

# Disaster Fundraising In Texas

A guide to fundraising laws for individuals  
who are interested in raising or donating  
money to a Texas charity in light of  
Hurricane Harvey

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**This guide is a collaborative project of Bracewell LLP, the Houston Bar Association and Texas RioGrande Legal Aid. Special thanks goes to Theano Manolopoulou, Brian Teaff, Tony Visage, Heather Brown, Marika DaPron, Andi March, D’Ann Johnson, Ileana Riojas, Ashley Gagnon Steininger and Kay Sim for their contributions to this document.**

In light of the devastation caused by Hurricane Harvey, many people have taken it upon themselves to fundraise on behalf of nonprofit charitable organizations in good faith; however, the manner in which the fundraising is conducted can be problematic for the organization if the proper procedural steps are not taken to ensure legal compliance and to protect both the organization and the third-party fundraiser. If you're an individual or third party organization who is interested to raise or donate money to a nonprofit charitable organization, here's a few things you should know about Texas fundraising laws. Be aware that this guide is for general information only and is not intended as legal advice. This guide does not address specific tax matters, such as the deductibility of the donations for tax purposes or IRS disclosure requirements for charitable organizations. If you have any specific tax questions with respect to your fundraising efforts, you should consult with an attorney or certified public accountant.

## 1. I WISH TO MAKE A DONATION TO A CHARITABLE ORGANIZATION. WHAT SHOULD I KNOW BEFORE GIVING?

You should get information in writing from the charity before giving, including an annual report or other financial information. Do not give your credit card number out over the phone in response to a phone solicitation. Do not respond to letters that say you have pledged money unless you are certain that you did. Do not give cash. Write a check in the name of the charity, or if you are giving other property, ask for a receipt identifying the name of the donee organization, the date of the gift and a description of the property given.

Be aware of the possibility that many websites have popped up in the wake of Hurricane Harvey, as was previously the case with Hurricanes Katrina and Rita. In some cases, these sites may be attempts to defraud people affected by or concerned with Hurricane Harvey. If you wish to determine if the organization in question is a legitimate nonprofit organization, Guidestar is a good resource. You can access data on nonprofit organizations as well as reports on their financial performance on Guidestar's website at: <http://www.guidestar.org/Home.aspx/>.

Always consult an attorney or certified public accountant before making a significant gift, whether making such a gift outright, by will or by trust.

## 2. I WISH TO ORGANIZE A FUNDRAISER. WHAT LAWS GOVERN THE PROCESS OF FUNDRAISING FOR CHARITABLE ORGANIZATIONS?

There is no uniform federal law that applies across the country regulating the process of charitable solicitation. On a federal level, the USA PATRIOT Act addresses fraudulent charitable solicitations by telemarketers.

## 3. WHAT SHOULD I DO TO MAKE SURE MY FUNDRAISER COMPLIES WITH THE USA PATRIOT ACT?

If you make calls to solicit donations, you should promptly disclose that the purpose of the call is to solicit charitable contributions, donations, or gifts, and the name and mailing address of your organization. Be aware that the PATRIOT Act added charitable contributions to the definition of telemarketing in the federal criminal laws, and increased the penalty for impersonating a Red Cross member or agent from one year to five years imprisonment.

## 4. WHAT IS THE NATIONAL "DO-NOT-CALL" REGISTRY?

The National Do Not Call Registry gives consumers a choice about whether to receive telemarketing calls. It is managed by the Federal Trade Commission. If you believe that an organization may not be operating for charitable purposes, is making misleading solicitations or is ignoring requests to be placed on a "Do-Not-Call" list, contact your state Attorney General, your local consumer protection office or the Federal Trade Commission. To file a complaint or to get free information on consumer issues, visit [www.ftc.gov](http://www.ftc.gov) or call toll-free, 1-877-FTC-HELP(1- 877-382-4357); TTY: 1-866-653-4261.

## 5. DO INDIVIDUAL STATES HAVE THEIR OWN RULES ABOUT CHARITABLE FUNDRAISING?

Approximately 40 states have enacted their own charitable solicitation laws which generally require that any organization seeking to solicit the state's residents for contributions must pre-register in the state and obtain permission to proceed with the solicitation. In most states, certain organizations are specifically excluded or exempt from the registration requirements. Although most states exempt similar types of organizations, specific exemptions vary from state to state. If you plan to solicit funds over the phone in states other than Texas, you should read the individual state's laws carefully. Be aware that crowd funding can trigger registration requirements in multiple states.

## 6. DOES TEXAS HAVE ITS OWN CHARITABLE SOLICITATIONS LAW?

Texas in general does not require registration or annual reporting in connection with conducting charitable solicitation for your organization in the state. Texas does, however, have certain statutes that impact certain types of solicitation by your organization in Texas. If you are interested to conduct fundraising activities in states other than Texas, however, be aware that certain other states have registration and reporting requirements. You can find helpful information on Texas State Nonprofit Corporation Filings on the Texas Secretary of State website at: [http://www.sos.state.tx.us/corp/nonprofit\\_org.shtml](http://www.sos.state.tx.us/corp/nonprofit_org.shtml).

## 7. WHAT ABOUT TEXAS DO-NOT-CALL LEGISLATION?

The Texas Do-Not-Call Legislation does not apply to charitable organizations. It applies only to unsolicited telemarketing calls made to:

- solicit a sale of a consumer good or service;
- solicit an extension of credit for a consumer good or service; or
- obtain information that may be used to solicit a sale of a consumer good or service or to extend credit for the sale.

## 8. I WISH TO ORGANIZE A RAFFLE. DOES TEXAS HAVE ITS OWN RULES ABOUT CHARITABLE RAFFLES?

Yes. However, the Charitable Raffle Enabling Act limits the amount of raffles you can hold per year. A "qualified organization" may hold only two raffles per calendar year and only one raffle at a time with certain restrictions.

The language of the law is very technical. If you are considering holding a raffle you should check the statute to be sure the charitable organization qualifies. There are also numerous Attorney General of Texas opinions regarding both raffles and casino / poker nights. The raffle laws are available online at the Attorney General of Texas Website:

<http://www.statutes.legis.state.tx.us/Docs/OC/htm/OC.2002.htm>

## 9. HOW DO I KNOW IF MY ORGANIZATION QUALIFIES TO HOLD A RAFFLE?

In general, a qualified organization is:

- A nonprofit association organized primarily for religious purposes that has been in existence in Texas for at least 10 years;
- A nonprofit volunteer emergency medical service that does not pay its members other than nominal compensation;
- A nonprofit volunteer fire department that operates fire-fighting equipment, provides fire-fighting services, and does not pay its members other than nominal compensation;

or

- A nonprofit organization that has existed for at least three preceding years and is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; does not distribute any of its income to its members, officers or governing body; does not devote a substantial part of its activities to attempting to influence legislation; and does not participate in any political campaign.

## 10. HOW DO I KNOW IF MY RAFFLE QUALIFIES?

A raffle is defined as “the award of one or more prizes by chance at a single occasion among a single pool or group of persons who have paid or promised a thing of value for a ticket that represents a chance to win a prize.”

## 11. DO I NEED TO REGISTER OR OBTAIN A PERMIT TO HOLD A RAFFLE IN TEXAS ON BEHALF OF A CHARITABLE ORGANIZATION?

No, your organization just needs to qualify under the law. A qualified organization is not required to register with the State of Texas before conducting a raffle. Remember, however, that your organization can’t conduct more than two raffles per calendar year (see above under question 8). For raffles in states other than Texas, be aware that certain other states require special permits and allow extra time for these to be obtained.

You should consult a tax attorney or certified public accountant to determine if you need to obtain any tax permits to conduct the raffle or auction and if you have questions about potential sales tax responsibilities in each state.

## 12. WHAT ABOUT FUNDRAISING FOR LAW ENFORCEMENT OR VETERANS CAUSES?

Special rules apply to organizations that solicit for law enforcement, public safety or veterans causes in Texas. Law enforcement related organizations that engage in telephone solicitation in the State of Texas are required to file a registration statement with the Office of the Attorney General and pay a \$50 fee. If the organization retains a commercial telephone solicitor, the solicitor must post a \$50,000 surety bond with the Secretary of State. Certain veterans organizations are also required to file a registration statement with the Secretary of State and pay a fee. If the veterans organization uses a solicitor, the organization must post a surety bond with the Secretary of State.

## 13. WHAT PRIZES CAN I OFFER?

You can offer any prize except money. “Money” is defined as coins, paper currency, or a negotiable instrument that represents and is readily convertible to coins or paper currency. If the raffle organizers offer a prize which they have purchased or have given other consideration for, the value of the prize may not exceed \$50,000, or \$250,000 if the purchased prize is a residential dwelling. There is no value limit on prizes donated to the organization. Texas lottery tickets may be purchased and offered as prizes, even though the tickets' payoff may exceed \$50,000.

You must have each raffle prize in your possession or ownership or must post a bond for the full amount of the value of the prize with the county clerk of the county where the raffle will be held. Make sure to award the prize within 30 days of the date printed on the ticket. Otherwise, you are required to offer a refund.

## 14. WHAT ABOUT PROCEEDS FROM THE TICKETSALES?

Proceeds from ticket sales must be used only for the charitable purposes of the qualified organization.

## 15. WHAT INFORMATION SHOULD I INCLUDE ON THE RAFFLE TICKET?

Each raffle ticket must contain the following information:

- the name of your organization;
- the address of your organization or of a named officer of the organization;
- the ticket price;
- a general description of each prize having a value of more than \$10; and
- the date on which the raffle prize(s) will be awarded

## 16. HOW SHOULD I ADVERTISE THE RAFFLE?

Texas law contains restrictions on advertising of charitable raffles. You may not promote or advertise the charitable raffle statewide, sell or offer to sell tickets statewide, or advertise it through a medium of mass communication. However, you are allowed to use donated advertising.

If you plan to create advertising materials, you should discuss with the donee charitable organization and obtain their approval in order to use their name, logo or mission. Always fully and truthfully state the portion of the proceeds which will be donated to the donee charitable organization in all advertising, promotions, and in all contact with donors, sponsors and participants. Check with the donee organization if it requires, as a matter of policy, all promotional materials, such as advertising, letters, brochures, flyers or press releases to be submitted to them for approval prior to production.

## 17. CAN I HIRE SOMEONE TO ORGANIZE THE RAFFLE?

Be aware that in Texas, no one may be compensated directly or indirectly for organizing or conducting a raffle or for selling raffle tickets.

## 18. WHAT HAPPENS TO ORGANIZATIONS AND INDIVIDUALS THAT HOLD UNAUTHORIZED RAFFLES?

Under the Occupations Code, only raffles held according to the terms of the Charitable Raffle Enabling Act are authorized raffles. An unauthorized raffle is considered gambling under the Texas Penal Code. Conducting such a raffle is a Class A misdemeanor. Participating in an unauthorized raffle is a Class C misdemeanor.

A county attorney, district attorney or the attorney general may bring an action in state court to stop a violation or potential violation of the Charitable Raffle Enabling Act.

If you have specific questions about the law, you should consult a private attorney.

## 19. WHAT ABOUT CHARITABLE BINGO?

Charitable bingo is authorized by the Bingo Enabling Act, Chapter 2001 of the Occupations Code. and is administered by the Texas Lottery Commission. For information on charitable bingo, contact the Charitable Bingo Operations Division of the Texas Lottery Commission at [www.txbingo.org](http://www.txbingo.org).

## 20. CAN I HOLD A POKER TOURNAMENT OR CASINO NIGHT FUNDRAISER ON BEHALF OF A CHARITABLE ORGANIZATION?

Unlike raffles and bingo, there is no exception to the gambling law in Texas for nonprofits to hold poker or casino night fundraising events. The gambling law, which is part of the Penal Code, applies to nonprofits and to for profits equally. There are three parts to an activity that could make it illegal gambling:

- money or anything of value is paid to enter the game;
- the winners are decided by a game of chance; and
- prizes of value are awarded.

If all three of those conditions are met, then it's probably gambling and illegal. If the game is free to enter, then prizes of value may be awarded. If an entry fee is charged, then prizes of value may not be awarded. There are some exceptions, including certain carnival contests in which prizes with a value of less than \$25 are awarded and mechanical devices for amusement purposes in which prizes with a value of less than \$5 are awarded. If your organization is considering conducting an event involving a game of chance, you should consult Chapter 47 of the Penal Code to determine if it is allowed.

## 21. WHERE SHOULD I FILE A CHARITIES COMPLAINT IF I BELIEVE AN ORGANIZATION HAS OPERATED IMPROPERLY?

The Attorney General's office conducts investigations in cases in which there is reliable evidence of a diversion of assets or gross mismanagement resulting in a significant financial loss or other substantial harm to the public. The Charitable Trusts complaint form is available online at: <https://texasattorneygeneral.gov/apps/charitable-trusts-complaint-form/>. If you wish to file a complaint, you should read the instructions carefully. If you feel that you need legal advice, you should consult with a private attorney, legal aid society or other organization that provides legal counsel to individuals.



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