

A GUIDE TO MINNESOTA'S CHARITIES LAWS

FROM THE OFFICE OF
MINNESOTA ATTORNEY GENERAL
KEITH ELLISON

www.ag.state.mn.us

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I.

INTRODUCTION

Charitable organizations, professional fundraisers, and charitable trusts are subject to regulation under the Charitable Solicitation Act, Minn. Stat. §§ 309.50-.61 (2017), and the Supervision of Charitable Trusts and Trustees Act, Minn. Stat. §§ 501B.33-.45 (2017). Minnesota-organized nonprofits are also governed by the Nonprofit Corporation Act, Minn. Stat. ch. 317A (2017), or equivalent statutes if the organization is a nonprofit limited liability company, Minn. Stat. § 322B.975 (2017).

This guide discusses parts of these and other statutes, including laws that require certain organizations to register with and provide notice to the Minnesota Attorney General’s Office. This guide is a summary of selected portions of these laws and is not comprehensive. It is the text of the laws discussed in this guide that governs, not the guide itself. Other state and federal statutes and regulations may also apply to a particular charitable organization, professional fundraiser, or charitable trust. An organization seeking legal advice about how the laws discussed in this guide apply to its activities should refer to the statutes themselves and consult a private attorney.

All forms referenced in this guide that charitable organizations, professional fundraisers, charitable trusts, and other nonprofits must file with the Attorney General’s Office are available on the Office’s website, www.ag.state.mn.us.

II.

LAWS THAT GOVERN CHARITABLE ORGANIZATIONS

The Charitable Solicitation Act, Minnesota Statutes sections 309.50-.61, governs the activities of charitable organizations that solicit cash and non-cash donations in Minnesota. The Act provides for registration, annual reporting, and supervision by the Attorney General’s Office of charitable organizations, as well as any professional fundraisers that they may hire to solicit donations on their behalves. The Act helps ensure that organizations that solicit charitable contributions are accountable to the public and properly administer, manage, and use the donations that they receive. The Charitable Solicitation Act further states the documents that charities and their fundraisers file with the Attorney General’s Office are public.¹ The public nature of these documents assists donors in making informed decisions about how to give, protects against deceptive practices and other fraud, and ensures that assets held for charitable purposes are properly administered and utilized.

CHARITABLE ORGANIZATIONS ARE REQUIRED TO REGISTER

Unless exempt, a “charitable organization” must register and file certain documents with the Attorney General’s Office before it is permitted to “solicit” any “contributions” in Minnesota.²

KEY DEFINITIONS—CHARITABLE ORGANIZATION, CONTRIBUTION, AND SOLICIT

“CHARITABLE ORGANIZATION”

Under Minnesota law, a “charitable organization” is any person, including a corporation or other entity, that solicits for any charitable, philanthropic, educational, religious, cultural, or similar public interest purpose.³ Organizations that are tax exempt under section 501(c)(3) of the Internal Revenue Code are likely charitable organizations under Minnesota law. Organizations that are tax exempt under a different subpart of section 501(c), or that are not tax exempt at all, may also still be charitable organizations, depending on the circumstances. For example, a civic league, a lobbying group, fraternal society, or chamber of commerce could be a charitable organization if it solicits contributions for a charitable purpose. Organizations whose primary purpose is to support or oppose a candidate for public office are not considered charitable organizations. For the purposes of this guide, the term “charity” is used interchangeably with “charitable organization.”

“CONTRIBUTION”

Under Minnesota law, a “contribution” is a gift of—or a promise to give in the future—anything of value to a charity.⁴ Contributions include not only money donations, but donations of non-cash items as well. Examples of common non-cash contributions to charities include cars, clothing, and other household goods. The term contribution also includes payments for merchandise or advertising if representations are made that any part of the price paid will be applied to a charitable purpose. See the section entitled “Determining Total Contributions” on page six for more information about how to calculate the total value of the contributions that a charity has received during the year (and an important exception when doing so). For the purposes of this guide, the term “donation” is used interchangeably with “contribution.”

“SOLICIT/SOLICITATION”

Under Minnesota law, “solicit” and “solicitation” are defined very broadly to mean any request, whether direct or indirect, for a contribution in connection with a claim that the contribution will be used for a charitable purpose.⁵ Mailings and flyers, written ads, and TV and radio ads requesting a donation are considered solicitations. The same is true for in-person and telephone requests for donations. Even a request to attend a concert, sporting, or similar event—or to buy a particular product or item—is considered a solicitation when made in connection with the claim that a portion of the price paid will be used for a charitable purpose.

CERTAIN CHARITABLE ORGANIZATIONS ARE EXEMPT FROM REGISTRATION

The registration requirements of the Charitable Solicitation Act generally apply to all charitable organizations.⁶ But the Act exempts certain types of organizations from registration.⁷

Charities that claim they are exempt from registering under the Charitable Solicitation Act should still be aware of three important points:

- Charities claiming to be exempt from registration must still file a Charitable Organization Exemption Form with the Attorney General’s Office.
- Some charities that are exempt from registering under the Charitable Solicitation Act but are tax-exempt under section 501(c) of the Internal Revenue Code may still need to register as charitable trusts under the Supervision of Charitable Trusts and Trustees Act, Minn. Stat. §§ 501B.33-.45. Please see the section

entitled “Laws that Govern Charitable Trusts” on page 13 of this publication, which discusses regulation of charitable trusts, for more information.

- Parts of the Charitable Solicitation Act prohibiting certain practices and mandating certain disclosures when soliciting donations apply to all charities, regardless of whether or not they are required to register.⁸

The following types of charities are exempt from registration under the Charitable Solicitation Act:

DE MINIMIS EXEMPTION

A charity is exempt from registration if:

1. it did not receive contributions totaling more than \$25,000 during the prior accounting year and it does not plan to receive contributions totaling more than \$25,000 during the upcoming year;
2. it does not utilize a professional fundraiser; and
3. its “functions and activities” are performed wholly by unpaid persons.⁹

See the section entitled “Determining Total Contributions” on page 6 of this publication for more information on how to calculate the total amount of contributions a charity has received for purposes of this exemption.

If a charity pays persons to perform services related to its “functions and activities” (i.e., services related to its governance or administration, fundraising, solicitation of contributions, representations to donors, etc.), it must register. If a charity does not pay any staff—or only pays persons for services unrelated to the performance of its functions or activities—then the charity need not register if it also satisfies the other criteria for the de minimis exemption.

- **Example 1**—A charity that only pays someone to clean its offices, clear its parking lot of snow, or operate a server that hosts its website does not pay a person engaged in performing the organization’s functions or activities.
- **Example 2**—By contrast, a charity paying a person to act as a board member or officer, to oversee or provide its charitable programming, to assist or consult in creating its solicitations, website content, or publications providing information to donors, or to engage in other similar or equivalent conduct does pay a person who performs the organization’s functions and activities.

Charities should be aware that, under this exemption, an organization that utilizes a professional fundraiser or that has paid staff performing its functions and activities is not exempt even though the charity did not receive \$25,000 in contributions during the prior year. The \$25,000 ceiling to qualify for this exemption includes donations from all sources, not merely donations received from Minnesota sources. For example, if a charity solicited \$20,000 in donations in Wisconsin and \$10,000 in donations in Minnesota it would not qualify for this exemption because total contributions exceeded \$25,000.

RELIGIOUS INSTITUTION EXEMPTION

Religious institutions that do not need to file a Form 990 federal tax return because they meet certain filing exceptions contained in portions of the Internal Revenue Code are exempt from registering.¹⁰

EDUCATIONAL INSTITUTION EXEMPTION

Certain types of educational institutions are exempt from registering.¹¹

MEMBERSHIP EXEMPTION

A charity that solicits donations only from persons who have a right to vote as a member of the organization are exempt from registering.¹² Examples may include fraternal, alumni, trade, or professional associations.

NAMED BENEFICIARY EXEMPTION

An organization that solicits donations is exempt from registering if:

1. the donations are for a person identified by name in the solicitation; and
2. the entirety of the donations are transferred to the person with no deductions; and
3. there is no restriction on how the donations are to be used.¹³

Examples may include a named person who has a medical condition or a named family who lost their home in a disaster.

PRIVATE FOUNDATION EXEMPTION

Private foundations that did not solicit contributions from more than 100 persons during the previous year are exempt from registering.¹⁴

DETERMINING TOTAL CONTRIBUTIONS

CASH CONTRIBUTIONS

As discussed above, charities receiving less than \$25,000 in total contributions may be exempt from registering with the Attorney General's Office. Money donations are the most common type of contribution, and are easy to value. Contributions to a charity from corporations and foundations, and those that are received as part of combined appeals (e.g., appeals conducted by a charitable federation), should be counted in calculating total donations. An important exception is grants received from government agencies. Government grants are excluded from the definition of "contribution,"¹⁵ and do not need to be included when determining whether a charity exceeds the \$25,000 registration threshold. The exception for government grants applies only to the process of calculating total contributions for the purposes of determining whether an organization should register with the Attorney General's Office. A charity must still, for example, report government grants as revenue on its tax return and in satisfying other reporting requirements.

NON-CASH CONTRIBUTIONS

Charities should value non-cash contributions they receive in accordance with generally accepted accounting principles ("GAAP"), unless applicable law requires them to value non-cash contributions differently. If a charity is offering goods and services to the public, Minnesota law states that the value of the contributions received is the difference between the cost to the charity of the goods and services and the price that the charity (or any person acting on its behalf) resells the goods and services.¹⁶

INITIAL REGISTRATION REQUIREMENTS FOR CHARITABLE ORGANIZATIONS

A charity that must register with the Attorney General's Office is required to file an initial registration statement on a form provided by the Office.¹⁷

Charities must attach a number of different documents when submitting their initial registration statement. The materials that must accompany the statement include the following:¹⁸

- Copies of all contracts between the charity and any professional fundraiser. If a charity enters into a contract with a professional fundraiser for the fundraiser to solicit in Minnesota after registering, a copy of the contract must be filed within seven days.
- A financial statement for the charity for the prior 12 months. See the next section of this publication discussing annual reporting for additional guidance on the nature and type of financial statement that a charity must submit, which varies by organization.
- A \$25 registration fee payable to the “State of Minnesota.” This fee may be paid electronically with a credit or debit card using the Attorney General’s Office’s website, or by check through the mail.

The statement must be executed pursuant to resolution of the charity’s board of directors and signed by two of its officers.¹⁹ A parent charitable organization supervising and controlling a subsidiary chapter, branch, or similarly affiliated charity may file an initial registration statement on behalf of the subsidiary.²⁰

ANNUAL REPORTING REQUIREMENTS FOR CHARITABLE ORGANIZATIONS

Charitable organizations that want to maintain their registration must file an annual report form and certain accompanying materials, and pay a fee, every year.²¹

CONTENTS OF ANNUAL REPORT

The contents of the annual report that charities must file with the Attorney General’s Office include the following documents:

1. Annual Report Form

A charity’s annual report form provides information to the public and the Attorney General’s Office about its operations, finances, and activities over the prior year. Charities must fully, accurately, and truthfully answer all questions contained in the form. It must be executed pursuant to a resolution of the charitable organization’s board of directors and signed by two of its officers.²²

Part of this annual report form requires charities to identify their five highest paid directors, officers, and employees if such persons receive total compensation of more than \$100,000 from the charity or from any related organization, when aggregated.²³ The term “related organization” is defined by Minnesota Statutes section 317A.011, subdivision 18, which charities should consult when completing this part of the form. This requirement applies to persons who are directors, officers, and employees of the reporting charity, but does not require highly paid employees of a related organization to be listed if they are not also a director, officer, or employee of the reporting charitable organization.

- **Example 1**—ABC Charity is affiliated with a related organization, ABC Corporation. ABC Charity’s highest paid persons are five of its officers, who are paid \$50,000 each. These same five persons are also employed by ABC Corporation, which pays them another \$150,000 each. ABC Charity would identify these officers on its annual report form and list the total compensation for each of them as \$200,000.
- **Example 2**—Same ABC Charity, ABC Corporation, and compensation as in Example 1. ABC Corporation also employs five other persons that are not directors, officers, or employees of ABC Charity and pays these five persons \$250,000 each. ABC Charity would not report these persons on its annual report form because they are not directors, officers, or employees of the charity.

2. IRS Tax or Information Return

If a charity files a federal tax or information return with the IRS, it must also file a copy of the return with the Attorney General's Office. The most common type of tax return that charities file is Form 990, with the others being Form 990-EZ, 990-N, and 990-PF. A charity must include all schedules that it submitted with its tax return when filing a copy of the return with the Attorney General's Office, except for a schedule of the charity's contributors.²⁴

- Charities that file Form 990-EZ, 990-PF, or 990-N with the IRS instead of Form 990 should file a copy of these forms with the Attorney General's Office as well.
- Charities that properly file a copy of their tax return with the Attorney General's Office as part of their annual reporting are not required to file another copy of the tax return with the Minnesota Department of Revenue.

3. Financial Statement

A charity must include with its annual report a financial statement covering its most recent fiscal year. The statement must be prepared in accordance with GAAP, and must contain a balance sheet, a statement of income and expenses, and a statement of functional expenses. It must further identify the portion of the charity's revenue that the organization allocated towards management and general expenses, program services, and fundraising.²⁵ Financial statements that do not comply with GAAP, which include those prepared on a cash basis, do not meet the requirements of the Charitable Solicitation Act and may result in a charity's registration falling into default.

The specific type of financial statement a charity must provide to the Attorney General's Office—and whether the organization is permitted to treat its federal tax return as its financial statement—varies depending on the amount and nature of the charity's revenue and the type of tax return that it filed, as follows:

- **Charities With More Than \$750,000 in Revenue.** A charity with more than \$750,000 in revenue must file an audited financial statement prepared in accordance with GAAP that has been examined by an independent certified public accountant for the purposes of expressing an opinion.²⁶ A charity with more than \$750,000 in revenue may not treat its federal tax return as its audited financial statement.²⁷
 - A charity that is a food shelf need not include the value of donated food in determining whether it has \$750,000 in revenue if the food is not resold and is redistributed at no charge.²⁸
- **Charities With Less Than \$750,000 in Revenue that File Form 990.** A charity with less than \$750,000 in revenue does not need to file an audited financial statement. If the charity files a Form 990 with the IRS, the charity may also treat its Form 990 as its financial statement if the Form 990 was prepared in accordance with GAAP.²⁹ If the charity's Form 990 was not prepared in accordance with GAAP, the charity must complete the financial section portion of the annual report form that it files with the Attorney General's Office.
- **Charities With Less Than \$750,000 in Revenue that Do Not File Form 990.** A charity with less than \$750,000 in revenue does not need to file an audited financial statement. If the charity files Form 990-EZ, 990-N, or 990-PF, the charity must complete the financial section portion of the annual report form that it files with the Attorney General's Office and may not treat its tax return as its financial statement.³⁰

4. Annual Fee

A charity must pay a \$25 fee payable to the "State of Minnesota" when it submits its annual report. This fee may be paid electronically with a credit or debit card using the Attorney General's Office's website, or by check through the mail.

PARENT-AFFILIATE FILING

If a parent charity is registered with the Attorney General's Office, it may file the annual report on behalf of any subsidiary chapter, branch, or similar affiliate charitable organization. If a parent organization files annual reports on behalf of one or more of its subsidiaries, the accounting information for each subsidiary that raises or expends more than \$25,000 may not be consolidated and must be set forth separately.³¹

DUE DATES AND EXTENSION REQUESTS

A charity's annual report is due on or before the fifteenth day of the seventh month after the close of the organization's fiscal year.³² For example, if an organization's fiscal year end is December 31, its annual report is due on July 15. Charities may request an extension of the due date to file their annual report of up to four months.³³ The easiest way to request an extension is electronically through the Attorney General's Office's website, *www.ag.state.mn.us*. Charities may also request an extension by mail. An Appendix is attached to this publication reflecting the due dates for annual reports for common fiscal year-end dates.

EFFECT OF FAILURE TO TIMELY FILE

A charity's registration ends on the day after it should have—but failed to—file its annual report.³⁴ A charity whose registration is in default is not eligible to re-register until it has properly filed all past due annual report(s).³⁵ In addition to the usual \$25 fee, charities that file their annual report late must submit a \$50 late fee.³⁶

DISCLOSURE REQUIREMENTS FOR CHARITABLE ORGANIZATIONS

Minnesota law requires charitable organizations to make certain disclosures to prospective donors when requesting a contribution.³⁷ These disclosures include notice of any professional fundraisers the charity is using, and providing prospective donors with basic information about the charity that may be helpful in deciding whether or not to contribute. The disclosures must be made by all charities soliciting donations, even if the charity is exempt from registering with the Attorney General's Office.

Prior to orally requesting a donation, or contemporaneously with a written request for a donation, a charity must clearly disclose the following information:³⁸

1. the name of the charity;
2. the location of the charity by city and state;
3. the tax deductibility of the donation; and
4. a description of the charitable program for which the solicitation campaign is being carried out; and, if different, a description of the charitable programming of the charity on whose behalf the solicitation campaign is being carried out.

If the solicitation is made by direct personal contact, this information must be disclosed prominently on a written document shown to the person being solicited. If the solicitor is requesting a donation to more than one charity, this information must be given for all charities for which a donation is being sought.³⁹

If a charity is using a professional fundraiser to solicit on its behalf, the professional fundraiser must disclose all of the above information and, in addition, disclose the name of the professional fundraiser as on file with the Attorney General's Office and that the solicitation is being made by a "professional fundraiser." These disclosures must be made in the same manner as discussed above.⁴⁰

OTHER REQUIREMENTS OF THE CHARITABLE SOLICITATION ACT

The Charitable Solicitation Act places various other requirements on charities that solicit donations in Minnesota. For example, it is unlawful for charities to engage in fraudulent, deceptive, or misleading practices in connection with any charitable solicitation, to use the name of others without written consent when soliciting, or to represent that their registration constitutes an endorsement by the State.⁴¹ Charities must also maintain accurate and detailed books and records for a minimum of three years, which are open to the Attorney General’s Office for inspection.⁴²

III. LAWS THAT GOVERN PROFESSIONAL FUNDRAISERS

The Charitable Solicitation Act, Minn. Stat. §§ 309.50-61, regulates “professional fundraisers” in addition to charitable organizations. Professional fundraisers are persons and businesses who charities hire to solicit donations on their behalf, or who advise, consult, or otherwise assist the charity in soliciting donations. Like charities, professional fundraisers are also required to register with the Attorney General’s Office.

DEFINITION OF PROFESSIONAL FUNDRAISER

Minnesota law broadly defines the term “professional fundraiser” to include any person (including a corporation or other artificial entity) who, for compensation or profit, engages in either of the following types of activities:⁴³

1. Soliciting donations for a charity, or performing for a charity any service in connection with which donations are solicited by the compensated person or by any compensated individual that the person employs to solicit; or
2. Planning, managing, advising, consulting, or preparing material for—or with respect to—another person’s solicitation of donations in Minnesota.

The first type of professional fundraiser is commonly referred to as a “soliciting” professional fundraiser. The second type is commonly referred to as a “consulting” professional fundraiser.

Bona fide employees or volunteers of the charitable organization are not considered professional fundraisers even if they solicit donations for the charity.⁴⁴ Certain licensed professionals—including lawyers, investment advisers and broker-dealers, accountants, and bankers—are not considered professional fundraisers merely because they advise a person to make a donation or provide professional services to a charity.⁴⁵ Auctioneers who do not have access to the proceeds of the auction are also not considered professional fundraisers.⁴⁶

REGISTRATION AND ANNUAL REPORTING BY PROFESSIONAL FUNDRAISERS

Professional fundraisers are required to register with the Attorney General’s Office. A professional fundraiser’s registration expires each year, and must be renewed annually by May 1.⁴⁷

The registration materials a professional fundraiser must file—both when initially registering and when re-registering annually—differ depending on whether it is a “soliciting” professional fundraiser or a “consulting” professional fundraiser. The difference between “soliciting” and “consulting” professional fundraisers is discussed above.

MATERIALS ALL PROFESSIONAL FUNDRAISERS MUST FILE

All professional fundraisers must file the following materials when registering for the first time, and when re-registering annually:

1. Registration Statement

The registration statement is a form provided by the Attorney General’s Office that must be fully, accurately, and truthfully completed.

2. Written Contract With Charity

All professional fundraisers, regardless of whether or not they solicit, must have a written contract with each charity to which they provide any type of goods or services. Each contract between a charity and a professional fundraiser must contain the following information:

- (a) a detailed description of the goods and services the professional fundraiser will be providing to the charity;
- (b) identify whether the professional fundraiser will at any time have custody of, or access to, donations made to the charity;
- (c) if the professional fundraiser is a soliciting professional fundraiser, the contract must also disclose the percentage or a reasonable estimate of the percentage of the total amount solicited that will be remitted to the charity and retained by the professional fundraiser; and
- (d) be signed by two officers of the charity.

3. Registration Fee

A registration fee of \$200 payable to the “State of Minnesota.” This fee may be paid electronically with a credit or debit card using the Attorney General’s Office’s website, or by check through the mail.

4. Bond

A professional fundraiser must file a bond of \$20,000 if it will at any time have custody of, or access to, donations made to the charity. The Attorney General’s Office provides forms on its website for use in satisfying these bonding requirements for professional fundraisers that must file a bond.

ADDITIONAL MATERIALS “SOLICITING” PROFESSIONAL FUNDRAISERS MUST FILE

In addition to the above materials, soliciting professional fundraisers must also file the following materials when registering for the first time and when re-registering annually:

5. Solicitation Notice

The solicitation notice is a form provided by the Attorney General’s Office that contains information about the professional fundraiser’s solicitation activities on behalf of a particular charitable organization. The charity on whose behalf the professional fundraiser is acting must certify that the solicitation notice and accompanying material are true and complete.

- A professional fundraiser soliciting for more than one charity must file a solicitation notice for each charity on whose behalf it is soliciting.
- The requirement to file a solicitation notice is not limited to professional fundraisers who have custody of, or access to, donations.

6. Solicitation Campaign Financial Report

A solicitation campaign financial report is a form provided by the Attorney General’s Office. Professional fundraisers must file a solicitation campaign financial report for every charity for which they solicited in Minnesota during the previous year. The report must be filed within 90 days after the completion of a campaign, and within 90 days following the anniversary of the commencement of a campaign lasting more than one year. The truthfulness and accuracy of each campaign financial report must be certified, under oath, by both the professional fundraiser and the charity.

- The requirement to file a solicitation campaign financial report is not limited to professional fundraisers who have custody of, or access to, donations.

EFFECT OF FAILURE TO TIMELY FILE

The registration of professional fundraisers that fail to submit their registration materials expires on May 1 each year. Such professional fundraisers must properly re-register and pay a late fee of \$300 before they are permitted to solicit in Minnesota again. The late fee is in addition to the \$200 registration fee.⁴⁸

DISCLOSURE REQUIREMENTS FOR SOLICITING PROFESSIONAL FUNDRAISERS

Minnesota law requires soliciting professional fundraisers to make various disclosures to prospective donors when soliciting contributions. These disclosures include providing certain information about the charity and its charitable programming, the professional fundraiser’s name as on file with the Attorney General’s Office, and that the solicitation is being conducted by a “professional fundraiser.”⁴⁹ The disclosures must be made prior to or contemporaneously with the request for a donation. See the section entitled “Disclosure Requirements for Charitable Organizations” on page 9 for additional information on the disclosures that professional fundraisers must make to prospective donors.

OTHER MINNESOTA LAWS THAT MAY APPLY TO PROFESSIONAL FUNDRAISERS

Other state and federal statutes and regulations not addressed in this publication may also govern professional fundraisers’ activities. For example, Minnesota law prohibits the use of an automatic dialing-announcing device, commonly known as “robocalls,” except under limited circumstances.⁵⁰ It is unlawful for professional fundraisers to engage in any deceptive, fraudulent, or misleading practices in connection with any charitable solicitation under the Charitable Solicitation Act.⁵¹ Such conduct may also violate Minnesota’s consumer protection laws.⁵² Various federal telemarketing statutes may apply to donations solicited over the phone as well.⁵³ Professional fundraisers must comply with all laws applicable to their conduct, not just the statutes referenced in this publication.

IV. LAWS THAT GOVERN CHARITABLE TRUSTS

LAWS THAT GOVERN CHARITABLE TRUSTS

The Minnesota Supervision of Charitable Trusts and Trustees Act (“Charitable Trust Act”), Minn. Stat. §§ 501B.33-45, requires charitable trusts to register and file annual reports with the Attorney General’s Office if they fall within the scope of the law. All documents charitable trusts file with the Attorney General’s Office are public.⁵⁴ Independent of any need to register, the Charitable Trust Act imposes on trustees certain fiduciary duties to properly manage, administer, and use property held for charitable purposes, a violation of which constitutes a breach of trust.

DEFINITION OF A CHARITABLE TRUST

Under the Charitable Trust Act, a “charitable trust” is created upon the manifestation of an intent that property be used for a charitable purpose, and subjects a person or group of persons to equitable duties to deal with the property for a charitable purpose.⁵⁵ A “charitable purpose” means an actual or purported charitable, philanthropic, religious, social service, educational, or other public use or purpose.⁵⁶ Minnesota law further expressly states that the term “property” for the purposes of the Charitable Trust Act includes money derived from fees for services.⁵⁷

Simply providing money or property to an organization whose purpose is charitable usually establishes a charitable trust under Minnesota law; this remains true even if the word “trust” is not used by the donor, or the transaction is styled as a gift.⁵⁸ This principle encompasses charitable bequests in wills or similar instruments.⁵⁹ An organization indicating that it intends to hold property for a charitable purpose—for example, by so stating in its articles of organization—also creates a charitable trust.⁶⁰

REGISTRATION OF CHARITABLE TRUSTS AND EXEMPTIONS FROM REGISTERING

REGISTRATION OF CHARITABLE TRUSTS

Unless exempt, a charitable trust must register with the Attorney General’s Office if it has gross assets of \$25,000 or more at any time during the year.⁶¹ A charitable trust must register within three months of receiving gross assets worth \$25,000 or more. A charitable trust must also include with its initial registration form a copy of its articles of organization—or the instrument that created the charitable trust, if different—including any amendments. A charitable trust must also pay a \$25 fee when initially registering.⁶²

EXEMPTIONS FROM REGISTRATION

The Charitable Trust Act excludes certain charitable trusts from its registration requirements.⁶³ Charitable trusts that claim they are exempt from registering should still be aware of two important points:

- Charitable trusts claiming to be exempt from registration must still file a Charitable Trust Exemption Form with the Attorney General’s Office.
- Parts of the Charitable Trust Act imposing fiduciary duties on charitable trustees to properly manage, administer, and use property held for charitable purposes apply to all charitable trustees, regardless of whether or not the charitable trust is required to register.⁶⁴

The following charitable trusts are exempt from registering with the Attorney General’s Office under the Charitable Trust Act:⁶⁵

- Charitable trusts that properly register with the Attorney General’s Office under the Charitable Solicitation Act, Minn. Stat. §§ 309.50-.61;
- Charitable trusts administered by the United States or its political subdivisions; and
- Charitable trusts that are religious associations under Minnesota Statutes chapters 315 or 317A, or that are organized and operated for exclusively religious purposes and are administered by such an association.

There are several other exemptions from registration, but they are complicated in nature because they are tied to certain federal and Minnesota tax law provisions, or are conditioned on the nature of the beneficiary or the type of instrument creating the trust. Parties should review section 501B.36 for more detail on these other exemptions.

CHARITABLE TRUST ANNUAL FILING REQUIREMENTS

Registered charitable trusts must file an annual report with the Attorney General’s Office for each year that they had gross assets of \$25,000 or more at any time during the year.⁶⁶ A charitable trust must include with its annual report a copy of its federal tax or information return filed with the IRS (i.e., Form 990, 990-EZ, or 990-PF), including all schedules and amendments. If the charitable trust does not file a return with the IRS—or only files Form 990-N—it must file a balance sheet and a statement of income and expense for its most recent accounting year.⁶⁷ An organization that files its federal return with the Attorney General’s Office is not required to file the same information with the Minnesota Department of Revenue.⁶⁸ A charitable trust must also pay a \$25 filing fee with its annual report.⁶⁹

A charitable trust’s annual report is due on or before the fifteenth day of the fifth month after the close of the trust’s taxable year.⁷⁰ For example, if a charitable trust’s taxable year end is December 31, its annual report is due on May 15. Charitable trusts may request an extension to the due date to file their annual report of up to six months.⁷¹ The easiest way to request an extension is electronically through the Attorney General’s Office’s website, www.ag.state.mn.us. Charitable trusts may also request an extension by mail. An Appendix is attached to this publication reflecting the due dates for annual reports for common taxable year-end dates.

BREACH OF TRUST

The failure of a trustee to timely register a charitable trust with the Attorney General’s Office, to file a complete and accurate annual report, or administer and manage property held for charitable purposes in accordance with the law and consistent with fiduciary obligations, constitutes a breach of trust.⁷²

SOLICITING CHARITY V. CHARITABLE TRUST

The Charitable Trust Act is broader than the Charitable Solicitation Act because it applies to the mere holding of assets, regardless of how they were acquired. Soliciting nonprofits request contributions from donors, subjecting those nonprofits to the Charitable Solicitation Act. Soliciting nonprofits also hold donations in trust for their intended charitable purpose, which subjects to them the Charitable Trust Act. A nonprofit is therefore often both a “charitable organization” under the Charitable Solicitation Act, and a “charitable trust” under the Charitable Trust Act.

V. MINNESOTA-ORGANIZED NONPROFITS AND CHARITABLE GAMBLING

Charities and charitable trusts that incorporate in Minnesota do so under the Minnesota Nonprofit Corporation Act, Minn. Stat. ch. 317A, or, less commonly, as a nonprofit limited liability company.⁷³ A summary of the Nonprofit Corporation Act is beyond the scope of this guide, but Minnesota nonprofits should be aware of certain key statutes in the Act, including the following:

- The length of time a director may serve on a nonprofit’s board may not exceed ten years without the person being elected or appointed to a new term. There is no limit on how many terms a director may serve on a board.⁷⁴
- Nonprofit board members have various fiduciary duties imposed on them as a director of the nonprofit, including the duties of care, loyalty, obedience, and to act in the best interests of the organization, among others.⁷⁵
- Nonprofit officers, or those exercising the functions of officers, likewise have various fiduciary duties imposed on them.⁷⁶
- A nonprofit must satisfy certain criteria in order to properly transact business with a related party.⁷⁷
- A nonprofit may not lend money to a director, officer, or employee of the organization (or a related organization) unless the board of directors reasonably expects the loan to benefit the nonprofit, as opposed to the recipient of the loan.⁷⁸
- A nonprofit is required to maintain complete and accurate books and records regarding its operations and affairs, including its articles and bylaws, accounting records, voting agreements, and meeting minutes.⁷⁹

Minnesota nonprofits should review the entirety of chapter 317A and consult with a private attorney to ensure their compliance with these laws. This Office has also prepared a brochure entitled *Guide for Board Members: Fiduciary Duties of Directors of Charitable Organizations*. It discusses in more detail the roles and responsibilities of board members, and is available on the Office’s website.

The requirements imposed on nonprofits by statutes administered by the Minnesota Secretary of State and the Minnesota Gambling Control Board (for nonprofits that engage in charitable gambling) are not discussed in this guide. For more information on these matters, please contact the Minnesota Secretary of State, Retirement Systems of Minnesota Building, 60 Empire Drive, Suite 100, St. Paul, MN 55103, or at (651) 296-2803 or (877) 551-6767. For information regarding charitable gambling, please contact the Minnesota Gambling Control Board, 1711 West County Road B, Suite 300 South, Roseville, MN 55113, or at (651) 539-1900.

VI. WHEN NONPROFITS MUST PROVIDE NOTICE TO THE ATTORNEY GENERAL

Charities, charitable trusts, personal representatives, and Minnesota-organized nonprofits must give prior notice to the Attorney General's Office of certain types of intended transactions and activities pursuant to the Charitable Trust Act,⁸⁰ the Minnesota Nonprofit Corporation Act,⁸¹ the Minnesota Limited Liability Company Act,⁸² and the Uniform Prudent Management of Institutional Funds Act.⁸³

PRIOR NOTICE OF MATTERS INVOLVING CHARITABLE TRUSTS

The Charitable Trust Act, Minn. Stat. §§ 501B.33-45, requires persons to give prior notice to the Attorney General's Office of the following types of court proceedings implicating charitable trusts:⁸⁴

1. to construe the terms of an instrument with respect to a charitable trust;
2. to modify or depart from the objects or purposes of a charitable trust, including in a *cy pres* proceeding and as discussed in Minnesota Statutes section 501B.31;
3. to review an accounting of a charitable trust submitted by a trustee;
4. to liquidate or distribute the assets of a charitable trust;
5. to terminate a charitable trust; and
6. proceedings in which the interests of uncertain or indefinite charitable beneficiaries in a charitable trust may be affected.

Trustees of court-supervised charitable trusts who are required to file annual accountings with the court must also provide a copy of the accounting, including individual and combined statements, to the Attorney General's Office.⁸⁵

Minnesota law permits interested persons to a trust to enter into a nonjudicial settlement agreement regarding the trust if the settlement could be properly approved by the court.⁸⁶ Because a settlement agreement resulting from a court proceeding involving a charitable trust is not valid unless the Attorney General's Office joined the settlement or declined to participate in it,⁸⁷ parties intending to enter into a nonjudicial settlement agreement relating to a charitable trust should provide to the Office prior notice of the proposed settlement.

PRIOR NOTICE OF PROBATE MATTERS INVOLVING CHARITABLE BEQUESTS OR DEVICES

The Charitable Trust Act, Minn. Stat. §§ 501B.33-.45, requires personal representatives to give prior notice to the Attorney General's Office of the following types of probate matters involving charitable bequests or devises:⁸⁸

1. a bequest or devise for charitable purposes in excess of \$150,000;
2. a bequest or devise for a charitable purpose for which there is no named charitable beneficiary;
3. a bequest or devise to a charitable beneficiary in receivership; or
4. upon a written request served on the personal representative by a named charitable beneficiary prior to the order allowing the final account or, in unsupervised proceedings, within 30 days after service of the final account on the charitable beneficiary.

If prior notice is required, the personal representative of the estate must provide the Attorney General's Office a copy of the probate petition and the will being offered for probate.⁸⁹

PRIOR NOTICE OF A MINNESOTA NONPROFIT'S INTENT TO DISSOLVE, MERGE, CONSOLIDATE, CONVERT, OR TRANSFER ASSETS

The Minnesota Nonprofit Corporation Act, Minn. Stat. ch. 317A, requires Minnesota-organized nonprofit corporations that are tax exempt under section 501(c)(3) of the Internal Revenue Code or that hold assets for a charitable purpose to notify the Attorney General's Office prior to dissolving, merging, consolidating, converting into a different nonprofit organization, or transferring all or a substantial portion of their assets.⁹⁰ Unless the time period is waived, the nonprofit must then wait 45 days before consummating the intended transaction.⁹¹ The same notification requirements apply to Minnesota nonprofit limited liability corporations.⁹² The Office provides a form on its website, www.ag.state.mn.us, that nonprofits should use to satisfy these notice requirements. The only exception to this notice requirement is if the transaction is a merger with, consolidation or conversion into, or transfer of assets to another organization tax exempt under section 501(c)(3).⁹³ Corporations excepted from this requirement must still provide a copy of the certificate of merger, consolidation and incorporation, or conversion to the Office.⁹⁴

NOTICE UNDER UPMIFA

As discussed further in the next section, the Uniform Prudent Management of Institutional Funds Act requires prior notice to the Attorney General's Office of any proceeding seeking to modify or release a restriction on an institutional fund.⁹⁵

VII. UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT

The Uniform Prudent Management of Institutional Funds Act (“UPMIFA”), Minn. Stat. §§ 309.73-.77, provides standards and procedures for charities managing institutional funds.

KEY DEFINITIONS

An “institution” is an entity operated exclusively for charitable purposes, a government entity to the extent it holds funds for a charitable purpose, and certain types of trusts.⁹⁶ With certain exceptions, UPMIFA defines an “institutional fund” as a fund held by an institution exclusively for charitable purposes.⁹⁷ Institutional funds do not include “program-related assets,” which is an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.⁹⁸ An institutional fund is typically created when a donor provides a donation or grant to an institution, but restricts the institution to using the funds for a particular charitable purpose. Examples include endowments, scholarship funds, and restricted-use gifts to institutions like universities or health care systems.

MANAGING INSTITUTIONAL FUNDS

UPMIFA requires institutions to honor restrictions placed by donors on institutional funds, and to manage institutional funds in good faith and with the care of an ordinarily prudent person in a like position. The law provides specific standards to help guide institutions when managing and investing institutional funds.⁹⁹

MODIFYING INSTITUTIONAL FUND RESTRICTIONS

UPMIFA establishes procedures for institutions that want to release or modify donor restrictions placed on the management, investment, or charitable purpose of an institutional fund. An institution may seek written consent from the donor to release or modify such a restriction, or it may seek court permission.¹⁰⁰ UPMIFA requires prior notice to the Attorney General’s Office of any such court proceedings. UPMIFA also provides an alternative procedure to release or modify fund restrictions without donor consent or court involvement. Under this alternative procedure, an institution may, 60 days after providing notice to the Attorney General’s Office, release or modify a restriction on an institutional fund if the fund has a total value of less than \$50,000, and is more than 20 years old, and the institution uses the remaining assets consistent with the donor’s charitable purpose.¹⁰¹

APPENDIX

APPENDIX

SOLICITING CHARITY DUE DATES FOR FILING ANNUAL REPORTS

Accounting Year End	Due Date	Due Date With Requested Extension
January 31	August 15	December 15
February 28	September 15	January 15
March 31	October 15	February 15
April 30	November 15	March 15
May 31	December 15	April 15
June 30	January 15	May 15
July 31	February 15	June 15
August 31	March 15	July 15
September 30	April 15	August 15
October 31	May 15	September 15
November 30	June 15	October 15
December 31	July 15	November 15

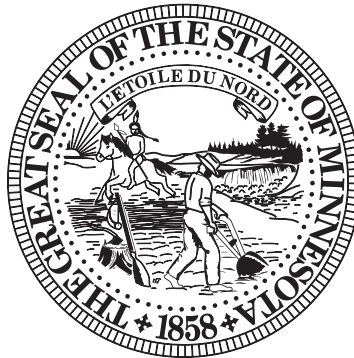
CHARITABLE TRUST DUE DATES FOR FILING ANNUAL REPORTS

Accounting Year End	Due Date	Due Date With Requested Extension
January 31	June 15	December 15
February 28	July 15	January 15
March 31	August 15	February 15
April 30	September 15	March 15
May 31	October 15	April 15
June 30	November 15	May 15
July 31	December 15	June 15
August 31	January 15	July 15
September 30	February 15	August 15
October 31	March 15	September 15
November 30	April 15	October 15
December 31	May 15	November 15

STATUTORY REFERENCES

- 1 Minn. Stat. § 309.54, subd. 1.
- 2 Minn. Stat. § 309.52, subd. 1.
- 3 Minn. Stat. § 309.50, subd. 4.
- 4 Minn. Stat. § 309.50, subd. 5.
- 5 Minn. Stat. § 309.54, subd. 10.
- 6 Minn. Stat. § 309.52, subd. 1.
- 7 Minn. Stat. § 309.515.
- 8 Minn. Stat. §§ 309.55, 309.556.
- 9 Minn. Stat. § 309.515, subd. 1(a).
- 10 Minn. Stat. § 309.515, subd. 1(b).
- 11 Minn. Stat. § 309.515, subd. 1(c).
- 12 Minn. Stat. § 309.515, subd. 1(d).
- 13 Minn. Stat. § 309.515, subd. 1(e).
- 14 Minn. Stat. § 309.515, subd. 1(f).
- 15 Minn. Stat. § 309.50, subd. 5.
- 16 Minn. Stat. § 309.50, subd. 5.
- 17 Minn. Stat. § 309.52, subd. 1.
- 18 Minn. Stat. § 309.52, subds. 1(m), 2.
- 19 Minn. Stat. § 309.52, subd. 3.
- 20 Minn. Stat. § 309.52, subd. 4.
- 21 Minn. Stat. § 309.53.
- 22 Minn. Stat. § 309.53, subds. 1, 2.
- 23 Minn. Stat. § 309.53, subd. 3(i).
- 24 Minn. Stat. § 309.53, subd. 2.
- 25 Minn. Stat. § 309.53, subd. 3.
- 26 Minn. Stat. § 309.53, subd. 3.
- 27 Minn. Stat. § 309.53, subds. 3, 3a.
- 28 Minn. Stat. § 309.53, subd. 3.
- 29 Minn. Stat. § 309.53, subds. 3, 3a.
- 30 Minn. Stat. § 309.53, subds. 3, 3a.
- 31 Minn. Stat. § 309.53, subd. 4.
- 32 Minn. Stat. § 309.53, subd. 1.
- 33 Minn. Stat. § 309.53, subd. 1.
- 34 Minn. Stat. § 309.52, subd. 7.
- 35 Minn. Stat. § 309.52, subd. 7.
- 36 Minn. Stat. § 309.53, subds. 2, 8.
- 37 Minn. Stat. § 309.556.
- 38 Minn. Stat. § 309.556, subd. 1.
- 39 Minn. Stat. § 309.556, subd. 1.
- 40 Minn. Stat. § 309.556, subd. 2.
- 41 Minn. Stat. § 309.55, subds. 1, 3, 5.
- 42 Minn. Stat. § 309.54, subds. 2, 3.
- 43 Minn. Stat. § 309.50, subd. 6.
- 44 Minn. Stat. § 309.50, subd. 6.
- 45 Minn. Stat. § 309.50, subd. 6.
- 46 Minn. Stat. § 309.515, subd. 1(g).
- 47 Minn. Stat. § 309.531.
- 48 Minn. Stat. § 309.531.
- 49 Minn. Stat. § 309.556.
- 50 Minn. Stat. § 325E.27.
- 51 Minn. Stat. § 309.55, subd. 5.
- 52 Minn. Stat. §§ 325D.44, 325F.67, 325F.69.
- 53 16 C.F.R. pt. 310.
- 54 Minn. Stat. § 501B.39.
- 55 Minn. Stat. § 501B.35, subd. 3.
- 56 Minn. Stat. § 501B.35, subd. 2.
- 57 Minn. Stat. § 501B.35, subd. 3.
- 58 *In re Quinlan's Estate*, 45 N.W.2d 807 (Minn. 1951); *see also* Minn. Stat. § 501B.31.
- 59 *In re Munson's Estate*, 57 N.W.2d 22 (Minn. 1953).
- 60 Restatement (Second) of Trusts § 349.
- 61 Minn. Stat. § 501B.36.
- 62 Minn. Stat. § 501B.37, subds. 2, 3.
- 63 Minn. Stat. § 501B.36.
- 64 Minn. Stat. § 501B.41, subd. 6.
- 65 Minn. Stat. § 501B.36.
- 66 Minn. Stat. § 501B.38.
- 67 Minn. Stat. § 501B.38, subd. 1.
- 68 Minn. Stat. § 501B.38, subd. 1a.
- 69 Minn. Stat. § 501B.38, subd. 3.
- 70 Minn. Stat. § 501B.38, subd. 1a.
- 71 Minn. Stat. § 501B.38, subd. 1a.
- 72 Minn. Stat. § 501B.41, subd. 6.
- 73 Minn. Stat. § 322B.975.
- 74 Minn. Stat. § 317A.207.
- 75 Minn. Stat. § 317A.251.
- 76 Minn. Stat. § 317A.361.
- 77 Minn. Stat. § 317A.255.
- 78 Minn. Stat. § 317A.501.
- 79 Minn. Stat. § 317A.461.
- 80 Minn. Stat. § 501B.41.

- 81 Minn. Stat. § 317A.811.
- 82 Minn. Stat. § 322B.975.
- 83 Minn. Stat. § 309.755.
- 84 Minn. Stat. §§ 501B.31, .41.
- 85 Minn. Stat. § 501C.0205.
- 86 Minn. Stat. § 501C.0111.
- 87 Minn. Stat. § 501B.41, subd. 4.
- 88 Minn. Stat. § 501B.41, subd. 5.
- 89 Minn. Stat. § 501B.41, subd. 5.
- 90 Minn. Stat. § 317A.811, subd. 1.
- 91 Minn. Stat. § 317A.811, subd. 2.
- 92 Minn. Stat. § 322B.975, subd. 6.
- 93 Minn. Stat. § 317A.811, subd. 6.
- 94 Minn. Stat. § 317A.811, subd. 6.
- 95 Minn. Stat. § 309.755(b).
- 96 Minn. Stat. § 309.735(4).
- 97 Minn. Stat. § 309.735(5).
- 98 Minn. Stat. § 309.735(7).
- 99 Minn. Stat. § 309.74.
- 100 Minn. Stat. § 309.755(a)-(b).
- 101 Minn. Stat. § 309.755(c).



Charities, charitable trusts, and professional fundraisers with questions, or that wish to access registration and reporting forms, should visit the Attorney General's Office's website at www.ag.state.mn.us. The website has additional information on the topics discussed in this guide. Organizations may also call the Attorney General's Office with questions at (651) 296-3353 (Twin Cities Calling Area), (800) 657-3787 (Outside the Twin Cities), or through the Minnesota Relay Service at (800) 627-3529. Written inquiries and other submissions should be directed as follows:

Minnesota Attorney General's Office

Charities Division

445 Minnesota Street, Suite 1200

St. Paul, MN 55101

www.ag.state.mn.us/charity