

Building donor relationships



**FORMS**

Current Model Standards of Practice

PGB2-0901

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WEEK 9

Ethics and Complying with Regulations

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| **BACKGROUND** | Rules of Ethics |
|  | State Regulation |
|  | Registration to Do Business |
|  | Registration to Solicit |
|  | Registration to Issue Charitable Gift Annuities |
| **PROJECTS** | Adopt the Model Standards of Practice for the Charitable Gift Planner |
|  | Review Compliance with State Regulations |
| **DOCUMENTS** | PGB2-0901 – Current PPP Model Standards of Practice |

**Time required:** 1 hour

**What it covers:** Introduction to planned giving ethics and regulations.

**Why:** You want to maintain your status as a charity in good standing that is known for doing the right thing.

**How to get it:** [www.PlannedGivinginaBox.Com/PGB2-0901](http://www.plannedgivinginabox.com/PGB2-0901)

BACKGROUND

Because planned giving may be a new field of endeavor for your charity, it is important to recognize the ethical rules and regulations which may apply to your work in this area.

*Rules of Ethics*

When planned giving emerged as a profession, there were no standards of ethics. While many of the professionals involved in planned giving (attorneys, accountants, financial advisors, etc.) were subject to *their own* ethical standards, the field of planned giving itself had none. In 1991, the **National Committee on Planned Giving (now the Partnership for Philanthropic Planning)** adopted the first set of *Model Standards of Practice for the Charitable Gift Planner.* These standards provide the groundwork for responsible planned giving by charities and professional advisors.

You can download the current version of the Model Standards at [www.PlannedGivinginaBox.Com/PGB2-0901](http://www.plannedgivinginabox.com/PGB2-0901).

The standards remind us that **at the heart of every planned gift is the charitable motivation of the donor.** Without charitable intent, a planned gift makes little sense, as there are commercially available financial alternatives to virtually every planned gift structure that make the commercial option more attractive.

* The Model Standards suggest that donors should be made aware of the tax implications of their planned gifts.
* They call for full disclosure of representation and compensation, so that donors know who represents who and how charitable representatives and professional advisors are compensated.
* They prohibit the payment of commissions on charitable gifts in all cases.
* The Model Standards also call on charitable representatives to be competent and professional.

If you follow all of the steps outlined in Planned Giving in a Box, you will know enough to successfully offer basic bequests, retirement plan beneficiary designations and life insurance policy beneficiary designations to your donors without worry or concern. But if you start to move into more complex gifts, such as those involving gift annuities, charitable trusts, lead trusts, private foundations or complex assets, you may need to get **more training or professional guidance**.

In fact, the Model Standards suggest that when you start to work on more complex gifts you call a professional advisor, and that you always suggest to the donor that he or she contact his or her own advisors before making a planned gift.

Ultimately, the Model Standards are to **ensure the public trust**. If charities do not regulate themselves, carrying themselves with fairness, honest, integrity and openness, then they betray the people they were created to serve. And without self-regulation, the government is likely to make the charitable giving process far more difficult or eliminate charitable giving incentives all together, in favor of government run programs.

*State Regulation*

Each state regulates charities. Unfortunately, these regulations are not uniform, meaning that just because a charity is in compliance in one state **does not mean** it is in compliance in another. It would be impossible for The Box to provide you with everything you need to be in full compliance with all of the regulations in all of the states, but it is important to raise a few key issues so that you can explore if you need to do more to get into compliance.

Keep in mind that most states regulate charities when they have a “presence” in that state. Of course, each state defines “presence” differently. For a while, some states said that if you have a website that targets its residents, *that* may be enough to be “present” and subject you to its regulations.

As technology has evolved, most states have determined that if your presence is “passive”, such as a website, a charity will not be subject to their regulations. However, if your presence is “proactive,” meaning that you reach out with mail, e-mail, postcards, magazines, newsletters, social media, etc., whether it is to solicit, share information, or just get the word out, you are present in their state and subject to their regulations.

As a general rule, a charity should always be in full compliance with its state of “domicile” (where it is legally formed), and in any other states where it is clearly present. An attorney can assist you in determining where your charity has a presence and how to comply. Some states do provide exemption from charitable regulation for certain religious and other charities, so finding a legal firm with experience in dealing with these issues can end up saving your charity a great many headaches and difficulties.

*More and more states are enforcing these regulations in order to collect revenue – so there is no better time than the present to review your compliance issues. To further complicate matters, the updated federal Form 990 has the charity sign off that it is in compliance with all federal and state regulations, so* ***this is no longer an issue that most charities can ignore*** *unless the signor of the 990 wants to commit perjury, which we caution against for obvious reasons.*

There are generally three types of registrations that charities need to complete when they have a presence in a state (unless they are exempt), including:

* Registration to do business,
* Registration to solicit
* Registration to issue gift annuities (if you plan to offer gift annuities to a resident of that state).

*Registration to Do Business*

Most states require a charity to register to do business if it has a presence in that state. Certainly if a charity is planning to solicit residents for outright gifts or gift annuities, the charity should be registered to do business. The process is generally straightforward, requiring the charity to have a bona-fide office or an agent for service of process in the state. Why? So that if the state government or a resident wants to sue your charity, **they know where to find you** and do not have to leave the state to do so.

*Registration to Solicit*

At last check, 39 states and Washington DC required charities to register in order to solicit residents of their state. Of course, many of these states also include wide exemptions from the registration requirements, typically for charities with religious affiliations. For those charities which are not exempt, the typical registration includes:

* An annual registration statement
* A copy of your audited financial statements
* Your most recent Form 990
* Copies of your articles of incorporation, by-laws and IRS determination letter.

Fortunately, most of the regulating states accept the Unified Registration Statement. To learn more about requirements in states where you solicit, visit these websites:

* + - [www.nasconet.org](http://www.nasconet.org/)
    - [www.multistatefiling.org](http://www.multistatefiling.org/)
    - [www.fundraisingregistration.com](http://www.fundraisingregistration.com/)

If you feel you need help in completing the registration process, the following vendors work in this space:

* + - Affinity Fundraising Registration – [www.fundraisingregistration.com](http://www.fundraisingregistration.com/)
    - Charitable Registry – [www.charitableregistry.com](http://www.charitableregistry.com/)
    - Copilevitz & Canter – <http://www.copilevitz-canter.com/>
    - Martignetti Planned Giving Advisors – [www.mpgadv.com](http://www.mpgadv.com/)
    - Montgomery, McCracken, Walker & Rhoads, LLP – [www.mmwr.com](http://www.mmwr.com/)
    - Perlman & Perlman – [www.perlmanandperlman.com](http://www.perlmanandperlman.com/)
    - Webster, Chamberlain & Bean – [www.wc-b.com](http://www.wc-b.com/)

While we cannot vouch for a particular vendor, and there may be others which offer these services, most large charities use such vendors to maintain their registrations due to the diversity of rules across the different states.

*Registration to Issue Charitable Gift Annuities*

Registration to issue gift annuities is one of the more complex areas of planned giving. Unfortunately, despite efforts to create uniform standards for regulating gift annuities, each state has its own set of rules regarding which charities can issue gift annuities and how the reserve accounts for those gift annuities should be invested.

States generally fall into four general categories in regards to issuing gift annuities:

* Approximately 16 states require you to notify them that you plan to solicit gift annuities, register, and make an annual filing.
* Another 11 require initial notification/registration, but nothing further.
* Eighteen other states require that charities meet certain criteria, but there is no annual filing or registration
* Six are silent on the issue.

For more information about various states, visit www.acga-web.org.

Even though registration to issue gift annuities is the most complex, the good news is that *most charities never need to register*. As you know, Planned Giving in a Box helps you to create a basic planned giving program to solicit gifts from people’s wills, retirement plans and life insurance policies. And these gifts make up 80% of all planned giving receipts. Someday you may elect to offer gift annuities, and when you do, we’ll be able to help you find the vendors to help complete that registration, or even suggest alternatives which you can offer instead of registering to issue gift annuities. But for now, let’s focus on the basics, where 80% of the planned giving dollars come from.

PROJECTS

**Project 14: Adopt the Model Standards of Practice for the Charitable Gift Planner**

As an organization embarking on a planned giving program, you should adopt the Model Standards for your organization.

Ideally the lead staff person would also join the **Partnership for Philanthropic Planning (PPP)** and the local planned giving council. All members of PPP sign on to the Model Standards as a condition of membership. It is an organization that fosters an atmosphere conducive to planned giving and provides continuing education to those who want to learn more about the field.

For more information, visit <http://www.pppnet.org/members/membership-criteria.html>.

**Project 15: Review Compliance with State Regulations**

It is beyond the scope of Planned Giving in a Box to assist you in complying with state regulations. However, **you should take this opportunity** to determine if you do business, solicit, or solicit gift annuities in your state or other states, and if you are in compliance with the regulations of those states. If you are *not*, it is an issue that should be raised with your staff and Board leadership so that resources can be allocated to bring your charity into compliance.

As your planned giving program starts to produce results, you do not want to put those gifts in jeopardy due to a failure to comply with state regulations.

DOCUMENT PGB2-0901

Current Model Standards of Practice

**Model Standards of Practice for the Charitable Gift Planner**

**Preamble**

The purpose of this statement is to encourage responsible gift planning by urging the adoption of the following Standards of Practice by all individuals who work in the charitable gift planning process, gift planning officers, fund raising consultants, attorneys, accountants, financial planners, life insurance agents and other financial services professionals (collectively referred to hereafter as “Gift Planners”), and by the institutions that these persons represent.

This statement recognizes that the solicitation, planning and administration of a charitable gift is a complex process involving philanthropic, personal, financial, and tax considerations, and often involves professionals from various disciplines whose goals should include working together to structure a gift that achieves a fair and proper balance between the interests of the donor and the purposes of the charitable institution.

**I. Primacy of Philanthropic Motivation**

The principal basis for making a charitable gift should be a desire on the part of the donor to support the work of charitable institutions.

**II. Explanation of Tax Implications**

Congress has provided tax incentives for charitable giving, and the emphasis in this statement on philanthropic motivation in no way minimizes the necessity and appropriateness of a full and accurate explanation by the Gift Planner of those incentives and their implications.

**III. Full Disclosure**

It is essential to the gift planning process that the role and relationships of all parties involved, including how and by whom each is compensated, be fully disclosed to the donor. A Gift Planner shall not act or purport to act as a representative of any charity without the express knowledge and approval of the charity, and shall not, while employed by the charity, act or purport to act as a representative of the donor, without the express consent of both the charity and the donor.

**IV. Compensation**

Compensation paid to Gift Planners shall be reasonable and proportionate to the services provided. Payment of finder’s fees, commissions or other fees by a done organization to an independent Gift Planner as a condition for the delivery of a gift is never appropriate. Such payments lead to abusive practices and may violate certain state and federal regulations. Likewise, commission-based compensation for Gift Planners who are employed by a charitable institution is never appropriate.

**V. Competence and Professionalism**

The Gift Planner should strive to achieve and maintain a high degree of competence in his or her chosen area, and shall advise donors only in areas in which he or she is professionally qualified. It is a hallmark of professionalism for Gift Planners that they realize when they have reached the limits of their knowledge and expertise, and as a result, should include other professionals in the process. Such relationships should be characterized by courtesy, tact and mutual respect.

**VI. Consultation with Independent Advisers**

A Gift Planner acting on behalf of a charity shall in all cases strongly encourage the donor to discuss the proposed gift with competent independent legal and tax advisers of the donor’s choice.

**VII. Consultation with Charities**

Although Gift Planners frequently and properly counsel donors concerning specific charitable gifts without the prior knowledge or approval of the donee organization, the Gift Planner, in order to insure that the gift will accomplish the donor’s objectives, should encourage the donor early in the gift planning process, to discuss the proposed gift with the charity to whom the gift is to be made. In cases where the donor desires anonymity, the Gift Planner shall endeavor, on behalf of the undisclosed donor, to obtain the charity’s input in the gift planning process.

**VIII. Description and Representation of Gift**

The Gift Planner shall make every effort to assure that the donor receives a full description and an accurate representation of all aspects of any proposed charitable gift plan. The consequences for the charity, the donor and, where applicable, the donor’s family, should be apparent, and the assumptions underlying any financial illustrations should be realistic.

**IX. Full Compliance**

A Gift Planner shall fully comply with and shall encourage other parties in the gift planning process to fully comply with both the letter and spirit of all applicable federal and state laws and regulations.

**X. Public Trust**

Gift Planners shall, in all dealings with donors, institutions and other professionals, act with fairness, honesty, integrity and openness. Except for compensation received for services, the terms of which have been disclosed to the donor, they shall have no vested interest that could result in personal gain.

*Adopted and subscribed to by the National Committee on Planned Giving (now the Partnership for Philanthropic Planning) and the American Council on Gift Annuities, May 7, 1991. Revised April 1999. Reprinted with permission.*