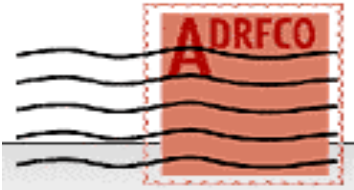


Prudent Contracting with A Professional Fundraiser

Prepared by:



A recent change in Postal Service cooperative mail regulations will enable a nonprofit organization to mail its solicitations at the nonprofit mail rate and accept financing of the solicitation mail campaign from its fundraiser. Most significantly, the change will remove restraints on so-called “risk sharing” arrangements, such as percentage compensation arrangements or outcome guarantees.

This regulation change has focused the attention of the DMA Nonprofit Federation, PostCom and The DMA on helping our members when they contract with outside fundraisers. This advice is the first step of a joint education project of the associations. We are pleased to have the assistance of the Postal Service in this project. We thank the USPS for placing links to this advice on its web site.

As always, a nonprofit organization is obliged to exercise great care in its financial dealings. Longstanding structures of law, ethics, and common sense make it so. The new regulation provides a significant opportunity for many nonprofits to reach new donors. Along with that opportunity comes added responsibility for nonprofits to protect themselves, their donors, their beneficiaries and the nonprofit industry as a whole by avoiding any untoward fundraising activities that place nonprofits in a poor public light.

The need for care is only heightened when a nonprofit engages the services of outside fundraising professionals. Fundraisers may shape an organization’s public face, its reputation, and its contact with current or prospective donors.

To contract prudently, a nonprofit shopping for products or services must have knowledge of the marketplace in which it shops. With regard to professional fundraising services, a nonprofit should understand both the business practices underlying its proposed arrangements with a fundraiser and the fund raising transaction itself.

We offer here a few cautions and bits of advice for a nonprofit organization that is negotiating for the services of an outside fundraiser:

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Do not waive your right to know who gave and how much he/she gave.

The new Postal Service regulation requires fundraisers to provide its nonprofit clients the contact information for any donor and the amount given by each donor. That regulation also allows a nonprofit to waive that right in writing. You should never waive this right. As you can see below, the ownership and control of your organization's donor list is one of the most important principles for nonprofits contracting with outside fundraisers.

Be sure to negotiate the arrangement at "arms length."

No officer, director, principal, or fiduciary of any commercial fundraiser, or any close relative of any such individual, should serve the nonprofit organization as an officer, director, or key employee. Most states mandate that such relationships be disclosed. Although this situation may appear entirely innocent to the parties involved, especially due a need for volunteers in some instances, state regulators and watchdog groups find such service unsavory and it tends to cast a pall of suspicion over an entire organization.

Set out every arrangement with an outside fundraiser in a written contract.

The contract should be signed by at least two individuals who are either board members or officers of the nonprofit organization. The two-signature requirement serves a dual purpose: It meets legal requirements in some states, and it increases the attention paid to the arrangement within the organization.

Deposit donations received from the public in a bank account under the *exclusive* control of the nonprofit organization.

A fundraiser might have perfectly legitimate reasons to want to take complete or shared control of fund raising proceeds. But a nonprofit that cedes this responsibility--for any reason--is simply shirking its stewardship obligations. This is another arrangement that state regulators and independent charity watchdogs consider to be a "red flag" when they evaluate nonprofits.

Take steps to ensure that the nonprofit organization's master list of donors is not misused.

It's called "salting" the file. Add four or five pseudonyms with real addresses to the master file that won't appear on any other list. The addresses should belong to persons close to the organization who would recognize an unauthorized mailing. The fact that the nonprofit has salted its donor file and the pseudonyms should be confidential

The nonprofit organization should insist that the list of those members of the public who contributed be its exclusive property.

The security and integrity of this donor list and the information it contains is as vital an element of stewardship as are the proceeds from the fund raising campaign. From the moment a donation is made, all uses of the donor list should be the exclusive province of the organization. For most nonprofits, this donor list is its most valuable asset and every restriction placed upon it hampers the nonprofit's ability to make its own decisions. In extreme cases, fundraisers who have gained rights to use a nonprofit's donor list have effectively "controlled" the nonprofit -- the fundraiser was able to dictate the message communicated to the nonprofit's donors and the nonprofit could not hire a new fundraiser because it would lose contact with all its existing donors.

Before accepting financing from an organization's fund raiser, the organization should assure that--

the arrangement is in writing and the repayment period, the interest rate, and other material terms of the credit offer are not conditioned on continued employment of the fund raiser by the nonprofit organization.

In other words, an organization should assure that its choice of fund raisers is not dictated by any indebtedness it might incur.

The nonprofit organization should retain all ownership rights to any intellectual property in the fund raising package developed at the nonprofit organization's expense.

A nonprofit organization must take care to insure the integrity of its investment in its fund raising program. If it pays a professional to develop fund raising materials, it must assure that it can use them freely in the future. This may involve the assertion and protection of copyright and trademark rights.

Work with the professional fund raiser to develop a reliable system to report each campaign's costs and results.

To learn what fund raising techniques, lists, copy, mail package design, and periods of the year work for the nonprofit organization, be sure to collect correct data and record them by campaign. Campaign expense and results data should be accumulated in a format that permits reliable campaign comparisons over time. Some expenses are incurred long before the solicitation is mailed; some donations are received long afterward. Agree on a reporting system that enables fund raising costs and results to be segregated by campaign regardless of the leads and lags.