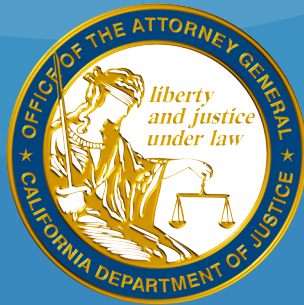


Attorney General's Guide for Online Charitable Giving



**California Department of Justice
Charitable Trusts Section**

*Protecting Charitable Assets and
Donations for the People of California*

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INTRODUCTION: HOW AND WHERE CAN YOU GIVE TO SUPPORT CHARITIES ONLINE?

Many companies encourage donors to use their own websites and other Internet-based platforms to give to charities listed on the platform...what we call charitable fundraising platforms.

Charitable giving on the Internet is no longer limited to giving directly to a charity through its website. Many companies encourage donors to use their own websites and other Internet-based platforms to give to charities listed on the platform. For instance, many companies unaffiliated with a charity may let you perform the following on their platforms:

- Select a charity to receive a donation from a list or database of charities;
- Fundraise for charities, sometimes called crowdfunding campaigns or peer-to-peer fundraising, encouraging you to use your personal social media contacts to solicit donations for your favorite charity or cause (e.g., the platform may let you solicit and match donations to celebrate your birthday or another event); or
- Support charities when you make purchases by, for instance, adding a small amount to a transaction that serves as a donation, or a donation is made by the platform or another corporation based on how much you spend online.

These websites and platforms, what we call charitable fundraising platforms, may have a business purpose independent of charitable giving, but have evolved to encourage charitable giving as part of their service offered to the public. Examples of such charitable fundraising platforms include Amazon, Benevity, Charity Navigator, CrowdRise, eBay, Facebook, GoFundMe, Google, GuideStar (Candid), Lyft, Overstock, and PayPal. And more are emerging and continue to innovate charitable giving online.

Several charitable fundraising platforms partner with a charity whose charitable purpose is to enable online giving. For instance, all donations made on a charitable fundraising platform, like PayPal, may be made to its partnering platform charity PayPal Giving Fund, which is then responsible for distributing the donation intended for a specific charity (among other duties). A platform charity like Pay Pal Giving Fund may even use what are called “donor advised funds” to receive and distribute donations, but this is not required.

Be fully informed as to how the donation process works.

RESEARCH BEFORE DONATING

Although it may be more convenient to donate to or support your favorite charities through charitable fundraising platforms, you should be fully informed as to how the donation process works for these indirect methods of charitable giving. These online donations are not refundable. Also, you may prefer to give directly to charities through their own websites (e.g., to increase the value of your donation as platforms may charge extra fees or for other reasons discussed below). So when you seek to support charities on charitable fundraising platforms, research before donating:

1. Who are you giving the donation to?

On most charitable fundraising platforms, donors make donations not to the charity they select, but instead to the charitable fundraising platform or its partnering platform charity. In doing so, donors are merely recommending a donation to the charity the donor selects from a list or database of charities.

On a few platforms that permit crowdfunding or peer-to-peer fundraising campaigns for personal and charitable causes, there is an additional scenario. If an individual creates a campaign that benefits him or her personally, but disguises that campaign as one that benefits a charity (e.g., the campaign's content mentions a specific charity and the platform did not categorize this campaign as a charity campaign), you would be donating to the individual who created the campaign. When this occurs, there is a risk the individual may not give the donation to the charity mentioned in the solicitation pitch. Before you donate using a platform that permits crowdfunding or peer-to-peer fundraising campaigns for both individuals and charities, make sure it is clear the campaign will benefit a specific charity before you donate (e.g., look for a reference *by the platform* that the campaign will benefit a "certified charity," or inquire with the platform about who specifically receives a campaign's proceeds). Also, to minimize the risk of inadvertently giving funds intended for a charity to an individual who created a personal crowdfunding campaign, it's a good idea to only give to fundraising campaigns created by individuals personally known to you.

If it's unclear who you are donating to, find another way to support the charity, such as contacting the charity directly or using another charitable fundraising platform that makes this clear.

2. Will the charity receive the donation?

When donations are made to the charitable fundraising platform or its partnering platform charity, custody and control over the donation remains with them and they may retain the right and discretion not to give the donation to the charity you recommended. Some of the reasons for not honoring a donor's recommendation can include finding that the charity is

not in compliance with a particular law or donation policy established by the platform, or that the charity has not agreed to the terms the platform requires to accept donated funds.

3. If the charity can't receive your donation, can you choose another charity to receive it (as donations are not refundable)?

When a charitable fundraising platform or its partnering platform charity chooses to exercise its discretion not to give a donation to your recommended charity, it may choose an alternate charity with a similar charitable purpose to receive your donated funds, instead of contacting you to select another recommended charity. It is also possible the platform or platform charity may decide to keep the donation for itself. If you would like to recommend another charity, confirm whether the platform will let you do this at the time of your initial donation.

4. If the charity can receive your donation, how long does it take for the charity to get it? Can you be notified of this?

You may believe a charitable fundraising platform or the platform's partnering charity may promptly send your donated funds to your designated charity. For instance, you may have designated a donation for a specific charity that is helping victims of a recent natural disaster, and you would like your funds to be used by that charity as quickly as possible. However, this may be an unrealistic expectation for donations made through charitable fundraising platforms. For example, the platform or its partnering platform charity may seek to aggregate donations from multiple donors who designated the same charity to receive the donations, and may grant the donations in the form of one lump sum payment to the designated charity on a predetermined schedule (e.g., monthly, bi-monthly, annually). It may also wait to grant donations to a charity until a certain minimum amount (e.g., \$100) is received from multiple donors. Platforms or platform charities also need time to confirm whether the designated charity is eligible to receive the grants, and account for any fees taken from donations, [as discussed below](#). Check to see if the platform has a disbursement policy that clearly explains how long they retain donations before granting them to the charities chosen by donors. Yet, if you would like a charity to receive your donation as quickly as possible, consider donating directly to the charity (e.g., through the charity's own website).

Even if you are less concerned with how long it takes for donations to be distributed, you may want to know whether the charity you designated a donation for actually received your donated funds (particularly for large donations). However, many charitable fundraising platforms do not currently notify or inform donors when they actually distribute donated funds to designated charities. Before donating, you should confirm with a

platform whether it will notify you when your donation is disbursed to the charity of your choice.

5. How much of your donation does the charity receive?

Fees may automatically be taken out of your donation, such as credit card processing fees or other transaction fees (like a platform fee).

Fees may automatically be taken out of your donation, such as credit card processing fees or other transaction fees (like a platform fee). Some charitable fundraising platforms may ask donors to pay more than their intended donation to cover the fees. These types of fees should be clearly disclosed, but if they are not, do not assume there are no fees—and you may want to research another way to give to your charity.

When platforms ask you to pay additional fees on top of your donation, do not feel pressured to cover that fee or pay a certain percentage of a donation (as there is no custom as to what is an appropriate platform fee). Such a platform should also make it straightforward for you to decline to pay any optional fee.

6. Is your donation tax deductible?

Many donors want to know whether their donations are tax deductible not only because they may be able to deduct the donations from their federal and state income taxes, but also because this indicates the donation is made to charity, as opposed to an individual, a for-profit company, or a nonprofit that isn't a charity (like a political action committee). Hence, it's important to know who your donation is going to, [as discussed above](#).

If your donation is made to the charitable fundraising platform itself, most likely your donation was to a for-profit company, so that the donation is not tax deductible. If the donation is made to the platform charity, then it should be tax deductible as platform charities should be tax-exempt under section 501(c)(3) of the Internal Revenue Code. In fact, this may be one reason why platforms partner with platform charities to receive and distribute donated funds to other designated charities, as the platform charity can offer donors tax deductible donations.

When you make purchases online that cause a platform or another corporation to make a donation, such donations would not be tax deductible by you (as you did not actually donate any funds to a charity). When you give money to individuals in response to their personal crowdfunding campaigns on a platform (even if they state they will give donations to a charity), your donation is not tax deductible.

You may want to consult with a tax professional to discuss or confirm your understanding of when donations are tax deductible.

7. Will the charity receive your contact information?

Some donors want to give anonymously, while others want to be acknowledged by a charity for donations made through charitable fundraising platforms (especially for large donations). Even if you didn't donate, you may want to be thanked for your efforts (e.g., for your fundraising or purchasing activity on a platform), or you may want the designated charity to contact you to learn more about its charitable programs, volunteer activities, and other events. Research how a charitable fundraising platform or its partnering platform charity may or may not share your name, e-mail address, and other optional contact information with charities you designate to receive your donation.

Some charitable fundraising platforms or platform charities may or may not share your information, while others may let you choose to remain anonymous.

Some charitable fundraising platforms or platform charities may or may not share your information, while others may let you choose to remain anonymous. Charitable fundraising platforms should conspicuously disclose when and under what conditions your information may be disclosed to your designated charity. They should also disclose how they will use your information when you make donations or otherwise support charities on their platforms.

8. Will your donation be used by a charity for the specific purposes described on a charitable fundraising platform?

Some charitable fundraising platforms let donors instruct or recommend how their donations may be used by the designated charity. Other platforms reflect or let individuals soliciting donations specify how funds will be used (e.g., "A \$5 donation means one child [the charity serves] will be fed three meals in a day"). This may be the case even though the benefiting charity may not be aware of or have authorized the solicitation on its behalf ([as discussed below](#)). In spite of these claims, charitable fundraising platforms or their partnering platform charities may let charities that receive donations from them to use the funds for any purpose. Hence, if you want your donation to be used for a specific (restricted) purpose, you may want to contact the platform to confirm whether and how such a request will be honored, or contact the charity to learn whether it will accept donations made directly to them subject to your restriction on use.

9. Has the charity given permission to the charitable fundraising platform to receive donations through the platform?

Some charitable fundraising platforms limit the charities you can support to those charities that have previously consented to receive donations through the platform. Other platforms let you choose any charity, even if the charity has no knowledge of and has not chosen to participate with a platform.

When a charity gives consent, it is aware of and has authorized solicitations on the platform on its behalf. A charity's consent also minimizes the chance of fraud, and provides a greater likelihood it will actually receive and accept donations made through the platform—and receive them faster. For instance, before listing a consenting charity on a platform, the platform or platform charity typically vets the consenting charity for compliance with the platform's donation policies and applicable laws, which increases the likelihood donations will be given to those charities. Consenting charities also would have agreed to the platform's terms for receiving donations, so there wouldn't be issues with a charity rejecting donations (e.g., charities may object to unauthorized fees taken from donations, they may not have access to donor information, or they may view accepting the funds as part of a scam). Consenting charities are also likely to set up methods to receive donated funds electronically, which is faster than receiving donated funds by check (and can easily get lost in the mail for a non-consenting charity when its current mailing address is unknown). Research whether the charities listed on a platform as intended recipients of your donation have given their consent.

The answers to these questions should be clearly provided to you

The best charitable fundraising platforms should be able to clearly and easily provide all of the above information to you. If it's not clear or the information is not provided, consider giving to the charity of your choice through the charity's website. In addition, submit a [complaint](#) to the Attorney General when a platform does not adequately and clearly disclose the details on how donations are made and processed.

DUTIES AND BEST PRACTICES FOR CHARITABLE FUNDRAISING PLATFORMS

When charitable fundraising platforms solicit donations in California, or otherwise enable donations to charities on their platforms, they must ensure compliance with all applicable laws, including California's charitable solicitation laws. Similarly, platforms (and their partnering platform charities) should implement policies and procedures that instill confidence in donors and the public that they can trust these platforms to receive, process, and/or distribute donations to their favorite charities. With this in mind, these legal duties and best business practices generally include but are not limited to:

Do not engage in or permit fraudulent and deceptive conduct. For instance, platforms should not make statements that create a likelihood of confusion or misunderstanding to a potential donor....Such conduct includes failure to provide material information a potential donor would find helpful in determining whether to donate or not.

1. Fundraising must be conducted without fraud and deception

Do not engage in or permit fraudulent and deceptive conduct. For instance, platforms should not make statements that create a likelihood of confusion or misunderstanding to a potential donor. (E.g., Gov. Code, § 12599.6, subd. (f)(2).) Such conduct includes failure to provide material information a potential donor would find helpful in deciding whether to donate or not, and failure to prohibit individuals that fundraise for charity on their platforms from making deceptive statements. Platforms also may not represent or imply a charity will receive an amount greater than the actual net proceeds reasonably estimated to be retained by the charity for its use. (Gov. Code, § 12599.6, subd. (f)(8).) For material information that should be accurately, clearly, and conspicuously disclosed before donors can donate, see the [Research Before Donating section above](#).

Other material information that should be disclosed (and not only in fine print) include: information on refunds, the process for vetting charities before listing them on platforms or granting them donated funds, and the use of donor advised funds. For instance, if donor advised funds are used to accept donations, platforms should clarify what that means, why and how donor advised funds are used, and whether a donor advised fund is created for each donor.

2. Abide by fiduciary duties

A fiduciary relationship exists between any person soliciting on behalf of a charity and the donor who is solicited. Hence, when a platform or its partnering platform charity solicits and accepts donations on behalf of a charity, a charitable trust is created. This requires the platform or platform charity, and the charity that ultimately receives the donated funds, to use these restricted donations for the declared charitable purposes for which they were sought. (Bus. & Prof. Code, § 17510.8.) This further underscores the importance of disclosing material information accurately, clearly, and conspicuously on charitable fundraising platforms as this informs donors as to the declared charitable purposes for donations that are given through the platforms.

3. Only list on platforms charities in good standing

Do not list charities as potential donation recipients, or distribute donated funds or provide your services to charities unless they are in good standing with the IRS, the California Franchise Tax Board, and the Attorney General (specifically the Attorney General's Registry of Charitable Trusts), when applicable. For the IRS and Franchise Tax Board, this means the charity's tax-exempt status has not been revoked. For the Attorney General, this means the charity is registered and in compliance with the Attorney General's annual reporting requirements. For instance, unregistered charities that have been ordered to register

with the Attorney General and charities that have had their registration suspended or revoked are not in good standing with the Attorney General, and cannot operate or solicit donations in California. (Cal. Code Regs., tit. 11, § 999.9.4.) It is also inappropriate to facilitate solicitations for and donations to charities not in good standing, and to mislead donors into believing they can support and give to such charities. (Gov. Code, §§ 12596, subd. (c), 12599.6, subd. (d), (f)(2).)

4. Let donors choose how their information is shared and responsibly handle their information

Ensure that donors have a clear opportunity to choose whether their contact information will be given to the charities they have designated to receive donations. This also applies to consumers who make purchases on platforms that cause donations to be made as a part of their purchases. In addition to honoring these requests, only use donor or consumer information to process a donation, or for future solicitations by the applicable charitable fundraising platform or its partnering platform charity (unless the donor or consumer requests to not receive such solicitations). Furthermore, ensure compliance with all consumer privacy and protection laws when handling donor or consumer information.

Provide transparency to donors...donors should be informed when their donated funds are sent to their recommended charities.

5. Make the donation process transparent

Provide transparency to donors as to what happens with recommended donations made to charitable fundraising platforms or their partnering platform charities. Donors should be informed when their donated funds are sent to their recommended charities, and should be contacted for alternate charities when the original charity can't receive the funds. Similarly, ask consumers who designate charities to receive donations from the platform or another corporation whether they would like to be informed when donations are sent to their charities, and notify them accordingly (also ask consumers to provide alternate charities when their designated charity can not receive donations).

Also, publish reports for the public that provide transparency, and show the absence of fraud in receiving, handling, and processing donations designated for charity. For instance, specify the donation amounts received before fees were deducted, how much each charity received, when they received such funds, and whether the charities were originally designated by donors to receive the funds or not. Such reporting substantially informs donors and encourages future charitable giving on platforms.

6. Distribute donated funds as quickly as possible

Make all reasonable efforts to ensure donations are distributed to the recommended charities as quickly as possible. For platforms that accept donations for a small number of charities, all donated funds should be

distributed within 30 days of the donations. For platforms that handle a voluminous number of donations for a large number of charities, more time may be required, like 60 days, unless it is determined within that time period that the designated charity is not eligible to receive the donations. Regardless, it should never take longer than a year to distribute the funds to alternate charities.

Furthermore, do not refuse to distribute donations for a recommended charity until a certain dollar value is reached, such as \$100. Not only does this discourage smaller donations, which is all some donors can afford. It also unreasonably delays the charitable impact of such donations (as the donations are not yet received and used by charities actually helping those in need), unlike for donors who give in larger amounts.

7. Provide compliant tax donation receipts

Ensure charitable solicitations and receipts to donors comply with mandatory disclosures under California law. Hence, when donations designated for a charity are made to a platform or its partnering platform charity, clearly specify: the name and address of the designated charity, and the platform or its partnering platform charity (depending on who the donation is made to); the non-tax exempt status of any of these entities under federal and state law when applicable; and the percentage of the donation which may be deducted as a charitable contribution under federal and state law. If no portion is tax deductible, state "This contribution is not tax deductible." (Bus. & Prof. Code, §§ 17510.3, subd. (a), 17510.4.)

8. Obtain prior permission from charities to solicit and receive donations intended for them

Do not use the name of a charity for solicitation purposes, unless the platform has the written consent of that charity in advance. (Gov. Code, §§ 12599.6, subds. (f)(2), (5), (11).) In addition to creating donor confusion and deception issues, the lack of consent interferes with a charity's legal duty to control its fundraising and to prevent objectionable solicitations. (Gov. Code, § 12599.6, subd. (b).)

When obtaining consent in a written agreement, platforms should also ensure the charity is adequately informed of the agreement's material terms. The agreement should conspicuously identify all fees deducted from donations, the processing time for release of the funding to the charity, and the terms on sharing donor/consumer information. Furthermore, should a charity wish to accept donated funds from a platform based on previously unauthorized solicitations, the platform should not require consent from the charity for future solicitations to obtain those funds.

9. Registration and other requirements

Charitable fundraising platforms that permit Californians to make donations to or otherwise support charities may need to register with the Attorney General's Registry of Charitable Trusts if they meet any of the following:

- The platform is paid to solicit donations for charitable purposes, to receive or control funds as a result of charitable solicitations, or to provide advice or prepare materials for charitable solicitations (see Gov. Code, §§ 12599, subd. (a), 12599.1, subd. (a));
- The platform is a for-profit entity that represents to the public that the purchase of any goods or services will benefit charitable purposes (see Gov. Code, § 12599.2, subd. (a)); or
- The platform is deemed a trustee, which includes nonprofit and for-profit entities, that hold charitable assets (see Gov. Code, § 12582).

When applicable, registration with and reporting to the Attorney General (and other requirements) would apply. The Attorney General's registration and reporting requirements are intended to protect the public from fraud, to prevent the misuse of charitable assets and other wrongdoing, and to provide transparency for donors to make informed decisions when giving. Indeed, many donors may be more willing to support charities on charitable fundraising platforms that are registered and complying with the Attorney General's requirements. However, registration with the Attorney General is not an endorsement of any platform. (Gov. Code, § 12599.6, subd. (f)(7).)

CONCLUSION AND LEGAL NOTICE

Thank you for reading this guide. We hope it is an invaluable resource for the public and charitable fundraising platforms, which promotes informed charitable giving and the protection of charitable assets as online fundraising innovation evolves.

This publication does not constitute legal advice. Moreover, it is not intended, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. No limitations are hereby placed on the otherwise lawful investigative and litigation prerogatives of the California Department of Justice.



California Department of Justice

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