



## **CHAR009 - Summary of Registration and Filing Requirements for Professional Fund Raisers, Professional Solicitors, Fund Raising Counsel & Commercial Co-Venturers**

Article 7-A of the Executive Law & NYCRR Title 13, Chapter V, Parts 90 - 99

<http://www.CharitiesNYS.com>

### **Important Notice:**

This Summary is intended to provide information on many of the registration and filing requirements for Professional Fund Raisers, Professional Solicitors and Fund Raising Counsel and the obligations of Commercial Co-Venturers. For additional information on registration and filing requirements pursuant to the Executive Law, registrants and potential registrants are encouraged to familiarize themselves with §171-a through §177 of Article 7-A of the Executive Law and NYCRR Title 13, Chapter V, Parts 90 - 99.

### **I. Professional Fund Raiser (PFR) - See §§171-a, Executive Law**

Any person who directly or indirectly, by contract, including but not limited to sub-contract, letter or other agreement or other engagement on any basis, for compensation or other consideration (a) plans, manages, conducts, carries on or assists in connection with a charitable solicitation or who employs or otherwise engages on any basis another person to solicit from persons in this state for or on behalf of any charitable organization or any other person, or who engages in the business of, or holds himself out to persons in this state as independently engaged in the business of soliciting for such purpose; (b) solicits on behalf of a charitable organization or any other person; or (c) who advertises that the purchase or use of goods, services, entertainment or any other thing of value will benefit a charitable organization but is not a commercial co-venturer. A bona fide director, trustee, officer, volunteer, or employee of a charitable organization or a fund raising counsel shall not be deemed a PFR.

### **Required Professional Fund Raiser Registration Filing Documents**

- Form **CHAR013** (with appropriate attachments)
- Form **CHAR015** Annual Bond (for Professional Fund Raisers) with original Power of Attorney form for the Surety's Attorney-in-Fact
- \$800 mandatory annual registration fee (All fees should be submitted in a single check or money order, payable to "New York State Department of Law".)
- Copies of all current contracts with charitable organizations required to be registered under the statute that were not previously filed
- Copies of all organizing documents, amendments to organizing documents, certificates of assumed name and "doing business as" (d/b/a) certificates that were not previously filed
- Copies of all delinquent Professional Fund Raiser Interim/Closing Statements (Form **CHAR037**)

### **Registration Period**

A Professional Fund Raiser's registration expires one year from the date of registration or re-registration. If continuing to act as a Professional Fund Raiser, the Registrant must submit the required re-registration documents each year prior to registration expiration.

### **Closing Statements - See §173-a, Executive Law**

Within 90 days after the termination of a contract, the PFR must file a closing statement, Form **CHAR037**, signed under penalties for perjury by all parties to the contract. If the contract term is longer than one year, an interim statement, Form **CHAR037**, signed under penalties for perjury by all parties to the contract, must be filed within 15 months of the execution of the contract and annually thereafter. For additional information, please refer to Form **CHAR037**.

### **Contracts, Solicitation Disclosures and Books & Records**

See appropriate sections on pages 3 and 4.

**II. Professional Solicitor (PS) - See §§171-a, Executive Law**

Any person who is employed or retained for compensation by a professional fund raiser to solicit contributions for charitable purposes or for the purposes of any law enforcement support organization from persons in this state.

**Required Professional Solicitor Registration Filing Documents**

- Form **CHAR012** (with appropriate attachments)
- \$80 mandatory annual registration fee (All fees should be submitted in a single check or money order, payable to "New York State Department of Law".)

**Registration Period**

A Professional Solicitor's registration expires one year from the date of registration or re-registration. If continuing to act as a Professional Solicitor, the Registrant must submit the required re-registration documents each year prior to registration expiration.

**Contracts, Solicitation Disclosures and Books & Records**

*See appropriate sections on pages 3 and 4.*

**III. Fund Raising Counsel (FRC) - See §§171-a, Executive Law**

Any person who for compensation consults with a charitable organization or who plans, manages, advises or assists with respect to the solicitation in this state of contributions for or on behalf of a charitable organization, but who does not have access to contributions or other receipts from a solicitation or authority to pay expenses associated with a solicitation and who does not solicit. A bona fide officer, volunteer, or employee of a charitable organization or an attorney at law retained by a charitable organization, shall not be deemed a FRC.

**Required Fund Raising Counsel Registration Filing Documents**

- Form **CHAR014** (with appropriate attachments)
- \$800 mandatory annual registration fee (All fees should be submitted in a single check or money order, payable to "New York State Department of Law".)
- Copies of all current contracts with charitable organizations required to be registered under the statute that were not previously filed
- Copies of all organizing documents, amendments to organizing documents, certificates of assumed name and "doing business as" (d/b/a) certificates that were not previously filed

**Registration Period**

A Fund Raising Counsel's registration expires one year from the date of registration or re-registration. If continuing to act as a Fund Raising Counsel, the Registrant must submit the required re-registration documents each year prior to registration expiration.

**Contracts, Solicitation Disclosures and Books & Records**

*See appropriate sections on pages 3 and 4.*

**IV. Commercial Co-Venturer(CCV) - See §§171-a, Executive Law**

Any person who for profit is regularly and primarily engaged in trade or commerce other than in connection with the raising of funds or any other thing of value for a charitable organization and who advertises that the purchase or use of goods, services, entertainment, or any other thing of value will benefit a charitable organization.

**Required Commercial Co-Venturer Registration Filing Documents**

None

**Final Accounting - See §§173-a, Executive Law**

Within 90 days after the termination of a sales promotion advertised to benefit a charitable organization, a CCV must provide the charitable organization with an accounting stating the number of items sold, the dollar amount of each sale and the amount paid or to be paid to the charitable organization. In the event that any such sales promotion is longer than a one year period, the CCV shall provide the charitable organization with an interim report at least annually.

Any charitable organization that enters into a contract with a CCV must file a statement with the organization's next annual financial report, on forms prescribed by the attorney general, signed by an officer of the organization under penalties for perjury, that includes: (a) a list of the names and addresses of all CCVs authorized to use its name during the year covered by the financial report; (b) a statement of the financial terms and conditions of each contract and (c) whether the CCV has provided an accounting as prescribed.

**Contracts and Books & Records**

*See appropriate sections on page 3.*

**V. Contracts - See §§172-d, 173-a, 174, 174-a, Executive Law**

- No person shall enter into any contract or agreement with or otherwise employ or engage a Professional Fund Raiser (PFR), Fund Raising Counsel (FRC) or Professional Solicitor (PS) required to be registered under NYS Executive Law unless such PFR/FRC/PS has provided to such person a statement, signed under penalties for perjury, that it is registered with the Attorney General's Charities Bureau and in compliance with all filing requirements of the Executive Law.
- No person shall enter into any contract or agreement, employment or engagement to raise funds or conduct any fund raising activities for any charitable organization required to be registered under NYS Executive Law §172 unless such charitable organization is registered with the Attorney General's Charities Bureau and in compliance with all filing requirements of the Executive Law.
- No person shall act as a PFR/FRC/CCV (Commercial Co-venturer) before that PFR/FRC/CCV has a written contract with the charitable organization, or other person benefitting from the services. A PFR/FRC must file with the Attorney General's Charities Bureau, within 10 days of its execution, a copy of each contract entered into between the PFR/FRC and any charitable organization required to be registered under NYS Executive Law §172. At the time of the filing, the PFR/FRC must certify, under penalties for perjury, that the contract being filed is a true and correct copy of the original executed contract. For additional information, please refer to Form **CHAR016A**.
- Whenever a charitable organization contracts with a PFR/FRC, the organization has the right to cancel the contract without cost, penalty, or liability for a period of 15 days following the date on which the contract is filed by the PFR/FRC with the Attorney General's Charities Bureau, regardless of the execution date of the contract. In order to cancel during this period, the organization must mail or hand deliver a notice of cancellation to the PFR/FRC and send a copy to the Attorney General's Charities Bureau. Such notice is sufficient if it indicates that the charitable organization does not intend to be bound by the contract. For additional information, please refer to Form **CHAR016B**.
- The failure of a PFR/FRC to discontinue solicitation or any other fund raising activity upon receipt of a notice of cancellation in accordance with the provisions of Article 7-A of the Executive Law within fifteen days of the cancellation of the contract shall be deemed to be a continuing fraud upon the people of New York State.
- Every contract between a charitable organization and a PFR/FRC must contain:
  - the names, addresses and NYS Attorney General's Charities Bureau identification numbers of all parties to the contract;
  - a specific beginning and ending date for the contract;
  - a clear narrative description of the services to be performed by the PFR/FRC;
  - a clear statement of the financial arrangement between the charitable organization and the PFR/FRC;
  - signatures and dates of signature of all parties to the contract; and
  - a statement of the charitable organization's statutory right to cancel the contract; the period during which the contract may be canceled; the address to which the notice of cancellation must be sent and the address of the Attorney General's Charities Bureau to which a duplicate must be sent.
- Every contract between a PFR and a charitable organization shall contain, or shall be deemed to contain, a provision that within 5 days of receipt by the PFR or other person, the gross revenue received from a solicitation conducted by that PFR shall be deposited in a bank account under the exclusive control of the charitable organization.
- No contract filing should include Federal ID numbers or Social Security numbers of the PFR/FRC or the charitable organization or any representative of the PFR/FRC or charitable organization.
- No person shall act as a sub-contractor on behalf of another PFR prior to obtaining a written contract with such PFR and written consent from the charitable organization on whose behalf fund raising activities are to be conducted pursuant to such contract. A sub-contractor must file with the Attorney General's Charities Bureau, within 10 days of execution, a copy of such written consent attached to a copy of the contract between the subcontractor and the other PFR.
- No services shall be performed pursuant to any contract required to be filed by a PFR/FRC if, within fifteen days of filing, the Attorney General's Charities Bureau notifies the PFR/FRC and the charitable organization of any deficiencies in the contract and/or in the registration or filings of the PFR/FRC or the charitable organization.
- No services shall be performed under a contract required to be filed by a PFR until the PFR shall have received an acknowledgement from the Attorney General's Charities Bureau or such contract shall have been on file with the Attorney General's Charities Bureau for at least fifteen days, whichever is shorter.

**VI. Books and Records - See §173, Executive Law**

- A PFR/FRC/CCV must maintain accurate and current books and records of all activities conducted under any contract with a charitable organization or other person benefitting from the services for a minimum of three years from the expiration date of such contract. Such books and records must be available for inspection, examination and/or audit by charitable organization and/or the Attorney General or any authorized representative at the address of the PFR/FRC/CCV.
- Within seven days of a request from a charitable organization with which it has contracted, a PFR/FRC/CCV must provide copies of all related records to that charitable organization.

**VII. Solicitation Disclosures - See §174-b, Executive Law**

- Any solicitation by any means made by or on behalf of a registered charitable organization that is required to file financial reports and that has actually filed all such reports must include a statement that upon request, a person may obtain from the charitable organization or from the Attorney General's Charities Bureau, a copy of the last financial report filed by the charitable organization with the Attorney General's Charities Bureau. Such statement must specify the address of the charitable organization and the address of the Attorney General's Charities Bureau (State of New York, Department of Law, Charities Bureau, 120 Broadway, New York, NY 10271) to which such request should be addressed. In instances where the charitable organization required to be registered has not been previously required to file an annual report with the Attorney General's Charities Bureau, the solicitation must state the date when such report will be filed.

- Any solicitation by any means by a PFR or PS on behalf of a charitable organization required to be registered with the Attorney General's Charities Bureau shall clearly and unambiguously disclose:

- the name of the PFR as on file with the Attorney General's Charities Bureau and that the solicitation is being conducted by a PFR;

- the name of the individual PS as on file with the Attorney General's Charities Bureau and that the PS is receiving compensation for conducting the solicitation.

**VII. Charitable Organizations - See §§171-a, Executive Law**

Any benevolent, philanthropic, patriotic, or eleemosynary person or one purporting to be such or law enforcement support organization as defined below.

**VIII. Law Enforcement Support Organization - See §§171-a, Executive Law**

Any organization, association, union or conference of or purporting to be of current or former law enforcement officers, including, without limitation, peace officers and police officers as defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law, sheriffs, deputy sheriffs, detectives, investigators or constables or any auxiliary or affiliate of such an organization, association, union or conference composed of one or more such organizations.

**IX. Person - See §§171-a, Executive Law**

Any individual, organization, group, association, partnership, corporation, or any combination of them.

**X. Contribution - See §§171-a, Executive Law**

The promise or grant of any money or property of any kind or value, whether or not in combination with the sale of goods, services, entertainment or any other thing of value, including a grant or other financial assistance from any agency of government, except payments by members of any organization for membership, for services or other benefit, other than the right to vote for directors or trustees, elect officers, or hold offices.

**XI. Solicit - See §§171-a, Executive Law**

To directly or indirectly make a request for a contribution, whether express or implied through any medium. A "solicitation" shall be deemed to have taken place whether or not a contribution is made. For purposes of this article, a "solicitation" or a "solicitation of contributions" includes any advertising which represents that the purchase or use of goods, services, entertainment or any other thing of value will benefit a charitable organization. Provided, however, that the printing and the mailing of a written solicitation for funds or any other thing of value to benefit a charitable organization shall not alone constitute soliciting on the part of persons who printed and mailed such solicitation if such persons do not otherwise solicit, receive or have access to contributions.