

March 25, 2019

Legal Alert: New York State Changes to the Required Disclosure Language in Charitable Solicitations

The language and disclosure requirements for charitable solicitations, including online and direct mail, event invitations, telemarketing, grant requests, and other fundraising campaigns, vary from state-to-state. This alert focuses on solicitations in New York State, which are governed by Article 7-a of the New York State Executive Law, with enforcement carried out by the Charities Bureau of the New York State Office of Attorney General.

Effective March 21, 2019, there are two new “disclosure” requirements for charitable solicitations in New York State. While the changes are modest and technical, they will require charities to review and modify some of the language contained in their solicitations in order to be in full compliance.¹

What has not changed

Registration: Charities must register with the Attorney General’s office before soliciting contributions from any person in New York State, unless exempt.² In addition, charities that own money or property in the state may have to register under Section 8-1.4 of New York Estate Powers and Trusts Law. Both registrations can be done at the same time, as a Dual registrant.

The Attorney General’s office maintains a searchable, [online charities registry](#) of more than 50,000 nonprofit entities required to register in New York. Nonprofit entities that are exempt from registration, such as religious entities, may choose to contact the Charities Bureau to claim their exemption, in which case they are listed as “exempt” on the registry.

Financial statements: Article 7-A and Dual registrants must file their annual financial statement -- NY Form CHAR500 (Annual Filing for Charitable Organizations) with IRS Form 990 – and annual filing fee within 4.5 months after the close of their fiscal years.³

Existing disclosures: In addition, New York has rules requiring that certain statements be included when soliciting contributions. Any charitable solicitation of a person, by or on behalf of a charitable organization which is required to file an annual financial report pursuant to Article 7-A, must state that a copy of the latest annual report may be obtained, upon request, from the organization or from the Office of the Attorney General. It must provide relevant addresses.⁴

Section 171-A-3 defines “person” as: “Any individual, organization, group, association, partnership, corporation, or any combination of them.”

¹ New York Assembly [Bill 2688](#), as signed by the Governor, adds these requirements by amending subdivisions 1, 2 and 3 of Section 174-b of the Executive Law, which is part of Article 7-a.

² Executive Law §172-1.

³ Executive Law §172, 172-a, 172-b.

⁴ Executive Law §174.

For written solicitations, the disclosure statement must be conspicuous and use no smaller than ten point bold font or, alternatively, no smaller than the size print used for the most number of words in the statements, with an exception for donated advertisements.⁵

New York law also requires the solicitation to include a clear description of the programs and activities for which requested funds will be expended or a statement that, upon request, a person can obtain such description from the organization.⁶

What has changed

The statutory changes effective March 21, 2019 add two new disclosure requirements for registered charities.

First, solicitations must state that a person may obtain a copy of the charity's most recently filed financial report from the "**charities registry on the attorney general's website.**" This is in addition to the existing requirement stating that a copy is available from the organization or the attorney general by written request.⁷

Second, solicitations made by or on behalf of a charity shall include "**a statement identifying the website and telephone number of the New York State Office of the Attorney General where an individual can receive information on charitable organizations.**"⁸

The website address is www.charitiesnys.com. Please be aware that the Charities Bureau of the New York State Attorney General's Office moved in 2018 to a new location in New York City. Therefore, references in solicitations to 120 Broadway in Manhattan are stale. The new address is: New York State Attorney General, Charities Bureau, 28 Liberty Street, New York, NY 10005.

Example of revised solicitation disclosure language:

A copy of our most recently filed financial report is available from the Charities Registry on the New York State Attorney General's website (www.charitiesnys.com) or, upon request, by contacting the New York State Attorney General, Charities Bureau, 28 Liberty Street, New York, NY 10005, or us at CHARITY'S ADDRESS. You also may obtain information on charitable organizations from the New York State Office of the Attorney General at www.charitiesnys.com or (212) 416-8401.

Commentary

Historically, when the specific disclosure rules change, it can take a couple of years for many charities to become fully aware and comply. Legal alerts like this can help, as can a charity's periodic review of its form solicitation materials.

Keep in mind these new disclosures apply to solicitations conducted by a charity as well as those made by a professional fundraiser or professional solicitor on the charity's behalf.

⁵ Executive Law §174.

⁶ Executive Law §174.

⁷ Executive Law §174-1.

⁸ Executive Law §174-2-B, §174-3-C.

While the added language will make it harder for some charities to fit what they want to say in a solicitation of limited size, the changes appear to be in the spirit of encouraging paper reduction and better public access to information.

The rules prohibiting misleading solicitations still apply. The statute prohibits solicitations that involve making false statements, engaging in fraud or illegal activity, failing to use funds in a manner substantially consistent with the solicitation, or using a name or symbol similar to one used by another charity that would confuse or mislead the public.

For charities with questions for the Charities Bureau, check www.charitiesnys.com or contact the Charities Bureau directly at (212) 416-8401 or charities.bureau@ag.ny.gov.

This alert is meant to provide general information only, not legal advice. If you have questions about this alert or fundraising regulation, please contact Deputy Executive Director Elizabeth Guggenheimer at (212) 219-1800 ext. 231.

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