

# Colorado Secretary of State



## Administration of the Colorado Charitable Solicitations Act [8 CCR 1505-9]

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**Rule 1. Definitions.**

As used in these rules and in the Colorado Charitable Solicitations Act:

- 1.1 “Accounting period” means the time period for keeping records and reporting income and expenses.
- 1.2 “Agent” means an individual who, by the principal’s written authority, transacts business or manages affairs for the principal, and provides an accounting to the principal. “Agent” includes “subcontractors.”
- 1.3 “Authorized officer” means the individual designated by the filing entity to electronically sign forms on behalf of the organization in accordance with the CCSA. This individual must be an officer of a nonprofit corporation, a trustee of a charitable trust, or a senior manager member of any other entity subject to the filing requirements of the CCSA.
- 1.4 “Bona fide personal emergency”:
  - 1.4.1 Includes:
    - (a) A medical emergency affecting a registrant or member of registrant’s immediate family, including incapacitation, hospitalization, accident, or death.
    - (b) A practical emergency including extraordinary obstacles out of the registrant’s control that prevents timely disclosure such as the loss or unavailability of records or a computer due to fire, flood, or theft.
  - 1.4.2 Excludes:
    - (a) Failure to timely file documents due to failure to plan.
    - (b) Accounting delays.
    - (c) Misunderstanding of applicable disclosure requirements and deadlines.
    - (d) Mistakes in electronic filing submission, including incomplete filings resulting in rejection of the document.
    - (e) Lack of access to internet or computer.
    - (f) Lack of corporate credit card or other means of making online payments.
- 1.5 “CCSA” means the Colorado Charitable Solicitations Act codified at Article 16 of Title 6, C.R.S.
- 1.6 “Directly employed”, as used in section 6-16-103(7)(d), C.R.S., means the charitable organization controls or directs the means and methods of accomplishing the result of the individual’s work, regardless of whether the individual is employed full-time or part-time, is paid a salary or on commission, or is called an employee or an agent or independent contractor.
- 1.7 “EIN,” an employer identification number, means the Federal Tax Identification Number used to identify a business entity.
- 1.8 “E-mail address” in section 6-16-114(1)(b)(II), C.R.S., means the e-mail address provided by and belonging to an authorized officer during the creation of a registrant’s online account.

- 1.9 “Fiscal year” means annual accounting period.
- 1.10 “Form of the applicant’s business” means an entity listed in section 7-90-102, C.R.S., or similar business statutes in other states but excludes the organization’s purpose and tax-exempt status.
- 1.11 “Gross revenue” means all revenue received from any source during the organization’s accounting period, without subtracting costs or expenses. “Gross revenue” excludes receipt of funds by a pass-through agent that lacks the right to use or benefit from them.
- 1.12 “Name or names,” as used in section 6-16-104(2)(a), C.R.S., includes:
- 1.12.1 “Doing business as,” “also known as,” or trade names; and
- 1.12.2 The name of any donor-advised fund that solicits contributions from the public using its own name, unless, in all written and oral solicitations, the fund clearly identifies itself as a “donor-advised fund” of a specified charitable organization that is either registered with the Secretary of State or exempt under section 6-16-104(6)(a) through (d), C.R.S.
- 1.13 “Newly-Formed Charitable Organization” means an organization that has not reached the 15th day of the fifth month following the close of its first fiscal year.
- 1.14 “Person Responsible for Directing and Supervising the Conduct of the Campaign”, in accordance with section 6-16-104.6(7)(b), C.R.S., includes agents or subcontractors of the paid solicitor.
- 1.15 “Principal Place of Business” means the street address of the organization’s usual place of business. “Principal place of business”, as used in these rules, does not include a post office box or private mailbox.
- 1.16 “Registrant,” as used in these rules, refers collectively to charitable organizations, professional fundraising consultants, and paid solicitors subject to CCSA requirements.
- 1.17 “Short-period registration and financial statement” means a registration and financial statement covering a period of less than 12 months.
- 1.18 “State Elections Commission” includes, for purposes of section 6-16-104(6)(b), C.R.S., the Secretary of State’s Campaign and Political Finance Program.
- 1.19 “Subcontractor,” includes the agent but not employee of a paid solicitor who solicits on behalf of the paid solicitor for the benefit of a charitable organization that contracted with the paid solicitor.

## **Rule 2. Electronic Filing**

- 2.1 Registrants must file all documents electronically using the Secretary of State’s online system.
- 2.2 The Secretary of State will issue a unique user identification and password for use of the online system. To receive access, an individual must provide their name, valid email address and EIN. Registrants must update this information promptly if it changes. Filing with the user identification and password will constitute the filer’s official signature, in accordance with section 24-71.3-102(8), C.R.S.

## **Rule 3. Expedited Hearing Deadlines**

- 3.1 The Secretary of State will set and give notice of the hearing within seven days of receiving a request for hearing per section 6-16-111(6)(b), C.R.S. The Secretary will set the hearing between 20 and 45 days after the mailing of the notice.

3.2 For good cause shown, the Secretary of State may continue a proceeding for up to 15 days.

3.3 The Secretary will take final agency action within ten days following the hearing.

#### **Rule 4. Registration**

4.1 All registrants

4.1.1 If the Secretary of State approves an initial or renewal registration statement, the Secretary will issue a permanent registration number or update the registrant's status and send confirmation to the registrant's authorized officer via email.

4.1.2 A registrant that has not been denied, suspended, or revoked, withdrawn, or expired may obtain a registration certificate verifying that status.

4.2 Charitable organizations

4.2.1 If the charitable organization was not in existence for an entire accounting period, changes its accounting period, or merges out of existence or dissolves before the end of its accounting period, it must file a short-period registration and financial statement.

4.2.2 A charitable organization must use the same accounting period to file registration documents with the Secretary of State that it uses to maintain financial records internally and to file IRS Form 990 with the IRS.

4.2.3 The Secretary of State may require a charitable organization to provide a copy of the appropriate IRS Form 990 to meet Colorado's reporting requirements.

4.2.4 If the Secretary of State identifies inconsistencies, between a charitable organization's registration statement and the IRS Form 990, the Secretary of State may require the organization to file an amended IRS Form 990 with the Secretary of State, or otherwise correct the inconsistency to complete the state filing. Failure to correct the inconsistency may result in denial or suspension of registration in accordance with section 6-16-111(6), C.R.S.

4.3 Paid Solicitors

4.3.1 In accordance with section 6-16-104.6(4), C.R.S., a paid solicitor may register and pay a single fee on behalf of its agents (including subcontractors) listed on the paid solicitor's registration.

4.3.2 For a specific solicitation campaign, an agent or subcontractor not directly under contract to the registered paid solicitor must file its own registration. See Rule 10 for additional subcontractor requirements.

#### **Rule 5. Filing Deadlines and Extension of Filing Deadlines**

5.1 Charitable organizations.

(a) If a charitable organization, at the time of initial registration, reports financial information outside of the most recently completed fiscal year, the Secretary of State may approve the initial registration but the organization must file a renewal or extension request within five days from the initial registration approval.

- (b) If the organization fails to file a renewal or extension within the five day period, the organization's registration will expire and the organization may be subject to fines.

#### 5.1.2 Registration renewal and financial report.

- (a) If a charitable organization does not file a deadline extension with the IRS, the charitable organization must file its registration renewal and a financial report for the most recent fiscal year by the 15th day of the fifth calendar month after the close of each fiscal year in which the charitable organization solicited in Colorado.
- (b) If a charitable organization files a deadline extension with the IRS, the charitable organization must file its registration renewal and financial report by the 15th day of the eighth calendar month after the close of each fiscal year in which the charitable organization solicited in Colorado.

5.1.3 A charitable organization may renew its registration or replace initial estimates with actual financial information no earlier than the close of the accounting period to which the filing applies.

5.2 For a professional fundraising consultant or paid solicitor, the renewal period begins 60 days before the expiration date of the consultant's or solicitor's registration, which is either:

5.2.1 The day and month the initial registration was approved; or

5.2.2 The day and month the most recent reinstatement was approved.

#### 5.3 Paid Solicitors

5.3.1 For reporting purposes, a solicitation campaign duration on a solicitation notice may not exceed one year.

5.3.2 Before the campaign end date listed on an initial solicitation notice, a paid solicitor may amend the initial solicitation notice to extend the campaign duration up to one year. After the campaign end date, the paid solicitor must file a new solicitation notice.

5.3.3 A paid solicitor must submit a solicitation campaign financial report on or before the 90th day following the campaign end date listed on a solicitation notice. A paid solicitor who does not submit a campaign report on or before the deadline may not begin a new solicitation campaign or file a new solicitation notice until the Secretary of State approves the overdue campaign report.

5.4 For any filing, including registration, that requires the name and address of a person with custody of a registrant's records, the registrant must include:

5.4.1 The name of an individual; and

5.4.2 The individual's principal place of business or, if the individual lacks a principal place of business, the individual's residential street address.

5.5 If the deadline for filing a registrant's document under the CCSA falls on a weekend or holiday, the deadline will still be on that day.

5.6 If a registration was filed on February 29, the renewal deadline is February 28 of the following year.

*[Administrative note: Rule 5.7, temporarily adopted on 7/15/2020, expired on 11/12/2020]*

## **Rule 6. Fines**

### 6.1 Charitable organization

6.1.1 The fine for a charitable organization is \$60 per overdue report, including an overdue update of estimated financial information.

6.1.2 The fine for a charitable organization that, after notification continues to solicit contributions before registering is \$300.

6.1.3 In response to a Secretary of State inquiry, an exempt charitable organization must indicate that it is exempt from registration and cite the basis for its exemption.

6.1.4 An organization fined for soliciting while unregistered, must pay both the fine and the regular filing fee.

6.1.5 If a nonexempt charitable organization solicits contributions in Colorado before filing its initial registration or reinstating its registration, it must provide financial reports for the last three fiscal years or for the period of solicitation, whichever is shorter.

### 6.2 Paid solicitor

6.2.1 The fine for a paid solicitor is \$200 per overdue renewal, solicitation notice, and campaign financial report.

6.2.2 The fine for a paid solicitor that, after notification, continues to solicit contributions before registering is \$1,000.

### 6.3 Professional fundraising consultant

6.3.1 The fine for a professional fundraising consultant is \$200 per overdue renewal.

6.3.2 The fine for a professional fundraising consultant that is required to register and, after notification, continues to provide consulting services before registering is \$1,000.

### 6.4 Waiver of fine

6.4.1 A registrant may ask the Secretary of State to reduce or excuse an imposed fine by submitting a written request by letter, email, fax.

6.4.2 The Secretary must receive the request within thirty days of the mailing date of the fine notice.

6.4.3 The request must include:

(a) The name of the charitable organization, professional fundraising consultant, or paid solicitor;

(b) The request date;

- (c) The due date of the delinquently filed registration document(s);
- (d) The actual filing date of the delinquently filed registration document(s);
- (e) Measures that the charitable organization, professional fundraising consultant, or paid solicitor instituted or plan to institute to avoid future delinquencies, if applicable;
- (f) A detailed explanation of the reason, circumstance, or other justification such as:
  - (1) A bona fide emergency as defined in Rule 1.4;
  - (2) A timely filing was not possible due to website or emergency errors; or
  - (3) The organization was not required to register during the time period of fine assessment.
- (g) The basis for claiming an exemption, if applicable; and
- (h) Any other relevant information.

6.4.4 The Secretary of State may also consider the frequency of requests to excuse or reduce fines within a three-year period and any past CCSA violations.

6.4.5 If the Secretary of State does not receive payment by the 60th day following the date of the fine notice, the Secretary of State will forward the penalty to the State's Central Collection Agency.

#### **Rule 7. Suspensions and Revocations**

- 7.1 A registrant may not solicit contributions, provide consulting services in connection with a solicitation campaign, file a solicitation notice, or conduct a solicitation campaign in Colorado while suspended or revoked.
- 7.2 If the Secretary of State does not receive an overdue solicitation campaign financial report, or a request for a hearing from a registrant by the 63rd day after the deadline or a deadline extension granted by Secretary of State, the Secretary of State will suspend the paid solicitor's registration.

#### **Rule 8. Withdrawing and Reinstating a Registration**

##### **8.1 Withdrawal**

- 8.1.1 A registrant may request to withdraw its registration by notifying the Secretary of State.
- 8.1.2 A newly-formed charitable organization may withdraw its registration unconditionally if it determines that it registered by mistake.
- 8.1.3 The Secretary of State will not approve a withdrawal request unless and until:
  - (a) A registrant pays any and all outstanding fines or obtains a waiver under Rule 6.4;
  - (b) A charitable organization files its final financial report for the most recent fiscal year that it was subject to the CCSA.

- (c) A paid solicitor files a solicitation campaign financial report for every solicitation campaign for which the paid solicitor filed a solicitation notice and a solicitation notice for every solicitation campaign conducted in Colorado.

8.1.4 If an organization is terminating, it may file a short-period financial statement covering the final fiscal year up to the date of dissolution or termination.

## 8.2 Reinstatement

### 8.2.1 Charitable organization

- (a) If a charity was exempt from registering for each fiscal year since its registration ended, it must complete the following requirements to reinstate its registration:

- (1) File a reinstatement form;
- (2) File a financial form for the most recent fiscal year; and
- (3) With respect to each fiscal year since the charity's registration expired or was withdrawn, certify that the charity was exempt from registration requirements under the CCSA.

- (b) An expired or withdrawn charity that was not exempt from registration requirements for each fiscal year since its registration ended must complete the following requirements to reinstate its registration:

- (1) File a reinstatement form;
- (2) File a financial form for the most recent fiscal year;
- (3) File a financial form for each fiscal year the charity should have been registered under the CCSA, up to a maximum of the past three consecutive fiscal years; and
- (4) Pay all applicable fees and fines.

### 8.2.2 Paid solicitor

- (a) If a paid solicitor was exempt from registering for each fiscal year since its registration ended, it must complete the following requirements to reinstate its registration:

- (1) File a reinstatement form; and
- (2) With respect to each year since the paid solicitor's registration expired or was withdrawn, certify that it was exempt from registration requirements under the CCSA.

- (b) If a paid solicitor was not exempt from registration requirements for each year since its registration ended, it must complete the following requirements to reinstate its registration:

- (1) File a reinstatement form;



- (2) File solicitation notices and campaign reports for solicitation campaigns conducted in Colorado while its registration was expired, withdrawn, or suspended; and
- (3) Pay all applicable fees and fines.

#### 8.2.3 Professional fundraising consultant

- (a) If a professional fundraising consultant was exempt from registering for each year since its registration ended, it must complete the following requirements to reinstate its registration:
  - (1) File a reinstatement form; and
  - (2) With respect to each year since the professional fundraising consultant's registration expired or was withdrawn, certify that it was exempt from registration requirements under the CCSA.
- (b) If a professional fundraising consultant was not exempt from registration requirements for each year since its registration ended, it must complete the following requirements to reinstate its registration:
  - (1) File a reinstatement form; and
  - (2) Pay all applicable fees and fines.

8.2.4 All suspended or denied registrants must cure all deficiencies, pay all applicable fines, and satisfy any other obligations that may be required.

### **Rule 9. Application of Registration Requirements to Internet Solicitation**

9.1 As used in this Rule 9:

- 9.1.1 "Interactive website" means a website that permits a contributor to make a contribution or purchase a product in connection with a charitable solicitation electronically, such as by submitting credit card information or by authorizing an electronic funds transfer. Interactive websites include sites through which a donor may complete a financial transaction online even if completion requires the use of linked or redirected sites. Such a website is interactive regardless of whether donors actually use it.
- 9.1.2 "Receives contributions from Colorado on a repeated and ongoing or substantial basis" means receiving contributions within the entity's fiscal year that are sufficient to establish the regular or significant (as opposed to rare, isolated, or insubstantial) nature of those contributions.
  - (a) An entity receives contributions on a repeated and ongoing basis if it receives at least 50 online contributions during a fiscal year.
  - (b) An entity receives substantial contributions if it receives the lesser of \$25,000 or 1% of its total contributions in online contributions during a fiscal year.
- 9.1.3 "Specifically targets persons physically located in Colorado for solicitation" means:
  - (a) To include on a website a reference to soliciting contributions from Colorado; or

- (b) To otherwise appeal to residents of Colorado, such as by advertising or sending messages to persons located in Colorado (electronically or otherwise) when the entity knows or reasonably should know the recipient is physically located in Colorado. Charities operating on a purely local basis, or within a limited geographic area, do not target states outside their operating area, if their web site makes clear in context that their fundraising focus is limited to that area even if they receive contributions from outside that area on less than a repeated and ongoing basis or on a substantial basis.
- 9.2 An entity that solicits Colorado residents via e-mail will be treated the same as one that solicits Colorado residents via telephone or direct mail.
- 9.3 An entity with a principal place of business in Colorado that uses the internet to conduct charitable solicitations in Colorado must register with the Secretary of State, unless it is exempt from the registration requirements per section 6-16-104(6), C.R.S., regardless of whether the solicitation methods are passive or interactive and regardless of whether the internet solicitation methods are maintained by itself or another entity with which it contracts, or whether it conducts solicitations in any other manner.
- 9.4 An entity with a principal place of business outside of Colorado must register with the Secretary of State, unless it is exempt per section 6-16-104(6), C.R.S., if:
  - 9.4.1 Its non-internet activities are sufficient to require registration in Colorado, or
  - 9.4.2 The entity solicits contributions through an interactive website and the entity either:
    - (a) Specifically targets persons physically located in Colorado for solicitation, or
    - (b) Receives contributions from Colorado on a repeated and ongoing basis or a substantial basis through its website; or
  - 9.4.3 The entity solicits contributions through a non-interactive site, but either specifically invites further offline activity to complete a contribution, or establishes other contacts with Colorado, such as sending e-mail messages or other communications that promote the website; and
    - (a) Specifically targets persons physically located in Colorado for solicitation, or
    - (b) Receives contributions from Colorado on a repeated and ongoing basis or a substantial basis through its website.
- 9.5 Solicitations for the sale of a product or service that include a representation that some portion of the price is devoted to a charitable organization or charitable purpose (also called “cause marketing” or “commercial coventuring,” as defined in section 6-16-103(3), C.R.S., as a “charitable sales promotion”) are governed by the same standards outlined in this Rule 9 and in accordance with section 6-16-104(1), C.R.S.
- 9.6 Nothing in this Rule 9 is intended to limit or expand upon the exception to the definition of a “paid solicitor” listed in section 6-16-103(7)(f), C.R.S., which states that a person whose only responsibility in connection with a charitable contribution is to provide a merchant account to process credit card payments using the internet is not considered a paid solicitor.

## **Rule 10. Subcontractors to Paid Solicitors**

### **10.1 Filing Requirements**

- 10.1.1 The Secretary of State will treat the subcontractor operating under a contract with a registered paid solicitor to solicit charitable contributions as an agent of that paid solicitor and the subcontractor is not required to register. The paid solicitor must file all solicitation notices and campaign reports and ensure that the subcontractor provides written confirmation of contribution statements and makes all the required oral disclosures that apply to paid solicitors in sections 6-16-105 and 6-16-105.3, C.R.S., respectively.
  - 10.1.2 A subcontractor who makes an oral solicitation regarding a charitable contribution to a person by a telephone call received in Colorado must state their own first and last name and that they are calling on behalf of the registered paid solicitor.
  - 10.1.3 An agent (but not an employee) of a subcontractor operating under a contract with that subcontractor to solicit contributions must register separately.
- 10.2 Authorization to Solicit
- 10.2.1 A subcontractor must operate under a written contract with a registered paid solicitor and the contract must be provided to the Secretary of State upon request in accordance with section 6-16-104.6(2), C.R.S.
  - 10.2.2 A subcontractor must keep records in accordance with section 6-16-109, C.R.S., and must furnish the originals or copies to the paid solicitor and, upon request, to the Secretary of State.