



# READY REFERENCE PAGE

NO. 119  
FOR YOUR FILE

## Charity Fundraisers Raise Many Legal Issues

*From preparation, through running the event, and reporting the results careful lawyering can reduce the risks of liability and embarrassment*

It isn't easy to run a successful charitable fundraising event. There is a lot of planning required, a lot of details to worry about, and a lot of people to coordinate. And, if you ask – and sometimes even if you don't – there are the lawyers.

A fundraising event presents a wide range of nonprofit legal issues. What follows is a checklist of some of them.

### Preparing for the Event

**Consultant.** If you use a consultant, is the consultant a fundraising counsel, required to register under your state's charitable solicitation registration statute? What kind of contract do you have? Is the consultant being paid on a percentage basis, which would be considered unethical by the Association of Fundraising Professionals and other groups? Will the consultant collect payments, which might constitute acting as a professional solicitor and create other legal problems?

**Name of Event.** Does anyone else use the same or similar name for the event who may have a protectable right in the name?

**Volunteers.** If you are using volunteers, do they have clear job descriptions or a clear understanding of what they are supposed to do? Do you want a "volunteer contract" which spells out your relationship? ([See Ready Reference Page: "Volunteer Contract Can Define Commitments"](#)) If there is a chance they will drive anywhere in their efforts, do they – and do you – have adequate insurance for automobile use and general liability? Will they be doing anything that requires background checks?

### Soliciting for the Event

**Registration.** Is your organization required to be registered to solicit? Are you soliciting in more than your home state, where additional registrations may be required? Is your consultant required to be registered as a fundraising consultant in another state because of your event? ([See Ready Reference Pages: "Compliance Assessments Protect Charities"](#)) Are you actively soliciting for the event over the Internet, which might require you to register in all of the states which have registration laws?

**Quid Pro Quo Rules.** If you are asking for contributions in excess of the value of the event, are you complying with the "Quid Pro Quo" rules in your solicitation materials, your tickets and receipts? For payments over \$75, you have to advise the donors how much of the payment is applicable to the value of the goods or services received and therefore not deductible. Your organization can be fined by the IRS for failure to follow these rules. ([See Ready Reference Page: "Charities Must Set Value on 'Quid Pro Quo' Gifts"](#))

**Sponsorships and Ad Books.** Are you complying with the sponsorship rules so that you give your sponsors only appropriate "acknowledgments," and can treat the payment as a contribution? ([See Ready](#)

[Reference Page: “IRS Finalizes Regs Covering Sponsorships”](#)) Or are you providing them with advertising space, which would not be a contribution to you and, under certain circumstances, could be considered unrelated business taxable income?

**In-kind Gifts.** Are donors of in-kind gifts aware of limitations on deductibility? There are particular limits on corporate contributions. ([See Ready Reference Page: “Corporations Have Special Rules on Contributions”](#)) Are they aware that there is no deduction for services, such as free use of space?

**Corporate Foundation Gifts.** If a corporate foundation purchases a table for your fundraising dinner, are they aware that it may be a taxable event of self-dealing if they allow corporate employees – as opposed to foundation employees – to use the tickets for the event? Suggest that they let you use the tickets for constituents who otherwise might not be able to afford to attend.

**Mailing Lists.** Do you swap mailing lists with organizations that are not charities? If so, you may have to record the value of the “income” on your tax return, perhaps as unrelated business taxable income. If you have healthcare clients, are you using their names within the limitations of the HIPAA regulations?

### **Running the Event**

**Insurance.** Do you have adequate insurance, and do you need special event insurance, to protect yourself from claims of injury? Do you have general liability insurance covering the activities of your volunteers on your behalf and providing medical payments coverage for them if they get hurt?

**Renting Property.** If you are running the event on someone else’s premises, be sure your rights and obligations are spelled out in a written agreement, including the services that will be supplied by the owner of the property, if any. Be especially careful about any indemnification language in the agreement. Landlords will usually ask for indemnification against any liability caused by anybody in the world, but your insurance will provide coverage only for liability caused by your agents or employees. If the property is damaged by a patron, you may have no insurance to protect you. You will need to purchase event insurance to protect the landlord if you have an indemnification obligation. ([See \*Nonprofit Issues\*®, Lessons from Litigation, 6/16/11.](#))

**Employees.** Are the non-exempt employees who staff the event “volunteers,” or, more likely, are they under wage and hour protection requiring payment for overtime?

**Accessibility.** Is the space accessible to those with disabilities? You don’t want the legal or public relations issues if it isn’t.

**Alcohol.** If you are providing alcohol at the event, do you need a special permit? Does your insurance specifically cover alcohol-related liability? Is that insurance effective if you have not followed all the legal rules for serving alcohol? Does your caterer provide the alcohol license? Do you get a certificate of insurance naming your organization as an additional insured?

**Permits.** If you are running an event such as a run through the city or a picnic in the park, do you need a special permit to carry it out? Do you need a special food preparation permit?

**Gambling.** If you are having any gambling activity, such as a lottery, bingo, fifty-fifty drawing, do you comply with all local and other governmental regulations? U.S. Postal regulations are pretty strict about mailing invitations to illegal gambling operations. Although lottery regulations are seldom enforced, there is no defense if you violate the rules.

**Auctions.** Are you prepared to advise your donor-purchasers of the estimated fair market value of what they buy so that they can claim a deduction for the excess – and only the excess – of their payment over the value? ([See Ready Reference Page: “Charities Must Set Value on ‘Quid Pro Quo’ Gifts”](#))

**Sales of Stuff.** If you are intending to sell stuff, like books, tee-shirts, or other items, at the event, try to structure it so that it does not generate unrelated business taxable income. ([See Ready Reference Pages: “Nonprofits Often Worry About UBIT”](#)) You also need to determine whether you are required to collect state or local sales taxes. The fact that you might be exempt from paying tax on your own purchases does not mean that you don’t have to collect on tax on things you sell.

**Obtaining Waivers.** If your event involves the active participation of the participants, like a race or a hot dog eating contest, do you want to get a waiver of any claims against you? Such waivers are usually effective in preventing liability, although not always in cases of your gross negligence or willful misconduct. Does your state law permit parents to waive in advance claims of their children? Not all states allow it. Be sure the waiver is broadly written to cover your employees, agents, volunteers, sponsors and any other person who might be sued because they helped you out.

**Other Safety Issues.** Do you have adequate security in place? Do you have someone assigned to deal with the major donor who drinks too much?

### **After the Event**

**Substantiation.** For those who have given you \$250 or more, have you provided the required substantiation letter, saying what was received and what goods or services, if any, were provided in return? The charity won’t be fined for failure to comply with this one, but the donor can’t claim the charitable contribution deduction and may be unhappy to have it denied on a later audit. ([See Ready Reference Page: “IRS Requires Substantiation of Contributions”](#))

**Use of Proceeds.** Be sure to use the proceeds for the purposes you advertised for the event. It may be a breach of your fiduciary duty to your donors, and perhaps a violation of your solicitation registration law, to do otherwise. At the least, it is bad public relations.

**Form 990 Reporting.** Be sure that you have kept your records so that the accountant can report accurately on the Form 990 and Schedule G tax return the amount raised and spent at your fundraisers. As the 990s become generally available on the Internet and more donors become more sophisticated in reading them, it may be embarrassing if you don’t show the results correctly as required by the form. ([See Ready Reference Page: “Form 990 Reporting for Special Events Can Be Tricky – And Is Often Wrong”](#))