

Frequently Asked Questions for Professional Solicitors and Professional Fundraising Counsels

Who needs to register?

Professional Solicitors and Professional Fundraising Counsels must register.

A Professional Solicitor is:

any person who, for a financial or other consideration, solicits contributions in this state for a charitable organization or any person with whom the professional solicitor independently contracts to solicit for contributions. A person who is otherwise a professional fundraising counsel shall be deemed a professional solicitor if the person's compensation is related to the amount of contributions received. The term does not include a bona fide volunteer. The term includes a salaried officer or employee of a charitable organization if the salaried officer or employee of the charitable organization receives percentage compensation

A Professional Fundraising Counsel is:

any person who, for compensation, plans, conducts, manages, advises, consults, or prepares material for, or with respect to, the solicitation of contributions in this state for a charitable organization, but who actually solicits no contributions as a part of the person's services, and who does not employ, procure, or engage any compensated person to solicit contributions. The term shall not include a bona fide volunteer, salaried officer, or employee of a charitable organization.

Do Grant Writers Need to Register?

No. Individuals whose only service to a charity is providing grant writing services do not have to register due to the law's definition of "contribution."

What is a "charitable organization?"

Hawaii's law defines "charitable organization" as

(1) Any person determined by the Internal Revenue Service to be a tax exempt organization pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, as amended; or

(2) Any person who is or holds itself out to be established for any benevolent, educational, philanthropic, humane, scientific, patriotic, social

welfare or advocacy, public health, environmental conservation, civic, or other eleemosynary purpose, or any person who in any manner employs a charitable appeal as the basis of any solicitation or an appeal that has a tendency to suggest there is a charitable purpose to the solicitation. The term includes each county or other local division of the charitable organization within this State, if the division has the authority and discretion to disburse funds or property otherwise than by transfer to any parent organization. The term does not include any federal, state, or county agency, or political parties and candidates for federal, state, or county office required to file financial information with federal or state election authorities or commissions.

How do I register?

Professional Solicitors register by completing and returning Form AGTAX-2 along with a completed surety bond, Form AGTAX-3.

Professional Fundraising Counsels register by completing and returning AGTAX-1.

All registration forms, bonds and fees should be sent to:

Hawaii Attorney General
Tax & Charities Division
425 Queen Street
Honolulu, Hawaii 96813

These forms are available on the Attorney General's website at:
<http://ag/Hawaii.gov/tax>.

Is there a deadline for annual renewals?

Yes. Registrations must be renewed no later than July 1 of each year.

How much does it cost to register?

The registration and annual renewal fee is \$250.00. Checks should be made payable to the State of Hawaii Director of Finance.

Do we need to filing any other documents or reports?

Yes. Professional Fundraising Counsels and Professional Solicitors must file a copy of any contract with a charitable organization at least ten days before performing any services.

Professional Solicitors must also file an *End of Solicitation Campaign Financial Report* within 90 days after the completion of any campaign, or on the anniversary date of any campaign lasting more than one year. A copy of the Financial Report is Form HIAGTAX-4.

Can we get an extension of time to file the end of campaign financial report?

No. The law does not provide any extensions. Failure to timely file the report may result in the suspension or revocation of your registration.

Do Professional Solicitors Have to Make any Disclosures to Donors:

Yes. A professional solicitor who makes an oral solicitation by telephone, door-to-door, or otherwise shall furnish to each contributor, prior to collecting or attempting to collect any contribution, a written confirmation of the expected contribution, containing the following information clearly and conspicuously:

- (1) The full legal name, address, and telephone number of the individual professional solicitor who directly communicated with the contributor; and
- (2) A disclosure that the contribution is not tax-deductible, if applicable, or, if the professional solicitor maintains that the contribution is tax-deductible in whole or in part, the portion of the contribution that the professional solicitor maintains is tax-deductible.

Does the law impose any requirements for fundraising contracts?

Yes. The law requires a written contract between every solicitor or fundraising counsel and a charitable organization and that they be filed with the Attorney General at least ten business days prior to the performance by the professional fundraising counsel or professional solicitor of any service. No solicitation or service pursuant to the contract shall begin before the contract is filed with the attorney general.

The contract shall be signed by two authorized officials of the charitable organization, one of whom shall be a member of the organization's governing body, and the authorized contracting officer for the professional fundraising counsel or professional solicitor. The contract shall contain all of the following provisions:

- (1) The legal name and address of the charitable organization;

- (2) A statement of the charitable purpose for which the solicitation campaign is being conducted;
- (3) A statement of the respective obligations of the professional fundraising counsel or professional solicitor and the charitable organization;
- (4) A statement of the guaranteed minimum percentage of the gross receipts from contributions that will be remitted to or retained by the charitable organization, if any, or, if the solicitation involves the sale of goods, services, or tickets to a fundraising event, the percentage of the purchase price that will be remitted to the charitable organization, if any. The stated percentage shall exclude any amount that the charitable organization is to pay as fundraising costs;
- (5) Information concerning the compensation of the professional solicitor and fundraising counsel as follows:
 - (A) If the compensation of the professional fundraising counsel or professional solicitor is contingent upon the number of contributions or the amount of revenue received, a statement shall be included specifying the percentage of the gross revenue that is the basis for that compensation. The stated percentage shall include any amount that the professional fundraising counsel or professional solicitor is to be reimbursed for fundraising costs;
 - (B) If the compensation of the professional solicitor is not contingent upon the number of contributions or amount of revenue received from the solicitation campaign, the compensation shall be expressed as a reasonable estimate of the percentage of the gross revenue, and the contract shall clearly disclose the assumptions upon which the estimate is based. The stated assumptions shall be based upon all of the relevant facts known to the professional solicitor regarding the solicitation to be conducted by the professional solicitor; or
 - (C) If the compensation of the fundraising counsel is not contingent on the number of contributions or amount of revenue received from the solicitation campaign, the compensation shall be stated in a dollar amount;
- (6) The effective and termination dates of the contract or, if the contract does not have a set termination date, a clause allowing either party a reasonable period to terminate the contract or notify the other party if either party chooses not to renew. The contract shall also contain the date

services will commence with respect to solicitation in this State of contributions for a charitable organization;

(7) In the case of a professional fundraising counsel, that the counsel will not at any time have custody or control of contributions;

(8) A statement that the charitable organization exercises control and approval over the content and volume of any solicitation; and

(9) Any other information required by the rules of the attorney general.

What are proper money handling procedures for professional solicitors?

The law requires each contribution in the control or custody of the professional solicitor, in its entirety and within five days of its receipt, shall be deposited in an account at a bank or other federally insured financial institution, which shall be in the name of the charitable organization. The charitable organization shall maintain and administer the account and shall have sole control of all withdrawals.

Are there record keeping requirements for professional solicitors?

The law requires a professional solicitor to maintain during each solicitation campaign and for not less than three years after the completion of that campaign the following records, which shall be available for inspection upon demand by the attorney general:

(1) The date and amount of each contribution received and the name and address of each contributor;

(2) The name and residence of each employee, agent, or other person involved in the solicitation;

(3) Records of all revenue received and expenses incurred in the course of the solicitation campaign; and

(4) The location and account number of each bank or other financial institution account in which the professional solicitor has deposited revenue from the solicitation campaign.

Do charities have a right to cancel contracts?

Yes, the law provides every charitable organization with a ten day right to cancel any contract without cause. Contracts with unregistered solicitors or fundraising counsels may be voidable at the option of the charity.

Does the law regulate charitable sales promotions?

Yes, a charitable sales promotion, is an advertising or sales campaign, conducted by a commercial co-venturer, that represents that the purchase or use of goods or services offered by the commercial co-venturer will benefit, in whole or in part, a charitable organization or charitable purpose.

The law requires the A final accounting for each charitable sales promotion must be prepared by the commercial co-venturer following the completion of the promotion. A copy of the final accounting must be provided to the attorney general not more than twenty days after the copy is requested by the attorney general. A copy of the final accounting must be provided to the charitable organization not more than twenty days after the copy is requested by the charitable organization. The final accounting shall be kept by the commercial co-venturer for a period of three years.

A written consent form that satisfies these requirements is available on the Tax & Charities website. <http://ag.hawaii.gov/tax/quick-links/forms/>

What Acts and practices are prohibited by professional solicitors?

Hawaii's charitable solicitation law prohibits solicitors from engaging in the following acts, which are prohibited:

- Using the name of any other person except that of an officer, director, or trustee of the charitable organization by or for which contributions are solicited, without the written consent of the other persons.
- Using a name, symbol, or statement so closely related or similar to that used by another charitable organization or governmental agency that the use thereof would tend to confuse or mislead the public.
- Misrepresenting or misleading anyone by any manner, means, practice, or device whatsoever, to believe that the solicitation or sale is being conducted on behalf of a charitable organization or that the proceeds of the solicitation or sale will be used for charitable purposes, if that is not the fact.
- Soliciting in the name of or on behalf of any charitable organization without:

- Obtaining the written authorization of two officers of the organization, which authorization shall bear the signature of the professional solicitor and the officers of the charitable organization and shall expressly state on its face the period for which it is valid, which shall not exceed one year from the date of issuance, and filing a copy of the written authorization with the attorney general prior to the solicitation; and
- The professional solicitor and any person who, for compensation, acts as an agent, employee, independent contractor, or otherwise on behalf of the professional solicitor must carry a copy of the authorization while conducting solicitations, and exhibits it on request to persons solicited or police officers or agents of the department.
- Using or exploiting the fact of filing any statement, report, professional fundraising counsel contracts, or professional solicitor contracts or other documents or information required to be filed the law or with the Attorney General so as to lead the public to believe that the filing in any manner constitutes an endorsement or approval by the State of the purposes or goals for the solicitation by the charitable organization, professional fundraising counsel, or professional solicitor."
- Impeding or obstructing, with the intent to physically inconvenience the general public or any member thereof in any public place or in any place open to the public.
- Submitting for filing on behalf of a charitable organization, professional fundraising counsel, or professional solicitor, any statement, financial statement, report, attachment, or other information to be filed with the Attorney General that contains information, statements, or omissions that are false or misleading.
- Soliciting contributions from persons in the State or otherwise operating in the State as a charitable organization, an exempt charitable organization, professional fundraising counsel, professional solicitor, or commercial co-venturer without filing the information required by law with the Attorney General in a timely manner.
- Aiding, abetting or permitting any persons to solicit contributions from persons in the State unless the person soliciting contributions has complied with the requirements of the law.
- Failing to file the information and statements required by the law or failing to provide any information demanded by the attorney general pursuant to this chapter in a timely manner.
- Employing in any solicitation or collection of contributions for a charitable organization, any device, scheme, or artifice to defraud or obtain money or property by means of any false, deceptive, or misleading pretense, representation, or promise.
- Representing in the course of any solicitation that funds collected will be used for a particular charitable purpose, or particular charitable purposes, if the funds solicited are not used for the represented purposes.
- Receiving from a charitable organization for obtaining moneys or bequests for that charitable organization if that person has also received

- compensation for advising the donor to make the donation; provided that compensation may be received if the person obtains the written consent of the donor to receive compensation from the charitable organization.
- Acting as a professional solicitor if the person, any officer, any person with a controlling interest therein, or any person the professional solicitor employs, engages, or procures to solicit for compensation, has been convicted by any federal or state court of any felony, or of any misdemeanor involving dishonesty or arising from the conduct of a solicitation for a charitable organization or purpose.

Does the law impose any penalties for violating the law?

Criminal penalties: Any person who intentionally or knowingly violates the law, or who intentionally or knowingly gives false or incorrect information to the attorney general in filing statements or reports required by the law, whether the reports or statements are verified or not, shall:

(1) For the first offense be fined not less than \$100 nor more than \$500, or imprisoned not more than six months, or both; and

(2) For the second and any subsequent offense, be fined not less than \$500 nor more than \$1,000, or imprisoned not more than one year, or both.

Administrative penalties imposed by Attorney General. The attorney general may refuse to register, may revoke, or may suspend the registration of any charitable organization, professional fundraising counsel, or professional solicitor whenever the attorney general finds that a charitable organization, professional fundraising counsel, or professional solicitor, or an agent, servant, or employee thereof:

(1) Has violated or is operating in violation of any provision of the law, the rules of the attorney general, or an order issued by the attorney general;

(2) Has refused or failed, after notice, to produce any records of the organization or to disclose any information required to be disclosed under the law or the rules of the attorney general; or

(3) Has made a material false statement in an application, statement, or report required to be filed under the law.

When the attorney general finds that the registration of any person may be refused, suspended, or revoked by the attorney general may:

- (1) Revoke a grant of exemption from any provisions of this chapter;
- (2) Issue an order directing that the person cease and desist specified fundraising activities;
- (3) Impose an administrative fine not to exceed \$1,000 for each act or omission that constitutes a violation of this chapter and an additional penalty, not to exceed \$100, for each day during which the violation continues. Registration shall be automatically suspended upon final affirmation of an administrative fine until the fine is paid or until the normal expiration date of the registration. No registration shall be renewed until the fine is paid; or
- (4) Place the registrant on probation for such period of time and subject to such conditions as the attorney general may determine.

Unfair trade practices remedies: Any person who engages in an act or practice that violates the law or rules adopted or issued shall have engaged in an unfair or deceptive act or practice in the conduct of a trade or commerce, in violation of section 480-2, Hawaii Revised Statutes and shall be subject to the penalties and remedies provided for such a violation .