



Legal Minute

November 2003

New State and Federal Laws Affecting Nonprofit Community Development Organizations

Do Not Call

Texas nonprofits are subject to two "Do Not Call" laws; one state and one federal. The Texas law has limited application. It prohibits phone calls to solicit a sale or extension of credit for consumer goods or services unless the caller has an established business relationship with the person called. An "established business relationship" means a prior relationship formed by a voluntary, two-way communication regarding consumer goods or services offered by the person.

The federal "Do Not Call" rules have broader application. The rules do not apply when a nonprofit makes a phone call on its own behalf using employees or volunteers. However, if a nonprofit uses a for-profit telephone solicitor firm to make calls, the firm must honor requests not to call again. Under federal law, telephone solicitors working on behalf of a nonprofit must:

- disclose truthfully and promptly the identity of the charitable organization and that the purpose of the call is to solicit a charitable contribution, if applicable;
- not make repeat phone calls to any household that has stated it wishes not to receive calls made on behalf of the charity; and
- not misrepresent the mission of the charity; the tax-deductible portion of a contribution; the purposes for which the contribution will be used; the percentage the charity will receive; or the telemarketer's affiliation with, or endorsement by any person or government entity.

As a best practice, nonprofits should not place phone calls to a person offering any product or service unless the nonprofit has an "established business relationship" or a signed written consent from the person that the nonprofit is calling.

For Texas "Do Not Call" information, see www.texasnocall.com or call 1-866-896-6225 for compliance details. For federal information, see www.donotcall.gov.

Do Not Fax

There are also state and federal laws relating to facsimile transmission. The Texas law is limited to solicitations for the sale of consumer goods or services. There is a very specific 12-point type notice required for such solicitations.

The federal law prohibits organizations from sending a fax advertising any product or service to anyone unless the nonprofit has an "established business relationship" with the person or entity without signed written consent from the recipient which includes their name and fax number. The rule applies to membership dues reminders and conference registrations. The Federal Communications Commission recently issued a rule eliminating the established business relationship exception and requiring written consent. The effective date of its new "Do Not Fax" rule is January 1, 2005. A sample Fax Consent Form is available at www.texasbar.org.

Do Not Email

Texas has passed an anti-spam law that became effective on September 1, 2003. The law requires that the letters "ADV:" be the first four letters of the subject line in any unsolicited electronic mail message that promotes any products or services to any person, unless the nonprofit has an "established business relationship" with the person. "Established business relationship" here means a prior relationship formed by a voluntary, two-way communication regarding products or services for sale. A nonprofit must provide a working email message to be removed from the email list and any opt-out request must be honored within three days of the opt-out request. There are civil and criminal penalties for violation of this law.

Cooperative Mailing with Commercial Fundraisers

The United States Postal System is considering a new rule on cooperative mailings using the nonprofit preferred mailing rate for charitable solicitations. The new rule may be subject to abuse by for-profit entities and nonprofits should be cautious with such proposals. For updated information, see www.independentsector.org.

The Patriot Act

There are several different provisions of the new federal Patriot Act that have implications for nonprofit organizations. International charitable activities will be closely scrutinized as well as sources of donations. The United States Department of Treasury has issued best practices for charities at www.ustreas.gov. The law also provides the government with expanded surveillance powers, greater access to voicemail messaging systems and email, and the authority to freeze and seize assets. Charitable organizations may be ordered to disclose educational records and foreign student information. In addition, the Financial Crimes Enforcement Network has proposed rules for real estate closings for transactions that are secured by real estate. This section of the law requires proof of the borrower's name, address, date of birth, and Social Security number. For more information, see www.alta.org.

Hotel Occupancy Tax

Hotel owners and operators may accept hotel occupancy tax exemption certificates (Form 12-302) in good faith, if employees and representatives of a nonprofit are traveling on official business. The exemption applies only to the state hotel tax and not local taxes. Nonprofit employees may show a printed copy of the Comptroller's website. To make sure your organization is listed, go to www.window.state.tx.us/taxinfo/hotel.

Criminal History Information

Two new laws authorize nonprofits that regularly provide programs for children to obtain criminal history information on volunteers and volunteer applicants (SB 443 and SB 602).

Charitable Immunity

Several new state laws extend immunity from civil liability to volunteers. The first provides immunity to all volunteers of charitable health care organizations. (HB 4) Another law provides immunity from money damages for persons providing assistance during disasters if the person does not expect to receive compensation for the assistance (HB4; SB 513).

Salvage and Surplus Property

Other recently passed legislation allows charitable organizations to participate in additional salvage and surplus property programs. A nonprofit computer bank may participate in the state's surplus and salvage program. School districts may deed property to a nonprofit for uses other than as a community center. Counties can donate surplus property to charitable organizations without first conducting a public bid process if certain requirements are met (SB912; SB805; HB 970).

Property Tax

The redemption period for mineral interests in property after a tax sale has changed from six months to two years.

The CHDO property tax exemption has changed. See the May 2003 Legal Minute at www.texasbar.org.

A new Urban Land Bank Demonstration program in Dallas changes the procedures for the City of Dallas to assemble tax foreclosed property for the development of affordable housing (HB 2801).

Real Estate

For any deed or mortgage to or from an individual executed on or after January 1, 2004, the following language in 12 point bold-face must be included: **Notice of Confidentiality Rights: If you are a natural person, you may remove or strike any of the following information from this instrument before it is filed for record in the public records: Your social security number or your driver's license number.**

Homebuilders must register with the newly-created Texas Residential Construction Commission. Rules outlining the process will be issued in January 2004. Watch the Texas C-BAR website for further information.

For more information on the new Texas laws, see www.capitol.state.tx.us.