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2001 SUPPLEMENT
ATTORNEY GENERAL'S GUIDE FOR CHARITIES

Charitable Trusts: <http://caag.state.ca.us/charities/>

Chapter 1: What Is A "Charity"?

As of January 2001, there were over 81,000 charitable organizations registered with the California Attorney General's Registry of Charitable Trusts. These registered charities reported total revenues for their last reporting year of \$70 billion and total assets of \$201 billion.

Many people contact the Registry of Charitable Trusts to ask if their organization is a "charity." If the organization is classified as a California public benefit corporation and has received federal tax exemption under Internal Revenue Code section 501(c)(3), it is a charity. Under the traditional common law definition, charitable purposes include relief from poverty, advancement of education, religion and other purposes beneficial to the community. Under the federal tax law definition and to qualify for tax exempt charitable status, the organization must be organized and operated exclusively for an "exempt" purpose. Exempt purposes are religious, charitable, scientific, testing for public safety, literary, education, fostering national or international amateur sports competition, or the prevention of cruelty to children or animals. In addition to these requirements, federal tax law also requires there must be no "private inurement" or improper private benefit to anyone in a position of control over the charitable organization, and that the organization not engage in candidate activity or carry on substantial lobbying activity.

Chapter 2: How to Form A Nonprofit Corporation

(Page 8) Registration with the Attorney General is required for newly formed California public benefit corporations or other types of organizations that file exemption application with the IRS and California Franchise Tax Board. Unless requested by the Attorney General, however, it is not necessary to enclose articles of incorporation or governing instruments. The Secretary of State *usually* forwards the required extra copy of the articles of incorporation of each public benefit corporation to the Attorney General at the time they are filed. When a trust or an unincorporated association applies to the Franchise Tax Board for tax-exempt status, the FTB *usually* forwards a copy of the governing instrument to the Attorney General. Charities may contact the Attorney General's Registry of Charitable Trusts at (916) 445-2021, or the Charitable Trusts website (above) for the registration forms.

Chapter 3: Application for Tax Exempt Status

(New) Federal tax law requires that charitable organizations make available for public review at their principal office copies of their Form 990, 990EZ or 990PF returns for the three most recent taxable years, and that charities also provide copies of these returns to any person who sends the charity a written request. The charity may charge reasonable copying fees and actual postage costs for mailing the Form 990, 990EZ or 990PF. Individuals who have been denied access or copies of Form 990 by a charitable organization may complain to:

Internal Revenue Service
TE/GE Customer Service
P.O. Box 2508 Room 4010
Cincinnati OH 45201
1-877-829-5500

If a charity has filed a Form 990, 990EZ, or 990PF with the California Attorney General's Registry of Charitable Trusts, that form is also available on the Charitable Trusts website at <http://caag.state.ca.us/charities/>, at no charge.

Chapter 4: Charity as an Employer

(Page 16) When an employment-related lawsuit is filed against a charitable organization, questions may arise over the payment of an attorney to defend the corporation and its officers and directors against the lawsuit. Whether the corporation can look to its insurance carrier to defend the action depends on the type of insurance coverage the corporation has purchased. "General liability" insurance

usually does not cover defense costs for the corporation or its directors and officers against an employment action. The corporation must also purchase "directors and officers" insurance in order to get insurance protection from employment actions, which constitute a substantial number of the lawsuits filed against charitable corporations.

Insurance coverage is a matter of importance to individual directors and officers who serve nonprofit organizations. One source for detailed information on nonprofit organization insurance is:

Nonprofits' Insurance Alliance of California
P.O. Box 8507
Santa Cruz CA 95061-8507
1-800-359-6422

Other organizations that provide information and services to nonprofit corporations are listed in the Directory of Services, pages D-1 through D-10.

Chapter 5: Reporting Requirements

(Page 20) Effective 2000, the Attorney General's Registry of Charitable Trusts discontinued the Form CT-2. A new reporting requirement, the "Registration/Renewal Fee Report" (RRF-1) was implemented in 2000. Form RRF-1 must be filed with the Registry once every calendar year by all registered charities. Each charity reporting revenues or assets over \$100,000 is required to pay a \$25 filing fee with the Form RRF-1. For additional information and forms, contact the Registry at (916) 445-2021 or see the Charitable Trusts website at <http://caag.state.ca.us/charities/>. There are new reporting requirements for charity raffles, effective 2001. Please see Chapter 8.

Chapter 6: Directors and Officers

(Page 23) Although California statutes (Corporations Code §§ 5047.5, 5239) purport to protect volunteer directors of charitable corporations against personal liability to third parties under certain circumstances, these statutes cannot prevent the filing of lawsuits against individual directors and officers of nonprofit corporations. It can be expensive for an individual director to pay an attorney to defend the director against a civil lawsuit. For this reason, it is important for directors to review the matter of "directors and officers" insurance. (See discussion under Chapter 4, above.)

(Page 26) California law (Corporation Code § 5238) allows a nonprofit charitable corporation to indemnify directors and officers for costs and expenses of civil litigation under certain circumstances. Many nonprofit corporations purchase "directors and officers" insurance to provide a source of payment for these litigation costs, in addition to the corporation's own funds.

Chapter 8: Charity Fundraising

(Page 32) California law requires "commercial fundraisers for charitable purposes" and "fundraising counsel for charitable purposes" to register annually with the Attorney General, pay an annual fee and file annual financial reports on charitable solicitation activities conducted during the preceding year. A commercial fundraiser is defined as any individual or entity who, for compensation, solicits funds for charitable purposes, or who receives or controls funds as a result of solicitation for charitable purposes. Commercial fundraisers are legally required to disclose their identity as a commercial fundraiser prior to solicitation and must disclose their fundraising expenses and ratios upon request by a person solicited. (See Calif. Government Code § 12599; People v. Orange County Charitable Services, 73 Calliope.4th 1054 (1999)).

(New) Fundraising counsel are persons who, for compensation, plan, manage or consult on solicitation in California for charitable purposes. (See Calif. Government Code § 12599.1.)

Additional information about charitable fundraising is contained in the Attorney General's Guide to Charitable Solicitation (1999) and the Attorney General's annual Report on Charitable Solicitation by Commercial Fundraisers. Both publications are available on the Charitable Trusts website and may be obtained from the Attorney General's Public Inquiry Unit at P.O. Box 944255, Sacramento, California 94244-2550.

Commercial fundraisers for charitable purposes who plan to solicit in California may obtain registration and reporting forms with instructions from the Registry of Charitable Trusts, P.O. Box 903447, Sacramento, California 94203-4470. The Registry's telephone number is (916) 445-2021. Forms are also available on the Charitable Trusts website.

(Page 33) (New) Raffles conducted by nonprofit organizations for beneficial or charitable purposes are lawful under new California law effective in July, 2001. (Calif. Penal Code § 320.5). Charitable organizations must register with the Attorney General's Registry of Charitable Trusts prior to conducting a raffle and must annually report the results of any raffles conducted. Registration and reporting forms may be obtained from the Registry of Charitable Trusts by mail or from the Internet on the Charitable Trusts website.

Chapter 9: Probate and Trusts

(Page 36) California law requires a trustee to serve notice on the Attorney General when a revocable trust becomes irrevocable for any reason, if the trust is a charitable trust. (Probate Code § 16961.7).

Where property is held in charitable trust, a court has no jurisdiction to terminate or modify the charitable trust unless the Attorney General is a party to the proceeding. (Government Code § 12591).

Notice must be given to the Attorney General in probate actions that involve charitable trusts. (Probate Code § 17203(c)).

Chapter 10: The Role of the Attorney General In Overseeing Charities

(Page 38) (New) The Attorney General may assess late fees for late filing of registration and financial reports (Government Code § 12586.1) and may revoke or suspend registration for statutory violations (Government Code § 12598(e) 1).

(Page 39) (New) Effective 2000, the Registry of Charitable Trusts discontinued Form CT-2 and implemented new Form RRF-1, which must be filed once each calendar year by all registered charities. Charities that report assets or annual revenues of \$100,000 or higher must pay a \$25 filing fee with their RRF-1. Registered charities are required to continue filing their Form 990, 990EZ or 990PF on an annual basis with the Registry, as well as with the IRS. To obtain the RRF-1 form and instructions from the Registry, write or call the Registry or use the Charitable Trusts website.

(Page 42) (New) California law requires that any public benefit corporation that is a "health facility" (as defined in Health and Safety Code § 1250) provide written notice to and obtain the written consent of the Attorney General prior to any sale or transfer of ownership or control of a material amount of the assets of the health facility to a for-profit corporation or to a nonprofit public benefit or mutual benefit corporation. (Calif. Corporations Code §§ 5914-5925.) The Attorney General has published a "Review Protocol" concerning such transactions which may be obtained from the Attorney General's Public Inquiry Unit. Regulations concerning these transactions are contained in 11 California Code Reg. § 999.5 and may be found on the "publications" section of the Attorney General's website.

"Health care service plans" are not hospitals or "health facilities." Health care service plans are regulated by the Commissioner of Corporations, not the Attorney General. (Corporations Code § 10821. See Van de Kamp v. Gumbiner, 221 Calliope.3d 1260 (1990).

(Pages 48, 49, 52). All references to the discontinued Form CT-2 should be replaced with reference to the new Form RRF-1, described above.

(Page 50) The Attorney General has limited oversight functions for corporate changes made by religious corporations, other than dissolution. (Corporations Code §§ 9230(a) and (c).) Despite confusing provisions in California statutes regarding consent to religious corporation mergers (Corporations Code § 9640), the Attorney General's statutory power over religious corporations is essentially limited to enforcement of the criminal laws and to disposition of assets on dissolution. (Corporations Code § 9230). The Attorney General usually waives notice of a religious corporation dissolution. The statute (Corporations Code § 9633) requires a religious corporation to give the Attorney General written notice twenty days before selling, leasing or otherwise transferring all or substantially all of its assets. The Attorney General usually waives notice of religious corporation sales. The Attorney General also may sue for a court determination that a corporation is not properly qualified or classified as a religious corporation (Corporations Code § 9230(b).)

(Page 52) Government Code § 12583 was amended to clarify that stated exceptions apply only to filing, registrations and reporting provisions of the article.

New legislation relating to solicitation includes Business & Professions Code § 17510.8, which codifies the fiduciary relationship between a charitable solicitor and the person solicited, and Business & Professions Code § 17510.9-.95, requiring that a disclosure document be filed with the Attorney General by a charity that collect in excess of 50% of annual revenue and over \$1 million in California and spends more than 25% of its revenue on "nonprogram activities." This information is provided to the public by the Attorney General.

(Page 51) Corporate conversions that involve licensed health facilities are discussed under Chapter 6, above. Prior approval from the Attorney General is required before completing the sale or transfer of control of a nonprofit corporation that is a health facility to a for-profit corporation or a nonprofit public benefit or mutual benefit corporation. (See Calif. Corporations Code §§ 5914-5925.)

(Page 52 (IV.)) (New) New laws requiring registration and financial reporting by commercial fundraisers and fundraising counsel for charitable purposes are discussed in Chapter 8, above. New laws concerning charitable raffles are discussed also in Chapter 8.

(Page 53) California Corporations Code § 5047.5 creates technical barriers to causes of action against volunteer directors for monetary damages in third party actions where the claim may be made against the corporation and a "general liability policy" is applicable to the claim. Code of Civil Procedure § 425.15 provides a negligence suit may not be filed against unpaid directors or officers of a non-profit corporation unless a court has first found that there is evidence that substantiates the claim.

The Uniform Management of Institutional Funds Act, (Probate Code § 18500 et seq.) dealing with the investment of charitable funds, formerly applied only to certain private colleges and universities. It now applies to any incorporated or unincorporated charitable organization. (Probate Code § 18501(f.)) The duty of care of directors in making investments under Probate Code § 18506 should be read in the context of standards for investment imposed on nonprofit corporation directors under Corporations Code § 5240.

Standing to sue charities is reviewed in Estate of Beryl Buck, Mental Health Association v. Marin Community Foundation, et al., 29 Calliope.4th 1846 (1994) and City of Palm Springs v. Living Desert Reserve, 70 Calliope.4th 613 (1999).

On relator status, see 11 Calif. Code Reg. §§ 1-11.

Directory of Services

(Pages D-1, D-2) Government Agency Listings:

Internal Revenue Service (Federal tax exemption and reporting compliance)

To order forms or publications call 1-800-829-3676

For general information call 1-800-829-1040

For exempt organization information and to complain about a charity:

Internal Revenue Service
TE/GE Customer Service
P.O. Box 2508 Room 4010
Cincinnati OH 45201
1-877-829-5500
<http://www.irs.gov/>

California Franchise Tax Board (California tax exemption)

FTB
Exempt Organizations Unit
P.O. Box 1286
Rancho Cordova CA 95741-1286
916-845-4171
<http://www.ftb.ca.gov/>

For forms and information call 1-800-852-5711

Outside the U.S. 1-916-845-6500

California Secretary of State (Filing Articles of Incorporation,
Annual Statement of Corporation)

California Secretary of State
1500 11th Street
Sacramento CA 95814
General Information - (916) 653-6814
<http://www.ss.ca.gov/>

Name Availability Unit
(recorded information on how to obtain)
(916) 654-7960

California Board of Equalization (Property taxes and sales taxes)

Telephone number: 1-800-400-7115

<http://www.boe.ca.gov/>

Address: P.O. Box 942879
Sacramento CA 94279-0090

California Employment Development Department (California payroll taxes)

Telephone: 1-888-745-3886

(Page D-3) (New) California Attorney General's Office Listings:

Los Angeles: Office of Attorney General - Charitable Trusts
300 South Spring Street, North Tower, Suite 500
Los Angeles CA 90013

San Francisco: Office of Attorney General - Charitable Trusts
455 Golden Gate Avenue, #11000
San Francisco CA 94102-3664

Sacramento: Office of Attorney General - Charitable Trusts
1300 I Street, Suite 1101
P.O. Box 944255
Sacramento CA 94244-2550

Registry of Charitable Trusts
1300 I Street, Suite 1101
P.O. Box 903447
Sacramento CA 94203-4470
Telephone: (916) 445-2021

California Attorney General's Charitable Trusts website:

<http://caag.state.ca.us/charities/>

Public Inquiry Unit: Telephone (916) 322-3360
(for copies of publications)

(Page D-8) Charitable Solicitation and Fundraising

A. Donors: Information about various charities may be obtained from the private organizations listed below. If a charity is registered with the California Attorney General and has filed Form 990, 990EZ or 990PF with the Registry of Charitable Trusts, that form is available on the Attorney General's Charitable Trusts website, listed above.

Better Business Bureau Wise Giving Guide
The Council of Better Business Bureaus' Foundation
4200 Wilson Boulevard, Suite 800
Arlington, Virginia 22203-1804
1-800-575-GIVE
www.bbb.org

National Charities Information Bureau, Inc.
19 Union Square West, 6th Floor
New York, New York 10003
(212) 929-6300
www.give.org

Charity Rating Guide and Watchdog Report
American Institute of Philanthropy
4905 Del Ray Avenue, Suite 300W
Bethesda, Maryland 20814
(301) 913-508

Federal Trade Commission website
www.ftc.gov

(Page D-8, 9) B. Registration with local government agencies: Current listings for some large cities and counties that require registration for charitable solicitation are provided below.

Los Angeles (city)

Social Services Department
Charitable Services Section
201 N. Figueroa Street, Room 160
Los Angeles CA 90012
213-580-1001

Los Angeles County

Business License Commission
Hall of Administration, Room 374
500 W. Temple Street
Los Angeles CA 90012
213-974-7691

San Diego County

Office of the County Sheriff
Licensing Division
9621 Ridgehaven Court
San Diego CA 92123

or

P.O. Box 429000
San Diego CA 92142-9000
858-974-2020

San Bernardino County

Clerk of Board of Supervisors
385 N. Arrowhead Avenue, 2nd Floor
San Bernardino CA 92415-0130
909-889-0200

San Francisco City and County

Police Department
Permit Bureau
850 Bryant Street, Room 458
San Francisco CA 94103
415-553-1115 or 415-553-9218

Orange County

County Clerk Recorder
Charitable Solicitations Unit
630 N. Broadway
Santa Ana CA 92702

Or

P.O. Box 238
Santa Ana CA 92702-0238
714-834-2248

Alameda County

City of Oakland
City Manager's Office
City Hall
No. 1 Frank Ogawa Plaza, 11th Floor
Oakland CA 94612
(510) 238-6914