REGULATION OF CHARITIES BY THE CALIFORNIA ATTORNEY GENERAL
AG has primary responsibility for oversight of charitable trusts and solicitations

- Including charitable corporations, unincorporated associations and charitable trustees and for-profit fundraising professionals
Overview

- Charitable Trusts Section carries out AG mandate
- Composed of
  - Legal and Audit Unit
  - Registry of Charitable Trusts
The Registry’s Role

- Manages registration and annual reporting requirements
  - Initial registration within 30 days of receiving assets
  - Annual reporting (usually 990 and RRF-1)
- Responsible for receipt and review of notices of specific transactions charitable corporations required to submit to AG,* including:

*See Corp. Code sec. 5000 et seq.
The Registry’s Role

- Sale or disposition of substantially all assets
- Voluntary dissolution
- Merger
- Conversion to mutual benefit or business corporation
- Self-dealing transactions
- Loans to directors/officers
- Sale/transfer of nonprofit hospital facilities
Transactions Requiring AG Notice or Consent*

- **Consent:**
  - Voluntary dissolution – requires AG waiver of notice
  - Conversion to mutual benefit or business corporation
  - Loans to directors and officers (with exceptions)
  - Sale or transfer of nonprofit health facility

- **20-Day Notice Only:**
  - Sale or disposition of substantially all assets
  - Merger

See Nonprofit Transactions Guide at [www.ag.ca.gov/charities](http://www.ag.ca.gov/charities)
Enforcement Program

- Investigations, audits and civil litigation
- Focus: mismanagement and diversion of charitable assets from intended use
- Multiple sources of jurisdiction
- Cases selection: developed from complaints received and review of annual filings
Stages of Enforcement

- Informal contact
- Corrective action
- Administrative subpoena
- Assurance of voluntary compliance
- Civil litigation
- Criminal charges
Attending to Governance

- CA Nonprofit Public Benefit Corporation Law governs board duties and responsibilities
- See also Parts VI and VII of the 2008 990*
- Restricted assets
  - Segregate
  - Content of solicitation

*See Guide to New Form 990 at www.ag.ca.gov/charities
Complying with Regulations of Other Government Agencies

- Local jurisdictions may regulate solicitation [see list on Resources page]
- Multi-state solicitation [information available at www.multistatefiling.org]
- SOS
- FTB
- IRS
The NIA: Amendments to Supervision Act*

- Effective January 1, 2005
- Amendments to existing law* re:
  - Charity registration
  - Charity governance
  - Charitable solicitation

The NIA: Amendments to Supervision Act

- **Applies to:**
  - Charitable organizations, including:
    - Nonprofit corporations
    - Unincorporated associations
    - Charitable trustees
  - Fundraising professionals, including:
    - Commercial fundraisers
    - Fundraising counsel
The NIA: Registration

- Effective date for initial registration with the Attorney General: within 30 days after initial receipt of property
- Registration requires a copy of governing instrument
- Property includes money and any other type of real or personal property

*See Registration Checklist at [www.ag.ca.gov/charities](http://www.ag.ca.gov/charities)
The NIA: Audit requirement

- Applies to the following entities with $2 million or more in gross revenue*
  - Nonprofit Corporations
  - Unincorporated Associations
  - Trusts

[Unless exempt from registration and reporting]

* $2 million threshold exclusive of revenue from governmental grants and contracts for services for which an accounting is required
The NIA:
FAQs re Gross Revenue

Definition

- Follow instructions for Line 12 of IRS Form 990 and Line 12, column (a) of IRS Form 990PF
- Non-cash and one-time contributions, and income from special events are included in definition.

* Additional FAQs available on the AG website
The NIA: Independent Audit Requirement

- Independent audited financial statements must be made available to the Attorney General and the public.
- Includes all statements and notes but NOT the management letter.
- No later than 9 months after close of fiscal year.
The NIA: FAQs re Independent Audit Requirement

- Audited financial statements for years prior to F/Y 2005 do not have to be released to the public.
- Extension for filing IRS informational returns does not apply to completion date for audit.
The NIA: Audit Committee Requirement

- If required to conduct independent audit
- Composition
  - Appointed by Governing Board
  - May be only one person
  - Can be non-governing board members
  - Cannot include 50% or more of members of Finance Committee
- Whether paid or unpaid, cannot include:
  - Staff members (employees of the charity)
  - President or CEO, Treasurer or CFO
The NIA: Duties and Responsibilities of the Audit Committee

- Recommend hiring and firing of CPA to the Governing Board
- Confirm that financial affairs are in order
- Review and accept/reject audit
- Approve non-audit services by CPA
The NIA: Requirement for Board Review of Executive Compensation

- Must be reviewed and approved by the governing board or authorized board committee
- Compensation review includes benefits
- Applies to all:
  - Nonprofit corporations
  - Unincorporated associations
  - Trusts

Gov. Code sec 12586(g)
The NIA: Requirement for Board Review of Executive Compensation

- Must be reviewed and approved for the following positions:
  - President or CEO
  - Treasurer or CFO
  - Or others with comparable powers and duties
The NIA: Requirement for Board Review of Executive Compensation

- Review and approval required at 3 points:
  - Initial Hiring of the Officer
  - Upon Renewal or Extension of the Employment Term
  - Modifying the Compensation

*Standard is “just and reasonable” compensation (Corp. Code sec. 5235)*
The NIA:
FAQs re Executive Compensation Review

- Review required for at-will employees on initial hiring and whenever compensation modified
- New provision does not supersede existing fiduciary duty of officers, directors and trustees under existing law
- No review required for staff paid more than president, CEO, treasurer or CFO
Commercial Fundraisers

Definition

- Any individual or entity who does the following for compensation:
  - solicits assets for charitable purposes,
  - receives or controls such solicited assets, or
  - employs any compensated person to do either

Gov.Code sec. 12599
The NIA: Notice of Intent to Solicit for CFRs

- Notice to Attorney General
  - 10 working days before the start of a solicitation campaign or event
  - *Exception* for disaster solicitations – provide notice concurrent with commencement of campaign

Gov. Code sec. 12599(h)
The NIA: Written Contract Requirements for CFR

- For every solicitation campaign or event
- Voidable unless the commercial fundraiser is registered with the Attorney General
- Must be signed by an official authorized by the Charity’s Governing Board
The NIA: Required Provisions in CFR Contracts

- The written contract must contain or state:
  - Charitable Purpose
  - Obligations of both parties
  - Fee arrangement
  - Effective, start, and termination dates
  - 5-day deposit of contributions
  - Charity control of content and frequency
  - Maximum amount to secure attendance, sponsorship or endorsement of an event
  - Cancellation rights

Gov. Code sec. 12599(i)
Definition:
A Fundraising Counsel is any individual or entity who for compensation
- Plans, manages, consults or prepares material for solicitation of assets for charitable purposes
- Does not solicit assets for charitable purposes
- Does not receive/control such assets
- Does not employ persons who solicit assets or receive/control such assets

GC sec. 12599.1
The NIA: Notice of Intent to Solicit for FRCs

- Notice to the Attorney General
  - 10 working days before the start of a solicitation campaign or event
  - Exception for Disaster Solicitations*

*Notice can be made concurrent with commencement of campaign
The NIA: Written Contract Requirements for FRCs

- For every solicitation campaign or event
- Voidable unless the fundraising counsel is registered with the Attorney General
- Must be signed by an official authorized by the Charity’s Governing Board

GC sec. 12599.1(e)
The NIA: Required Provisions in FRC Contracts

- The written contract must contain or state:
  - Charitable Purpose
  - Obligations of both parties
  - Fee arrangement
  - Effective, start, and termination dates
  - Cancellation rights
  - Charity control of content and frequency
  - Statement that fundraising counsel will not solicit, receive or control donated funds, assets or property or employ another to do so

Gov. Code sec. 12599.1(f)
The NIA:
Contract Cancellation Rights

- Applies to all fundraising professionals
- Contract voidable if CFR or FRC not registered with Attorney General
- Right to cancel for any reason w/in 10 days of execution

Gov. Code sec. 12599.3
The NIA: Specific Obligations When Fundraising

- Do not misrepresent purpose of charity or beneficiary
- Charity exercise control over fundraising activities
  - Approval of written contracts
  - Assure no coercion
- Commercial fundraisers and charities must all be registered with the Attorney General
- Transfer of funds to account controlled by charity within 5 days of receipt

Gov Code sec. 12599.6
The NIA: Prohibited Solicitation Acts

- Any violation of Govt. Code section 12580-12599.7
- Unfair or deceptive acts or fraudulent conduct
- Using any name or symbol that falsely suggests a contribution is for a particular charitable organization
- Misrepresenting that a contribution is for a charitable organization or will be used for a charitable purpose when it is not true
The NIA: Prohibited Solicitation Acts

- Representing that a person endorses a charitable solicitation unless that person has agreed to do so in writing
- Misrepresenting endorsements or characteristics of goods or services
- Representing that a charity has endorsements or affiliations it does not have
The NIA: Prohibited Solicitation Acts

- Representing that registration constitutes an endorsement or approval by the Attorney General
- Misrepresenting the net proceeds to be received by the charity
- Issuing items that can be used for display on a motor vehicle that suggest an affiliation with a group of public safety personnel
The NIA: Prohibited Solicitation Acts

- Representing that contributions solicited will be given to another charity unless that charity has given prior written consent
- Representing that event tickets will be donated for use by another person or entity unless:
  - Written commitments to accept tickets and
  - Tickets do not exceed those received from the charity or the total capacity of the event site
The NIA: Record-keeping Requirements for CFRs*

- Keep records for 10 years
- Document all revenue and expenses
  - Cash: date and amount
  - Non-cash: date, amount, name and address of donor
  - Name and address of each employee or agent involved
  - Bank account numbers, names, locations

GC sec. 12599.7

*Note: AG has 10 year s/l for charities as well.
Raffle Regulation
Overview

- A raffle is defined as a lottery
- History
- Penal Code sec. 320.5
  - Creates an exception to California law prohibiting gambling
What Is A Raffle?

- Purchase of a chance to win a prize
- Paper ticket with identifying number and detachable stub
- Drawing held to determine winner
Raffles
Limits On Who Can Conduct

- Must be an “eligible” organization*:
  - a private nonprofit organization
  - qualified to do business in CA for at least one year before raffle conducted
  - Tax exempt under specific Rev. and Tax Code sections

*does not include public schools or other government entities
Raffles
Annual Registration

- Must be registered with Attorney General prior to conducting raffle: September 1 – August 31
- Separate from registration under Government Code
- Must have confirmation letter from Registry before raffle conducted
- Each chapter of statewide organization must register separately

*Exemption*: nonprofit religious organizations, educational institutions, hospitals, BUT must comply with all other provisions of sec. 320.5
Raffles Restrictions

- 90% of gross receipts from ticket sales for each draw must either:
  - Be used by the organization conducting the raffle for its charitable or beneficial purpose
  - Or given to another eligible organization to use for its charitable or beneficial purpose
Raffles
Restrictions

- Proceeds must be used in California
- Money from sources other than tickets can be used to pay for costs
- None of the 90% restricted funds can be used to compensate a person in connection with operation of the raffle
- Cannot advertise or sell tickets on the internet
Raffles Restrictions

- Cannot use gaming machines to conduct raffles
- Cannot sell tickets or conduct raffle in a satellite wagering facility, at a racetrack or gambling establishment
- No legal entity or individual may hold financial interest in the raffle except eligible organization conducting, or receiving proceeds from, the raffle
Raffles Reporting

- Separate report for each raffle held
- Report(s) filed no later than 8/31
- Reporting requires precise financial records
  - Total funds received
  - Total expenses
  - Charitable or beneficial purpose for which proceeds used
  - Name of eligible organization receiving proceeds
Raffles
Exemption from Regulation

A raffle is exempt if:
- It involves general and indiscriminate distribution of tickets
- Tickets are offered on same terms and conditions as tickets for which donation given
- Participants are not required to pay for a chance to win

Penal Code sec. 320.5(m)
Recent Developments

- Registry automation project
- CT opt-in listserv
- New 990
- Website resources
  - Registration guide
  - Guide to submitting transactions
  - Guide for Charities
  - Forms and instructions
  - Laws and regulations
  - Model contract
  - Resources re conduct of raffles
ATTORNEY GENERAL
Contacts and Information

• Web resources: www.ag.ca.gov/charities
• Specific questions: Belinda.Johns@doj.ca.gov