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## **Regulations Affecting the Running of Raffles in Massachusetts**

**KLR Not-for-Profit Services Group**

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## **Regulations Affecting the Running of Raffles in Massachusetts**

The regulations affecting charitable raffles in Massachusetts are contained in 940 CMR 12.00 and are probably more complex than you ever imagined! The law applies to any raffle conducted under M.G.L. c. 271, § 7A in which the value of the prize or prizes to be awarded exceeds \$10,000 or in which the ticket price exceeds \$10.00.

A raffle is an activity the subject of which is awarding it to a person selected by chance from among those purchasing tickets (to the raffle) an item or items chosen by a sponsoring organization.

In any raffle conducted pursuant to M.G.L. c. 271, § 7A, the sponsoring organization must disclose the following information either on the raffle ticket itself or in a written notice given to the purchaser prior to the sale:

- a) A full and fair description of the prize;
- b) The appraised value of the prize;
- c) Date or dates when the prize will be available for inspection (presumably it is OK to not have the prize available for inspection);
- d) If there is a minimum number of tickets to be sold; what the minimum is and the procedure to be employed to secure a refund in the event the minimum is not reached. If there is no minimum number of tickets to be sold, you can be silent on this point;
- e) The maximum number of tickets to be sold if any;
- f) The fact that the value of the prize will be treated as ordinary income to the winner for federal and state income tax purposes and that the winner may be required to pre pay a portion of the tax liability prior to receiving the prize;
- g) The fact that the Internal Revenue Service takes the position that no portion of the ticket price will qualify as a charitable contribution for federal income tax purposes;
- h) The drawing date for the raffle;
- i) The estimated percentage of the ticket price which will be used for charitable purposes in the event that only the minimum number of tickets are sold; (even if you do not have a minimum number of tickets that must be sold, it appears that a good faith estimate of this percentage must be made and disclosed.)
- j) The exact nature of the charitable purpose for which the proceeds will be used;
- k) Any other facts the disclosure of which may have influenced the purchaser or prospective purchaser not to enter into the transaction.

Each ticket must bear a clear and conspicuous warning to the effect that depositing the ticket or any other material in connection with the raffle in the federal mail is a violation of federal law and may lead to criminal penalties.

**Therefore, you should not be mailing raffle tickets to your past contributors and asking them to mail the ticket stub and payment back to you!**

## **Specific Obligations of the Sponsoring Organization**

If there are any changes in the terms of the raffle such as a change in the nature or value of the prize, a postponement of the drawing date, the sale of greater than the maximum number of tickets, etc., the organization shall notify each of the ticket purchasers of the change and offer them an opportunity to rescind their purchase.

If for any reason the raffle is not completed and a prize is not awarded on the scheduled drawing date, the sponsoring organization must take all steps necessary to notify ticket purchasers of that fact and return all money received from ticket purchasers **within 30 days**.

No member or employee, or immediate family member of a member or employee, of a sponsoring organization who has been directly involved in the promotion or operation of a raffle shall be permitted to purchase tickets to the raffle or win the prize. The sale of tickets alone shall not constitute the “promotion and sale of a raffle” for purposes of 940 CMR 12.03.

No such member shall receive remuneration in any form for time or effort devoted to the promotion or operation of the raffle.

This presumably does not preclude the organization from providing compensation to the development director or other normal employee who happens to be involved in the promotion of the raffle as part of their normal job duties. However, additional compensation, especially incentive compensation linked to the profitability of the raffle would clearly be inappropriate.

The sponsoring organization shall take such steps as are necessary under the circumstances to insure that each ticket purchased has an equal chance to be selected as the prize winner and that the prize winner is selected in an entirely random manner.

In cases where the sponsoring organization purchases the prize from a third party, it must arrange for an independent appraisal of the value of the prize from a person licensed to render such appraisals, or if there is no applicable licensing requirement, from a person qualified to render such appraisals. Thus, you cannot use your costs as a representation of the value of the prize.

If the sponsoring organization purchases a prize from a related party, the price to be paid must be at cost or substantially less than the appraised value of the prize. [(a related party is:

- a) An officer, director, or trustee (or an individual having powers or responsibilities similar to those of officers, directors, or trustees) of the organization.
- b) A spouse other than a spouse who is legally separated from the individual under a decree of divorce or separate maintenance; a child including legally adopted children; grandchildren; parents; and grandparents of parties described in 940 CMR 12.01(1). (c) A corporation, trust, estate or partnership more than 35% of which is owned or held by any of the preceding.]

No sponsoring organization or its employees, members, agents or servants, shall give away tickets to a raffle without receiving the full established price for them.

The sponsoring organization shall structure the raffle in such a way that it may reasonably be anticipated that the sponsoring organization will retain a percentage of the gross proceeds which is reasonable under the circumstances and shall retain all of the net proceeds (gross proceeds minus the direct expenses of the raffle) for the purposes specified in their application. Organizations must apply

for a permit to conduct raffles from the clerk of the city or town in which the raffle will be drawn. There will be a fee of between \$10 and \$50. (M.G.L. c. 271, § 7A.)

### **Record Keeping and Financial Control**

A record keeper shall be designated from among the members of the organization. The record keeper must have been a member for a minimum of two years prior to the commencement of the raffle.

The record keeper or his designee shall be responsible for the keeping and distribution of raffle tickets to be sold, the safekeeping of paid for and completed ticket stubs, and the maintenance of the records (described in #4 below) during and after the completion (or suspension) of the raffle for a period of at least two years.

The raffle ticket shall have at least two parts, one of which is to be retained by the purchaser, and the other to be retained by the record keeper. The record keeper's part must at a minimum contain the purchaser's name, address, and the telephone number. All such parts shall be imprinted with sequential serial numbers commencing with the numeral "1" through the maximum number of tickets to be sold. Both copies shall bear the signatures of both the seller and the purchaser of the ticket.

The record keeper shall maintain and periodically update as the need arises, the following types of records:

- a) A list of members of the sponsoring organization;
- b) A list of members authorized to sell raffle tickets or participating in any way in the promotion or operation of the raffle;
- c) All documents, bills of sale, agreements, appraisals or other documents concerning the purchase of the article or articles to be raffled;
- d) All permits, licenses, and any other documents prescribed or required by law as necessary for the lawful conduct of a raffle;
- e) A ledger book or other suitable record keeping device listing the serial number of the ticket sold, the purchaser's name and address, and the date purchased. Such entries shall be made upon receipt of the ticket part from the selling member or members and will be maintained in such a way as to permit a calculation at any time, of the number of tickets sold to date;
- f) The ticket stubs used to conduct the drawing for a period of not less than two years.

Financial records shall be maintained by the record keeper sufficient to show:

- a) The current amount of proceeds received on account of the raffle;
- b) All expenses related to the conduct of the raffle including printing costs, advertising costs, lawyers' fees, appraisal costs, insurance premiums, and any other costs reasonably attributable to the raffle.

### **Penalties for Violations**

Failure to comply with any of 940 CMR 12.00 shall be deemed an unfair and deceptive act or practice, in violation of M.G.L. c. 93A, § 2 or a misapplication of funds given or appropriated to public charities. The penalty will depend on the action brought by the injured party.

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\*Please note that this whitepaper is a general summary of the law and omits many important details, footnotes and caveats. It is no substitute for informed advice from a tax professional based on your particular circumstances.

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