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State Regulation of Nonprofit Organizations: Everything You Need to Know about Required State Filings for Your Nonprofit Organization

Association Foundation Group / Venable LLP
APRIL 18, 2013



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Today's Presenter



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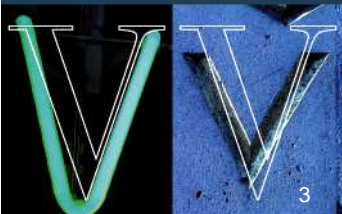
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Agenda

1. Incorporation/
Annual Corporate
Reporting
2. Foreign
Corporation
Authorization/
Reporting
3. State Tax-
Registration and
Reporting
4. Charitable
Solicitation
Registration
5. Gaming/Raffles
6. Lobbying/
Registration
Disclosures
7. Other Potential
Pitfalls

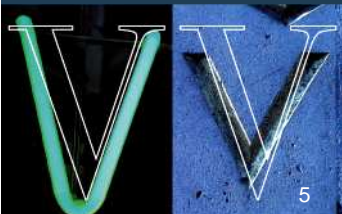


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Category 1:
Incorporation/
Annual Corporate Reports

Incorporation/Annual Reporting

- First step for nonprofits
- Agency varies
 - Typically, State Department of Corporations or Secretary of State
 - State Department of Assessments & Taxation
 - Department of Consumer and Regulatory Affairs
 - State Corporation Commission
- Typical requirements: name, purposes, registered agent, incorporator
- CA, NY particularities



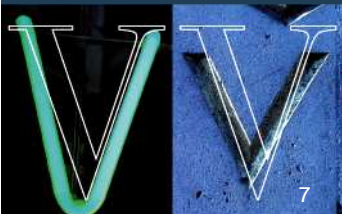
Incorporation/Annual Reporting (cont'd.)

- Naming particulars
 - Corporate indicator (MD, NY)
 - Distinguishable from all other names on file
 - In some states, cannot use certain words (e.g. bank, trust, education)
- Trade Name/ d/b/a Registration
 - Trade Name: a name used in business that is different than the corporate name
 - Usually one-time filing
 - Different from federal or state trademark registration



Annual Reporting: Common Requirements

- Basic information: name, registered agent, directors and officers, and addresses
- Fee: usually minimal
 - VA: \$25, MD: free, DC: \$80
- Timing
 - VA: annually, by last date of month of incorporation
 - MD: annually, by April 15
 - DC: every 2 years, by April 15

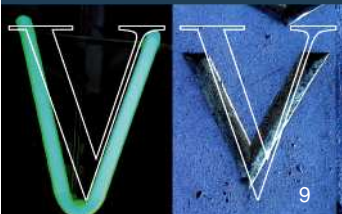


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Category 2:
Foreign Corporation
Authorization/Reporting

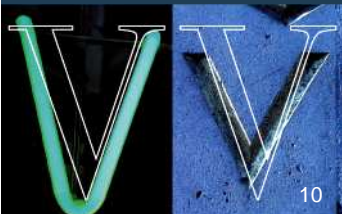
Foreign Corporation Authorization

- When? Conducting activities or “doing business” in the state
- Usually “doing business” not specifically defined
 - May list activities that are not doing business
- Sometimes necessitated by other filings
- Annual reporting requirements similar to domestic entities



Not in Good Standing?

- Typical process is to file for reinstatement:
 1. File reinstatement form (Articles of Revival in MD)
 2. Submit fee for filing Reinstatement Form
 3. File all previous annual reports
 4. Late fee

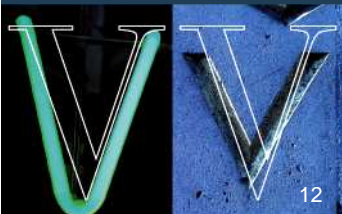


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Category 3:
State Tax –
Registration and
Reporting

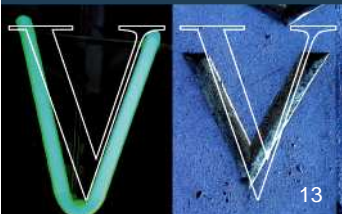
State Tax

- Income/Franchise
 - Tax on net income earned in state
 - Many states (not all) exempt charities
- Sales and Use Tax
 - Tax imposed on the retail sale of most tangible personal property and certain enumerated services in a state
 - Might have exemption from paying sales tax, most likely not from collecting



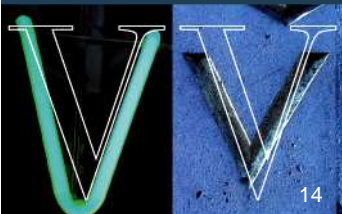
State Tax (cont'd.)

- Property Tax
 - Tax on personal and real property
 - Usually very narrow exemption, if any
- Employment Tax Withholding
 - Almost never an exemption available



Other Tax-Triggering Activities

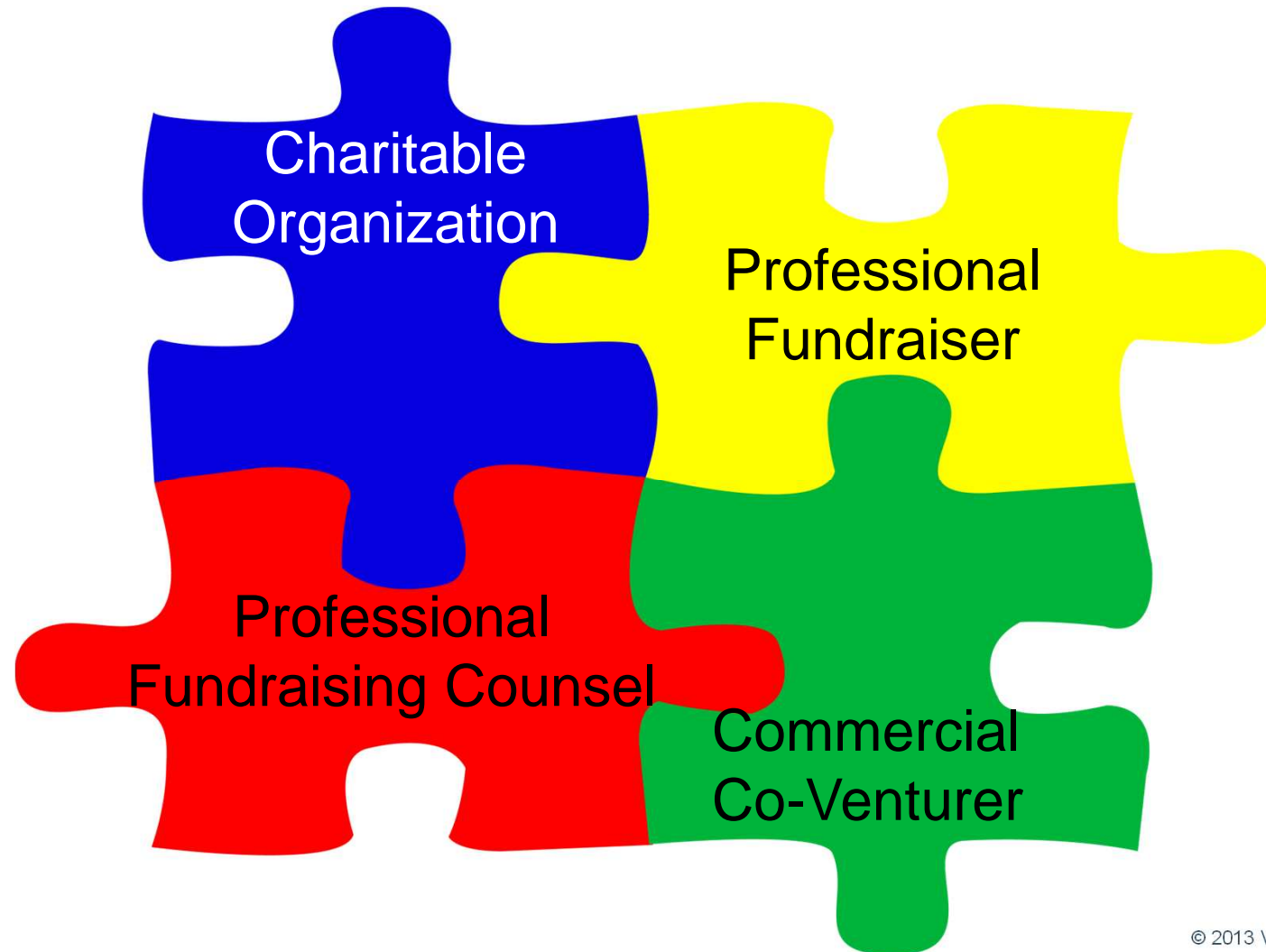
- Holding Conferences
 - Tax on lease of convention space (prime vs. subleases)
 - Retail sales at conference
 - Amusement or sport events
- Selling Online
 - Retailer with “physical presence” in state of delivery needs to collect and remit sales tax
 - Certificates required to verify purchaser claims for exemption



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Category 4: Charitable Solicitation Registration

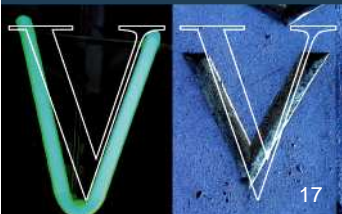
Charitable Solicitation – Regulatory Landscape



Charity's Considerations in Fundraising



- About 40 states require charities to register
- Triggering definition: generally triggered by “solicitation,” affirmative act of asking for a gift (“contribution”) or selling goods/services that will benefit charitable cause
 - Broad “by any means”
 - May include grant solicitation
- Unified Registration Statement:
 - Currently accepted by 36 states BUT not really “uniform”
 - <http://www.multistatefiling.org/>



Charleston Principles

Offline

Online

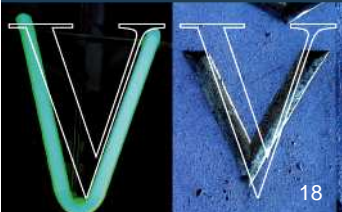
Letters

Specifically target

Repeated and ongoing

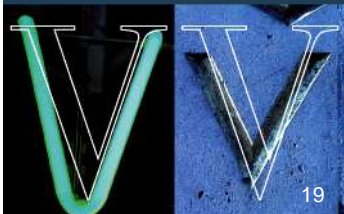
Phone calls

Substantial basis



Annual Reporting / Financial Information Submission

- Usually annual reporting requirement; sometimes tied to and sometimes separate from financial reporting requirement
- Form 990 Issues



Working with Professional Fundraisers: PF Regulation

- **Professional Fundraiser:** For a fee, solicits the general public on behalf of a charity OR has custody and control of funds.
- About **41 states** require registration and other requirements:



- **Registration**
- **Bond**
- **Filing of Contracts**
- **Disclosures**

- **Charities need to** (i) ensure working with a registered professional fundraiser and (ii) report professional fundraiser information on annual report.



Commercial Co-ventures



- **Commercial Co-Venture (“CCV”):** A person who regularly and primarily is engaged in a trade or business other than the raising of funds for charities that conducts a charitable sales promotion.
 - **Charitable Sales Promotion:** offering goods or services on the representation that the purchase or use of goods or services will benefit a charitable organization or a charitable purpose.
- **Charities need to** (i) have an agreement, (ii) make filings as required prior to co-venture, and (iii) report co-venture activities on annual reports.



CCV Contracts

- Term of Agreement and Dates of Solicitation (Dates of Campaign)
- Amount to Be Donated (\$ or % of Items)
- Geographic Scope of Campaign
- Schedule for Donations to Be Transferred
- Schedule for Reporting
- Charity Ability to Cancel
- Branding and Intellectual Property Terms
- Reps and Warrants Re: Compliance with Laws
- Advance Approvals
- Clear Tax Treatment and Description of Activities



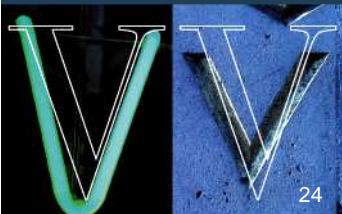
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Category 5: Gaming / Raffles

Gaming/Raffles

- Federal law and all states prohibit lotteries (except state-run lotteries). A lottery has the following elements:
 1. The awarding of a prize,
 2. By chance,
 3. Where the participants have been required to submit consideration to enter.

- In many states, certain charitable fundraising games of chance are exempt from lottery prohibitions



Gaming / Raffles

- Most states govern raffles and games of chance, defined differently by states
- In states where allowed, permit or registration may be required
 - Some states have residency requirements
 - Restriction on ticket price
 - Limits on where raffle conducted and by whom
 - Distribution of proceeds of raffle
- If permit required, allow lots of time (weeks or months)
- Movement to further limit?

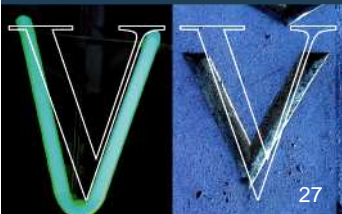


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Category 6:
Lobbying/
Registration Disclosures

Lobbying and Related Activities

- Laws and requirements vary widely by state
- May include
 1. Registrations for companies/organization that employ or retain lobbyists
 - Some states registrant is lobbyist; in others, organization
 - Tracking and reporting of expenses
 2. Reporting of gifts to government officials
 3. State Pay-to-Play

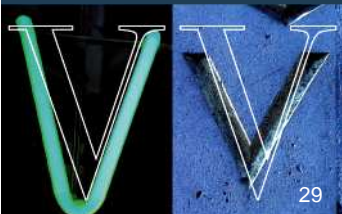


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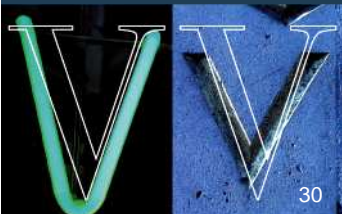
Category 7: Other Potential Pitfalls

Examples of Other Potential Registrations

- Credit counseling
- Hospitals
- Private schools
- Business licenses/permitting



Questions?



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