



Fundraising: Commercial Co-Ventures

Now more than ever, many charitable organizations need alternative ways to raise funds. A commercial co-venture (sometimes referred to as “embedded giving” or “cause-related marketing”) is a joint venture between a charitable organization and a for-profit business offering financial benefits to both the charitable organization and the business. *Typically, the business announces to the general public that a portion of the purchase price of a product or service it sells or provides will, during a stated period, be paid to the charitable organization.*

The following alert provides an overview of the registration, reporting and disclosure requirements associated with commercial co-venture programs, and tips on how to structure a commercial co-venture agreement. If your charitable organization is contemplating a commercial co-venture as a fundraising activity you should familiarize yourself with these requirements to protect your organization from negative regulatory and tax consequences.

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This alert should not be construed as legal advice. This alert is designed as a highlight of the law governing commercial co-ventures and is current as of April 2009. There are numerous other laws and reporting requirements to which California nonprofit organizations are subject that are not included in this alert. For more information regarding the laws and regulations that apply to fundraising activities by nonprofit organizations, please contact Public Counsel’s Community Development Project at (213) 385-2977 ext. 200.

Public Counsel’s Community Development Project provides free legal assistance to qualifying nonprofit organizations that share our mission of serving low-income communities and addressing issues of poverty within Los Angeles County. If your organization needs legal assistance, visit http://www.publiccounsel.org/practice_areas/community_development or call (212) 385-2977, extension 200.

What is a commercial co-venture?

When a for-profit business announces to the public that a portion of the purchase price of a product or service it sells will be donated to a charitable organization, this arrangement is generally known as a **commercial co-venture** (“**CCV Program**”). The portion to be paid to the charitable organization is usually a contractually agreed upon amount or percentage of the sale proceeds, resulting in a charitable contribution by the for-profit business. For example, retailers often promote a weekend where \$1 of every purchase over \$20, or a certain percentage of designated items, will be donated to a specified charitable organization. This publication describes the California laws that apply to CCV Programs, including laws that apply to the charitable organization and laws that cover the for-profit business that conducts the sales.¹

What is a commercial co-venturer?

A for-profit business that is not generally in the business of raising funds for charity will be treated as a **commercial co-venturer** (“**co-venturer**”) and subject to regulation, if that for-profit business advertises to the public that the purchase or use of any goods, services, entertainment, or any other thing of value will benefit a particular charitable organization. The co-venturer will be subject to California’s charitable fundraising laws and will have to report to the Attorney General unless the exceptions that are described below apply to the co-venturer.

Is the co-venturer subject to any registration or reporting requirements?

Yes. California generally requires co-venturers to register and file periodic reports with the Attorney General. However, a co-venturer is not required to comply with these registration and reporting rules as long as it fulfills all of the following three requirements:

- 1. Written contract with the recipient charitable organization*

The co-venturer must have a written contract with the charitable organization that will benefit from the CCV Program, signed by two officers of the charitable organization. The contract must be signed before the co-venturer makes any representation to the public that the purchase or use of its goods or services will benefit the charitable organization.

- 2. Automatic transfer of funds to the charitable organization within 90 days*

Within 90 days after first making any representation to the public about the benefit to the charitable organization, the co-venturer must transfer to the charitable organization all funds, assets or property that it has contracted to deliver to the charitable organization. The co-venturer must continue to transfer any additional funds, assets or property as required under the contract every 90 days as long as the CCV Program continues.

¹ For information about other types of fundraising activities, including gaming activities and auctions, please refer to Public Counsel’s Fundraising Alert, available on our website at www.publiccounsel.org/publications/fundraising.pdf.

3. *Written accounting of all funds received to the charitable organization*

Along with the transfer of funds, assets or property, the co-venturer must provide a written accounting to the charitable organization of all funds, assets, or property it received, in a manner sufficient to enable the charity to determine that representations made on its behalf have been accurate and to prepare its periodic reports for the Attorney General (see reporting requirements of the charitable organization below).

If these three requirements are not met, the co-venturer must instead comply with the following registration and reporting requirements:²

1. *Registration with the Attorney General's Registry of Charitable Trusts*

The co-venturer must either meet the requirements described above, or it must register annually with the Attorney General by filing [Form CT-5CF](#) [[instructions](#)] and paying an annual registration fee. As of March 2009, that fee is \$350. Failure to register by the deadline may result in an assessment of late fees.

2. *Filing of periodic reports with the Attorney General's Registry of Charitable Trusts*

In addition to registering with the Attorney General, the co-venturer must file an annual financial report ([Form CT-6CF](#) [[instructions](#)]) no later than 30 days after the close of the preceding calendar year or at the completion of a campaign or contract period, irrespective of the year. An authorized officer of the co-venturer and two officers or directors of the charitable organization must likewise sign Form CT-6CF.

Is our charitable organization subject to any reporting requirements if it conducts a CCV Program?

Yes. Regardless of the method chosen above by the co-venturer, [Form CT-1](#), the Initial Registration Form for the Attorney General's Registry of Charitable Trusts, requires the charitable organization to provide the co-venturer's name, address and telephone number. Similarly, [Form RRF-1](#) [[instructions](#)], the Annual Registration Renewal Fee Report to the Attorney General, requires the charitable organization to provide the co-venturer's name, address, telephone number and e-mail address.

What must the co-venturer disclose to the public while conducting the CCV Program?

A CCV Program falls within the definition of "sales solicitations for charitable purposes" in California, defined as the sale of, offer to sell, or attempt to sell any advertisement, advertising space ... merchandise, ticket of admission or any other thing or service in connection with an appeal for a charitable purpose, with the use of a charitable organization's name as an inducement for making the sale, with a statement that part of the proceeds from the sale will go to a charitable organization, and so forth.³

When a sales solicitation for charitable purposes is made to the public, certain disclosure requirements must be met. Namely, before any sales solicitation is made, the seller must show the prospective purchaser a

² For more information on registration and reporting requirements, visit <http://ag.ca.gov/charities>.

³ Cal. Bus. & Prof. Code §17510.2.

“Solicitation or Sale for Charitable Purposes Card” which is signed and dated under penalty of perjury by a principal or officer of the soliciting entity, containing certain requisite information, or must provide printed material that contains the same information. Either the card or the printed material must disclose all of the applicable information outlined in California Business & Professions Code §17510.3(a) in at least 10-point type.

For example, §17510.3(a) requires disclosure of the name and address of the charitable organization being supported by the solicitation, the percentage of the total purchase price that may be deducted by the purchaser as a charitable contribution under federal and state tax laws, and if no portion is deductible, the statement “this contribution is not tax deductible,” and so forth.

How much control should our charitable organization exercise over the co-venturer? Are there any restrictions on how we conduct the CCV Program?

The charitable organization must establish and exercise control over all fundraising activities conducted for its benefit, which includes approval of all written contracts and agreements, and assuring that fundraising activities are conducted without coercion. Parties engaged in a CCV Program are also prohibited from misrepresenting the purpose of the charitable organization or the nature, purpose, or beneficiary of a charitable solicitation.

California Government Code §12599.6(f) contains a list of twelve prohibited acts and practices by parties in a CCV Program in the planning, conduct, or execution of any charitable sales promotion. For example, these prohibited acts and practices include misrepresenting or misleading anyone to believe that the beneficiary of a sales promotion is a charitable organization when it is not, and representing that a charitable organization will receive more than the amount reasonably estimated.

What should we include in a CCV Program agreement?

Aside from the required control detailed above, a charitable organization involved in a CCV Program should maintain as passive a role as possible in order to avoid being characterized as an active participant in a true for profit venture. If the charitable organization plays a passive role, the funds it receives will count as public support.⁴ If it plays a more active role (e.g., by providing marketing services to the co-venturer), the CCV Program may be viewed as a true for profit venture, and as a result, the funds it generates for the charitable organization may be subject to unrelated business income tax. A charitable organization wishing to conduct a CCV Program should make sure to address the following matters in the CCV Program agreement:

- Identification of the charitable organization or purposes to be benefited;
- Permission to use the charitable organization’s name and manner in which it will be used;
- Identification of the goods or services to be offered to the public;
- Representation to be made to the public as to the actual or estimated dollar amount, or percentage per unit of goods or services purchased or used, that will be paid to the charitable organization;
- Geographic area of sale;
- Starting and ending dates of sale;
- Estimated number of units of goods or services to be sold or used; and
- Dates by which, and the manner in which, the payments will be made to the charitable organization.

⁴ See www.irs.gov/instructions/i990-ez/ar02.html#d0e4898.