

(revised January 2012)



MARYLAND NONPROFITS
PUBLIC POLICY ALERT

DISCLOSE IT!

A Charitable Nonprofit's Guide to Public Disclosure Requirements

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Because nonprofits serve important public purposes, nonprofit organizations are granted exemption from most federal, state and local taxes, and donors are granted a tax deduction for contributions to 501(c)(3) charities. Along with these privileges comes the responsibility to provide details about their operations to members of the public. As the Maryland Nonprofits *Standards for Excellence: An Ethics and Accountability Code for the Nonprofit Sector* states, it is important that all nonprofits comply with both the letter and the spirit of federal and state laws which require disclosure of information to the public.

The following is a summary of federal and state public disclosure requirements for charitable nonprofits, including:

- Proper registration for soliciting contributions;
- Disclosure requirements in fundraising solicitations;
- Disclosure requirements regarding the deductibility of your donors contributions;
- Disclosure requirements in fundraising receipts and acknowledgments;
- Disclosure requirements regarding financial documents that must be provided to a member of the public upon request; and
- Detailed disclosure requirements for contests, sweepstakes and promotions.

Take a few minutes, and make sure that your organization is complying with these procedures.

**BEFORE YOU SOLICIT CONTRIBUTIONS
BE SURE YOUR ORGANIZATION AND THE FUNDRAISERS IT WORKS WITH ARE
PROPERLY REGISTERED**

- 501(c)(3) status** -- With a few exceptions, only contributions to nonprofits that have been designated as tax exempt under section 501(c)(3) of the Internal Revenue Code are tax deductible as charitable contributions. (Call Maryland Nonprofits for more information on other types of nonprofits that may receive tax deductible contributions.)
- State Registration under the Maryland Charitable Solicitations Act** -- In general, every nonprofit that

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solicits charitable contributions in Maryland must register with the Secretary of State of Maryland by filing form COR-92 and submitting the appropriate corporate documents and payment.¹ Registration is effective on receipt of a registration letter (confirmation) from the Secretary of State, or 10 business days after filing the registration statement if there is no response from the Secretary's office. There are several types of nonprofits exempted from full registration that are still required to file an exempt fundraising notice prior to soliciting charitable contributions. For example, organizations that do not receive more than \$25,000 in charitable contributions in a year are not required to register with the Secretary of State, but are required to file an exempt fundraising notice with the Secretary of State's office. A few types of nonprofits are exempt from registering with the Secretary of State's office. Call Maryland Nonprofits to learn more about these exempt groups.

If your organization employs a professional solicitor or a fundraising counsel, they too must be properly registered with the Secretary of State.² You may contact Maryland Nonprofits or the Secretary of State's office if you have questions about your registration or the registration of those with whom you contract to provide fundraising services (www.sos.state.md.us or 410-974-5521.)

- **Proper registration for fundraising in other states** -- If you solicit charitable contributions in other states, you may need to be registered in the other states as well. Each state has its own requirements/thresholds/definitions for charitable solicitation registration. Maryland Nonprofits library contains a catalog of requirements in other states and the Secretary of State's web site has a page that provides links to charitable regulators (www.sos.state.md.us).
- **Proper licensure for organizations soliciting gifts of automobiles** -- A nonprofit that accepts gifts of automobiles must be properly licensed as a dealer with the Maryland Department of Motor Vehicles and must take title of the vehicle upon its donation--even if the vehicle will be immediately re-sold to a third party.

DISCLOSURE REQUIREMENTS IN FUNDRAISING SOLICITATIONS

Do you solicit any form of charitable contributions (money or others) to support the mission of your organization? For many charitable nonprofits, the answer to this question is a resounding YES, however, many nonprofits do not fully understand and follow the disclosure requirements for solicitations. These

¹A charitable contribution is considered a contribution made on a representation that it will be used for a charitable purpose-including money, property, or services. (Unsolicited gifts, corporate or foundation grants, government grants, membership dues, or payment for property sold or services are not considered charitable contributions.)

²More detailed disclosures are required when a professional solicitor is involved. Generally, a professional solicitor is a person (other than a salaried officer or employee) who, for pay, directly or indirectly, solicits or receives charitable contributions for your organization. If you use a professional solicitor, much more detailed disclosure requirements come into play. Call Maryland Nonprofits for more information and we will provide you with a copy of the relevant provisions of the law.

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days, solicitations for charitable contributions take many forms: direct mail campaign letters, newspaper advertisements, personal letters from celebrities or board members, e-mail messages, etc.

- **Tell donors that you are recognized as tax exempt under section 501(c)(3)** of the Internal Revenue Code. Donations to nonprofits with 501(c)(3) tax exempt status are tax deductible as charitable contributions.

To take the guesswork out for donors, it is advisable for nonprofits to include a statement like, **ABC Nonprofit is a 501(c)(3) nonprofit organization -- donations to which are tax deductible to the fullest extent allowed by law.** on all solicitations.³

- **Under Maryland law, all solicitations in the state must include a Secretary of State disclosure statement** notifying the public that current financial statements for the nonprofit are available upon request by contacting the organization or the Secretary of State's office. The disclosure statement itself can be stated in a variety of ways.

Sample statement that should be included on all fundraising communications (including solicitations, pledge cards, and receipts):

A copy of our current financial statement is available upon request by contacting (name of organization) at (address and telephone number of organization). Documents and information submitted to the State of Maryland under the Maryland Charitable Solicitations Act are available from the Office of the Secretary of State for the cost of copying and postage."

The only exception to this disclosure requirement is that it does not apply to solicitations by accredited schools, colleges or universities to students, former students, parents of students or former students, board members and staff. Despite this exception, it is advisable to include the disclosure statement on all solicitations.

- **Disclosure of value of items provided to donors --** You are required by law to disclose the fair market value of goods or services provided to donors in return for gifts of \$75 and over. For example, in an invitation to an annual dinner dance, you must disclose the fair market value of the dinner and entertainment.

Sample Text for Solicitation for Tickets to Annual Dinner Dance:

The ticket price for the event is \$150. For tax purposes, only \$100 is tax-deductible. The balance of \$50 represents the fair market value of the food and entertainment for the event.

³ Exceptionally generous donors may donate so much to charitable nonprofits that they reach the maximum threshold where they are not permitted to take deductions for all of their contributions. It is the donor's responsibility to make this determination. Donors who do not itemize their income taxes generally cannot deduct charitable contributions from their taxes.

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For more information about determining the deductibility of contributions and determining the fair market value of goods and services given in return for contributions, see the next section entitled, **DISCLOSE TO DONORS HOW MUCH OF THEIR CONTRIBUTIONS ARE DEDUCTIBLE.**

- **Disclosure statements should be conspicuous** -- If you need a magnifying glass to read the disclosure statements, they are NOT conspicuous. While there are no hard and fast rules about what is or is not conspicuous, you should certainly think twice if your disclosure statements are smaller than 10-point type. Whether the disclosure statement is conspicuous depends upon many circumstances (i.e., the size of the type, placement on the page, etc.) You should consider if the disclosure statement is likely to be noticed, read, and understood by a person casually reading the solicitation.

DISCLOSE TO DONORS HOW MUCH OF THEIR CONTRIBUTIONS ARE DEDUCTIBLE

Does your organization hold a special event where dinner or entertainment is provided? Do you give contributors a subscription to a magazine or promotional merchandise (a mug, book, etc.)? Do you provide donors with membership benefits in return for a contribution? If so, your organization needs to be familiar with the IRS rules that apply when donors receive something in exchange for their contribution. You should know the following:

- **The IRS presumes that donations are not tax-deductible** -- The IRS requires taxpayers to prove that the amount they pay exceeds the fair market value of the food, entertainment, merchandise, or other goods and/or services that the donor receives. You should **NOT** state in solicitation materials, catalogs, or tickets that the donor's payment is tax-deductible if the donor is receiving something of value in exchange for the contribution.
- **The IRS is clamping down on organizations which do not follow the disclosure requirements** -- A law enacted by Congress in 1993 establishes strict rules governing the sale of tickets for special events, the sale of auction items, and other situations where the donor is receiving something of value in return for his/her donation. After years of advising charities that they should tell donors that some portion of the ticket price is not tax deductible, and years of frustration in watching frequent and flagrant violations of this rule, the IRS is clamping down.

VIOLATIONS: The penalties for violating these requirements can be severe. A charity may be assessed a penalty of \$10 per contribution, up to a maximum of \$5,000 per fundraising event.

- **Disclosure of deductibility when donors receive something in return for contributions** -- The 1993 law applies to any contribution over \$75, where donor is receiving something of value in return. In these cases, the charity must tell the donor that the only portion of the contribution that is tax deductible is the amount that exceeds the fair market value of whatever the donor received in return. The charity must also provide the donor with an estimate of the fair market value for the goods or services provided to the

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donor. For example, if you sponsor a gala for which tickets are \$100 and where food and entertainment with a fair market value of \$50 is provided, you must include on the solicitation materials a statement to the effect that only \$50 of the ticket price is tax deductible, and that the fair market value of admission to the event (including the food and entertainment) is \$50.

- **Determining fair market value** -- If the fair market value of the food, entertainment, merchandise or other goods or services is equal to or greater than the cost of the ticket or amount of the contribution, then no portion of the contribution is deductible. If this is the case, you should state on the ticket, or in the catalog or solicitation materials that the ticket price or donation is NOT tax-deductible.

Fair market value is the retail value of the goods or services to the donor. It is not the wholesale value or wholesale cost, nor is it affected by whether or not the charity received any of the goods or services as donations. The charity must provide the donor with a good faith estimate of the fair market value of the goods or services that were provided. The IRS will accept the charity's estimate of value provided it is based on some reasonable methodology. You should retain records demonstrating how you determined the fair market value of such items.

Although these mandatory requirements for fundraising solicitations are only applicable to payments over \$75, it would be a good idea to adopt these procedures regardless of the amount involved.

- **Giving items of insubstantial value to donors** -- The full amount of the payment may be tax-deductible if the item you provide to the donor is of insubstantial market value. The IRS considers the benefit to the donor insubstantial if:
 - (a) the fair market value of what the donor receives is less than either 2% of the amount of the contribution or \$99 for 2012, whichever is less; or
 - (b) the amount of the contribution exceeded \$49.50 or more, the benefits received by the donor are token items that include the logo or name of the organization, and the cost of the token item was less than \$9.90 (for 2012).
- **No deductibility for raffle tickets** -- Payments for raffle tickets, lottery tickets, or door prize tickets are not tax-deductible.
- **When the donor refuses items of value** -- The donor may deduct the full value of the charitable contribution by refusing the goods or services offered. For instance, in situations where the donation includes tickets to an event, if the donor returns the tickets to the organization for resale, the donor can deduct the full amount paid for the ticket. Merely not using the goods or services provided (e.g. not using the dinner tickets) is not enough.

DEDUCTIBILITY AND CHARITABLE AUCTIONS:

Regulations also clarify the legal procedures for charitable auctions. The regulations make clear that the charity must make a good faith estimate of the fair market value of the items to be auctioned. To claim a charitable deduction, bidders must know these values in advance, and should be advised that under IRS rules only the portion of their bid/payment that exceeds the fair market value of an item is deductible as a charitable contribution.

- **Good faith estimates of auctioned goods or services** -- When making a good faith estimate of the value of goods or services provided to a donor (at an auction or otherwise), the regulations provide that any reasonable methodology will suffice. Assigning a value that is within the range of typical retail prices is acceptable, even if the charity chooses the lower end of the price range. When the goods or services are unique, the estimate of fair market value may be made based upon the fair market values of similar merchandise or services. You should retain records demonstrating how you determined the fair market value of such items.

DEDUCTIBILITY AND MEMBERSHIP BENEFITS:

Annual membership benefits offered to a donor for a payment of \$75 or less per year may be disregarded if the benefits are rights or privileges that can be exercised **frequently** during the membership period (i.e., free parking or discounted admission to organization's facilities, free or discounted parking, preferred access to goods or services, discounts on purchases of goods or services).

- **Disregarding free admission in the deductibility equation** -- Free admission to an event may also be disregarded, provided that the event is open only to members and cost (excluding allocable overhead) for the event is no more than \$9.90 per person in 2012.
- **Do not disregard admission to a series or limited number of performances in the deductibility equation** -- It is important to emphasize that in order to be disregarded, the membership benefits must be capable of being exercised frequently. Thus, a membership benefit package that grants the donor the right to visit a museum, zoo, gallery or other facility on a daily or weekly basis will qualify. A membership that allows a donor to attend some or all of a limited number of performances (e.g., a series of four performances during a theater season) will not satisfy the frequency requirement.
- **Newsletters generally disregarded in the deductibility equation** -- A newsletter sent to members or contributors may generally be disregarded, provided it is not of commercial quality.
- **Special considerations for organizations with levels of membership** -- Finally, for organizations that offer levels of membership benefits which vary according to the amount contributed, benefits for membership categories that cost \$75 or less can be disregarded when a part of a higher cost membership benefit package. However, the benefits disregarded must be identical to those involved in the less expensive membership category.

Example: Museum Offering a Membership Category over \$75 and Membership Category under \$75

A museum offers two membership categories, *Bronze* membership (at a cost of \$60/year), and *Silver* membership (at a cost of \$200/year). Membership benefits consist of free admissions, free parking and gift shop discounts for *Bronze* members and free parking, gift shop discounts for goods and services, and special commemorative silver bowls (valued at \$35) for *Silver* members. For donors contributing \$60, free admissions, free parking and gift shop discount are disregarded and the entire \$60 is a tax-deductible contribution. For donors contributing \$200, free admissions, free parking and gift shop discount are disregarded. However, the silver bowl may not be disregarded. Thus, the museum must notify the donor that only \$165 of the \$200 contribution is deductible.

BENEFITS PROVIDED TO EMPLOYEES OF CORPORATE CONTRIBUTORS:

Sometimes a charity may provide membership benefits or other goods/services to the employees of a corporate contributor. Here, too, benefits that would be disregarded if provided to an individual contributor may also be disregarded if provided to employees of a contributor. Moreover, in this situation, the charity may merely provide a description of the goods/services **offered** to the employees of the corporate donor and is **not** required to make a good faith estimate of the fair market value.

BENEFITS PROVIDED ON THE BASIS OF A MATCHED CONTRIBUTION:

Many employers have programs to match contributions made by their employees. In some cases, the employee-donor may be eligible to receive goods or services in return - based on the total amount contributed by both employee and employer. When goods or services are provided to an employee in exchange for a matched contribution, the benefits received by the employee will affect the deductibility of the employee's contribution only. The benefits, however, will not reduce the deductibility of the employer's deductible charitable contribution. Receipts or notices given to employees or employers in this situation should reflect their own contribution, any benefits received by each, and the value of such benefits.

Example: Matching Contributions

An employee makes a \$500 contribution to a charity; it is then matched by his/her employer with an additional \$500. The charity provides the employee with goods/services based on the combined contribution of \$1,000 and does not provide any additional benefit to the employer. The receipt given to the employee must include: the amount of the employee's contribution, a description of the goods/services provided, and the organization's good faith estimate of the fair market value of the benefit received. The receipt provided to the employer for the matched payment must list that no good or service was provided to the employer in consideration of its \$500 contribution.

DISCLOSURE REQUIREMENTS IN FUNDRAISING RECEIPTS/ACKNOWLEDGMENTS

Do you issue receipts for contributions? Donors who itemize their taxes and wish to claim a deduction for a cash contribution must have a bank record (cancelled check or bank statement) or written communication from the charity (receipt or other acknowledgement). There is no minimum threshold on the amount of the gift that requires written substantiation as in the past. This new law is in effect for all contributions made in tax years beginning August 17, 2006 and later.

For contributions of \$250 or more, however, a cancelled check or bank statement alone is not enough. For these larger donation amounts a receipt or written acknowledgment from the charity is required. The law does not specify any particular form for the receipt, but certainly the document should include the name and address of the donor, and the amount of the donation. Many nonprofits issue receipts in the form of acknowledgment or thank you letters. In 2002, the IRS began accepting electronic receipts as a valid method to acknowledge a gift to a public charity.

- All receipts should include the Secretary of State's disclosure statement** -- Under Maryland law, all receipts in the state must include a Secretary of State disclosure statement notifying the public that

current financial statements for the nonprofit are available upon request by contacting the organization or the Secretary of State's office. The disclosure statement itself can be stated in a variety of ways.

Sample statement that should be included on all fundraising communications (including solicitations, pledge cards, and receipts):

A copy of our current financial statement is available upon request by contacting (name of organization) at (address and telephone number of organization).

Documents and information submitted to the State of Maryland under the Maryland Charitable Solicitations Act are available from the Office of the Secretary of State for the cost of copying and postage."

- Issue receipts where the donor does not receive anything of value in return for his/her contribution**

Sample Text to be Included in Receipt/Letter Acknowledging donations of \$250 or more where the donor does not receive anything of value in return for his/her contribution:

Thank you for your contribution of \$250 on [date]. You should retain this receipt/letter in your records for tax purposes. As you may be aware, the IRS no longer will accept a canceled check as substantiation of a charitable contribution of \$250 or more.

[Select one]:

This letter further serves to verify that you did not receive anything of value in exchange for your contribution. Therefore, the entire amount of your donation is tax-deductible.

OR

This letter further serves to verify that the items you received in exchange for your donation were insubstantial under IRS guidelines. Therefore, the entire amount of your donation is tax-deductible.

The full amount of the donations may be tax-deductible if the item you provide to the donor is considered to be of insubstantial market value. See the previous section, DISCLOSE TO DONORS HOW MUCH OF THEIR CONTRIBUTIONS ARE DEDUCTIBLE for more information on gifts of insubstantial value.

- Issue receipts where the donor gives a non-cash or in-kind donation --** Many nonprofit solicit and receive in-kind gifts each year. Some examples include: computer equipment, furniture, cars, and clothing. In tax years beginning after August 17, 2006 or later, donors are generally only able to take a deduction for charitable contributions of clothing or household items if they are in good used condition or better. Donation of a single item of clothing or household property that is not in good used condition or better is only allowed if the claimed value is \$500 or more and the value is substantiated by an appraisal from a qualified appraiser.

A receipt is required for non-cash donations with a value estimated to be \$250 or more. While not required, if the value of the in-kind gifts have an estimated value of less than \$250, it is a good idea to provide a receipt or acknowledgment anyway so that the donor has some proof that the gift was given. However, it is advisable to prepare a receipt that merely describes the donated property instead of attempting to place a value on it. The donor is responsible for valuing the property him/herself.

Sample Text for Receipt/Letter Acknowledging donation of non-cash or in-kind donation
Thank you for your donation of a Hewlett Packard Desk Jet 500 printer. The Internal Revenue Code prohibits our organization from placing a value on your donated gift. ABC Nonprofit is a 501(c)(3) tax-exempt organization. No goods or services were provided by ABC Nonprofit in return for the contribution. Your contribution is deductible to the fullest extent allowed by law. You should retain this receipt for tax purposes.

If your organization receives an in-kind gift, which you estimate has a value of over \$5,000 (i.e., automobile, boat), the donor must file an IRS Form 8283, and the donor needs to get an independent appraisal of the gift. Then, if your organization sells all or part of the donated good within 2 years, your organization must report its sale to the IRS on form 8282.

- **Issue receipts where the donor receives goods or services** -- When an organization provides donors with goods or services in return for contributions, the organization should first determine whether a receipt is required. First a charity should subtract the value of any goods or services that were provided to the donor from the amount of the donation. For example, if a donor made a gift of \$275 and in exchange received goods or services valued at \$50, then the deductible portion of the gift is only \$225 and the receipt requirement is not triggered. That said, it is helpful to donors to provide a receipt that outlines the deductibility of a gift even when not legally mandated. See the previous section, **DISCLOSE TO DONORS HOW MUCH OF THEIR CONTRIBUTION IS DEDUCTIBLE** for more information.

Sample Text for Receipt/Letter Acknowledging donations where the donor receives something of value in return for his/her contribution:

Thank you for your donation of \$300.00 for the ABC Nonprofit's Annual Gala Celebration. ABC Nonprofit is a 501(c)(3) tax-exempt organization. This letter further serves to verify that you received dinner and entertainment, which had a fair market value of \$70.00. Therefore, only \$230.00 of your donation is tax-deductible).

- **Substantiate contributions made by payroll deductions** -- Special procedures for substantiating charitable contributions are applicable when a contribution is made through a workplace campaign. When contributions are withheld from a taxpayer's wages and payment is made by the taxpayer's employer to a charitable organization, substantiation of the contribution can be made through a combination of two documents:

(1) a pay stub, Form W-2, or other document furnished by the taxpayer's employer that documents the amount withheld from the taxpayer's wages,

AND

(2) a pledge card or other document (receipt/letter) prepared by the organization that states the organization did not provide any goods or services as whole or partial consideration for any contributions made by payroll deduction. (The donor did not receive anything of value for their contribution.)

NOTE: Each payment made by payroll deduction is treated as a separate payment for purposes of applying the \$250.00 threshold.

DISCLOSURE REQUIREMENTS REGARDING FINANCIAL DOCUMENTS THAT MUST BE PROVIDED TO A MEMBER OF THE PUBLIC UPON REQUEST

State of Maryland Public Disclosure Requirements for Financial Documents

When a person, donor or otherwise, requests a copy of your organization's Financial Statement, you must forward it (within 30 days) after the request is made. The Financial Statement must, at a minimum, include:

- The name, address and telephone number of your organization;
- The amount of total revenue, and the amount of total revenue received from charitable contributions,
- The amounts and percentages of total revenue that were used during the preceding fiscal year for management and general expenses, fundraising expenses, and program services. For new organizations, an estimate will suffice.
- If your organization is registered with the Secretary of State's office, a statement that you are registered with the added qualification that registration is not and does not imply endorsement of any solicitation by the Secretary of State.

Your organization's Annual Report should include all of this information and can be used to meet this requirement.

Federal tax documents must be available for inspection by the public -- The following federal tax documents should be available for inspection, upon request during normal business hours, at your principal office and any regional or district office with three or more full-time employees (or the part-time equivalent). The Taxpayer's Bill of Rights enacted in 1996, also requires that you honor in-person or written requests for copies of these documents.

- The annual federal tax return, **form 990**, for the preceding three years. The copy available for public inspection should include all attachments, schedules, and the form 990-T, the Exempt Organization Business Income Tax Return (for form 990-Ts filed after August 17, 2006), except you may omit: lists of names and addresses of contributors.

- The original application for tax exempt status, **form 1023 or 1024**, with all materials submitted in support of the application.
- The IRS's determination letter issued in response to your application for tax exempt status, or any IRS letters issued in response to your annual tax return.

When providing public access to these federal tax documents:

- Documents must be provided free of charge, except that you may charge a reasonable fee for reproduction and mailing costs. You **MAY** charge \$1.00 for the first page and \$0.15 for each additional page of copying.
- You **MAY NOT** require the person making the request to tell you the reason they want to see the materials.
- In person requests for the above federal tax documents must be fulfilled on the day the request is made except in unusual circumstances. For requests made in person, copies of the documents must be provided on the day the request was made, except in "unusual circumstances" as defined by the IRS as "circumstances where fulfilling the request on the same business day causes an unreasonable burden to the tax exempt organization." In such unusual circumstances, the IRS allows the organization to provide the documents no later than the next day following the unusual circumstances or the fifth business day after the date of the request (whichever comes first). In response to written requests for the documents, nonprofits are generally required to mail the copy of the requested documents within 30 days of the receipt of the request.

While there is a limited exception to the requirement that you have the materials available at regional and branch offices, we recommend you have the materials available at any site with three or more full-time equivalent employees.

DETAILED DISCLOSURES ARE REQUIRED FOR CONTESTS, SWEEPSTAKES AND PROMOTIONS

Any fundraising program involving a contest, sweepstakes, or promotion for which a prize, or a chance to win a prize, is offered in exchange for a contribution will trigger an additional set of disclosure requirements. Because raffle tickets, lottery tickets, and contest entry fees are not deductible as charitable contributions, nonprofits should take care to avoid referring to the price of a raffle ticket as a donation or a contribution. Charities offering raffles or other games of chance should contact the appropriate county or jurisdiction to obtain permits and learn about restrictions for such activities under specific county laws.

January 6, 2012