

Nonprofit Fundraising Registration and Compliance



Regulation in the nonprofit sector has come a long way in the past decade. No one wants a repeat of the high-profile scandals of the 1990s, the most damaging ones involving televangelists Jim and Tammy Faye Baker, and John G. Bennett, Jr. and his *New Era Philanthropy* Ponzi scheme.

But with increased transparency rules and complicated registration requirements at the state level, the entire process can be a time-consuming, costly, bureaucratic nightmare for many nonprofits, who might feel that regulators and lawmakers are punishing them for the illegal acts of the corrupt few.

That's where we come in. Perlman + Perlman has been at the forefront of nonprofit state registrations and compliance for over 50 years. We know the rules, and we can take the burden off our clients, freeing them to focus on their real work — making the world a better place.

Not only do we understand the sometimes baffling state regulations, we are also on top of developments at the federal level. The Unified Registration Statement (URS) was designed in 1997 to provide a way to disclose the fundraising details across numerous states, using a standardized reporting form. While the URS is now accepted by 37 states including the District of Columbia, most require independent supplemental information. So the process is not as streamlined as it could be, and nonprofits find they still need expert guidance.

Our compliance specialists have unrivaled knowledge and expertise; we successfully guide hundreds of nonprofits, fundraisers, and commercial co-ventures through the steps to make sure they are in complete compliance with every single requirement. Our clients are freed from administrative burdens to focus on what matters most to them — fulfilling their mission.

The Perlman + Perlman Registration and Compliance Process

Our veteran compliance specialists manage the entire registration process so our clients can stay focused on fulfilling their mission.

OUR SERVICES INCLUDE:

- Tracking state filing requirements and deadlines; obtaining client contact, financial, and other information, securing proper documentation, and following up with state authorities until a license has been issued.
- Tracking and notifying clients of upcoming renewal deadlines, process annual registration renewal applications, and alerting our clients to any changes in registration requirements throughout the year.
- Reviewing fundraising contracts to ensure compliance with state required provisions and disclaimers.
- Helping to determine whether our clients qualify for any special circumstance registration exemptions.
- Arranging, where required by law, for registered agents to receive service of legal documents in that specific state.



Frequently Asked Questions

When must an organization register?

By law, nonprofits are required to register prior to conducting solicitation activities or receiving funds within a state. For fundraising consultants, commercial co-venturers and professional solicitors, registration is required prior to the commencement of services. If and when possible, the organization should renew its license prior to expiration.

Are there any groups that are exempt from registration?

Many states exempt any organization that raises less than a particular threshold in contributions (\$5,000 - \$25,000). There are also exemptions given to particular categories of nonprofits. For instance, in many states, schools, hospitals and religious organizations are generally exempt. Despite this, it is important to note, that many states continue to re-define who is exempted (i.e. what is the definition of a “church”?). To make this question even more complicated, there are some states that require the organization to apply for exemption, by filling forms. Beyond that, there are some states that require the organization to file exemption applications each year in order to be exempt from registration requirements.

How does a state become aware that an organization is soliciting unregistered in their state?

States discover non-compliance in a few different ways. The most common is when a consumer makes either an inquiry or complaint to the agency that regulates nonprofits in that state. Other states, like Pennsylvania, get their employees names “seeded” into direct mail or telephone solicitation lists that are purchased by nonprofit organizations.

If I have been soliciting contributions prior to becoming registered are there any penalties I will incur?

All states have the right to impose fines and penalties on those who solicit without registering in their state. In some states, (Florida, Pennsylvania, etc.), criminal penalties may be imposed along with fines for non-compliance. California, New York, Illinois and many other states impose civil penalties. Failure to register may also result in the revocation of solicitation privileges in the state. Furthermore, the board members can be liable for your organization’s criminal or civil wrongdoings under the principles of fiduciary liability. On top of all this the IRS has stepped in. The new IRS Form 990, which non-profits must file annually if they raise over \$25,000, asks two questions about your compliance with registration laws in states where you solicit. The 990 is signed by an officer under penalty of perjury.

Is registration required in all 50 states?

All but six (6) states require some form of registration. Currently, 37 states (including Washington, DC) require nonprofits to register, while 44 states require professional fundraisers to register and approximately 28 states have provisions in their statute for fundraising consultants. Specific forms and practices vary from state to state. Our firm works closely with regulators to make certain we are always current with their requirements and file all applications and accompanying documentation properly and professionally.

Do I need to register if I am only making internet appeals on our nonprofits website?

Although much is written on this subject, you will find little consensus and virtually no states with laws on the books. Yet, despite that, it is best to take a more cautious approach and at least register in the state from where you are located. Even better would be to register in all states that you receive contributions from, as you can anticipate receipt of contributions from other states. As this issue continues to evolve we will continue to keep our clients informed.

What are the Yearly Registration Fees for a Nonprofit?

Costs can vary from state to state. What category the organization falls into will influence the fee (nonprofit, consultant, etc). Furthermore, some states have sliding scales based on income. A nonprofit should expect to pay approximately \$1,500 - \$3,600 in registration fees. In addition, there may be fees incurred to have an accountant prepare the IRS Form 990 and audit. There may be legal fees and there may also be administrative fees (postage photocopies, etc.), as well.

How does Perlman + Perlman carry out the registration process?

The firm's compliance specialists are prepared to handle the entire process. See page 3 for details, or contact cynthia@perlmanandperlman.com

Who prepares the registration forms?

Our experienced compliance specialists work closely with the firm's attorneys and with state regulators to ensure that each client's filings are completed and submitted properly.

How does Perlman + Perlman handle annual registration renewal?

Two months prior to the first set of registrations becoming due, a renewal package is sent to each client. The package includes, among other items, a status report apprising the client of any important information regarding their registrations. During the year, we continue to provide updated reports to keep the client current with their status in each state. For more information contact Cynthia Mercado, Director, Compliance Department.

Do I need a registered agent?

There are currently four jurisdictions (Colorado, Michigan, North Dakota and Washington, DC) that require soliciting organizations to have a registered agent if they do not have an office in the state. A registered agent is a legal representative who is entitled to receive official communications. If needed, our firm can make arrangements for you to obtain a registered agent in the applicable jurisdictions.

What documents do I need to provide?

Rudimentary information will be required (i.e. list of officers and directors, mission statement); as well as basic documentation (i.e. By-Laws, Articles of Incorporation) and, the organizations IRS Form 990 and audited financial statement for the most recently completed fiscal year. In addition, any current fundraising contracts would be needed, as well.

Is anyone qualified or able to assist me with fundraising contracts?

Yes. Perlman + Perlman is a law firm with expertise in philanthropy and charitable giving. The nonprofit fundraising registration and compliance department is only one department within the firm. The firm's attorneys can assist you with negotiating and preparing fundraising contracts and other legal matters, as well.

Glossary of Terms

Articles of Incorporation - The charter for the company stating the place of business, type of business and the principals of the company who found it. It allows the business to be recognized at the state and federal level as a unique entity.

Audited Financial Statement - A financial statement which has been prepared and certified by a Certified Public Accountant. The accountant (or auditor) must certify that the financial statement has met the requirements of the U.S. GAAP.

Board of Trustees (Board of Directors) - the Board represents the interests of the general public or the specific public group that the organization was established to serve.

By-Laws - An important component stating how the company will operate and its goals and directives. It defines who does what and how often the board of directors will meet to vote on new directives or issues.

Certificate of Authority - A license issued by a state's Secretary of State giving permission for a foreign corporation to operate in that state. This license is required before operating a business establishment or otherwise engaging in commerce in that state, such as hiring that state's residents as employees.

Charitable Purpose - Any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic or other eleemosynary objective, or an objective that benefits law enforcement personnel, firefighters, or other persons who protect the public safety.

Combined Federal Campaign - Established in the 1960's, it is probably the largest workplace giving campaign in the United States. It authorizes the solicitation and collection of charitable contributions from federal employees in the workplace.

Commercial Co-Venturer - Refers to a "person who for profit is regularly and primarily engaged in trade or commerce other than in connection with soliciting for charitable organizations or purposes and who conducts a charitable sales promotion." Sometimes a law will simply refer to a "coventurer" with the same meaning.

501(c)(3) - That section of the IRS code defining certain tax-exempt, nonprofit organizations. These organizations are specifically established for religious, charitable, educational, literary or scientific purposes

Fundraising Consultant (Fundraising Counsel) - Contracted by nonprofit for a fixed rate or fee to plan, manage, conduct, or prepare material for the solicitation of contributions. At no time does a consultant have custody or control of the funds.

IRS Form 990 - Internal Revenue Service form filed annually by public charities. The IRS uses this form to assess compliance with the Internal Revenue Code. The form lists organizational assets, receipts, expenditures and compensation of officers.

Nonprofit Organization (Charitable Organization) - An organization which exists for educational or charitable reasons, and from which its trustees do not benefit financially. Any money earned must be retained by the organization, and used for its own expenses, operations, and programs. Many non-profit organizations also seek tax exempt status, and may also be exempt from local taxes.

Professional Solicitor (Paid Solicitor) - Under written contract and for compensation, both conducts the solicitation itself and/or has custody or control of the contributions at some time.

Private Foundation - a charity that does not receive a major part of its support from the public.

Public Foundation (Grantmaking Public Charity) - is a foundation that raises money from the public (individuals, corporations, and other foundations) to provide grants. The IRS does not consider these as private foundations as their base of support is typically broad.

URS - A form contained in the Standardized Registration Kit, which is accepted by most states that require registration of nonprofit organizations conducting charitable solicitations within their jurisdiction, in lieu of each state's own form for this purpose. Some states require certain supplementary information.

Registered Agent - Agent for service of process.

Solicitation (Charitable Solicitation) - Although the states definitions vary it is generally defined to include any request of any kind for a charitable contribution. Any in person or telephone solicitation would be encompassed in the definition of a charitable solicitation, as well as the distribution of a newsletter or brochure which solicits a gift.

Tax-exempt - A term usually used to mean exempt from state or federal corporate income taxes, e.g. a tax-exempt nonprofit organization. However, organizations that are exempt from state or federal corporate income taxes are not usually exempt from all taxes.

Unrestricted Funds - Donations that made available for the nonprofit to use toward any purpose. These usually go toward the operating expenses of the organization



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**Nonprofit Fundraising
Registration and Compliance Office**

Perlman + Perlman, LLP
1855 W. Baseline Road, Suite 250
Mesa, AZ 85202- 9012
Phone: (480) 699-8270
Fax: (480) 699-8271
Email: cynthia@perlmanandperlman.com

Headquarters

Perlman + Perlman, LLP
41 Madison Avenue, Suite 4000
New York, NY 10010-2202
Phone: (212) 889-0575
Fax: (212) 743-8120
Email: info@perlmanandperlman.com