

NONPROFIT MATTERS

PUBLIC

Providing Access To Justice



LAW CENTER

For Orange County's Low Income Residents

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As the recession continues to present significant challenges to the nonprofit sector, you are no doubt busy brainstorming creative ways to raise much-needed funds to maintain your programs and services. In this edition of **Nonprofit Matters**, we share with you information about a vital resource for fundraising: the Orange County Community Foundation (OCCF). Shelley Hoss' article highlights OCCF's work in the areas of endowments and planned giving, options that may be much more accessible than you realize. We hope that the second article will help you avoid common fundraising mistakes that could jeopardize your tax-exempt status.

You will notice that this edition's IRS Update is lengthier than in previous editions as the IRS Charities & Nonprofits section has increased its efforts to become more user-friendly and created a number of helpful tools and publications for organizations. Please contact me if you have any questions or comments about the information in this newsletter, have suggestions for future newsletter topics, or need legal assistance for your organization.

Thank you to the 2008-2009 Access to Justice Annual Fund Donors

PLC's work is life-changing for thousands of children, families, adults and seniors each year. They depend upon PLC for assistance in civil matters that threaten their safety and security in basic areas of living. PLC in turn depends upon the financial support of the Access to Justice Annual Fund to ensure that Orange County's low-income residents receive vitally needed legal assistance. Make your contribution to the 2010 Access to Justice Annual Fund Today.

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The Public Law Center, Orange County's pro bono law firm, is committed to providing access to justice for low-income residents.



A Foundation of Support for Orange County Nonprofits *The Orange County Community Foundation (OCCF) Offers Training, Gift Planning Options for Local Agencies*



By Shelley Hoss, President, OCCF

Orange County is home to a dynamic mix of nonprofit organizations working to meet the needs of our diverse community. In our role as a facilitator of philanthropy in Orange County, we work with donors, nonprofits and community and business leaders to make Orange County a better place to live, learn and thrive.

The [Orange County Community Foundation](#) is perhaps best known as a grant-making organization - in fact, in partnership with our generous donors, we awarded \$21.3 million in grants and scholarships during 2009. We are proud that this funding support allows local nonprofits to fulfill their mission-critical work, especially during this time of continued economic challenge. But today's climate demands that our local nonprofit institutions work smarter, more effectively and more sustainably.

A lingering recession means fewer resources with which nonprofits can meet increased demand. And, in the face of severe state and local government cutbacks, nonprofits that rely on this support are now at even greater risk.

The Community Foundation works with local nonprofit organizations to bolster their effectiveness and fundraising capabilities -- through partnership, training and educational resources, with a special focus on increasing endowment and building planned giving capacity.

What is endowment?

An endowment is a permanent investment in a nonprofit organization that provides a continual source of support. The principal of an endowment is not itself spent; rather it is invested and generates investment earnings that support the charitable work of an organization forever. Endowments are made possible by gifts from individuals who embrace your mission or have benefitted from your programs or services.

What is a planned gift?

Many sizeable gifts to endowment are made possible through planned gifts. Planned giving includes a spectrum of giving vehicles that allow donors to give to a charity during or after their lifetime. Often part of estate planning, a planned gift allows donors to provide for charity and their heirs in a way that maximizes benefits to their estate. Planned giving is a growing development opportunity for nonprofit agencies.

The Orange County Community Foundation offers two important programs to help local nonprofits establish endowment and put planned giving to work.

Nonprofit Sustainability Program

Through the Nonprofit Sustainability Program, our team guides and supports local nonprofit organizations as they begin to expand their revenue mix to build endowments and ultimately sustain their critical work in the community. The program helps nonprofit agencies establish the infrastructure and begin the organizational process of incorporating endowed giving options in their fundraising efforts. Since launching in 2008, thirty-six (36) organizations have completed the program.

Legacy Partners Program

While the importance of endowment development may be understood, it is often difficult to implement due to

limitations of structure, experience and resources. The Legacy Partners program provides a cost-effective, structured program to help nonprofits build endowment capacity through planned and deferred giving. The goal of the program is to help nonprofits learn to:

- Create and launch an effective program tailored to their organization
- Secure legacy gift commitments from new and existing donors
- Provide a consistent focus on building self-perpetuating endowment
- Cultivate relationships that may also lead to current gifts

Your Partner in Planned Giving

In addition to these programs, we are happy to provide pro bono consultation to local nonprofits with donors who may be interested in particular planned giving tools. We can create customizable illustrations on planned gifts and we offer a wide range of products, such as charitable gift annuities, that nonprofit agencies can share with their donors.

To Learn More

I invite you to contact our Development and Gift Planning team to learn how OCCF can help your agency. For more information please visit our web site at www.oc-cf.org and click on the "For Nonprofits" tab. Or contact Jeff Swanson, Vice President of Development and Gift Planning at either 949-553-4202 ext. 39 or jswanson@oc-cf.org.

We are proud to be your partner in philanthropy.



5 Fundraising Mistakes That Can Get You Into Legal Trouble

by Sarah Efthymiou, PLC Volunteer Attorney

Fundraising is one of the most effective ways for nonprofits to raise needed financial resources. However, fundraising is subject to a complex collection of laws and restrictions. These include federal and state regulations on recordkeeping, reporting, and disclosure, as well as Postal Service restrictions on misleading or fraudulent direct mail and the misuse of nonprofit standard rate postal permits. Below is an overview of the laws which could affect your organization's fundraising efforts.

1. Federal Record-keeping and Reporting

In order to comply with federal tax rules and maintain tax-exempt status, organizations need to establish some basic record-keeping and reporting procedures and make informative disclosures to their members and donors. Records should be kept on:

- the total amount of contributions, gifts and grants received;
- the names and amounts given by contributors; and
- how the funds are spent, including separating program, administration and fundraising expenditures.

2. Disclosure Statements

IRS disclosure rules require organizations to inform prospective donors about the extent to which their contributions are legally tax-deductible. Disclosures should be made on membership applications, direct-mail appeals, tickets to and flyers promoting fundraising events, and so forth. Additional information on IRS

disclosure rules can be found in [IRS Publication 1771](#).

3. Postal Regulations

Reduced postal rates are a major benefit to 501(c)(3) organizations, but require strict rules to be followed. For example, the mailing must identify the authorized organization and must include only your own organization's mail.

Additional information and application forms can be found in [USPS Publication 417](#), Nonprofit Standard Mail Eligibility. Also, the bulk mail coordinator at your local or regional post office is generally very helpful in answering questions about the proper use of your nonprofit postal permit.

4. State Laws

Complying with state and local fundraising laws can prove to be the most difficult and time-consuming aspect of fundraising, particularly with respect to a fundraising campaign that appeals to residents in a number of states. Most states have enacted special rules for fundraisers and many of these regulations require organizations to register with each state in which they plan to solicit donations before they begin soliciting funds. The failure to properly register and comply with all applicable state fundraising laws can result in costly fines and other penalties.

To make compliance easier, organizations may use a [Unified Registration Statement \(URS\)](#). Before getting started, however, it is a good idea to determine the states in which your group will be raising funds from the public and look at the registration and disclosure requirements of those states. (See the appendix of the Unified Registration Statement for state-by-state information.)

Fundraisers may also be subject to a variety of other state laws, including prohibitions on fraudulent advertising. In some states, a fundraising appeal needs only to be capable of deceiving to violate these laws. More information about these statutes may usually be obtained by contacting the state's attorney general's office.

5. Local Laws

Many cities and counties also have registration and disclosure statutes. While it is difficult, if not impossible, for an organization to contact every city and county in which it will solicit funds, it is particularly important to do so if you are conducting a door-to-door solicitation, a raffle or a bingo fundraiser, because these types of activities are frequently subject to special local regulations.

Offices regulating fundraising vary depending on the locality; however, local police, finance, tax, licensing, and commerce departments are often responsible for issuing required permits.

For most nonprofit organizations, fundraising is a necessary part of their existence. By keeping this legal framework in mind, you can help your organization avoid costly fines and, in some situations, the loss of tax-exempt status. Even more important, however, abiding by the regulations helps to maintain the public's trust in the nonprofit sector and, in turn, helps to ensure the continued support of the essential services your organization provides.

For further information or guidance, the [Public Law Center](#) may be able to provide legal assistance to eligible organizations through pro bono counsel.

Citizenship

Hundreds of legal immigrants in Los Angeles, Orange and San Bernardino counties whose citizenship applications have been in limbo for years due to indefinite delays in routine FBI background checks will have their cases resolved within 6 months because of a recent settlement with the federal government. For more information, view this [press release](#) by the [National Immigration Law Center](#).



COBRA

In December, the President signed the 2010 Department of Defense Appropriations Act which includes a provision to extend the COBRA subsidy, helping millions of unemployed Americans continue their health insurance coverage. The extension expands the amount of time people can get the subsidy from 9 months to 15 months. It also extends the eligibility period for the COBRA premium reduction an additional 2 months. Before the extension, you had to have been involuntarily separated from your job between Sept. 1, 2008, and Dec. 31, 2009, to qualify for the reduced COBRA payment. That period of eligibility has now been extended to Feb. 28, 2010. For more information, visit www.dol.gov/COBRA or call the Employee Benefits Security Administration at 866-444-3272.

Early Care and Education

Mia's Law ([AB 1368](#)) was enacted in October and requires small family child care programs to have at least one person trained in CPR on site at all times.

Gay Rights

In October, the President expanded federal hate crimes law, named after Matthew Shepard and James Byrd Jr. The new legislation makes it a federal crime to assault an individual because of his or her sexual orientation or gender identity. Click [here](#) for more information from the [Human Rights Campaign](#).

The Governor recently signed [SB 54](#), effective Jan. 1, 2010, recognizing same-sex marriages performed out-of-state before Proposition 8 went into effect Nov. 5, 2008, with the exception of the designation of "marriage."

HIV/AIDS

In October, the President announced the publication of the [rule ending the HIV immigration and travel ban](#), effective Jan. 4, 2010. HIV will no longer be a bar to applying for permanent residence. The CDC removed HIV infection from the list of communicable diseases restricting foreigners' entry into the US.

Housing & Mortgage Reform

The Wall Street Reform and Consumer Protection Act ([HR 4173](#)) was passed by the House in December. If enacted, it would establish a Consumer Financial Protection Agency, create other regulatory agencies, expand the power of current agencies, and provide for other protections relating to the Making Home Affordable modification program, executive compensation, hedge funds and derivatives. It incorporates The Mortgage Reform and Anti-Predatory Lending Act ([HR 1728](#)), which was passed in the House and requires that lenders must verify that the borrower has the ability to repay the loan.

[SB 239](#), effective Jan. 1, 2010, provides that it is a felony for anyone other than the borrower to make false statements on a mortgage application. The offense of mortgage fraud would be punishable by imprisonment for up to 1 year when the value of the fraud meets the threshold for grand theft. The legislation also makes it easier for law enforcement to obtain a search warrant for real estate records and documents believed to contain evidence of mortgage fraud.

Reverse mortgages are complex loans that are marketed aggressively to seniors with equity in their home. There are often significant conflicts of interest between the broker offering the reverse mortgage and the counseling agency providing reverse mortgage counseling. [AB 329](#) addresses that issue and provides that brokers of reverse mortgages must disclose any conflicts and allows the borrower 30 days to cancel the loan. Importantly, [AB 329](#) creates a fiduciary duty between an elder and any person who offers, sells, or arranges for the sale of a reverse mortgage to an elder. A person who breaches this fiduciary duty is liable for any damages caused by that breach, including attorneys' fees and costs.

[AB 1160](#) requires that mortgage lenders provide documents translated into Spanish, Chinese, Tagalog, Korean or Vietnamese if the loan was negotiated orally in that language. However, if a lender fails to comply there is no private right of action for the consumer and no real enforcement mechanism.

[SB 36](#) requires that those engaging in mortgage origination must obtain a license from the CA Department of Corporations. This law brought the state into compliance with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the SAFE Act), the federal law that requires that states establish a licensing procedure for mortgage originators.

Advance fees for loan modifications are now unlawful in CA. [SB 94](#) makes it illegal for any person, including lawyers, real estate brokers, real estate salespersons, corporations, companies, partnerships, or any other licensed or unlicensed person or party, to demand, charge, or collect any advance, up-front, or retainer fees, or any other type of pre-payment compensation, for loan modification work or services, or any other form of mortgage loan forbearance.

Right to Counsel

The Governor signed legislation creating a pilot representation program, which is an important step in the efforts around the nation to ensure a lawyer for those who cannot afford one in civil cases related to critical basic human needs. Effective July 2011, the Sargent Shriver Civil Counsel Act ([AB 590](#)) creates a 6-year pilot project that will fund efforts in selected counties to extend in some civil cases the right to counsel that is already granted in criminal cases. Cases may include housing-related matters, domestic violence and civil harassment restraining orders, probate conservatorships, guardianships, elder abuse and actions by a parent to obtain sole legal or physical custody of a child. Funds for the \$11 million-a-year project will come from a \$10 allocation of certain court fees. [AB 590](#) also cracks down on for profit businesses that seek to confuse the public by falsely claiming to be non-profit free legal aid providers.

Voting Rights

[AB 30](#) allows 16 and 17-year-olds to pre-register to vote. Those who pre-register would have the right to vote on their 18th birthday.

Legal Developments Affecting Your Organization



COBRA

As mentioned in the previous section, the COBRA subsidy has been extended to help unemployed Americans continue their health insurance coverage. It also requires that plans notify certain current and former participants and beneficiaries about the changes. For example, individuals who had lost the subsidy will now have additional time to pay the reduced premium to maintain coverage. The US Department of Labor (DOL) will post updated model notices

to help plans and individuals comply with requirements. Subscribe to the DOL's COBRA website, www.dol.gov/cobra, for notification on the posting of the updated model notices.

Employees' Privacy Rights in the Workplace

Employees have a reasonable expectation of privacy in the workplace, but in some circumstances, those rights may be limited when an employer has legitimate business interests that justify an intrusion on those rights. In *Hernandez v. Hillside*, 47 Cal. 4th 272, 211 P.3d 1063 (Cal. 2009), the CA Supreme Court found that employees' privacy rights were not invaded by hidden video surveillance. The employer was a nonprofit residential facility for neglected and abused children. In an effort to prevent potential harm to the children, it conducted surveillance in its employees' semi-private office after discovering that an employee was visiting pornographic websites on office computers. Read the Court's opinion [here](#).

Genetic Discrimination

In November, the Genetic Information Nondiscrimination Act (GINA) of 2008 went into effect. This Act is intended to prevent employers from discriminating against individuals based on genetic tests and information. GINA requires that covered entities obtain and post notices informing covered individuals of their rights under the law. Affected employers are all private employers with 15 or more employees; certain public sector employers; and employment agencies and labor organizations.

Raffles

[SB 200](#) allows nonprofits to announce and advertise raffles on the internet and strengthens the prohibition regarding actual sales of raffle tickets over the internet.

Red Flags Rule

The "Red Flags Rule," promulgated under the Fair and Accurate Credit Transactions Act (FACTA), requires certain organizations to implement a written identity theft prevention program to protect consumer information. Your organization is required to comply with the rule if you are a creditor that maintains financial information on consumers. If a nonprofit or government entity defers payment for goods or services, it is considered a creditor subject to the rule. The deadline to implement a written identity theft prevention program is June 1, 2010 . The Federal Trade Commission (FTC) provides a [template](#) on its website. For additional information from the Federal Trade Commission on the Red Flags Rule, click [here](#).

Volunteer Liability

The Good Samaritan Protection Act ([SB 39](#)) indemnifies registered Disaster Service Volunteers performing emergency care from liability for civil damages.

[AB 83](#) immunizes Good Samaritans from liability when they assist others at the scene of an emergency - regardless of whether the care provided is of a medical or non-medical nature - unless the person providing assistance acts in a reckless or grossly negligent manner.

For text and status updates of state law, visit the [Official California Legislative](#)

[Information website.](#)

IRS Updates

New User Fees

The IRS has raised the fee for organizations applying for tax-exempt status. The new [fees](#) for Forms 1023, 1024, 1028 and for group exemption letters apply to all applications postmarked after January 3, 2010. See the [Fee FAQs](#) for more information about the new fees.

Form 1023 Cyber Assistant

Cyber Assistant is a Web-based software program designed to help 501(c)(3) applicants prepare a complete and accurate Form 1023 application. It will become available during 2010. Once Cyber Assistant is made available, user fees for Form 1023 will change again.

Completing Form 990 and Foreign Activity Reporting Requirements

The IRS has posted a new [on-line tool](#) with a sample filled-in [Form 990](#), [Schedule A](#) and [Schedule O](#). They were prepared using information about a hypothetical organization's mission, board of directors, financial information and policies. Click [here](#) for the case study on this hypothetical organization. A series of 7 short on-line [videos](#) explain how to complete key sections of the Form 990 and highlights some of the form changes. Compare your own situation to the case study and learn how to properly complete your own form. These [FAQs and tips](#) address questions raised about the new foreign activity reporting requirements, including how passive and related organization investments should be reported on [Schedule F](#).

Form 990 Due Date Table

Do you know when your organization's returns are due? The IRS published [tables of the due dates](#) for Form 990 and other returns nonprofits must file, including employment returns, excise tax returns, and special forms, such as those used to report gambling winnings or donations of motor vehicles, boats, and airplanes.

Final Regulations for Form 990-N

The IRS has issued final e-Postcard regulations that went into effect on July 23, 2009. Remember: organizations that are required to file Form 990-N and fail to do so for 3 consecutive years will lose their tax-exempt status. Revocations will begin in May 2010. Click [here](#) for more information.

Updated Compliance Guide for 501(c)(3)s

Publication 4221-PC, [Compliance Guide](#) for 501(c)(3) Public Charities has been updated to incorporate changes in the compliance requirements that apply to public charities.

Governance Check Sheet

As you know from previous newsletters and in reviewing the revised Form 990, the IRS has had an increased interest in examining governance at nonprofits. The IRS has posted both the [check sheet](#) and the [guidance](#) agents will use to complete it.

Completing Your Termination or Merger

Most organizations that end their operations, either through shutting down, transferring their assets or merging with another tax-exempt organization, must inform the IRS about the details of the action. This useful [fact sheet](#) will help you properly complete your termination or merger.

Workshop Schedule

Starting a New Nonprofit

March 2

May 4

September 7

November 2

9am-12pm

[Info/Register](#)

Starting Off Right

February 20

August 21

8:30am-2pm

[Info/Register](#)

Protecting Your Organization's Assets with Intellectual Property

April 6

9am-12pm

[Info/Register](#)

Nonprofit & Enterprise: What Are Your Options?

The Legal Implications of Running a Business

November 16

10am-4pm

These workshops are made possible through a partnership with the Volunteer Center of Orange County (VCOC). Workshops are held at VCOC, located at 1901 E. Fourth St. Ste 100, Santa Ana, CA 92705. To register, please visit their [website](#) or call (714) 953-5757.

About COLAP

PLC's Community Organizations Legal Assistance Project (COLAP), through staff and pro bono volunteer attorneys, provides free transactional legal assistance to local nonprofit organizations that face a variety of business law issues in areas such as contract law, employment law, fundraising law, corporate governance law, and real estate law. For instance, COLAP can match organizations with attorneys to review and draft bylaws, employment handbooks, service provider contracts, and commercial leases. COLAP also provides free legal assistance to those interested in starting new nonprofit organizations that benefit Orange County's low-income population. In addition to providing direct representation on a number of business law-related issues, COLAP assists organizations through a legal check-up program. Through this program, volunteer attorneys and law students conduct legal checkups of organizations to make sure they are complying with various state and federal laws. The service allows organizations to address legal issues before they become a problem. If nonprofits do not comply with legal requirements, they may be subject to administrative fines or they can even lose their tax-exempt status. This project helps organizations avoid these consequences. For more information on COLAP services, please visit [PLC's website](#), or contact [Diamond Tran](#).

Legal Disclaimer

Nothing in this bulletin should be construed as legal advice. For more information about complying with the laws mentioned in this bulletin, please consult a legal or tax professional.