors that intend to solicit in *or from* the state of Florida must now register, regardless of whether they are soliciting Florida residents.

Charitable organizations or sponsors *and* their officers, directors, trustees and employees may not knowingly allow officers, directors, trustees and employees to solicit contributions if they have certain criminal histories.

The department has the right to deny or revoke the registration of a charitable organization or sponsor if the organization or an officer, director or trustee has had the right to solicit contributions revoked or has been ordered by a court or government agency to cease soliciting in any state.

Charitable organizations or sponsors that cease soliciting in Florida are required to notify the department in writing.

#### **Changes in Information**

Most changes in information filed by a charitable organization or sponsors can be updated on your next annual renewal statement. However, any changes involving conviction or incarceration of a charitable organization's or sponsor's officers, directors, trustees, or employees for any felony or any crime involving fraud, theft, larceny, embezzlement, fraudulent conversion, misappropriation of property, or any crime resulting from acts committed while involved in the solicitation of contributions must be reported to the department on a

material change form within ten days after the change occurs.

Additionally, if a charitable organization or sponsor has been enjoined from soliciting contributions, been enjoined from violating any law relating to charitable solicitation, had its registration or authority denied, suspended, or revoked, or entered into an assurance of voluntary compliance, this information must be reported within ten days. To ensure timely receipt of renewal applications, any changes in addresses or officers should be reported to the department immediately upon those changes occurring.

#### **Consolidated Financial Statement**

Parent organizations will now be required to report specific financial information for all of their chapters, branches or affiliates, including the amount of contributions received by each chapter, branch or affiliate, payments made to each chapter, branch or affiliate from the parent and administrative fees assessed to each chapter, branch or affiliate. Additionally, any chapter, branch or affiliate that is required to file a 990 to the IRS must submit a copy of the 990 to the department.

#### **Conflict of Interest Policy**

Charitable organizations and sponsors are required to adopt a policy regarding conflict of interest transactions. A conflict of interest transaction is defined as a transaction between a charitable organization or sponsor and another party in which a director, officer or trustee of the charitable organization or sponsor has a direct or indirect financial interest. The term includes, but is not limited to:

- the sale, lease, or exchange of property to or from the charitable organization,
- the lending of moneys to or borrowing of moneys from the charitable organization or sponsor, or
- payment of compensation for services provided to or from the charitable organization or sponsor.

The conflict of interest policy must be certified annually by all directors, officers, and trustees of the organization. A copy of the annual certification must be submitted to

the department as part of the organization's annual registration.

### **Financial Statements**

Charitable organizations or sponsors that receive at least \$500,000 but less than \$1 million in annual contributions must submit a financial statement that has been reviewed or audited by an independent certified public accountant. Charitable organizations or sponsors that receive \$1 million or more in annual contributions must submit financial statements that have been audited by an independent certified public accountant. In lieu of a financial statement, any charitable organization or sponsor may submit an IRS Form 990. IRS Form 990s submitted by charitable organizations or sponsors that receive more than \$500,000 in annual contributions must be prepared by a CPA or a professional who prepares such forms or schedules in the ordinary course of his or her business.

When submitting an IRS Form 990, charitable organizations or sponsors may redact information that is not subject to public inspection pursuant to 26 U.S. Code 6104(d)(3).

### **Request for Extensions**

The process for requesting an extension will change. Registration documents must now be filed timely, however, the department may grant up to a 180 day extension for submission of financial statements.

Failure to provide the financial statement within the extension period will result in automatic expiration or suspension of a registration.

### **Supplemental Financial Disclosure**

Charitable organizations or sponsors that receive more than \$1 million in contributions but spend less than 25% of their annual expenses on program services will be required to submit a more detailed financial report. The report requires detailed information about salaries, travel expenses, fundraising expenses, overhead and administrative expenses, business transactions between the charitable organization or sponsor and officers, directors, trustees or their immediate family members, and the names of service providers who earned over \$100,000. The charitable organization or sponsor will have the opportunity to detail any extenuating circumstances as to why it spent less than 25% on program services, such as reserving money for a capital project.

### **Disaster Relief Solicitations**

Charitable organizations or sponsors that raise \$50,000 or more in contributions during the aftermath of natural disasters or other crisis must submit financial information regarding contributions and program service expenses

on a quarterly basis. Charitable organizations or sponsors that have been registered with the department for at least four consecutive years will not be required to file additional information if raising funds for a disaster or crisis. The department will post a notice on its website, [www.800helpfla.com](http://www.800helpfla.com), of each disaster or crisis which is subject to the reporting requirements of this section within ten days after the disaster or crisis.

### **PROFESSIONAL FUNDRAISING CONSULTANTS**

Professional fundraising consultants may enter into a contract or agreement only with a charitable organization or sponsor that has complied with all the provisions of Florida's Solicitation of Contributions Act.

Professional fundraising consultants AND their officers, directors, trustees or employees may not knowingly employ an officer, director, trustee or employee if they have, within the past 10 years, regardless of adjudication, been found guilty of, pled nolo contendere or pled guilty to any crime involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property.

The department has the right to deny or revoke the registration of a professional fundraising consultant if the professional fundraising consultant or an officer, director or trustee has had the right to solicit contributions revoked in any state or has been ordered by a court or government agency to cease soliciting in any state.

### **PROFESSIONAL SOLICITORS**

#### **Registration/Solicitation Requirements**

Professional solicitors are required to register if they are soliciting Florida residents or if they are soliciting from any location in Florida.

A professional solicitor may enter into a contract or agreement only with a charitable organization or sponsor that has complied with all the provisions of Florida's Solicitation of Contributions Act.

Professional solicitors are required to submit any sales information, scripts, outlines, or presentations used to conduct solicitations, all locations and all phone numbers at each location used to conduct telephonic solicitation, and the names, dates of birth, and a government issued identification number of all persons in charge of or engaged in solicitation activities.

Professional solicitors *and* their officers, directors, trustees and employees may not knowingly allow officers, directors, trustees and employees to solicit contributions if they have certain criminal histories in any state.

The department has the right to deny or revoke the registration of a professional solicitor if the organization

or an officer, director or trustee has had the right to solicit contributions revoked in any state or has been ordered by a court or government agency to cease soliciting in any state.

### **Financial Report of Campaign (FROC) / Notice of Campaign (NOC)**

The information required on the NOC form has been amended to include the guaranteed minimum percentage that will be remitted to the charitable organization or sponsor, the percentage of a contribution which is tax deductible, familial relationships between the professional solicitor and the charitable organization or sponsor, and copies of scripts, outlines and presentations related to the solicitation campaign.

### **Professional Solicitor Individual License**

Individuals who are employed by professional solicitors to conduct telephonic solicitation and who have access to a potential donor's personal financial information will also be required to submit fingerprints and undergo a background check. Personal financial data includes social security numbers, credit card numbers, banking information and credit reports. Additionally, all directors, officers, trustees and owners of a professional solicitor and anyone in charge of solicitation activities will be required to submit fingerprints and undergo a background check.

### **DISCLOSURE REQUIREMENTS**

The solicitation disclosure that is required on all solicitations should now include the department's website, [www.800helpfla.com](http://www.800helpfla.com), in addition to the department's toll free number, 1-800-435-7352. This information must also be placed on an organization's website on any webpage that identifies a mailing address where contributions are sent, a telephone number to process contributions or a webpage that provides for online processing of contributions.

### **COLLECTION BINS**

Receptacles used to collect donations of clothing or other household items for resale must display a

permanent sign on each side with letters at least 3 inches in height and no less than ½ inch wide in a contrasting color. Charitable organizations or sponsors must include the name, address, phone number and registration number of the organization. For profit entities must include the name, address, telephone number, and a statement that says "This is not a charity. Donations made here support a for-profit business and are not tax deductible." Upon request, a charitable organization or sponsor using a collection receptacle must provide a donor with documentation of its tax-exempt status and the registration issued by the department.

### **ENHANCED PENALTIES**

Upon notification and subsequent written verification by a law enforcement agency, a court, a state attorney, or the Department of Law Enforcement, the department must immediately suspend a registration or the processing of an application for a registration if the registrant, applicant, or an officer or director of the registrant or applicant is formally charged with a crime involving fraud, theft, larceny, embezzlement, or fraudulent conversion or misappropriation of property or a crime arising from the conduct of a solicitation for a charitable organization or sponsor until final disposition of the case or removal or resignation of that officer or director.

The department has the authority to remove an organization's sales tax exemption as a penalty for violations of the Solicitation of Contributions Act. Administrative penalties for violations of the Solicitation of Contributions Act have increased to up to \$5,000. Penalties for fraudulent or deceptive acts have increased to up to \$10,000. Fines for failure to file a registration for a 501(c)(3) remain at \$500.

### **ENHANCED WEBSITE**

As part of the new legislation, the department will create an interactive database at [www.800helpfla.com](http://www.800helpfla.com) that will allow Floridians to find all the information the department collects on charitable organizations and sponsors through a simple search.

### **FOR MORE INFORMATION CONTACT:**

Frank S. Ioppolo, Jr., Esq.  
Managing Member  
407.936.3645  
[frankjr@ioppololawgroup.com](mailto:frankjr@ioppololawgroup.com)

Richard A. Bruner, Jr., Esq.  
Senior Associate  
407.936-3643  
[rbruner@ioppololawgroup.com](mailto:rbruner@ioppololawgroup.com)

The foregoing article is issued for informational purposes only and is not intended to be construed or used as general legal advice. Please contact one of the attorneys listed above if you have questions regarding this information.