

Charitable Solicitation and Substantiation/Disclosure of Contributions



Jennifer L. Urban, Esq.

Attorney for Nonprofits

The Parkdales

5354 Parkdale Dr., Suite 103

St. Louis Park, MN 55416

t: 612-284-6441 | m: 612-418-0199

e: jenn@legalforgood.com

w: www.legalforgood.com



Overview

The United States is the most generous country in the world:

- 88% of households give to charity. Charitable Giving Statistics, NPTrust, (October 23, 2013) (<http://www.nptrust.org/philanthropic-resources/charitable-giving-statistics>).
- In 2011, the largest source of charitable giving came from individuals at \$217.79 billion, or 73% of total giving; followed by foundations (\$41.67 billion/14%), bequests (\$24.41 billion/8%), and corporations (\$14.55 billion/5%).



Overview

This generosity, however, has attracted criminals who profit from dishonest fundraising practices. To curb the exploitation of generous citizens, a patchwork of state-by-state fundraising regulations exist to protect consumers and nonprofits from deceptive and unscrupulous fundraising practices.

List of U.S. Charity Offices:

<http://www.nasconet.org/documents/u-s-charity-offices/>



Solicitation

- The legal term for fundraising is “charitable solicitation.”
- The definition of “charitable solicitation” is extremely broad. In most jurisdictions, a solicitation includes a direct or indirect request for a contribution with the understanding that it will be used for a charitable purpose, and likely includes all of the following methods:
 - Oral or written request.
 - The distribution, circulation, mailing, posting, or publishing of any advertisement or publication.
 - The making of any announcement to the press; over the radio; or by television, telephone or telegraph, concerning an event to which the public is requested to attend or make a contribution to.
 - The sale or attempted sale of any advertisement, advertising space, book, card, magazine, merchandise, subscription, ticket of admission or any other thing; the use of the name of any charitable person in any offer or sale as an inducement or reason to purchase such item; or the making of any statement in connection with any such sale, that the whole or any part of the proceeds from such sale will be used for any charitable purpose.



Solicitation

What about the internet?

- Charleston Principles:

- Every nonprofit that raises funds using the internet and social media should be familiar with the Charleston Principles. The Charleston Principles are guidelines on charitable solicitations using the internet, and were approved by the National Association of State Charity Officials in March 2001. See: <http://www.nasconet.org/wp-content/uploads/2011/05/Charleston-Principles-Final.pdf>
 - In general, if a charity has a website with a passive “donate here” button, that, alone, is not enough to require solicitation registration in multiple states. However, if the charity responds to a donation from that “donate here” button with an active request for further donations, such as “thank you for your donation, please consider another donation...,” the charity has now solicited and is required to register.
- Be aware that that no matter what vehicle your nonprofit is using for fundraising (Twitter, Facebook, texting, phone calls, or old-fashioned snail mail and personal “asks”) if the underlying activity is solicitation – defined as *asking for a donation* – that's regulated activity in most states.
- Crowdfunding and giving days can trigger registration requirements in multiple states.



Fundraising Regulations

Fundraising regulations generally come in 2 flavors:

- Charitable Solicitation Registration: To facilitate fundraising regulation, state authorities have traditionally required charities soliciting their residents for donations to register with its state charity office. <http://www.nasconet.org/documents/u-s-charity-offices/>. Registration allows the state to monitor who is soliciting within the jurisdiction, ensuring a responsible party can be contacted if complaints arise.
- Professional Fundraiser Registration: Many states also regulate the activity of paid fundraising consultants and require them to register with the designated state body. Paid fundraising consultants are usually called “Professional Fundraisers” or “Professional Solicitors.”



#1: Charitable Solicitation

#1: Fundraising by the Charity & Disclosure of Charitable Contributions



#1: Charitable Solicitation

Fundraising by the Charity:

- The general rule is: Charitable organizations must file a registration statement with the state's charity office (sometimes it's the Attorney General's Office; sometimes it's the Secretary of State's Office) prior to any charitable solicitation, and an annual return thereafter. Late fees apply so be sure to note renewal deadlines.
- Exceptions:
 - Certain jurisdictions have exemptions from this filing requirement for specific types of organizations.
 - Some jurisdictions do not have a filing requirement at all.



#1: Charitable Solicitation

Fundraising by the Charity:

- Common exemptions from charitable registration:
 - Charitable organizations that are composed ENTIRELY of volunteers (no paid staff) and receive less than \$X in annual contributions from the public. (NOTE: Some jurisdictions say \$25,000; some say \$5,000; some say \$50,000; some say “receive contributions from fewer than 10 people.”)
 - Religious organizations exempt from filing Form 990s
 - Accredited educational institutions/schools
 - Organizations that solely solicit contributions from its voting members
- There are others, so check state-by-state where your charitable organization “does business.”



#1: Charitable Solicitation

- Each state's system of fundraising regulation is different.
- Nonprofits have long agonized over the complexity of complying with the existing national patchwork of inconsistent and ever changing laws.
- These laws, although attempting to protect the public from deceptive fundraising practices, is costly and burdensome for charities.



#1: Charitable Solicitation

State-by-State Approach:

- Pros:
 - Allows you to be more targeted in your approach to registration, registering only in jurisdictions where it's absolutely necessary (saving \$, and time in future years)
- Cons:
 - Each jurisdiction has its own form and its own laws
 - Requires a search for the forms, but now Google makes this easier and most jurisdictions have the forms on-line and/or an on-line registration process
 - Many state registration forms require signatures by more than one corporate officer, so allow time to collect the necessary signatures well in advance of filing deadlines
- Helpful resource: <https://www.councilofnonprofits.org/tools-resources/charitable-solicitation-registration>



#1: Charitable Solicitation

Unified Registration Statement:

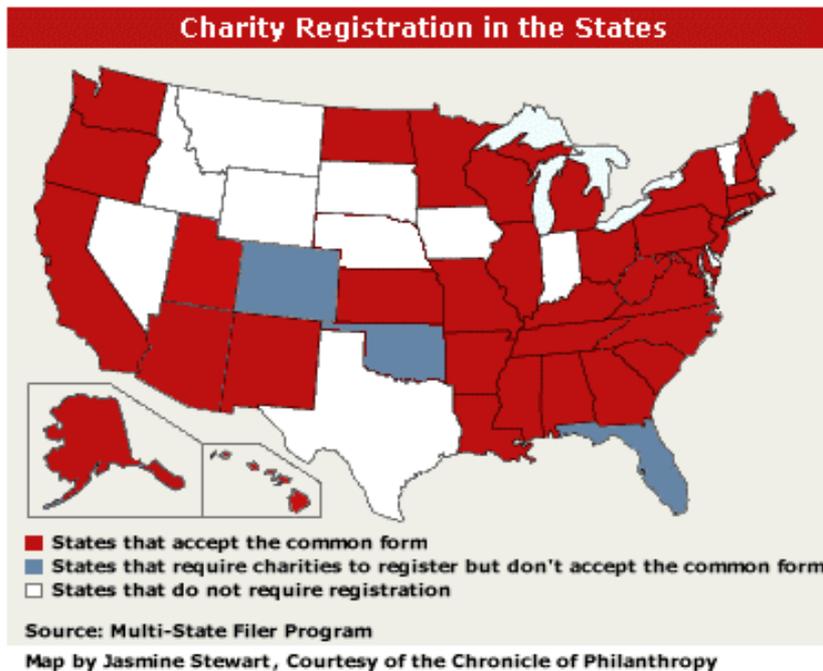
- What is it?: The Unified Registration Statement (URS) represents an effort to consolidate the information and data requirements of all states that require registration of nonprofit organizations performing charitable solicitations within their jurisdictions. The effort is organized by the National Association of State Charities Officials and the National Association of Attorneys General, and is one part of the Standardized Reporting Project, whose aim is to standardize, simplify, and economize compliance under the states' solicitation laws.
- **The URS is an *alternative to filing*** all of the respective registration forms produced by each of the cooperating states. In those states, a registering nonprofit may use *either* the state form *or* the URS. Thus, the URS proves most useful to nonprofits soliciting regionally or nationally and, therefore, subject to the registration laws of *multiple* states. **But the URS may be used by any nonprofit that is registering in a state accepting it.**
- <http://www.multistatefiling.org/>



#1: Charitable Solicitation

Unified Registration Statement:

Which States Require Registration of Charitable Soliciting Organizations and Accept the URS?





#1: Charitable Solicitation

Unified Registration Statement:

<http://www.multistatefiling.org/>

- Required Supplementary Forms
 - Arkansas
 - California
 - District of Columbia
 - Georgia
 - Maine
 - Minnesota
 - Mississippi
 - North Carolina
 - North Dakota
 - Tennessee
 - Utah
 - Washington
 - West Virginia
 - Wisconsin
- Appendix
 - Summary of Regulations for the Cooperating States
 - Other States that Require Registration
 - Annual Financial Reporting



#1: Charitable Solicitation

Unified Registration Statement:

- Pros:

- One form

- Cons:

- Not all jurisdictions accept it
- Some of the jurisdictions that accept it still require supplemental forms with additional information
- Does not provide you with information about whether your organization is specifically exempt from filing in each jurisdiction – and once you register, it’s difficult to “unring the bell”



Disclosure Statements - State

- In addition to registration requirements, several states also require "disclosure statements" that alert potential donors that the nonprofit is registered in the state. The disclosure statements must be included in solicitation materials, such as annual appeal letters and letters confirming pledges.
- For state-by-state info on disclosure statements:
http://www.perlmanandperlman.com/practice_areas/registration_compliance/charitable_organizations.shtml



Disclosure Statements - State

Examples:

- Minnesota: Minn. Stat. § 309.556, Subd. 1

The following information must be clearly disclosed in any written charitable solicitation:

- the name and location by city and state of each charitable organization on behalf of which the solicitation is made;
- the tax deductibility of the contribution; and
- a description of the charitable program for which the solicitation campaign is being carried out; and, if different, a description of the programs and activities of the organization on whose behalf the solicitation campaign is being carried out.

- Ohio: O.R.C. § 1716.10

Every charitable organization that directly solicits contributions in this state must make the following disclosures at the point of solicitation:

- The name of the charitable organization and the city of the principal place of business of the charitable organization;
- If the charitable organization has not received a determination letter from the Internal Revenue Service that is currently in effect, stating that the organization is exempt from federal income taxation under section 501(a) and described in section 501(c)(3) of the Internal Revenue Code, and the particular charitable purpose or purposes to be advanced with the funds raised.

- Illinois: 225 ILCS 460/15(b)

If a charitable organization engages in any public solicitation and purports to relate the purpose or purposes for which the funds are solicited, such purposes must be fully and accurately identified to the prospective donor. If a charitable organization whose purposes include the rendering of noneducational program services intends to expend or budget more than 50% of its program service expenditures for informing or educating the public, and the funds being solicited will be used for such purpose, the donor at his or her request must be told that a primary use of the program funds will be for public education.



Disclosure Statements - State

Examples (continued):

- New York: McKinney's Executive Law § 174-b
Any solicitation, by any means, including oral and written solicitations, by or on behalf of a registered charitable organization, must include:
 1. A statement that upon request, a person may obtain from the organization or from the attorney general, a copy of the last financial report filed by the organization with the attorney general. Such statement shall specify the address of the organization and the address of the attorney general, to which such request should be addressed and in the case of a written solicitation, must be placed conspicuously in the material with print no smaller than ten point bold face type or, alternatively, no smaller than the size print used for the most number of words in the statements.
 2. A clear description of the programs and activities for which it has requested contributions or a statement that, upon request, a person may obtain from the organization such a description.
 3. If any charitable organization makes contributions to another organization which is not its affiliate, the solicitation must include a statement that such contributions have been made and that a list of all organizations which have received contributions during the past twelve months from the soliciting organization may be obtained from that organization provided, however, a united way, federated fund or incorporated community appeal, by or through which a donation is merely transferred to a charity selected by the donor, need not include such donor selected organizations in the list. The term "affiliate" includes any chapter, branch, auxiliary, or other subordinate unit of any registered charitable organization, howsoever designated, whose policies, fund raising activities, and expenditures are supervised or controlled by such parent organization.

The written disclosure must be placed conspicuously in the materials with print no smaller than 10 point bold face type or, alternatively, no smaller than the size print used for the most number of words in the solicitation.

- California: No disclosure requirements for written solicitations by charities not using professional solicitors.



Disclosure Statements - Federal

- A nonprofit organization should provide a written disclosure (sometimes called a “donation acknowledgement”) to a donor when the nonprofit organization receives contributions of \$250 or more, and MUST provide a written disclosure when the donor makes a payment exceeding \$75 partly as a contribution and partly as a compensation for goods and services provided by the organization (this is called a *quid pro quo* contribution). See: I.R.C. § 6115(a)(1)-(2)(2013); See also IRS Pub. 1771 at 11 (2013) (<http://www.irs.gov/pub/irs-pdf/p1771.pdf>).
- The written disclosure should contain the following:
 - Name of organization
 - Amount of cash contribution
 - Description (but not the value) of non-cash contribution)
 - Statement that no goods or services were provided by the organization in return for the contribution, if that was the case
 - Description and good faith estimate of the value of goods or services, if any, that an organization provided in return for the contribution
 - If it’s a *quid pro quo* contribution, a notification to the donor that the amount of the contribution that is deductible for federal income tax purposes is limited to the excess of money (and the fair market value of property other than money) contributed by the donor over the value of goods or services provided by the organization



Disclosure Statements - Federal

Donors are allowed to deduct the difference between the value of the amount contributed and the value of the goods and services received in return from the nonprofit organization.



Disclosure Statements - Federal

Token Exception:

- Insubstantial goods or services a charitable organization provides in exchange for contributions do not have to be described in the acknowledgment.
- Good and services are considered to be insubstantial if the payment occurs in the context of a fund-raising campaign in which a charitable organization informs the donor of the amount of the contribution that is a deductible contribution, and:
 - the fair market value of the benefits received does not exceed the lesser of 2 percent of the payment or \$102; or
 - the payment is at least \$51, the only items provided bear the organization's name or logo (e.g., calendars, mugs, or posters), and the cost of these items is within the limit for "low-cost articles," which is \$10.20.
 - NOTE: These dollar amounts are for 2013. Guideline amounts are adjusted for inflation. Contact IRS Exempt Organizations Customer Account Services at (877) 829-5500 for annual inflation information.
- Example: If a charity gives a coffee mug bearing its logo and costing the organization \$10.20 or less to a donor who contributes \$51 or more, the organization may state that no goods or services were provided in return for the \$51 contribution. The \$51 is fully deductible.



Disclosure Statements - Federal

Membership Benefits Exception:

- An annual membership benefit is also considered to be insubstantial if it is provided in exchange for an annual payment of \$75 or less and consists of annual recurring rights or privileges, such as:
 - Free or discounted admissions to the charitable organization’s facilities or events
 - Discounts on purchases from the organization’s gift shop
 - Free or discounted parking
 - Free or discounted admission to member-only events sponsored by an organization, where a per-person cost (not including overhead) is within the “low-cost articles” limits
- Example: If a charity offers a \$75 annual membership that allows free admission to all of its weekly events, plus a \$20 poster, a written acknowledgement need only mention the \$20 value of the poster, since the free admission would be considered insubstantial and, therefore, would be disregarded.



Disclosure Statements - Federal

Intangible Religious Benefits Exception:

- If a religious organization provides only “intangible religious benefits” to a contributor, the acknowledgment does not need to describe or value those benefits. It can simply state that the organization provided intangible religious benefits to the contributor.
- “Intangible religious benefits” are benefits provided by a tax-exempt organization operated exclusively for religious purposes, and are not usually sold in commercial transactions outside a donative (gift) context.
- Examples include admission to a religious ceremony and a *de minimis* tangible benefit, such as wine used in a religious ceremony. Benefits that are not intangible religious benefits include education leading to a recognized degree, travel services, and consumer goods.



Disclosure Statements - Federal

- A separate acknowledgment may be provided for each single contribution exceeding the threshold, or one acknowledgment, such as an annual summary, may be used to substantiate several single contribution exceeding the threshold. There are no IRS forms for the acknowledgment. Letters, postcards, or computer-generated forms with the above information are acceptable.
- Recipient organizations typically send written acknowledgments to donors no later than January 31 of the year following the donation.



Disclosure Statements - Federal

A penalty is imposed on charities that do not meet the written disclosure requirement when receiving *quid pro quo* contributions. The penalty is \$10 per contribution, not to exceed \$5,000 per fundraising event or mailing. An organization may avoid the penalty if it can show that failure to meet the requirements was due to reasonable cause.



Disclosure Statements - Federal

NOTE: The IRS has separate, specific requirements for vehicles, land, buildings, and stock.

- Vehicles: See IRS Publication 4302 and Form 1098-C
- Land/Buildings: Beware of UBIT, Form 8283, and IRS Publications 526 & 561
- Stock: Beware of Rev. Rul. 78-197 (1978) (http://www.law.indiana.edu/instruction/pmpurcel/vault/Rev_Rul_78-197.pdf), and IRS Publication 526



Disclosure Statements - Federal

Beware of in-kind donations:

- An in-kind donation typically comes in the form of goods or services. Examples of in-kind donations include individuals providing school supplies to nonprofit organizations that serve at-risk youth, a gift card for a silent auction, or works of art given to a museum.
- Nonprofit organizations should provide donors who give in-kind donations a receipt similar to one provided to an individual who gives a cash donation. The only difference is that the nonprofit organization is not expected to list the actual value of the in-kind donation. However, it is important to describe what was donated.
- Example: “Thank you for your contribution of 5 gift cards with a face value of \$100. Charity received this donation on [date]. No goods or services were provided in exchange for this contribution.” or “Thank you for your contribution of a used oak baby crib and matching dresser....”
- The donor is responsible for valuing the goods or services provided in non-cash contributions and reporting that amount on their own tax return if they are seeking a charitable deduction.



Disclosure Statements - Federal

What if the nonprofit corporation doesn't have 501(c)(3) status??

- If the organization is not eligible to receive tax-deductible donations (i.e., is NOT a 501(c)(3)), solicitations on behalf of that organization must contain an express and easily recognizable statement that donations are not deductible as charitable contributions for federal income tax purposes. While a good faith effort to meet the foregoing will suffice, the IRS has provided safe harbor rules for complying with this requirement. See: IRS Notice 88-120 (1988) (<http://www.irs.gov/Charities-&-Non-Profits/Notice-88-120,-1988-2-C.B.-454>); I.R.C. § 6113(a) (2013).
- To meet the safe harbor in a written solicitation, the statement must:
 - Be in at least the same size type as the primary message and readily visible.
 - Be on the same page, and in close proximity to, the request for donations.
 - Be the first sentence of a paragraph, or constitute the entire paragraph.
 - Be worded as one of the following:
 - ✓ “Contributions or gifts to [name of organization] are not tax deductible as charitable contributions for Federal income tax purposes.”
 - ✓ “Contributions or gifts to [name of organization] are not tax deductible.”
 - ✓ “Contributions or gifts to [name of organization] are not tax deductible as charitable contributions.”
- For oral solicitations, the same statement must be made in close proximity to the request for contributions (i.e., during the same telephone conversation and by the same solicitor).



#2: Professional Fundraisers

#2: Fundraising by a Professional



#2: Professional Fundraisers

Fundraising by a Professional:

- Nonprofits hiring outside consultants to provide assistance with fundraising should be familiar with state laws that may require the registration with the state charity office prior to any solicitation activity.
- While registration of the consultant may not be the nonprofit's direct obligation, it is prudent to verify that your fundraising consultant is registered, if required by state law.



#2: Professional Fundraisers

Fundraising by a Professional:

- Fundraising professionals often go by the following names:
 - Professional Fundraiser
 - Professional Solicitor
 - Fundraising Counsel
 - Grant Professional
- The general rule: If a person is a.) soliciting b.) on behalf of a charity c.) and being paid to do so, he/she is a fundraising professional and must register with the state charity office prior to any solicitation activity. This rule generally applies to independent contractors/consultants, not employees.



#2: Professional Fundraisers

Fundraising by a Professional:

- This general rule applies to grant writers as much as it applies to phone solicitors in call-centers.
- What commonly needs to be filed:
 - Registration Statement
 - Solicitation Notice
 - Written authorization from the charity, usually in the form of a contract
 - Surety bond (usually in the amount of \$25,000) – some jurisdictions waive this requirement if the professional is not going to have custody and/or control of the charitable contributions
 - Solicitation Campaign Report Form within 90-days of the close of the fundraising “campaign”
 - Fee



#2: Professional Fundraisers

Fundraising by a Professional: Be sure you hire a reputable professional

- Federal Trade Commission: <https://www.ftc.gov/tips-advice/business-center/guidance/raising-funds-what-you-should-know-about-hiring-professional>
- Fundraising Fables: Retaining Fund Development Professionals:
<http://fundraisinggoodtimes.com/2014/07/21/fundraising-fables-retaining-fund-development-professionals/>
- Check with your state's charity office to get more information about the fundraising professional and to determine if he/she is properly registered.
<http://www.nasconet.org/documents/u-s-charity-offices/>



#2: Professional Fundraisers

Fundraising by a Professional:

- It is not considered ethical to compensate fundraising professionals with a commission, or a percentage of contributions, or funds raised.
- See:
 - Association of Fundraising Professionals:
<http://www.afpnet.org/Ethics/EthicsArticleDetail.cfm?ItemNumber=734>
 - Council for Advancement and Support of Education:
http://www.case.org/Samples_Research_and_Tools/Principles_of_Practice/CASE_Statements_on_Compensation_for_Fundraising_Performance.html

#2: Professional Fundraisers

Watch out for “inadvertent” professional fundraising: Cafepress

NARROW BY DEPARTMENT

POPULAR PRODUCTS

- Charity T-Shirts
- Long Sleeve T-Shirts
- Sweatshirts & Hoodies
- Mugs
- Water Bottles
- Tote Bags
- Greeting Cards
- Jewelry
- Bedding

T-SHIRTS & CLOTHING

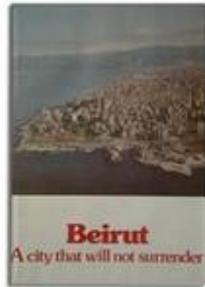
- Charity Men's T-Shirts sale!
- Women's T-Shirts sale!
- Kids Clothing
- Baby Clothing top seller!

SORT RELEVANCE ▾

SHOW 28 ▾

GO TO: PAGE 1 ▾

NEXT PAGE »



Save Beirut Rectangle Magnet

Refrigerator Magnet

\$5



NCL Zip Hoodie

Men's Zip Hoodie

\$54.50



The American Job For Jack D...

16oz Drinking Glass

\$18



HEARTS Bumper Sticker

Vinyl Sticker

\$5 \$3.99



Watch out for
“bad” professional
fundraising:
Savers

Savers under the scrutiny of Attorney General



Storefront of the E. Lake St. Savers, one of 330 stores owned by conglomerate Savers LLC. Their operations in Minnesota are under scrutiny by the Minnesota Attorney General. (Photo by Margie O'Loughlin)

By MARGIE O'LOUGHLIN

On Nov. 24, Minnesota Attorney General Lori Swanson issued a compliance report questioning the relationship between Savers retail stores and the local non-profits they partner with. These include Vietnam Veterans of America, Disabled Veterans of America, Epilepsy Foundation of Minnesota, Lupus Foundation of Minnesota, Courage Kenney Foundation and True Friends.



NEWS AND ANALYSIS

DECEMBER 12, 2014

     |  Comment (0)

Report Slamming Savers LLC Prompts Pivot in Handling of Donated Goods

By Michael Anft

Several nonprofits that use for-profit companies to collect donated goods say that they will look more closely at such arrangements, following a Minnesota [decision](#) that called for Savers LLC to change its business practices.

Minnesota's Attorney General's Office filed a [compliance report](#) in November stating that "Savers mixes its identity with that of the charities and fails to disclose the amount of a donor's donation that is received by the charity versus the amount that is retained by Savers, a for-profit corporation."

The Seattle-based company earns more than \$1-billion annually from sales of donated



#2: Professional Fundraisers

Watch out for “bad” professional fundraising: Integral Resources

Phone solicitor Integral Resources to pay \$105,000 to Ohio over charity calls

A Massachusetts-based professional phone solicitor will pay \$105,000 to settle a suit by Ohio's attorney general that it misled Ohioans about calls it made for nonprofits.

Ohio Attorney General Mike DeWine announced the settlement today with Integral Resources Inc.

DeWine said Integral's employees misled Ohioans into believing they were being called by a volunteer from the charity, rather than a professional solicitor, and misled them about the percentage of collected dollars that would go to the cause.



Ohio Attorney General Mike DeWine

Plain Dealer file

Thank you!!!



Jennifer L. Urban, Esq.

Attorney for Nonprofits

The Parkdales

5354 Parkdale Dr., Suite 103

St. Louis Park, MN 55416

t: 612-284-6441 | m: 612-418-0199

e: jenn@legalforgood.com

w: www.legalforgood.com