

Office of the Attorney General

State of California • Dept. of Justice



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Questions about Charitable Organizations

[The Attorney General's Guide for Charities](#), first published in 1988, provides comprehensive information about California laws that govern charities, and also about important federal laws. It is primarily intended to assist individuals who give their time and skills to serve charitable organizations. The answers to many basic questions about charities can be found in the Guide. *Be sure to check the ["2001 Supplement"](#).*

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Questions About Charitable Solicitation

The [Attorney General's Guide to Charitable Solicitation](#) provides information about charitable fundraising, solicitation disclosure laws and commercial fundraisers. It also includes important suggestions to donors and information on how to check out a charity.

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CHARITIES

1. **I have just been solicited by a charity. How can I tell if it is legitimate?**

The Attorney General's office can tell you if a charity is registered and current in its reporting requirements. However, we can't tell you whether it is legitimate, or such things as how effective it is, or whether it uses its money wisely. There is no Attorney General's seal of approval. It is up to the individual donor to check out a charity for him/herself.

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2. How can I check out a charity?

You may find the most recently filed Form 900, 990EZ or 990 PF by [searching the database](#). Please note, however, that not every charity report is available yet, and the information on the reports is unedited.

The Attorney General's Registry of Charitable Trusts (Registry) (916-445-2021) maintains the public files containing financial reports (IRS Form 990) for the largest California registered charities. In addition, the Registry maintains a current index and a computer printout of all registered California charities. The Registry receives and processes the periodic financial reports which must be filed by the largest public benefit corporations and Charitable Trusts; many small charities are exempt from annual reporting. Currently, all hospitals, schools, and churches are also exempt from reporting to the Registry.

If a charity has not registered with the California Attorney General, the Registry is unable to provide any information about it. If the charity has registered, the Registry can provide the following public information: a copy of its articles of incorporation or trust instrument, copies of annual information returns for the largest tax-exempt organizations (IRS Form 990 or 990 EZ for public charities and Form 990 PF for private foundations) filed by the charity, and the RRF-1 form. If a Form 990, 990 EZ, or 990 PF is available for the charity listed above, that document may contain valuable information about the charitable organization and its programs.

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3. Can't I get information about a charity's operations and expenditures directly from the charity?

Certainly. Federal law now requires a charity to send you a copy of its Form 990 for a reasonable charge. If the form is not available by [searching the database](#), this is the fastest way to obtain the information.

You can also [request copies](#) of Form 990 from the Attorney General's Registry of Charitable Trusts. The charge is 30 cents per page copying charges, plus mailing costs. All public copying requests are handled by a copying service and processed in the order received. The average time to process such requests is three weeks.

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4. How can I understand the information that is on a charity's Form 990?

IRS Form 990 basically explains how much money the charity received for the year reported, and gives a fairly detailed breakdown of how the charity spent the money. The Attorney General's office has prepared instructions for detailed review of a Form 990. They are contained in the Attorney General's Guide to Charitable Solicitation [on pages "20-24"](#).

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5. What is the role of governmental agencies regarding charities?

Various government agencies take actions that affect the status and operations of charitable organizations. The IRS and the California Franchise Tax Board initially determine whether an organization qualifies for federal and state income tax exempt status. At any time during the operating life of a charity, the IRS or the Franchise Tax Board may audit the organization to determine its liability for taxes, penalties, or revocation of tax exempt status.

The role of the Attorney General in overseeing California charities is different from the IRS and Franchise Tax Board. The Attorney General represents the public beneficiaries of charities, who cannot sue in their own right. The Attorney General investigates and audits charities to detect cases in which directors and trustees have mismanaged, diverted, or defrauded the charity. If in fact such improper actions by directors have resulted in a loss of charitable assets, the Attorney General may sue the directors to recover from them the missing funds. The funds recovered by the Attorney General are returned to the charity.

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6. What does the Attorney General investigate?

Some of the problems frequently investigated by the Attorney General include:

1. self-dealing transactions either between a director and the public benefit corporations, or by trustees;
2. loans by a corporation to a director or officer;
3. loss of substantial corporate funds or assets during one year;
4. losses of charitable assets through speculative investments;
5. excessive amounts paid by a public benefit corporation or

- Charitable Trusts for salaries, benefits, travel, entertainment, legal and other professional fees;
6. sale of a charity or conversion of a public benefit corporation to "for profit" status (authorized by statute under restricted conditions) at a price that is unfair to the charity;
 7. illegal use of charitable funds; and
 8. diversion of Charitable Trusts funds from their intended purpose.

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7. What does the Attorney General's Office generally not investigate?

The Attorney General's Charitable Trusts jurisdiction does not apply to churches, religious corporations, homeowner's associations, and most mutual benefit corporations. The Attorney General does not review matters involving internal labor disputes, contested elections, disagreements between directors and members over policy and procedures, and most legal actions between charities and third parties regarding contracts or torts. Persons with complaints in any of the foregoing categories may choose to consult a private attorney to review legal rights and remedies.

Persons with complaints of criminal activities by a charity should refer the matter to the local district attorney.

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8. What can I expect when I submit a complaint to the Attorney General's office about a charity or a charitable solicitation?

The Attorney General's office receives thousands of inquiries and complaints from the general public, news reporters, and other interested parties regarding possible mismanagement or diversion of charitable assets. All complaints about charities are reviewed by the Attorney General's Charitable Trusts audit staff. An investigation is conducted on those cases in which there is reliable evidence of a diversion of assets or gross mismanagement resulting in a significant financial loss to the charity. If these improper actions have resulted in a loss of charitable assets, the Attorney General may sue the directors to recover from them the missing funds. The funds recovered by the Attorney General are returned to the charity. However, the Attorney General has a small staff and limited financial resources to carry out charitable investigations.

Although disclosure procedures prohibit the Attorney General

from discussing pending investigations or indicating whether or not any specific action has or will be taken with respect to a particular organization, you may be assured that the Attorney General seeks to administer the Charitable Trusts laws equitably and efficiently.

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NOTE: Detailed answers to most questions can be found in one of the publications available at this web site.

NONPROFIT INTEGRITY ACT OF 2004

1. Does the Nonprofit Integrity Act of 2004 apply only to organizations domiciled in California?

No. The Act applies to all charitable corporations, unincorporated associations, trustees, and other legal entities holding property for charitable purposes, commercial fundraisers for charitable purposes, fundraising counsel for charitable purposes, and commercial coventurers, over which the Attorney General has enforcement or supervisory powers. That includes all charities that solicit donations and conduct sales solicitations in California, no matter where those organizations are domiciled.

The Act applies to all foreign charitable corporations (corporations formed under the laws of other states) doing business or holding property in California for charitable purposes. Doing business in California includes soliciting donations in California by mail, by advertisements in publications or by any other means from outside of California. Other examples of doing business in California include engaging in any of the following activities in California: holding meetings of the board of directors or corporate members here, maintaining an office here, having officers or employees who perform work here, conducting charitable programs here, and/or maintaining financial accounts or investments at an office of a financial institution located here. However, a charity is not doing business in California if its sole contact with this state is making purely discretionary grants to persons or entities located here.

The Act applies to all commercial fundraisers for charitable purposes who solicit charitable donations, including donations of salvageable personal property, in California, or who receive any funds, assets or property as a result of a solicitation in this state for charitable purposes, or who employ any compensated person

to solicit, receive or control funds, assets or property for charitable purposes here.

The Act applies to all fundraising counsel for charitable purposes who for compensation plan, manage, advise, counsel, consult or prepare material for any charitable solicitation in this state.

(Government Code sections 12581, 12582.1, 12586(a), 12599(a), 12599.1(a); Business and Professions Code section 17510.)

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2. What is included in "gross revenue" for the purpose of determining whether a charity must prepare audited financial statements under Government Code section 12586(e)?

"Gross revenue" under that section is the same as "total revenue," which currently appears on Line 12 of IRS Form 990 for public charities and Line 12, column (a) for private foundations. Follow instructions for IRS Form 990 and 990PF, Part I, Line 12.

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3. Are non-cash contributions included in "gross revenue" for the purpose of determining whether a charity must prepare audited financial statements under Government Code section 12586(e)?

Yes, follow instructions for IRS Form 990, Part I, Line 1

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4. For purposes of determining gross revenue, how will income derived from special events be treated?

Income from special events will be treated as reported on IRS Form 990. Follow instructions for IRS Form 990, Part I, Lines 9a through 9c.

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5. For purposes of determining gross revenue, how will one-time donations be treated?

The statute does not provide for an exemption for such donations. Follow instructions for IRS Form 990, Part I, Line 1.

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6. What is the effective date for initial registration under the Act? If property was initially received in 2004, under the old law, would an organization be required to register within 30 days after January 1, 2005?

The effective date of the Act is January 1, 2005. The Act requires a charitable organization to register within 30 days after it initially receives property. (Registration is accomplished by filing Form CT-1 with the Registry of Charitable Trusts along with a copy of the organization's governing instrument. Property includes money and any other type of real or personal property.) If a charitable organization first received property prior to January 1, 2005, then the 6 month registration deadline under the old law initially applies, and initial registration is due no later than 6 months after property is first received. However, if the 6 month period does not expire until after the filing deadline under the new law (January 30, 2005), then initial registration is due on or before January 30, 2005. For example, if your organization first received property on October 1, 2004, it must register on or before January 30, 2005. (Government Code section 12585.)

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7. What is the effective date of the new requirement for a certified audit? Must the audit be done for any fiscal year ending on or after January 1, 2005, or is there a phase-in period?

There is a 6 month phase-in period to give charities time to comply with the new audit requirement. An audit will be required for all fiscal years ending on or after June 30, 2005. An audit will not be required for any fiscal year ending prior to that date. (Government Code section 12586(e).)

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8. Must a charity that has audited financial statements for any fiscal year ending before 1/1/05 make those statements available for public inspection or provide copies to the public or to the Attorney General?

No, the statute is not retroactive, although the Attorney General has investigative powers under other statutes that would allow him to obtain any charity's audited financial statements upon request.

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9. What documents related to audited financial statements must be released to the public?

The audited financial statement and notes to the statement must be released to the public. The management letter is not part of the audited financial statement and is not required to be released to the public.

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10. Does the extension for filing IRS Form 990 also apply to the completion date for the audit?

No. The statute does not provide for an extension of time.

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11. If a board of directors does not have a meeting scheduled in January 2005, is the organization in violation of the requirement to appoint an audit committee, or can the audit committee be appointed at the first board meeting in 2005?

The statute does not say when the audit committee must be appointed. Accordingly, the board should appoint the audit committee at the first reasonable opportunity. The board's delay must be reasonable, however, which means that the audit committee should be appointed no later than the end of the first quarter.

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12. Who may serve on the audit committee?

The audit committee may include persons who are not members of the board, but may not include any members of the staff (employees) of the corporation, whether or not they are unpaid volunteers, including the president or CEO or the treasurer or CFO. (Government Code 12586(e)(2).)

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13. May an unpaid president or CEO or an unpaid treasurer or CFO serve on the audit committee?

No. The Act does not provide an exception if these officers are unpaid.

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14. What is the permissible minimum size of the audit committee?

The committee may have as few as one member.

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15. **When must a charitable organization conduct an initial review of the compensation of its president or CEO and its treasurer or CFO? May it wait to do so until one of the events set forth in the new law occurs?**

The organization may wait until the occurrence of one of the events set forth in the statute to conduct its initial review of compensation. Those events are the hiring of the officer, the renewal or extension of the term of the officer's employment, and the modification of the officer's compensation. If an officer has no employment contract but instead is an at-will employee, then the organization should review that officer's compensation as soon after January 1, 2005 as is reasonable.

This compensation review requirement does not supercede the existing fiduciary duties of officers, directors and trustees in managing charitable organizations. They have a continuing duty to pay compensation to officers and directors that does not exceed what is fair and reasonable to the organization, and may incur personal liability for paying excessive compensation. Therefore the payment of excessive compensation at any time is a violation of the law. (Government Code section 12586(g), Corporations Code section 5235.)

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16. **If a charity has staff members who are paid more than the president or CEO and the treasurer or CFO, does the compensation-review provision of the Act apply to them?**

No. However, as stated above, the members of the board of directors have a continuing duty to pay compensation that does not exceed what is fair and reasonable to the charity. Moreover, if a staff member actually performs the duties and functions of a president or CEO or a treasurer or CFO, a charity may not avoid the compensation-review required by the Act by giving that person a different job title.

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RAFFLES

1. May charities now hold raffles to raise funds?

Recent changes to the state constitution and Penal Code provide a narrow exception to the prohibition against gambling in California. After July 1, certain tax-exempt groups such as charities may hold fund-raising raffles.

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2. What is a raffle?

A raffle is a type of lottery in which prizes are awarded to people who pay for a chance to win. Each person enters the game of chance by submitting a detachable coupon or stub from the paper ticket purchased. A raffle must be conducted under the supervision of a natural person age 18 or older. At least 90 percent of the gross receipts from raffle ticket sales must be used by the eligible tax-exempt organization to benefit or support beneficial purposes in California.

Groups are prohibited from awarding raffle prizes by use of a gaming machine, apparatus or device such as a slot machine. A raffle also may not be advertised, operated or conducted over the Internet. However, the organization conducting the raffle may place on its web site an announcement of a raffle. See Penal Code section 320.5 and [Statutes and Regulations](#).

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3. Who may hold raffles?

Only eligible private, tax-exempt nonprofit groups qualified to conduct business in California for at least one year prior to conducting the raffle may conduct raffles to raise funds for the organization and charitable or beneficial purposes in California.

Eligible organizations are charities and religious or other organizations that were exempted from state taxation by the Franchise Tax Board under the following Revenue and Taxation Code sections: 23701a (labor, agricultural, or horticultural organizations other than cooperative organizations); 23701b (fraternal orders); 23701d (corporations, community chests or trusts operating exclusively for religious, charitable or educational purposes); 23701e (business leagues, chambers of commerce); 23701f (civic leagues, social welfare organizations or local employee organizations); 23701g (social organizations); 23701k (religious or apostolic corporations); 23701l (domestic fraternal societies); 23701t (homeowners' associations); and 23701w

(veteran's organizations).

If you need a copy of your tax-exempt letter, submit an e-mail request to the [Franchise Tax Board](#) or write to: Exempt Organizations Unit, Franchise Tax Board, PO Box 942840, Sacramento, CA 94240-0040.

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4. Does an organization already registered as a charity need to register separately to conduct a raffle? Are there separate reporting requirements?

Yes. Raffle registration is a separate requirement from charity registration. A report on raffle activities is required during the year (September 1 through August 31) in which any raffle is held..

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5. Must all eligible organizations register and report?

Nonprofit religious organizations, schools and hospitals are exempt from the registration and reporting requirements; however, even though they are not required to register and report, those organizations must still comply with all other provisions of Penal Code section 320.5.

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6. Can my organization hold a raffle immediately?

No. Before conducting a raffle, your group must be registered with the Attorney General's Registry of Charitable Trusts. Your group also must receive written confirmation of your annual registration before holding the initial raffle.

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7. If an organization gives away raffle tickets, does it have to register and report?

Registration is not required if all tickets for a drawing are free, and solicitations of voluntary donations to the organization are in no way connected to distribution of tickets, and this is made clear to all participants. If you require a "donation" in return for a ticket, you must register.

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8. How do I register to conduct a raffle?

Complete the raffle annual registration form (ct-NRP-1) and mail to the Registry with your \$20 registration fee by September 1 of the year (September 1 through August 31) in which you expect to hold a raffle. Checks should be made payable to the Department of Justice.

Please note, you must receive written confirmation of your registration before holding a raffle. Raffle registration forms are available on the Internet at [Charities Forms](#), or may be requested by mail, fax, or telephone.

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9. How long is a raffle registration valid?

A raffle registration is good for 12 months - from September 1 through August 31 - and must be renewed annually.

Since the law takes effect July 1, 2001, the first year under the new law includes two extra months - July and August. Therefore, this registration period will be July 1, 2001 through August 31, 2002.

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10. If my organization registers but decides not to hold a raffle, is the fee refundable?

No.

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11. What information must we provide for raffle registration?

An eligible nonprofit group must furnish on the registration form:

- a) Name of organization;
- b) Address of organization;
- c) One or more of the following:

Federal Tax/Employer Identification Number

(assigned by the Internal Revenue Service and usually found on the IRS letter granting exemption from federal taxes. Contact the Exempt Organization Section of the IRS at (877) 829-5500; or <http://www.irs.gov/> with questions); or

Corporate Number

(assigned by the Secretary of State at the time the Articles of Incorporation are endorsed and filed); or

Organization Number

(assigned by the Franchise Tax Board to associations, trusts, and organizations that are not incorporated in California but do business in California); or

California Charitable Trusts Identification Number

(assigned by the Registry of Charitable Trusts to organizations required to register and report with the Registry).

d) Name and title of a "fiduciary," which is a person such as a director, officer, trustee or other individual occupying a similar position of responsibility in the organization.

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12. As a chapter of a statewide organization, do I have to register to hold a raffle?

Yes. Each individual chapter of an organization that plans to conduct a raffle must register and complete a Nonprofit Raffle Report for each raffle conducted.

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13. My organization has changed the raffle date noted on the registration form. Do we need to contact the Registry?

No. You can indicate the revised date on the Nonprofit Raffle Report when it is completed and filed.

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14. When is the Nonprofit Raffle Report disclosing raffle activities required to be filed?

A separate disclosure report is required for each raffle held by the organization. The reports may be filed with the Registry of Charitable Trusts anytime after the conclusion of a raffle, but must be filed by no later than September 1 of each year for activities in the current registration period.

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15. What kind of record keeping is required?

The required information appears on the Nonprofit Raffle Report form (ct-NRP-2). Basically, the organization must report the date and location of the raffle held; total funds received from the raffle;

total expenses for conducting the raffle; the charitable or beneficial purpose for which raffle proceeds were used or the amount and organization to which proceeds were directed. (See Nonprofit Raffle Report form at [forms](#).)

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16. Are there limits on raffle prizes?

State law does not specify any limits on the value of raffle prizes.

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17. Does an organization report individual buyers of raffle tickets?

No.

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18. When can an organization expect to receive confirmation of registration?

Depending on volume, it could be up to 60 days after receipt of the registration form.

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19. Can I complete the registration and report forms on the Internet?

Yes. However, upon completion, you must print it, sign and mail it along with the fee to the Registry of Charitable Trusts.



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