SPECIAL EVENTS:
What Are the Legal Issues Your Nonprofit Needs to Know?

April 3, 2013

Welcome and Opening Remarks

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Today’s Program

Today’s program on “Special Events” is the latest in a series of Strategic Legal Thinking seminars sponsored by Pfizer Inc. and the law firm of DLA Piper LLP (US), held in New York City, and video-conferenced to sites in other cities throughout the country.

These seminars cover issues of concern to nonprofits and are organized in conjunction with a network of business law pro bono programs operating in markets throughout the nation.

Today’s session is designed to help nonprofit managers understand legal, regulatory and practical issues relevant to special events.

If carefully planned and executed, special events can help charities raise funds, engage and thank supporters, recruit program participants, and otherwise increase awareness and excitement for their work.
Participating Locations

California  District of Columbia
Florida      Georgia
Illinois     Maryland
Massachusetts New Jersey
New York     Pennsylvania
Texas        Washington
Today’s Topics

• Register and report charitable solicitation activities
• Manage event staff
• Work with vendors
• Engage supporters and keep them happy
• Secure corporate sponsorships
• Manage risk and minimize injury
• Hold a successful event that achieves key goals
Today’s Goal: Information to Help Your Organization Know, Plan, and Do

"Please, sir — ten bucks more and I can sign up for a fund-raising course at the university!"
Questions During Today’s Program

Email:
pfizerprobononyc@pfizer.com
Further Information

- Participants will receive a seminar survey by email.
- If your organization believes it needs an attorney, contact the business law pro bono provider in your area to find out if it is eligible for pro bono legal services.
- My contact information: 212-219-1800 x 231, eguggenheimer@lawyersalliance.org
Thank You

- Hosts and Lead Sponsors: Pfizer Inc., DLA Piper LLP
- Presenters: Carter Ledyard & Milburn, DC Bar Pro Bono Program, Erika Byrnes Consulting, Lawyers Alliance for New York, Perlman & Perlman
- Participating Nonprofit Managers
- Participating Pro Bono Programs
Pfizer Strategic Legal Thinking Seminars
for Nonprofit Executives

Complying with State Charitable Solicitation rules

April 3, 2013
WHAT ACTIVITY IS REGULATED?

SOLICITATION
In short, solicitation is the affirmative act of asking for a gift or selling goods or services that will benefit a charitable organization.

47 states have some sort of statutory scheme to regulate charitable solicitations

REGISTRATION/REPORTING
Registration and reporting requirements are imposed on charities, professional fundraising counsel, professional solicitors, and commercial co-venturers.
CHARITABLE ORGANIZATIONS

- Primarily Section 501(c)(3) and (c)(4) organizations
- Also may include other nonprofit organizations as defined by state law
  - tax exemption and deductibility is a function of federal tax law while the nonprofit status is a creature of state law
- May even include for profit organizations
  - key issue is asking for money using a charitable appeal
- 40 States plus DC require registration prior to commencement of solicitations
PROFESSIONAL SOLICITORS
(a/k/a Professional Fundraisers or Commercial Fundraisers)

- Directly solicit the general public on behalf of a charitable organization for a fee
- May have custody/control of the contributions received
- Many states also require a pre-solicitation disclosure of professional status prior to making the request for a gift
- Required to register in 44 states, post a surety bond, file contracts with their nonprofit clients and file campaign financial reports
PROFESSIONAL FUNDRAISING COUNSELs
(a/k/a Fundraising Consultants)

- Help plan, manage, advise on, consult or produce and design solicitations to the general public for a fee

- Do not make the solicitations

- Generally, may not have custody or control of contributions

- Required to register and file contracts in 32 states, and post bonds and file campaign reports in a few
COMMERCIAL CO-VENTURERS

- An entity that, as part of a sales promotion, uses the charity’s name to sell its products or services (at its usual retail price) and makes a charitable donation based on the sales.

- Registration and/or filing of contract required in: Alabama, Hawaii, Maine, Massachusetts, Mississippi and South Carolina (+ maybe California)

- 17 other states regulate the activity but do not require registration
  - Require written contract and, in some cases, charity to file copy
  - Require specific disclosure of the amount of the donation to potential buyers (either as a dollar amount of percentage of sales)
STATE REQUIREMENTS

- Annual Filings:
  - State-specific Registration Forms
  - IRS Form 990s
  - Financial Statements (may need to be compiled, reviewed or audited)
  - Contracts
  - Campaign Financial Reports (by professionals)
  - Bonds (by professionals)
  - Fees
- Public Filings
- Record Retention Requirements
REGISTRATION EXEMPTIONS

Vary from state to state, but most common include:

- Churches and in most states - Religious Organizations
- Organizations raising less than a specified dollar amount (most common is $25,000)
- Educational Institutions
- Organizations for which solicitations limited to membership
- Volunteers soliciting for the benefit of a named individual
- Political organizations
- Hospitals
SOLICITATION DISCLOSURES

- Several states require specific disclosures by charities and professional solicitors
  - Sometimes, regardless of whether registration is required
  - Others, only if registered

- Many states require professional solicitors to identify themselves as such in any oral solicitations

- **Written solicitations:**
  - Verbatim disclosure requirements
  - Typically, identification of where financial information about the charity can be found
SOLICITING AND THE INTERNET

Charleston Principles

An effort by the National Association of State Charity Officials to provide guidance to both charities and state regulators regarding the application of state registration requirements to charities soliciting donations over the Internet.

Must register in the state of principle place of business.

Must also register in other states where specifically targeting residents (such as through letters or phone calls) or receiving repeated or substantial contributions from residents of those states.
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Pfizer Strategic Thinking Seminars for Nonprofit Executives

Managing Employees, Contractors and Special Event Volunteers

April 3, 2013

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Who is planning and staffing your event?

- Your employees, interns and volunteers PLUS
- Fundraisers/Fundraising Counsel
- Event Planner
- Graphic Artist/Designer
- Hospitality (e.g., florist, caterer, waiter, bartender)
- Entertainment
FAQ’s

• Is my event planner really an independent contractor?
• Can I ask my employees to help plan our special event in addition to their regular job duties?
• Do I have to pay my employees for “pitching in”?
• Is it ok to ask volunteers or our interns to assist with planning activities?
• Can I require my employees to attend our event? Do I have to pay them?
• If I’m hiring workers just to staff our event, are they really my employees?
PRE-EVENT PLANNING

Independent Contractor or Employee?

Important Distinction

- withholdings/employment tax
- unemployment/workers comp
- most employment laws (incl. discrimination laws) do not apply to indep K’s
- minimum wage and overtime rules
EMPLOYEE OR INDEPENDENT CONTRACTOR?

• An independent contractor is engaged to produce a **result**.

• The organization has **no right to control** or direct the means and methods of accomplishing the result.

• **NB**: **Number of hours worked by individual irrelevant**.
INDEPENDENT CONTRACTORS

No definitive definition! Factors may include:

- Individual has significant investment in facilities and equipment;
- Individual assumes the risk of profit or loss in providing services;
- Individual is engaged to produce a result;
- Individual establishes his own work schedule to meet deadline;
INDEPENDENT CONTRACTORS (cont’d)

- Individual provides highly specialized skills;
- Contracting individual may engage another person to actually perform the services;
- Individual must submit an invoice to receive payment;
- Individual is free to provide services to other organizations;
- Relationship is documented in a well-written agreement.
EMPLOYEES

• An employee is an individual who performs services under the direction and control of the employer in exchange for compensation.

• All legal obligations apply:
  - Tax laws (proper withholdings)
  - Wage and hour laws (min. wage/overtime)
  - Anti-discrimination laws
  - Workers’ compensation, etc.
EMPLOYEES PLANNING EVENT

• Non-exempts
  – Must be paid at least minimum wage and time and one half for all hours worked in a work week over 40.
  – Employer’s duty to keep track of all time.
  – Don’t turn a blind eye to “off the clock” service.

• Exempts
  – Required to work all hours necessary to perform their jobs without expectation of or entitlement to additional compensation.
  – Exempts’ primary duties must be exempt duties.
EMPLOYEES “VOLUNTEERING”

• Staff work for a nonprofit is working time if:
  – it is at the employer’s request, or
  – under his direction or control, or
  – while the employee is required to be on the premises.

• Staff work for a nonprofit is NOT considered working time if:
  – outside of employee’s normal working hours, AND
  – the employee is not performing the same type of services he is normally employed to perform.

See 29 CFR §785.44; DOL Field Ops Handbook §10b03(c).
VOLUNTEERS

• US DOL definition: “A volunteer is an individual “who performs hours of service . . . for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered.” See 29 CFR §101(a).

• Most employment laws do not apply.
COMPENSATING VOLUNTEERS

• Giving a volunteer some form of pay that exceeds actual out-of-pocket expenses may convert them into an employee.

• Benefits paid to volunteers should not be tied to productivity or service hours and should be “nominal”. Calling $$ a “stipend” does not solve the problem!
**INTERNS**

- Work must be consistent with bona fide “trainee” program.

- Federal DOL six factor test, including that individual must receive training similar to vocational or academic instruction.

- As long as work consistent with these factors, unpaid interns can help with event. Similar to volunteers; no employer-employee relationship.

- **Paid** interns are just like any other EE.
VOLUNTEERS AND LIABILITY

• Be aware volunteers can bind nonprofits for liability purposes:
  – Vicarious liability has been expanded to volunteers.
  – Nonprofits may be held responsible for negligent retention of volunteers.

• Nonprofits can be liable to volunteers
  – Volunteers can be included in general liability insurance and workers’ comp.
THE BIG DAY!

- Event coordinators, caterers, entertainers, others with specialized skills: **Employees or Independent Contractors?**

- **Volunteers/Interns** – May be a great source of manpower on event day. But remember:
  - No more than “de minimis” benefits
  - Volunteer services must be truly voluntary!
  - Intern work must be “training”
THE BIG DAY (cont’d)

Employees

• Non-exempts:
  – If required to work during event, must be paid.
  – If not required to work, but must attend, best practice is to pay.
  – Time at event may trigger overtime!

• Exempts:
  – Whether required to work or just attend event, no right to additional comp.
  – Agreed upon salary covers all hours worked, including required attendance at special events outside work hours.
THE BIG DAY (cont’d)

Employee Conduct

• All normal policies and procedures in place while employees (incl. temps) working at event.

• All employment laws governing employer-employee relationship in effect, including anti-harassment.

• Duty to investigate, duty to protect from harassment by non-employees (e.g., independent contractors/volunteers/guests)

• If employee injured while working on event, likely compensable under workers’ comp
THE BIG DAY (cont’d)

Employee “Volunteers”

• Employees may not be required to attend event, but may offer to volunteer.

• Not working time if:
  – event outside normal working hours
  – “volunteer” services not the same the employee usually provides
  – DOL Opinion Letters on employees at special events.
  – Be careful: can encourage attendance, but volunteerism must be truly voluntary!

   **Example:** Your receptionist/office admin “volunteers” to check in guests at gala, do you have to pay her regular hourly rate?
THE BIG DAY (cont’d)

Temporary Employees

• Temps are treated as any other employee.

• If they are not independent contractors, volunteers or interns, they are employees.

• Even if hired for just one day!

• If vendor needs extra hands, let vendor hire them.
REMEMBER

All individuals providing services before and during the event are either:

– Employees;
– Volunteers;
– Paid or Unpaid Interns; or
– Independent Contractors

Understand each individual’s relationship and treat them accordingly!
QUESTIONS?

This presentation is meant to provide general information only, not legal advice.

If you have questions about the subjects covered in this webinar, please contact Judith Moldover, Senior Staff Attorney at Lawyers Alliance for New York

(212) 219-1800, ext. 250

Or visit www.lawyersalliance.org for more information.
Special Events:
Donations, Deductibility and Documentation—Understanding the IRS Rules

April 3, 2013
Presentation

Elizabeth M. Guggenheimer
Lawyers Alliance for New York
What is Fundraising Activity?

- Fundraising activity refers to raising funds through *voluntary* gifts of cash, goods or services.
- Special events are a particular type of fundraising activity which, if successful, can lead to increased fundraising dollars.
- At the federal level, the IRS regulates special event fundraising through the Internal Revenue Code.
Tax Deductible Contributions: Qualified Organizations

- Organizations exempt under Section 501(c)(3) of the IRC and other “qualified” organizations may receive tax-deductible contributions.
- The organization must serve a large or indefinite group, not particular, pre-selected individuals.
- A 501(c)(3) organization will jeopardize its tax exemption if it is not operated exclusively for exempt purposes.
What *Is* Tax Deductible to a Donor?

- Contributions must be to a qualified organization
- Restricted donations, provided restriction does not prevent use
- Unreimbursed expenses incurred by volunteers
- For details, see IRS Publication 526, *Charitable Contributions*
What Is **Not** Tax Deductible to a Donor?

- Donated time or services
- Earmarked contributions to specific individuals
- Cost of raffle, bingo or lottery ticket
Quid Pro Quo Contributions: Definition and Exceptions

Contributions made in exchange for goods or services are deductible only to the extent donor's payment exceeds the fair market value (FMV) of the goods or services received in exchange.

Exceptions:

- No donative intent. Do not treat excess amount as gift.
- Donor receives goods or services of “insubstantial” value. Treat full amount as gift.
- Donor receives only an intangible religious benefit. Treat full amount as gift.
Quid Pro Quo Contributions: Insubstantial Value

The IRS periodically adjusts “insubstantial value” definition due to inflation. For tax years beginning in 2013:

a) The fair market value of the items exchanged is not > than 2% of the payment or $102, whichever is less; OR

b) The payment is >$51, and the only benefits exchanged are token items which contain logo and cost, in aggregate, <$10.20.
Items of Insubstantial Monetary Value Can Still Be Meaningful and Convey Mission

“and this one’s for people who’ve hurt their wrists wearing too many wristbands”.

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Quid Pro Quo Contributions: Event Examples
Food and Entertainment

1. Organization provides donors who give at $1,000+ level with 2 baseball game tickets with face value of $100 each, pre-game barbeque, and 2 towels with organization’s logo.

2. Example 1, but donor does not attend game.

3. Organization also provides donors at $2,000+ level with an autographed program.

4. Organization also provides donors at $3,000+ level with a backstage tour conducted by well-known announcer.
Quid Pro Quo Contributions: Establishing Fair Market Value

- Make good faith estimate.
- Use reasonable method to compute.
- Proper standard is fair market value, not cost.
  - Doesn’t matter if all food and tickets are donated, still look at FMV.
  - Doesn’t matter if organization spent a substantial amount on decorations or supplies, still look at FMV.
Documentation of Contributions: General Rules to Claim a Tax Deduction

- Monetary contributions of under $250: Taxpayers must maintain a written record, i.e., bank record or written communication from the donee.

- Contributions of $250 or more: Taxpayer must have a contemporaneous written acknowledgment from donee. Obligation is on donor.

- *Quid pro quo* contributions: Charity must give the donor a written disclosure statement if the payment is over $75 and is a quid quo pro contribution. Failure penalties.

See IRS Publication 1771, *Charitable Contributions Substantiation and Disclosure Requirements*, for details.
Contents of Written Acknowledgements and Disclosure Statements for Donors

- Name of organization
- Date
- Amount (if cash) or description (if non-cash contribution)
- Statement whether charity provided goods or services in exchange, e.g., “no goods or services were provided in exchange”
- For quid pro quo contributions, add:
  - Description and good faith estimate of the FMV of goods or services provided by the charity in exchange
  - Statement that the donor can deduct only the amount by which the contribution exceeds the FMV of any goods or services received
Cash Contributions: Documentation Examples

1. Lead sponsors contribute $2,000 to support an educational conference about adult literacy. In exchange, they receive 2 premier tickets (valued at $50 each) and sit on dais during keynote speech.

2. Volunteer swimmers get friends and colleagues to pledge $X per mile for each mile they swim in the nonprofit’s swim-a-thon to raise money to support environmental projects.
Additional Documentation for Non-Cash Contributions

- The contribution amount is the FMV of the property at the time of the contribution. See IRS Publication 561, *Determining Value of Donated Property*, for details.
- FMV is the price a willing, knowledgeable buyer would pay a willing, knowledgeable seller when neither has to buy or sell.
- A charity may need to provide additional substantiation:
  - $250+ in value: written acknowledgment, but charity need not estimate value; describing property is sufficient.
  - $500+ in value: above, plus donor completes IRS Form 8283.
  - $5,000+ in value: above, plus charity and a qualified appraiser must sign IRS Form 8383.
Special Documentation Rules for Used Items

• Contributions of used closing or household items have special requirements.

• Donor can only claim a deduction for used items that (a) are in good used condition or better, or (b) if not in used condition or better, are valued at more than $500 and donor submits a qualified appraisal of it with his or tax return.

• Examples:
  1. Students organizing walk-a-thon also collect used sneakers to share with low-income families.
  2. These students instead collect new sneakers.
**Quid Pro Quo Contributions: Event Examples**

**Acknowledgement versus Advertisement**

1. Silver page journal “listing” or virtual “greeting” at event
2. Listing in New York Times “ad” before or after event
3. Recognition of company’s sponsorship of event in corporation’s internal newsletter
4. Charity’s approved “thank you” language to event sponsor added to company’s product packaging
5. Sponsor’s employee hands out award to event honoree, and photo of presentation appears in charity’s external newsletter
Charity Auctions at Events

- Rules regarding deductibility and documentation of contributions apply.
- Consider those who contribute items and those who purchase such items.
- “Priceless” items: price paid by bidder will likely be deemed the fair market value.
- Gifts of partial interests in property generally aren’t tax deductible.
- Check state and local rules about licenses.
Charitable Gaming: State Oversight

- Sometimes charities seek to hold a raffle, bingo tournament, casino night, video lottery, or other game of chance as a recreational and/or fundraising activity.

- Each state has an agency (or agencies) that regulates gaming, including gaming by charities. See www.gambling-law-us.com/Useful-Sites/State-Gambling-Agencies.htm for list.

- States and localities may restrict gaming to “authorized” nonprofit and religious organizations and/or to particular types of activities.

- The most commonly permissible activities are bingo and charitable raffles and certain types of casino games.

- Proceeds typically are to be used exclusively for charitable purposes.
Charitable Gaming: Federal Regulation

- At the federal level, the IRS in most instances deems gaming to be business (not charitable) activity, creating questions about:
  - Gaming’s impact on tax-exempt status.

- IRS considers gaming to be a trade or business activity, not a charitable activity, if it generates revenue.

- Though the activity may generate funds to pay expenses associated with exempt activities, gaming itself does not further the exempt purposes of most charities.

- A charity conducting gaming as an insubstantial part of its activities ordinarily will not jeopardize its tax-exempt status, but its gaming income may be subject to Unrelated Business Income Tax (UBIT).
Exceptions to UBIT for Gaming Income

- Gaming conducted at annual fundraising event: not “regularly carried on” (in contrast to weekly/monthly casino nights)
- Gaming furthering the organization’s exempt purposes
- Bingo games if: conducted according to applicable laws; in jurisdiction where for-profit entities aren’t regularly carrying on bingo; and all placing wagers are present
- Substantially all (i.e., 85%+) of hours/work is done by volunteer, not compensated, workers; compensation is broadly defined
- “Qualified public entertainment activities” (i.e., at fairs or expositions promoting agricultural education)
Form 990 Records and Reporting

• Complete schedule G of IRS Form 990 or 990-EZ, *Supplemental Information Regarding Fundraising or Gaming Activities*, if
  – Organization is reporting more than $15,000 of expenses for fundraising services, OR
  – Organization receives more than $15,000 from fundraising events (list special events with receipts more than $5,000) or from charitable gaming: report revenues and direct expenses.

• Retain records of gross receipts from gaming, prize payouts and gaming expenses to substantiate contents of IRS Form 990/990-EZ (information return), Form 990-T (income tax return), and state accountings if required.
Conclusion

The law and regulatory schemes can be a tool rather than a burden for your organization’s fundraising endeavors. Advance planning helps.

Today’s presentations are informational only. Nothing does or is intended to constitute legal advice. Consult with appropriate counsel for guidance pertinent to your organization.
Corporate Sponsorship

- Section 513(i) - An Exception from Unrelated Business Income Tax
  - The Bowl Game that started it all.
Unrelated Business Taxable Income is derived from:

- A trade or business,
- Regularly carried on, and
- Not substantially related to the organization’s exempt purpose.
Modifications to the UBIT rules

- Passive Income
- Royalties
- Rent
- Capital Gains
Exceptions to the UBIT rules

• Volunteers
• Convenience
• Contributions
• Trade Shows and State Fairs
• Bingo
• Mailing Lists
• Corporate Sponsorship Payments
The Corporate Sponsorship Exception

- Within certain guidelines, a charity can accept a qualified sponsorship payment ("QSP") that will not be treated as UBTI.
Public Support

- QSPs in the form of money or property are treated as a contribution received by the nonprofit organization.
  - This is true regardless of whether the sponsor treats the payment as a charitable contribution or a marketing expense.
Qualified Sponsorship Payment

- From a person engaged in trade or business to an exempt organization.
- No arrangement or expectation that the person will receive a **substantial return benefit**.
- Money, an in-kind transfer of property, performance of services.
Substantial Return Benefit

Any benefit to the sponsor received in exchange for the sponsorship payment, other than

- a *use or acknowledgment* of the sponsor’s name or logo, or
- a *disregarded benefit* - goods or services with a low value relative to the sponsorship payment.
Use or Acknowledgment

• “Exclusive sponsorship” arrangements
• Logos and slogans that do not contain qualitative or comparative descriptions
  • Exception: logos and slogans that are an established part of a sponsor’s identity
• Information about the sponsor’s locations, telephone numbers, or website
• Value-neutral descriptions, including displays or visual depictions of sponsor’s product or services
• Brand, trade-names, product lists or services of the Sponsor
Use of Acknowledgment

• Can Include:
  • Display or distribution (for free or for charge) of a sponsor’s product by the sponsor or the exempt organization at the sponsored activity.

• Can’t Include:
  • Advertising: any message that promotes or markets any trade or business, service, facility or product.
  • A single message that contains both advertising and an acknowledgment is deemed to be advertising.
Run/Walkathon Example

- Dreaded Disease Prevention Foundation organizes a run/walkathon. A national corporation provides drinks, other refreshments, and prizes for DDPF to award to winners of the event. DDPF recognizes the assistance of the corporation by listing the corporation’s name in promotional fliers, newspaper advertisements for the event, and on T-shirts worn by the participants.
The local public radio station airs a program funded by a local music store. In exchange for the funding, the station broadcasts the following message: “This program has been brought to you by the Music Shop, located at 123 Main Street. For all your music needs, give them a call today at 555-1234. This station is proud to have the Music Shop as a sponsor.”
Disregarded Benefits

• Benefits are disregarded if the aggregate fair market value of all the benefits provided to the sponsor in connection with the payment are not more than 2% of the amount of the payment.
  • This applies to any benefit that is not a use or acknowledgment, including advertising.
Exceeding 2%

- If the fair market value of the benefits received by the sponsor exceeds 2% of the payment, then the entire fair market value of the benefit is a substantial return benefit - not just the excess.
Dinner Example

• An art museum organizes an exhibition and receives a large sponsorship payment. The museum uses the sponsor’s name and established logo in materials publicizing the exhibition, which includes banners, posters, brochures and public service announcements. The museum also hosts a dinner for the corporation’s executives. The FMV of the dinner exceeds 2% of the sponsorship payment.
Fair Market Value

• FMV of any benefit is the price that would be reached in an arms-length transaction without regard to any other aspect of the sponsorship arrangement.

• FMV is determined on the date a binding, written sponsorship contract is entered into or, if there is no contract, the date the benefit is provided.
FMV Example

• 6/30/11 - Enter into a binding corporate sponsorship contract - a $5,000 payment in 2012. As a return benefit, the sponsor will receive advertising at the nonprofit’s event in 2012.
• As of 6/30/11 the FMV of the advertising was $75, less than 2% of the payment.
• As of 2/1/2012, the date of the event, the FMV of the advertising was $110, exceeding 2% of the payment.
Mixed Payments

• If there is an arrangement or expectation that the sponsor will receive a substantial return benefit from a payment, then only the portion of the payment, if any, that exceeds the fair market value of the substantial return benefit is a QSP.
  • The burden is on the exempt organization to establish the FMV of the return benefit.
  • The portion of a payment that is not a QSP is subject to UBIT.
Bowl Game Example: Facts

- Lucky corporation: exclusive sponsor of the Lemon Bowl Game, broadcast on tv and radio.
- A detailed contract and $1 million payment:
  - “Lucky Lemon Bowl”
  - Lucky’s name and logo prominent
  - Block of Tickets
Bowl Game Example: Analysis

- The use of the corporate name and logo in connection with the bowl game constitutes acknowledgment of the sponsorship.
- Other benefits that do not exceed 2% of the total payment are disregarded and the entire payment is a QSP.
Exceptions and Traps

• Beware the “Exclusive Provider”
• Contingent Payments
• Periodicals
• Convention or Trade Show
Corporate Sponsorship and the Internet

• Acknowledgment: A nonprofit posts a list of its sponsors on its website, including their names and website as a hyperlink. The website does not promote the sponsors or advertise merchandise.

• Advertising: On the sponsor’s website, linked through the nonprofit’s page, there is an endorsement from the nonprofit. The nonprofit reviewed and approved the endorsement of the sponsor’s business.
Other Virtual Concerns

- Online “Stores” subject to fragmentation rule.
- Lobbying and Political Activity by a Sponsor on their website.
Cause Marketing

- Best Practices via NY Attorney General:
  - Clearly Describe the Promotion
  - Allow Consumers to Easily Determine the Donation Amount
  - Be Transparent About What is Not Transparent
  - Ensure Transparency in Social Media
  - Tell the Public How Much Was Raised
The Risk Management Process

• Risk Management is essentially a three step process:
  • Assess the Risk
  • Mitigate, or Lessen, the Risk
  • Insure Against the Risk
Assessing the Risk

• Basically, risk assessment can be reduced to a single question:
  • What would a Really Bad Day look like?
  • It means identifying all the things that could go wrong- both business risks and risk of injury. In the case of a special event, these include:
    You violate the law in conducting the event or while publicizing it.
    The event has to be cancelled.
    Someone is injured at the event.
    Property is damaged or destroyed because of the event.
    Someone embezzles property from the event.
Assessing the Risk

• Risk assessment should be included as a part of your planning process.
• Appoint someone as the risk manager for the event and give the person the task of conducting a risk assessment.
• Make it clear to everyone that the risk manager has this responsibility and everyone is expected to cooperate with the risk manager.
• Have the risk manager make regular reports to the planning group.
Assessing the Risk

Example:

• The Cancer Awareness Group, an organization that provides cancer screenings for low income women in D.C., wants to raise funds through a special event. Therefore, it is planning a golf outing at a public golf course in neighboring Virginia. After the golf day, there will be a gala dinner, followed by a silent auction.

• CAG arranges with the local course to host the tournament and allow participants to use the locker room and club house; it rents a tent where the dinner will be held; hires a caterer and a DJ to play music; solicits donations for the silent auction; publicizes the event; and sells tickets.
Assessing the Risk

• 150 people pay $250 per person to take part in the golf tournament.
• Another 250 people buy $150 tickets to the dinner.
• CAG solicits donations of 100 items to be included in the silent auction, including the use of several vacation homes, free golf and tennis lessons, and lunch with a local celebrity.
• What could possibly go wrong?
Assessing the Risk

- CAG solicits donations and sells tickets for the event, but does not register with the Commonwealth of Virginia to solicit charitable funds in the state.
- As part of the publicity for the event, someone describes the event as “Golf for the Cure” and includes a pink ribbon as part of the graphics.
- As a result, CAG receives a cease and desist letter from the Susan G. Komen Fund stating that it is infringing on its trademark and to stop using the brochures immediately.
- CAG has to reprint the brochures at a cost of $350.
Assessing the Risk

• The CAG treasurer gives donation receipts to people who buy tickets for the event without subtracting the value of the golf outing or dinner.

• The day of the event, the National Weather Service issues a tornado watch, forcing cancellation of the golf tournament.

• While removing signage during the rain storm, a volunteer coordinator trips and falls on the golf course, breaking his wrist.

• It rains heavily the night of the dinner. Because of the inclement weather only 140 people show up for the dinner event.
Assessing the Risk

• The tent leaks and the D.J.’s audio equipment is damaged.
• The bartender serves drinks to a guest who becomes intoxicated, and the guest gets into a car accident on the way home from the event.
• Fifteen people eat food from a raw bar and contract food poisoning.
• There is no procedure for securing the funds raised at the dinner and one of the volunteers does not turn in $500 in receipts from the silent auction.
Assessing the Risk

After the event:

• **CAG is contacted by attorney representing a person who had food poisoning saying the person went to the emergency room, and incurred $8,000 in medical expenses. The attorney demands that CAG pay the medical expenses, plus $10,000 for pain and suffering.**

• **The D.J. demands that CAG replace his damaged equipment at a cost of $2,000.**

• **The golf course charges CAG a $4,000 fee for the cost of the cancelled golf session. 30 people seek a full refund of the $250 they each paid to play golf.**

• **The caterer charges CAG for 250 dinners, even though only 140 attended. Also, 25 people who bought tickets to the dinner are seeking a full refund of $150 each.**
Assessing the Risk

• The volunteer who broke his wrist does not have health insurance, and sues CAG for the cost of his medical bills.
• CAG is sued for $150,000 by the passengers in the car hit by the intoxicated guest.
• CAG receives a letter from the Commonwealth of Virginia seeking to fine CAG because it did not have a license to solicit donations in Virginia.
• The following April, CAG is contacted by a dozen angry donors who find out from their accountants that they cannot deduct the full value of the tickets to the golf tournament and dinner.
Mitigating Risk

- Risk mitigation is the process by which an organization reduces or eliminates the risk that an injury or property damage will occur.
- Risk mitigation also includes ways to reduce the loss if a loss happens.
- A risk mitigation strategy should include both physical precautions and administrative procedures that your organization can take to reduce its exposure.
- Do not worry that creating a list of your organization’s risks can be used against you in a lawsuit someday. Remember that a risk assessment is a necessary component of an overall risk management plan.
Mitigating Risk

As a first step, you need to decide into what category the risk falls. There are four risk categories:

<table>
<thead>
<tr>
<th>Low Risk Incident Will Occur/Low Cost if Incident Does Occur</th>
<th>High Risk Incident Will Occur/Low Cost if Incident Does Occur</th>
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<tr>
<td>Low Risk Incident Will Occur/High Cost if Incident Does Occur</td>
<td>High Risk Incident Will Occur/High Cost if Incident Does Occur</td>
</tr>
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Mitigating Risk

- How you rate the risk of loss to your organization will determine how many resources your organization should expend trying to lessen the risk.
  - In our example:
    - Inadvertently use a trademark on your brochure.
      - Low risk/Low cost
    - Volunteer takes funds raised at dinner.
      - High risk/Low cost
    - Tornado strikes the golf course.
      - Low risk/High cost
    - Serving alcohol to an intoxicated guest.
      - High risk/High cost
Risk Mitigation

• The most difficult to plan for are the low risk/high cost events. Take, for example, tornadoes. We know that every year there will be severe weather that will cause substantial loss of life and property damage somewhere in the United States. However, it is highly unlikely that it will strike a specific community.

• How much should your organization expend to mitigate the risk when you may never experience severe weather?

• It is a question of cost vs. likelihood something will happen.
  • Earthquake in D.C. versus earthquake in California.

• Risk mitigation is not an all or nothing proposition. Even if you cannot eliminate a risk, it makes sense to reduce the risk or reduce the consequences of the risk.
How to Mitigate Risk

• There are several ways to mitigate risk:
  • **Tone at the Top.** Make it clear that the organization expects everyone to be part of its risk mitigation strategy. If someone sees an unsafe or risky condition, they should report it, and not ignore it.
  • **Responsibility and Control.** If a volunteer or employee is engaging in risky behavior, it is the organization’s responsibility to exert control over the situation and mitigate the risk.
  • **Procedures.** The organization should adopt procedures, such as having two people together handle cash receipts, or restrict who may use the organization’s autos.
  • **Check references.** Check out who you do business with.
How to Mitigate Risk

• Contractual provisions
  • **Force Majeure** – Provision in contract limiting liability.
    • Neither party shall be liable and will have the right to terminate agreement for any delay in performing if such delay is caused by conditions beyond a party’s control including acts of God, a strike or other industrial action, any form of civil disturbance, government restrictions, wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.
  • **Indemnification.** Provides that, in the event something happens, the other party will hold organization harmless if it is sued.
    For example, a contract with a caterer may provide that the caterer will indemnify the nonprofit for any damages it incurs because of the improper handling or preparing of food.
How to Mitigate Risk

- **Training.** Provide training for employees and volunteers – such as safety, CPR, first aid and other types of training.

- **Emergency response.** Make sure that you have clear plans to deal with an accident or injury that occurs during the special event. Think of things like – Will we be able to call 911? Who is trained in first aid or CPR? Is there proper safety equipment on scene? Has anyone been put in charge? Do you need emergency contact information?

- **Waivers of liability.** Ask participants to sign a waiver of liability. Enforceable in most states if the person is engaged in a volunteer activity.

- **Volunteer Accident Insurance.** No fault insurance that pays a volunteer’s uninsured medical expenses.
Our Example

• **CAG solicits donations and sells tickets for the event, but does register with the Commonwealth of Virginia to solicit charitable funds in the state.**

• **As part of the publicity for the event, someone describes the event as “Golf for the Cure” and includes a pink ribbon as part of the graphics.**

• **CAG receives a cease and desist letter from the Susan G. Komen Fund stating that it is infringing on its trademark and to stop using the brochures immediately.**

• **CAG has to reprint the brochures at a cost of $350.**

  CAG checks with its pro bono attorney before the event to ensure that it has all the proper license and registrations. The attorney does a quick search in the US Patent and Trademark Office and identifies that “Golf for the Cure” may infringe on Susan G. Komen’s Trademark.
Our Example

• The CAG treasurer gives donation receipts to people who buy tickets for the event without subtracting the value of the golf outing or dinner.

• The treasurer goes to the IRS website and reads a publication explaining the rules for receipting special events.

• The day of the event, the National Weather Service issues a tornado watch, forcing cancellation of the golf tournament.

• In its contract with the golf course, CAG negotiates a provision that if the event is cancelled because of bad weather, it will not be liable and will receive refund of its deposit.

• The tickets to the golf tournament provide that if the event is cancelled due to weather, on request CAG will refund portion of the ticket that is not a donation - the greens fee of $75. 30 people are refunded $2,250, instead of $7,500.
Our Example

• A volunteer trips and falls on the golf course, breaking his wrist.
• When the course becomes dangerous because of weather, designated CAG volunteer tells other volunteers to leave the course. CAG also ensures that there are people who can administer first aid. CAG has volunteer accident insurance and volunteer signed waiver of liability.
• It rains heavily the night of the dinner. Because of the inclement weather only 140 people show up for the dinner event.
  • In its contract with the caterer, CAG guaranteed to pay for 225 dinners. The tickets do not provide for a refund. It is a business decision whether to issue a full or partial refund.
  • The tent leaks and the D.J.’s audio equipment is damaged.
• Before renting the tent from the vendor, CAG makes sure that the vendor had liability insurance to cover the cost of any damage if the tent did not function properly.
Our Example

• A bartender serves drinks to a guest who becomes intoxicated, and the guest gets into a car accident on the way home from the event.

• Fifteen people eat food from a raw bar and contract food poisoning.
  • CAG made sure that the caterer has liability insurance to cover any potential injuries, including liquor liability insurance. The catering contract provides that the caterer will indemnify CAG for any damages that result from the caterer’s negligence.

• There is no procedure for securing the funds raised at the dinner and one of the volunteers does not turn in $500 in receipts.
  • CAG institutes a policy whereby two people must together handle cash receipts for the dinner.
Insuring Against the Risk

• Not all risks can be mitigated. Accidents will happen. People will get injured. Property will be damaged.

• Insurance is designed to protect the assets of an organization in case there is a loss and the organization is legally responsible.

• Before any special event, speak with your insurance broker to make sure that you have the right insurance to cover any losses resulting from the event.
Insuring Against the Risk

• Types of policies that typically respond with respect to special events:
  • Commercial general liability insurance
  • Worker’s compensation
  • Automobile insurance
  • Non-owned and hired auto coverage
  • Employee dishonesty coverage
  • Accidental medical insurance
  • Liquor liability insurance
  • Umbrella coverage
  • Directors and officers insurance
Insuring Against the Risk

• **Commercial general liability insurance (CGL)** – policy that protects the insured against claims for personal injury, typically including slander and libel, and property damage. Organization may provide that volunteers and employees are also insured under the policy. Check for exclusions such as sexual abuse, liquor liability, hazardous activities (i.e., sky diving, motor boating, etc.)

• **Automobile insurance** – coverage for autos owned by nonprofit. (Should have protocol for who can drive autos.)

• **Non-owned and hired auto coverage** – covers rental cars and cars owned by volunteers and employees when engaged in activities on behalf of nonprofit. Typically part of auto policy. If nonprofit has no auto policy, can be added to CGL policy. (Nonprofit may want to limit use of vehicles to employees and volunteers that have a certain level of private insurance.)
Insuring Against the Risk

- **Employee dishonesty coverage** – provides coverage in the event an employee or volunteer steals funds. Typically a rider to property insurance or can be added to CGL policy.

- **Worker’s compensation** – provides coverage for medical expenses and lost wages if employee is injured on the job.

- **Accidental medical insurance** – provides no-fault medical insurance for volunteers up to specified dollar amount. Covers otherwise uninsured medical expenses, such as deductibles, co-pays, and volunteers who are uninsured. (Not very expensive compared to other types of policies.)
Insuring Against the Risk

• **Liquor liability insurance** – There are two types of liquor liability –

  **Host liquor liability** covers bodily injury or property damage arising out of the serving or distribution of alcoholic beverages by a party not engaged in this activity as a business enterprise. Host liquor liability exposures are typically insurable under general liability policies.

  **Comprehensive liquor liability insurance** - applies to restaurants, bars and others who sell alcohol.

• **Wine tasting events, cocktail receptions, cash bars, etc.** Check with your insurance broker to see if your policy covers such events, or whether you need a short term comprehensive liquor liability policy. If it’s a grey area, may want to add to CGL policy.
Insuring Against the Risk

- **Umbrella coverage** – policy that sits above your CGL, worker’s comp and auto policy. Increases the limits of your coverage, and may cover certain gaps in coverage.

- **Directors and officers insurance** - typically would not apply to special events, but may cover claims of employee discrimination and discrimination against certain segments of the public. For example, it may cover a claim of discrimination if the event was not accessible by disabled.
A Special Word About Mission Trips

• Many liability polices have a territorial limitation. This means it only covers losses that occur in the United States (and sometimes Canada.)

• This may include the nonprofit’s general liability policy, worker’s compensation policy, accidental medical policy, umbrella and auto policy. (Also, many health insurance policies and Medicare do not cover medical expenses incurred outside the U.S.)

• If you are hosting an event outside the U.S., such as a mission trip, you must speak to your broker about ensuring organization has coverage for outside U.S. (Check by country.)
Mission Trips

- If the trip is not a regular occurrence, organization may need short term coverage to extend to trip outside U.S.
- Medical expenses and evacuation coverage (Medex, SOS, etc.) Will provide assistance and cover non-U.S. medical expenses and evacuation.
- If nonprofit regularly hosts events outside U.S. may need:
  - International general liability policy
  - International workers compensation
  - International auto policy (May also need local policy.)
  - Rider to your umbrella making clear that it covers claims under these policies.
Additional Issues

- **Additional Insureds.** If you rent a facility for special event, the owner may ask to be named as an additional insured under the organization’s general liability policy. Generally, the insurance company will not charge your organization any additional premium for doing so. You may want to be named as an addition insured on vendor’s policy as well.

- **Certificates of Insurance.** It is important to obtain certificates of insurance from the vendors you deal with, such as a caterer, equipment rental facility, contractor, ride operator, etc. Your organization may be sued for injury caused by the vendor, only because the vendor does not have insurance or has inadequate insurance. “Deep pockets.”
Our Example

• **CAG solicits donations and sells tickets for the event, but does register with Virginia to solicit charitable funds in the state.**
• **As part of the publicity for the event, someone describes the event as “Golf for the Cure” and includes a pink ribbon as part of the graphics.**
• **The CAG treasurer gives donation receipts to people who buy tickets for the event without subtracting the value of the golf outing or dinner.**
• **The day of the event, the National Weather Service issues a tornado watch, forcing cancellation of the golf event.**
• **It rains heavily the night of the dinner. Because of the inclement weather only 140 people show up for the dinner event.**
  
  **Generally no insurance coverage. Must mitigate the risk.**
Our Example

• A volunteer trips and falls on the golf course, breaking his wrist.
  • Volunteer accidental medical insurance covers uninsured medical claims. CGL will cover any other claims.
• The tent leaks and the D.J.’s audio equipment is damaged.
  • CAG asks D.J. to file claim against tent vendor. If no coverage, CAG’s CGL covers damages.
Our Example

• A bartender serves drinks to a guest who becomes intoxicated, and the guest gets into a car accident on the way home from the event.

• Fifteen people eat food from a raw bar and contract food poisoning.
  • CAG notifies caterer that it wants its insurance carrier to cover claims. CAG has CGL and liquor liability coverage.

• There is no procedure for securing the funds raised at the dinner and one of the volunteers does not turn in $500 in receipts.
  • Employee dishonesty coverage.
Questions?

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Best Practices for Planning and Holding Special Events

Erika Byrnes, Principal, Erika Byrnes Consulting
Grant Writing • Fundraising Strategy • Special Projects
Join us...
Who doesn’t like a party?

- Events are fun
- You interact with colleagues in a more relaxed setting
- You discover new things about people you know
- You meet new people
FUNDRAISING 101: PEOPLE GIVE TO PEOPLE
PEOPLE GIVE...

- Time
- Money
- Provide Introductions
- Provide Access to Resources
Who doesn’t like a party...

- Development Directors

But why...
BECAUSE...

- Events Take a Lot of Time and Thought and Energy
- They are Detail Heavy and Deadline Driven
- Event Costs are More Predictable Than its Revenues and Many Costs are Up Front
THAT SAID...

- Successful Events Serve Multiple Purposes
- If a Fundraiser, it Brings Unrestricted Revenue
- If a Social Event, it Brings Together Key Stakeholders
• Some Charitable Events Double as Networking Events

• Event Programs Showcase Key Partnerships, Essential Services and Social Benefits

• Events Reinforce or Build a Deeper Personal Connection to an Organization’s Mission
BUILDING A SUCCESSFUL EVENT
ACHIEVE CONSENSUS ON EVENT GOALS AND TARGET AUDIENCE

- How Do You Define Event Success ($ Raised, Guests Attended, etc.)
- Who is Your Audience? Are There Sub-groups, Can You Rank Them?
- What Gets Your Invitees to Attend? What Makes Them Want to Come Again and Bring Others?
WHAT TYPE OF EVENT?

- Choose a Time, Location and Format that Matches Your Event Goals and Target Audience
- The Venue and Format Should Amplify or Reflect Your Message
- Guests Look for Convenience and Unique Experiences
IDENTIFY SPECIAL GUESTS AND VENUE NEEDS EARLY

- A-list Speakers or Honorees May Rally Behind Just One or Two Charities per Year. Create a Shortlist and Strategy for Each.

- When You Know Your Ideal Guest Size and Budget, Research Venues or Caterers. Top Picks Go Fast.
CRAFT THEMES
LINKING PEOPLE AND PROGRAMS TO MISSION

- Identify a Thematic Connection Between Your Organization and Your Lead Speaker or Honoree

- Every Program Addition Should Tie to a Central Theme or Bridge Two Supporting Points, Reinforcing Key Messages to Your Audience
CORPORATE SPONSORS

- Meet with Each Honoree / Special Guest to Discuss Contacts Whom You May Solicit on Their Behalf

- Consider Business Sectors Aligned with Your Event Theme and Mission

- Consider Your Agency’s Current Funders Who May Have Additional Funds Available for Special Events
EVENT PLANNING TIPS

- Create an Event Timeline Once You Lock in Your Venue or Key Guest
- Begin Fundraising Immediately
- Focus Your Program So That it is Short, Tight and On Message
- To the Extent Possible, Show (Don’t Tell About) Your Work
- Draft Remarks in Advance and Be Clear About Time Allocations
WHEN TO SEEK COUNSEL?

- Before Signing a Contract (With Venue, Caterer, or Other Vendors)
- Clear All Special Guest/Honoree Photos and Narrative Through Their Corporate Vetting Process
- Secure Photo Releases Before Using Client Images in Program or Guest Images Taken at the Event
FINAL THOUGHTS

- Be Gracious - Thank Everyone for Coming
- Recognize Key Staff or Volunteers Who Played a Big Role in the Event’s Success
- Recognize Other Major Stakeholders in the Room
Thank You!