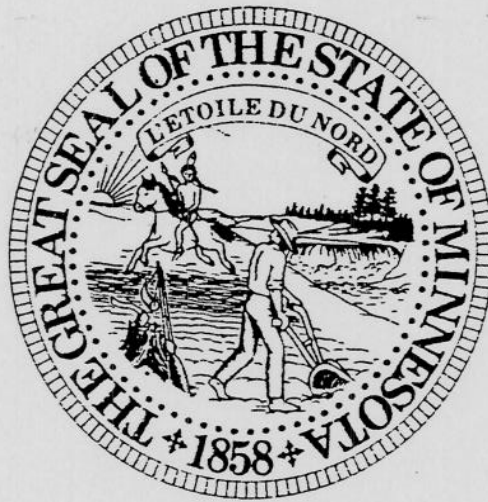


STATE OF MINNESOTA
OFFICE OF ATTORNEY GENERAL



A GUIDE TO MINNESOTA'S CHARITIES LAWS

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A GUIDE TO MINNESOTA'S CHARITIES LAWS

In Minnesota, the Attorney General has primary responsibility for regulating, enforcing and supervising charitable organizations and charitable trusts. This guide summarizes Minnesota's laws that govern charitable organizations, professional fund-raisers and charitable trusts, including laws that require registration with the Attorney General and laws that require notice to the Attorney General of certain actions involving charitable organizations and trusts. The discussion below is intended simply as an introduction. For exact statements of the law, refer to the statutes themselves.

I. LAWS THAT GOVERN CHARITABLE ORGANIZATIONS

Minnesota Charitable Solicitation Act

Chapter 309 of Minnesota Statutes, generally referred to as the Minnesota Charitable Solicitation Act, governs the activities and behavior of organizations that solicit funds from the public. The Charitable Solicitation Act provides for the registration, financial reporting, and supervision by the Attorney General of charities and their fund-raisers. The primary goal of the Minnesota Charitable Solicitation Act is to make organizations that hold or solicit funds for charitable purposes accountable to the public for management of the funds. The law seeks to assure that donors or prospective donors are well informed, that they are protected from misrepresentation and fraud, and that funds held for public purposes are protected. The intended result is to encourage charitable giving.

Registration

Unless exempt, a charitable organization must file certain documents with the Charities Unit of the Attorney General's Office before it solicits contributions from persons in Minnesota.

Definition of Charitable Organization

For purposes of Minnesota Law, a "charitable organization" is any person, including a corporation or other entity, that solicits for any charitable, philanthropic or similar public interest purpose. A charitable organization can include an organization that is tax exempt pursuant to

section 501(c)(3) of the Internal Revenue Code or any person or entity that holds itself out to be established for a charitable purpose or that uses a charitable appeal in any solicitation. Consequently, a "charitable organization" could be a civic league, a lobbying group, a fraternal society or a chamber of commerce if the organization solicits contributions for charitable purposes.

Organizations whose primary purpose is to support or oppose a candidate for public office are not considered charitable organizations.

Exemptions From Registration

The Charitable Solicitation Act generally applies to all charitable organizations. However, the law exempts certain charitable organizations from filing registration and financial information. The following charitable organizations are exempt from registration:

1. Organizations that do not employ paid persons or professional fund-raisers *and* that do not receive and do not plan to receive more than \$25,000 in total contributions (see following section on "Determining Total Contributions") from the public in and outside Minnesota during an accounting year. **Note:** Organizations are required to register if they receive even small amounts of money as contributions if the organization has paid staff.
2. Religious organizations that do not file a Form 990 federal information return;
3. Certain educational institutions;
4. Organizations that limit solicitations to persons who have a right to vote as a member (examples are alumni, trade or professional organizations);
5. Organizations that solicit contributions for a single person specified by name if all contributions are transferred to the person with no restrictions and there is no deduction; and
6. Private foundations that did not solicit contributions from more than 100 persons during an accounting year.

Some exempt organizations and charities that do not receive contributions but are classified under section 501(c)(3) of the IRS code may need to register under Minn. Stat. ch.

501B if they have more than \$25,000 in total assets. Please see the charitable trust section of this booklet.

Determining Total Contributions

The amount of contributions an organization receives is important for registration purposes. As noted previously under "Exemptions to Registration," organizations receiving under \$25,000 in total contributions may not be required to register.

"Contributions" are the promise or grant of money or property from individuals, corporations, foundations, or combined appeals, such as those conducted by the United Way or Cooperating Fund Drive, upon the direct or indirect representation that any part of the money or property will be used for a charitable purpose. For purposes of registration, grants received from government entities are *not* "contributions." "Contributions" does, however, include payment for merchandise or advertising if it is represented that any part of the price will be applied to a charitable purpose. In the case of a charitable organization offering goods and services to the public, "contributions" includes the difference between the direct cost (to the charitable organization) of the goods and services and the price for which the charitable organization or any person acting on its behalf resells those goods or services to the public.

One way to determine the amount of "contributions" for reporting purposes is by reference to the organization's IRS form 990. Generally, an organization's total contributions would be the total of lines 1a (direct public support), 1b (indirect public support), and 9c (net income from special fund raising events and activities). If using the 990-EZ form, corresponding lines would be the total of lines 1 (excluding government grants) and 6c.

Initial Registration Requirements

For initial registration, a charitable organization is required to file a registration statement on a form prepared by the Attorney General. The registration statement should be accompanied by the organization's financial statement of its operations for the most recent twelve month period. The required financial statement may be the organization's IRS Form 990, an audited statement, or any other statement which contains financial information about the organization.

All charitable organizations must include a \$25.00 registration fee, payable to the State of Minnesota, with their registration materials. Once these documents are filed, the organization is considered registered.

Annual Report

Each year following initial registration, charitable organizations required to file a registration statement must file an annual report with the Attorney General no later than the fifteenth day of the seventh month after the close of the organization's fiscal year. The Annual Report is intended to advise the Attorney General and the public of the organization's financial status for the most recent year, and to inform the public regarding the charitable activities conducted by the organization.

Extensions: Charitable organizations are entitled to an extension of time of up to four months in which to file their annual report. To obtain an extension, please submit a copy of your federal extension form or a letter requesting an extension. You may assume that the four-month extension was granted unless advised otherwise.

Parent affiliate filing: A parent organization that is registered with the Attorney General may file an annual report on behalf of a chapter or similar affiliate organization. If so, the accounting information for each affiliate or chapter which raises or expends more than \$25,000 in Minnesota must be set forth separately. If an organization fails to file a complete annual report, the organization's registration is withdrawn and it may not solicit contributions in Minnesota.

Contents of Annual Report form: The Annual Report must include a balance sheet, a statement of income and expense and a statement of functional expenses of the organization. The financial statement must be prepared in accordance with generally accepted accounting principles, and must fully disclose financial information such as total receipts and total income from all sources, costs of management and general operating expenses, costs of fund raising and costs of public education.

In summary, the Attorney General requires that charitable organizations file the following in an annual report:

1. *An Attorney General annual report form.* The form requests information updating registration information about the organization. It also provides for a brief financial statement from organizations that do not file an IRS Form 990 but are required or choose to be registered. As part of the annual report form, charitable organizations must list the five highest paid directors, officers and employees of the charitable organization and its related organizations who receive more than \$50,000 (if any), together with each person's total compensation. (Compensation includes that paid by a "related organization," as defined by Minn. Stat. § 317A.011, subdivision 18). The annual report form must be signed by two officers of the charitable organization and executed pursuant to a resolution of the Board of Directors authorizing submission of the entire annual report to the Attorney General's Office.
2. *An IRS Form 990, 990-EZ or 990-PF,* if the organization files one of these information returns with the IRS. The 990-EZ does not fulfill all state requirements for a financial statement. Those filing a Form 990-EZ will also need to file with the Attorney General a separate functional expense statement, a statement showing total direct and indirect public support excluding government grants and a balance sheet. Charitable organizations that file a copy of their IRS Form 990, 990-EZ or 990-PF with the Attorney General are not required to file a copy with the Minnesota Department of Revenue.
3. *An audited financial statement* prepared in accordance with generally accepted accounting principles, if the charitable organization received total revenue in excess of \$350,000 for its most recent fiscal year. The audited financial statement must bear the opinion of an independent

certified public accountant, if the charitable organization received total revenue in excess of \$350,000 for its most recent fiscal year. In preparing the audit, the certified public accountant must take into consideration capital, endowment or other reserve funds controlled by the charitable organization. A review or compilation does not fulfill state requirements for an audit.

4. *Fee.* The report must be accompanied by a registration fee of \$25.00. Organizations filing a late report will be subject to an additional \$50.00 late fee.

Please note: A charitable organization is *not* required to file a list of its donors. If a donor list is filed, it will become part of the organization's registration and is a public record.

II. LAWS THAT GOVERN PROFESSIONAL FUND-RAISERS

Professional fund-raisers and consultants employed by charitable organizations are also affected by provisions of the Charitable Solicitation Act. A professional fund-raiser is any person (including a corporation or other entity) who, for compensation or profit, either:

1. Solicits contributions in Minnesota for a charitable organization or performs any service for a charitable organization by which contributions are solicited in this State by the compensated person or any compensated individual the person employs, procures or engages to solicit; or
2. Plans, manages, advises or consults, or prepares materials for, or with respect to, the solicitation in this State of contributions for a charitable organization.

True salaried officers, employees or volunteers of a charitable organization are not professional fund-raisers for the purposes of Minnesota law. Also, certain professionals such as investment advisers, broker-dealers, lawyers, accountants and bankers are not professional fund-raisers.

Registration of Professional Fund-Raisers

No person, corporation or other entity may act as a professional fund-raiser unless registered with the Attorney General. The professional fund-raiser registration year runs from May 1 through April 30 of each year. Registration must be renewed for the upcoming registration year prior to May 1 of each year. Registration consists of the following:

1. A registration fee of \$200.00;
2. A registration statement on a form provided by the Attorney General;
3. A signed copy of the contract between the charitable organization and the professional fund-raiser. The contract must:
 - (a) be in writing;
 - (b) contain information as to what services the professional fund-raiser will provide, including whether it will have custody of contributions;
 - (c) disclose the percentage or reasonable estimate of the percentage of the total amount solicited from each person that will be received by the charitable organization for charitable purposes. This subsection (c) is applicable solely to those professional fund-raisers who directly or indirectly solicit in this State;

All new contracts between the professional fund-raiser and a charity entered into during the registration year must also be filed with the Charities Unit of the Attorney General's Office.

4. A bond for \$20,000 if the professional fund-raiser will have custody of or access to solicited contributions at any time during the campaign;
5. A completed "solicitation notice" on a form provided by the Attorney General, if the professional fund-raiser solicits in this State. The notice, which contains information about the campaign, must be verified by the

charitable organization. A professional fund-raiser soliciting for more than one charitable organization needs to file a "solicitation notice" for each campaign;

6. A post-solicitation campaign financial report, sworn to by both the charitable organization and the professional fund-raiser, for every campaign in which the professional fund-raiser solicited in Minnesota during the previous registration year. This report is required to be filed within 90 days after a solicitation campaign has been completed and 90 days following the anniversary of the commencement of a solicitation campaign lasting more than one year. A campaign financial report for a given registration period must be on file before a professional fund-raiser can register for a subsequent year. This requirement is not limited to professional fund-raisers who have custody of or access to the contributions raised.

Once registration documents (including fees and reports) are filed, a professional fund-raiser is registered. A professional fund-raiser who fails to register on the date required or who fails to file the post-solicitation campaign financial report on the required date must pay a late fee of \$300. The late fee is in addition to the \$200 registration fee.

Public Disclosure Requirements

Prior to orally requesting a contribution or contemporaneously with a written request, charitable organizations *and* professional fund-raisers must make certain disclosures. These disclosures are required even if the charitable organization is exempt from registration. The disclosures required of both charitable organizations and professional fund-raisers are:

1. The name and location by city and state of the charitable organization;
2. The tax deductibility of the contribution; and

3. A description of the charitable program for which the solicitation campaign is being carried out and, if different, a description of the programs and activities of the organization generally.

In addition to the above, professional fund-raisers must also disclose their name as on file with the Attorney General and that the solicitation is being conducted by a “professional fund-raiser.”

Other Requirements

Other provisions of Minnesota law regarding soliciting charitable organizations and their professional fund-raisers prohibit misrepresentation or fraud, the use of a charity's name without the written permission of the charity, and the sale of contributors' names unless the contributor has consented to the sale. The law requires all charitable organizations to maintain accurate and detailed books and records for at least three years. Also, persons or organizations registered with the Attorney General are not permitted to represent, directly or indirectly, that registration constitutes an endorsement by the State of Minnesota.

III. LAWS THAT GOVERN CHARITABLE TRUSTS

Supervision of Charitable Trusts & Trustees Act

Like the Minnesota Charitable Solicitation Act, the Minnesota Supervision of Charitable Trusts and Trustees Act, Minn. Stat. §§ 501B.33 to 501B.45, requires charitable trusts and foundations to register with the Attorney General. It also requires charitable trusts and foundations to notify the Attorney General of any court proceeding involving the charitable trust. The law charges charitable trustees with certain fiduciary duties to properly administer property held for charitable purposes, a violation of which constitutes a breach of trust.

Registration of Charitable Trusts

Unless exempt (see "Exclusions" section), any charitable trust that has gross assets of \$25,000 or more at any time during a taxable year must register with the Attorney General within three months after the charitable trust receives the trust property. The registration statement should be filed on a form prepared by the Attorney General. A copy of the trust's

articles of incorporation or trust instrument, including any amendments, plus a \$25.00 registration fee must be filed with the registration statement.

Definition of Charitable Trust

For purposes of chapter 501B, a “charitable trust” is created if a fiduciary or trust relationship with respect to property is created, if there is an intent to create this relationship, and if the trustee is required to use the property for charitable purposes. A charitable purpose is a charitable, benevolent, philanthropic, religious, social service, educational, eleemosynary or other public use or purpose. In Minnesota, money or property given to or held by a charitable organization is deemed to create a charitable trust even if the word "trust" is not used by the donor. Organizations that are charitable trusts include private foundations, charitable corporations, non-profit corporations and some unincorporated organizations that have a charitable purpose or that hold assets for a charitable purpose. Any organization that holds funds or obtains any other asset from individuals, corporations, the government, foundations, other charities or lawful gambling for a charitable purpose is a charitable trust.

Exemptions From Registration

Chapter 501B excludes certain charitable trusts from registration and reporting requirements. While these excluded organizations do not have to file registration documents or annual reports, they still have fiduciary duties to properly administer property held for charitable purposes.

Charitable trusts that are excluded from the registration and reporting requirements are:

1. Organizations that do not have at least \$25,000 in gross assets at any time during a taxable year;
2. Organizations that register and file with the Attorney General as charitable organizations under the Minnesota Charitable Solicitation Act;
3. Charitable trusts administered by the United States or other political subdivision including the District of Columbia or the Commonwealth of Puerto Rico;

4. Religious associations and all charitable trusts organized and operated exclusively for religious purposes that are administered by a religious association;
5. All charitable remainder annuity trusts or unitrusts or pooled income funds;
6. Trusts described in section 4947(a)(2) of the Internal Revenue Code of 1954, known as split-interest trusts;
7. Trusts in which the only charitable interest is a contingent interest for which no charitable deduction has been allowed for Minnesota income, inheritance or gift tax purposes;
8. Trusts in which not all of the unexpired interests are devoted to one or more charitable purposes and where the charitable interest is an annuity or income interest that qualifies for a charitable deduction under applicable Minnesota income tax laws.

Annual Filing

All registered charitable trusts must annually submit a \$25.00 filing fee and a copy of their federal tax or information return, including all schedules and amendments that are submitted to the Internal Revenue Service (such as Forms 990, 990-EZ or 990-PF). There is no specific Attorney General's form to be submitted by the charitable trust as part of an annual filing. An organization which files its federal return with the Attorney General is not required to file the same information with the Minnesota Department of Revenue. If the charitable trust does not file a federal tax or information return with the Internal Revenue Service, it must file a balance sheet and a statement of income and expense for the accounting year last completed. A charitable trust may use a form prepared by the Attorney General for this purpose.

Annual filings must be filed on or before the fifteenth day of the fifth month following the close of the charitable trust's taxable year. The filing deadline may be extended by the Attorney General for up to six months. Requests for an extension should be in writing to the Charities Unit of the Office of the Attorney General.

Breach of Trust

The failure of a trustee to register or file a complete, accurate annual filing in a timely way or to administer and manage property held for charitable purposes in accordance with law and consistent with good fiduciary practices constitutes a breach of trust.

IV. LAWS THAT REQUIRE NOTICE TO THE ATTORNEY GENERAL

The Attorney General must be given notice of certain actions and activities involving charitable organizations and charitable trusts. These notice requirements are set forth in the Supervision of Charitable Trusts and Trustees Act (Chapter 501B) and the Minnesota Nonprofit Corporation Act (Chapter 317A).

The Supervision of Charitable Trusts and Trustees Act requires notice to the Attorney General of court proceedings to: 1) terminate a charitable trust; 2) liquidate or distribute the assets of a charitable trust; 3) modify or depart from the stated purposes of a charitable trust; 4) construe the provisions of an instrument with respect to a charitable trust; and 5) review an accounting submitted by a trustee. The Attorney General must also be notified of court proceedings involving a charitable trust when the interests of uncertain or indefinite charitable beneficiaries may be affected. Finally, the law requires notice to the Attorney General of certain probate proceedings in which a bequest or devise for charitable purposes is involved.

The Minnesota Nonprofit Corporation Act requires a nonprofit corporation that holds assets for charitable purposes or is exempt from income tax under section 501(c)(3) of the Internal Revenue Code to notify the Attorney General if it intends to dissolve, merge, consolidate or transfer all or substantially all of its assets. This notice does not apply to mergers with, consolidations into or transfers of assets to another organization that is exempt under section 501(c)(3). The information required to be submitted to comply with this requirement is set forth in Minnesota Statutes Section 317A.811.

CONCLUSION

All documents that must be filed and all questions concerning the regulation or registration of charitable organizations or charitable trusts may be directed to the Attorney General's Office, Charities Unit, at Suite 1200, Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2130 telephone (651) 296-6172 (voice), (651) 296-1410 (telecommunications device for persons with communication disabilities or “tty”). Please note that all registration statements, annual reports and other documents required to be filed with the Attorney General are public records.

FINAL NOTE

No information on the requirements of the Minnesota Secretary of State or the Minnesota Gambling Control Board has been included in this Guide. For information on registering as either a domestic nonprofit corporation or as a foreign corporation, please contact the Secretary of State, 180 State Office Building, St. Paul, Minnesota 55155, telephone (651) 296-2803 or (651) 296-3266. For information on laws concerning lawful gambling (including raffles) contact the Gambling Control Board, 1711 West County Road B, Roseville, MN 55113, telephone (651) 639-4000.

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