

Re: General Overview – Legal Obligations of Participants on Local Giving Mall  
2/2020

***THE FOLLOWING IS NOT INTENDED TO BE, NOR MAY IT BE A SUBSTITUTE, FOR LEGAL ADVICE. CONSULT COUNSEL FOR LEGAL ADVICE RELATED TO SPECIFIC CHARITABLE SALES PROMOTION OR FUNDRAISING ACTIVITY. LOCAL GIVING MALL CAN DIRECT YOU TO APPROPRIATE COUNSEL FOR INDIVIDUAL COMPLIANCE ASSISTANCE.***

Use of the LocalGivingMall Platform may require users to comply with state laws regulating fundraising, including charitable sales promotions such as those conducted on the platform. Which states' laws apply may depend upon where the store and/or the charity are physically located.

Any sales made through the site where a Seller represents that a charitable organization will benefit will most likely be deemed “commercial coventure activity” by Sellers and Charities using the site. Commercial coventure is a “state-law” defined activity that is a subset of charitable fundraising involving the sale of a good or service with the representation that a charity will benefit from the sale. Using the most strict of the state requirements would put the company on par with the requirements for a promotion conducted nationwide. If a state is not specifically addressed in this primer, then the state has no specific legal requirements beyond basic consumer protection and truth in advertising requirements (and that the charity benefitting be registered to engage in fundraising).

Completing the charitable fundraising registration and providing permission to the Seller to use its name, for the most part, is just about all that the charitable organization-beneficiary needs to do with respect to being named as the beneficiary of CCV activity. That said, there are a few caveats in terms of contract and related issues that do apply to the nonprofit beneficiary of a CCV beyond just the registration of the charity. Those obligations may also include contract filings and updates to registration filings, as well as some level of “best practices” to ensure that the advertising engaged in by the commercial partner comply with Better Business Bureau guidelines and related “truth in advertising.”

## **Written Agreement**

Most state laws require that there be a *written contract* between the for-profit enterprise and the charitable organization receiving the proceeds of the promotion. Contracts between a commercial co-venturer and a charitable organization must contain certain required state language, which is detailed under each state’s information that follows. The Platform agreement and Terms and Conditions attempt to provide this “agreement” for the Platform user(s).

**(GENERAL UNITED STATES) COMMERCIAL CO-VENTURER REGISTRATION REQUIREMENTS FOR THE SELLER)<sup>1</sup>**

Alabama - Register, fee, bond, and contract.

California - unless contract contains specific language (see below).

Massachusetts - Register, fee, bond, notice, contract, report due annually on 2/28.

South Carolina – Register, contract filing and notice form, fee, report due annually.

Mississippi – Register (via contract filing and state law), report due annually.

Hawaii – Register (via contract notice filing and filing of contract which must be done online.

**CHARITABLE ORGANIZATION FILING/REGISTRATION REQUIREMENTS FOR CHARITABLE ORGANIZATIONS WISHING TO USE THE SITE**

As already noted, almost all states require the charitable organization to be registered to engage in fundraising, including being named as the beneficiary of a commercial coventure. Some states require nothing more be done. Some states require the charitable organization file a written agreement with a commercial co-venturer pertaining to a charitable sales promotion to supplement its registration.

**STATES WHERE CONTRACT FILING REQUIRED BY CHARITY AND/OR SELLER FOR SALES IN THESE STATES**

Alabama (contract only)

Arkansas (notice to be filed by charity along with the contract)

Connecticut (contract only)

Massachusetts (contract only)

New Jersey (contract and \$30 fee; charity must also file a report within 60 days of end of campaign)

New Hampshire (notice form is required to be filed along with contract)

South Carolina (contract only – notice form must be filed by the CCV)

Utah (contract only)

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<sup>1</sup> In Mississippi, the filing must be made seven days prior to the start of the promotion.

**(AS OF 02/2020) SPECIFIC STATE REQUIREMENTS OUTLINED BY STATE. (This has been formatted so that each State's information may be readily accessed and implemented, depending upon whether Sellers are selling and promoting in a single state, regionally, or nationally. Throughout, Sellers shall be referred to as CCV or commercial coventurer.**

### **ALABAMA**

1. Registration is required annually of the charitable organization benefitting from the promotion. Registration is with the Alabama Office of the Attorney General.
2. Registration is required annually (for any year in which a promotion is conducted) by the commercial coventurer and must be renewed by September 30. Registration must include \$100 filing fee and \$10,000 bond.
3. A written contract is required and must be submitted to the Attorney General's Office within ten days after execution or submitted at least fifteen days prior to the commencement of sales activities.
4. Financial reports must be filed by the commercial coventurer outlining sales and donations with the Attorney General within ninety (90) days of campaign end.

## ARKANSAS

1. A non-profit organization required to be registered and the commercial co-venturer must have a written contract on file with the Attorney General prior to any charitable sales promotion.
2. The contract must include:
  - a. The goods or services to be offered;
  - b. The geographic area, and the starting and ending date, of the offering;
  - c. The non-profit organization's name will be used, including amount/percentage of the sale of goods or services to benefit the non-profit organization;
  - d. Provide for an accounting per unit to be given to the non-profit organization and when the accounting will be given; and
  - e. When and how the benefit will be conferred on the non-profit organization.
3. Commercial co-venturer shall disclose in each advertisement for the charitable sales promotion the amount per unit (in dollars or percentage of value) to benefit the non-profit organization.

## CALIFORNIA

1. A non-profit organization required to be registered and the commercial coventurer must have a written contract signed by two officers of the charitable organization.
2. Commercial co-venturers must transfer to the charitable organization all funds, assets or property received as a result of the sales promotion within 90 days after commencement of the campaign and at the end of each successive 90-day period during the campaign.
3. In connection with each payment or transfer set required in paragraph b, the commercial coventurer must also provide a written accounting to the charity of all funds received sufficient to enable the charity to determine that representations made to the public on its behalf have been adhered to accurately and completely, and to prepare its periodic report filed with the Attorney General.

## **COLORADO**

The provisions relating to commercial co-venturers only apply when the commercial co-venturer reasonably expects that more than one-half of all proceeds from the solicitation campaign will be derived from transactions within the State of Colorado.

1. Each charitable sales promotion advertisement must disclose the dollar amount or percent per unit of goods or services purchased or used that will benefit the non-profit.
2. A commercial entity purchasing a wholesale product created, manufactured, and produced by a non-profit for resale to the general public as part of the general stock of merchandise of the commercial entity is exempt from these provisions.

## CONNECTICUT

1. The non-profit organization who agrees to a charitable sales promotion to be conducted on its behalf shall obtain a written agreement from the commercial co-venturer and file the agreement **not less than ten days prior** to the charitable sales promotion.
2. The agreement shall be signed by a representative of the commercial co-venturer and the non-profit organization and shall include the following terms:
  - a. The goods or services to be offered to the general public;
  - b. The geographic area and the beginning and ending dates when such offering is to be made;
  - c. The manner in which the name of the non-profit organization is to be used, including any representation to be made to the general public as to the amount or percent per unit of goods or services purchased or used that is to benefit the non-profit organization;
  - d. A provision for a final accounting on a per unit basis to be given by the commercial co-venturer to the non-profit organization and the date when it is to be made; and
  - e. The date when and the manner in which the benefit will be conferred on the non-profit organization.
3. The commercial co-venturer must keep a final accounting for each charitable sales promotion for a period of three years and make the final accounting available to the state upon request.
4. The commercial co-venturer must disclose in each advertisement for a charitable sales promotion the amount per unit of goods or services purchased that is to benefit the non-profit organization or charitable purpose. Such amount may be expressed as a dollar amount or as a percentage of the value of the goods or services purchased.

## **FLORIDA**

1. Prior to commencement of a charitable sales promotion on behalf of a non-profit organization, a commercial co-venturer must obtain the written consent of the non-profit whose name will be used during the charitable sales promotion.
2. If determined to be essential to protect the general public from deceptive or fraudulent advertising, the department may adopt rules requiring disclosure in advertising for a charitable sales promotion relating to the amount that will benefit the non-profit organization.
3. A final accounting for each charitable sales promotion must be prepared by the commercial co-venturer following the completion of the charitable sales promotion and kept for a period of three years. The final accounting must be provided to the non-profit organization not less than ten days after its request. A copy of the final accounting must be provided to the state not less than ten business days after its request.

## GEORGIA

1. Prior to the commencement of a charitable sales promotion, a non-profit organization which agrees to permit a charitable sales promotion to be conducted on its behalf must enter into a written agreement from the commercial co-venturer which must be provided to the Georgia Secretary of State's Office upon request. The agreement must provide:
  - a. The goods or services to be offered to the public;
  - b. The geographic area where, and the starting and final date when, the offering will be made;
  - c. The manner in which the non-profit organization's name will be used, including the representation to be made to the public as to the actual or estimated dollar amount or percent per unit of goods or services purchased or used that will benefit the non-profit organization;
  - d. If applicable, the maximum dollar amount that will benefit the non-profit organization;
  - e. The estimated number of units or goods or services to be sold or used;
  - f. A provision for a final accounting on a per unit basis to be given by the commercial co-venturer to the non-profit organization and the date by which it will be made;
  - g. A statement that the charitable sales promotion is subject to the requirements of this chapter; and
  - h. The date by when, and the manner in which, the benefit will be conferred on the non-profit organization.
2. The final accounting of a charitable sales promotion shall be kept by the commercial co-venturer for three years.
3. All records pertaining to a charitable sales promotion are subject to reasonable periodic, special, or other examinations by representatives of the Secretary of State whenever deemed necessary.

## HAWAII

1. Prior to the commencement of any charitable sales promotion, the commercial co-venturer must obtain the written consent of the charitable organization whose name will be used during the charitable sales promotion. The commercial co-venturer must file a copy of the written consent with the state not less than ten days prior to the commencement of the charitable sales promotion. An authorized representative of the charitable organization and the commercial co-venturer must sign the written consent, and the terms of the written consent must include the following:
  - a. The goods or services to be offered to the public;
  - b. The geographic area where, and the starting and final date when, the offering is to be made;
  - c. The manner in which the name of the charitable organization is to be used, including any representation to be made to the public as to the amount or per cent per unit of goods or services purchased or used that is to benefit the charitable organization;
  - d. A provision for a final accounting on a per unit basis to be given by the commercial co-venturer to the charitable organization and the date when it is to be made; and
  - e. The date when and the manner in which the benefit is to be conferred on the charitable organization.
  
2. A final accounting for each charitable sales promotion shall be prepared by the commercial co-venturer following the completion of the promotion. A copy of the final accounting shall be provided to the attorney general not more than twenty days after the copy is requested by the attorney general. A copy of the final accounting shall be provided to the charitable organization not more than twenty days after the copy is requested by the charitable organization. The final accounting shall be kept by the commercial co-venturer for a period of three years, unless the commercial co-venturer and the charitable organization mutually agree that the accounting should be kept by the charitable organization instead of the commercial co-venturer.

## LOUISIANA

1. Prior to the commencement of any charitable sales promotion, a commercial co-venturer must obtain the written consent of the non-profit whose name will be used during the charitable sales promotion.
2. If determined, disclosure of the actual dollar amount or percentage per unit of goods or services purchased or used that will benefit the non-profit or charitable purpose shall be made in any sale or advertisement. In the event an actual dollar amount or percentage per unit of goods or services purchased or used that will benefit the non-profit or charitable purpose cannot reasonably be determined prior to the charitable sales promotion, an estimated amount or percentage shall be given in each advertisement for the charitable sales promotion.
3. A commercial co-venturer shall keep a final accounting for each charitable sales promotion that it conducts for a period of three years following the charitable sales promotion.
4. A final accounting must be provided by the commercial co-venturer for each charitable sales promotion to the non-profit on whose behalf the charitable sales promotion was conducted or the state no more than ten days after it is requested.
5. If determined to be essential to protect the general public from deceptive or fraudulent advertising, the state may adopt rules requiring commercial co-venturers to disclose in advertisements for a charitable sales promotion the actual or estimated amount or percentage of goods or services purchased that will benefit the non-profit, sponsor, or charitable purpose or sponsor purpose, and to disclose the specific name of the recipient non-profit.

## MASSACHUSETTS

1. Registration is required annually and must be renewed by December 31. Registration must include a \$200 filing fee and \$25,000 bond.
2. A contract and Notice of Solicitation (on state's form) is required to be filed prior to commencing the charitable sales promotion. There is no waiting period after the notice is filed.
3. Financial report for each campaign due to be filed with the State Attorney General by February 28 each year.
4. Required Contract Provisions:
  - a. A statement of the charitable purpose to be described in the solicitation.
  - b. A statement of the guaranteed minimum percentage of the gross receipts from fund-raising which will be utilized exclusively for the charitable purposes described in the solicitation.
  - c. Signed by two officers of the non-profit organization.

## **MISSISSIPPI**

1. Notice must be filed with the Secretary of State's Office no less than 7 days prior to the start of the promotion along with the contract between the charitable organization and the commercial co-venturer.
2. No later than 30 days after the conclusion of the promotion if the promotion is less than a year, the commercial co-venturer must file with the Secretary of State's Office a financial accounting. If the promotion period is greater than one year, the commercial co-venturer must file an annual financial accounting each year of the charitable sales promotion no later than thirty (30) days after the anniversary date of the first notice of promotion filing, and shall file a final financial accounting of the charitable sales promotion no later than thirty (30) days after the conclusion of said promotion. The final accounting must include the following:
  - a. The number of units of goods or services sold in Mississippi;
  - b. The amount of gross sales in Mississippi;
  - c. The amount of those gross sales paid by the commercial co-venturer to the charitable organization; and
  - d. In the case of national, multi-state or international campaign, the percentage of total sales in Mississippi paid to the charitable organization.

## NEW HAMPSHIRE

1. Notice of promotion must be filed by the non-profit organization prior to the commencement of a charitable sales promotion (on State form with Attorney General).
2. Prior to the commencement of the charitable sales promotion there must be a contract which includes the following contract provisions:
  - a. Goods and services to be offered;
  - b. Geographic area of offerings;
  - c. Beginning and ending date of offering;
  - d. Manner in which non-profit organization's name will be used including representations as to percent of proceeds to be received;
  - e. Maximum dollar amount to non-profit organization, if applicable;
  - f. Number of units or services to be sold;
  - g. Final accounting on a per unit basis to be provided to the non-profit organization and date by which it will be provided;
  - h. Statement that the charitable sales promotion is subject to New Hampshire statutes; and
  - i. How and when benefits will be conferred.
3. Final accounting for the charitable sales promotion shall be kept for three years after promotion and shall be available to attorney general upon request.
4. Co-venturer must disclose in each advertisement for the promotion the dollar amount or percent per unit of goods or services purchased or used that is to benefit the non-profit organization. If the actual amount cannot be calculated, the estimated amount shall be disclosed.

## NEW JERSEY

1. Non-profit organizations shall have a written contract with a commercial co-venturer that must be filed with the attorney general at least ten days prior to initiation of a charitable sales promotion.
2. The non-profit organization must file with the attorney general the following information at the conclusion of the charitable sales promotion:
  - a. Gross amount of income received that is attributable to the charitable sales promotion; and
  - b. The amount of money remitted to the organization covering each event or portion of an extended charitable sales promotion.
  - c. Co-venturer must disclose in each advertisement for the charitable sales promotion the dollar amount or percent per unit of goods or services purchased or used that will benefit the non-profit organization. If actual amounts or percentages cannot be determined, co-venturer shall disclose a reasonable estimate of the dollar amount or percentage.

## NEW YORK

1. A commercial co-venturer must have a written contract with a non-profit organization prior to a charitable sales promotion. Co-venturer shall keep a copy of the contract on file for a period of three years after expiration or termination.
2. Within ninety days after termination of the charitable sales promotion the co-venturer must provide to the non-profit a report setting forth the number of items sold and the dollar amount of each sale from the charitable sales promotion. In the event the charitable sales promotion lasts longer than one year, the co-venturer shall provide the non-profit organization an interim report on the anniversary.
3. A non-profit organization contracting with a commercial co-venturer on the date its next annual report is due to be filed with the attorney general, shall provide the following information:
  - a. A list of all commercial co-venturers authorized to use the non-profit organization's name during the previous year and upcoming year;
  - b. A statement of financial terms and conditions of each co-venturer contract.
  - c. A statement of whether each co-venturer has provided the required accounting report.
  - d. A concise, accurate statement of the non-profit organization's right to cancel without cost for a period of fifteen days following the date on which said contract is filed with the attorney general.<sup>2</sup>
4. The address to which the notice of cancellation is to be sent.
5. The address of the Secretary of State to which a duplicate of the notice of cancellation is to be sent.
6. A clear statement of the financial arrangement.

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\*\*\*While the statute allows the charity the right to cancel the contract within 30 days of filing the contract with the Attorney General's Office, there is no statutory requirement to file a commercial co-venturer contract with the New York Attorney General. The Section Chief of the New York Attorney General's Office, Charities Bureau, acknowledges there is no filing requirement and the statute is in error. As such, they currently advise that the required language in the contract be changed to allow the charity to cancel the contract for a period of fifteen days following the date on which said contract is executed.

## NORTH CAROLINA

1. Prior to commencement of any charitable sales promotion, the co-venturer shall obtain written consent of the non-profit whose name will be used during the promotion.
2. Co-venturer shall prepare a final accounting for each charitable sales promotion. **Upon request**, the final accounting shall be provided to the non-profit or the state within ten days.
3. Prior to a charitable sales promotion, the charitable organization or sponsor shall obtain a license to solicit charitable contributions and enter into an agreement with the coventurer the agreement shall include:
  - a. the projected amounts of gross sales;
  - b. the projected sales for each vending unit;
  - c. the charitable organization or sponsor's share per unit; and
  - d. the charitable organization or sponsor's projected total dollar share.
4. Upon the conclusion of the charitable sales promotion, the charitable organization shall provide to the Department (Secretary of State) an accounting of the items set forth in section 3, above. In lieu of a separate accounting to the Department, the charitable organization may incorporate the accounting into the annual financial report filed with the Department.

## OHIO

1. Ohio law requires the written consent of the non-profit organization whose name will be used during the charitable sales promotion;
2. If it has been determined, disclosure of the actual dollar amount or percentage per unit of goods or services purchased or used that will benefit the non-profit organization or charitable purpose. In the event an actual dollar amount or percentage per unit of goods or services purchased or used that will benefit the non-profit or charitable purpose cannot reasonably be determined prior to the charitable sales promotion, an estimated amount or percentage shall be given in each advertisement for the charitable sales promotion.
3. A commercial co-venturer must keep a final accounting for each charitable sales promotion that it conducts for a period of three years.
4. A final accounting must be provided by the commercial co-venturer for each charitable sales promotion to the non-profit organization on whose behalf the charitable sales promotion was conducted or the attorney general no more than ten days after it is requested.

## **OREGON**

1. The commercial co-venturer must keep a final accounting for each commercial fund-raising solicitation it conducts for a period of three years following the completion of the campaign.
2. The commercial co-venturer must provide such accounting not later than twenty days after it is requested by the attorney general or the non-profit organization.

## SOUTH CAROLINA

1. Commercial Coventurer must register with the Secretary of State and pay \$50 filing fee. The registration must be attested to by the CEO and CFO of the company. Financial reports must also be filed reflecting gross sale and amounts paid to the charity.
2. There must be a contract. The contract between a commercial co-venturer and a charitable organization must be in writing and filed, along with a Notice of Solicitation form, with the Secretary of State at least ten days before the commercial co-venturer begins any solicitation activity or any other activity contemplated by the contract or agreement. Solicitations or services pursuant to a contract may not begin in South Carolina until the contract has been filed with the Secretary of State and the charitable organization is registered properly with the Secretary of State. A contract filed pursuant to this section must disclose the following, if applicable:
  - a. legal name and alias name, address, and registration number, if any, of the commercial co-venturer;
  - b. legal name, address, and registration number of the charitable organization;
  - c. name and residence address of each person directing or supervising the contract solicitation services;
  - d. description of the event or campaign;
  - e. date the solicitation or campaign commences;
  - f. date the solicitation or campaign terminates;
  - g. statement of the guaranteed minimum percentage of gross receipts to be remitted or retained by the charitable organization, excluding the amount which the charitable organization must pay for fundraising costs;
  - h. statement of the percentage of gross receipts with which the commercial co-venturer is compensated, including the amount the commercial co-venturer must be reimbursed as payment for fundraising costs; and
  - i. if applicable, the maximum dollar amount that will benefit the charitable organization.
3. A commercial co-venturer must keep the true fiscal records as to its activities in South Carolina. The records must be retained for at least three years after the end of the promotion.

## **TENNESSEE**

1. No commercial co-venturer shall conduct any charitable sales promotion in Tennessee on behalf of a charitable or civic organization unless the charitable or civic organization is duly registered or granted the appropriate exemption.
2. Prior to any charitable sales promotion in Tennessee, the commercial co-venturer must have a written agreement with the charitable or civic organization on whose behalf the charitable sales promotion is to be conducted. The agreement shall be signed by an authorized representative of the commercial co-venturer and two (2) officers of the charitable or civic organization.
3. The commercial co-venturer must maintain all records in connection with the charitable sales promotion for a period of three (3) years after the end date of the charitable sales promotion. All charitable sales promotion records shall be made available to the division upon request.

## UTAH

1. Charitable organizations which agree to permit a charitable sales promotion to be conducted by a commercial co-venturer on its behalf must file with the division of consumer protection a notice of the promotion. Essentially, filing of the agreement required below, or including the information as requested on the annual renewal registration will suffice.
2. Utah law requires a written agreement. The terms are to be determined by rule. No such rule presently exists. Licensing of the charity's name to the co-venturer and description of what is to be sold and the corresponding benefit to the charity are key elements.
3. A final accounting must be kept by the commercial co-venturer for a period of three years after the end of the campaign and must be provided to the division upon request.
4. The commercial co-venturer shall disclose in each advertisement for a promotion the dollar amount or percent per unit of goods or services purchased or used that will benefit the charity.

## VERMONT

1. Every commercial co-venturer must disclose the following information in a clear and conspicuous manner in close proximity to any representation, in connection with a charitable sales promotion, that an amount per unit of goods or services purchased or used by the public, or an amount based on aggregate purchases or use by the public, will benefit a charitable organization or charitable purpose:
  - a. the name of the charitable organization or purpose which is to benefit from the charitable sales promotion;
  - b. the amount per unit of goods or services purchased or used that will benefit the charitable organization or purpose or, if not known, the estimated amount, in either case expressed as a dollar amount or a percentage of the amount paid for the purchase or use, except that if the amount is based on aggregate purchases or use, that amount and how it will be calculated shall be disclosed; and
  - c. any maximum amount that will benefit the charitable organization or purpose.
  
2. A commercial co-venturer shall maintain records that are sufficient to demonstrate compliance with the requirements of this chapter and the disclosed terms of a charitable sales promotion.

## **VIRGINIA**

1. A charity and a commercial co-venturer are required to have a written agreement which is signed by two authorized representatives of the charitable organization.
2. The commercial co-venturer is required to maintain records of the campaign for three years after the end of the charitable sales promotion.

## **WISCONSIN**

1. If a commercial co-venturer conducts a charitable sales promotion on behalf of a charitable organization that is required to be registered, the commercial co-venturer must disclose in each advertisement for the charitable sales promotion the dollar amount, or percentage of price, per unit of goods or services purchased or used that will benefit the charitable organization or charitable purpose. If the actual dollar amount or percentage cannot reasonably be determined on the date of the advertisement, the commercial co-venturer shall disclose an estimated dollar amount or percentage. The estimate shall be based upon all of the relevant facts known to the commercial co-venturer and to the charitable organization regarding the charitable sales promotion.

### **Additional Information for All States**

Failure to register can result in potential fines and related monetary penalties. In some states, these penalties can be as much as \$1,000.00 per violation. A single violation takes place with every advertisement or sale that takes place – so potential fines could be catastrophic.