

New Hampshire Department of Justice - Charitable Trusts Unit

Guidelines for Fundraising for an Individual

Sometimes tragedy strikes hard. It may be a young person's death from a drug overdose or a child receiving treatment for cancer or a family suddenly homeless due to a house fire. Friends and others in the community often want to help. While there are many good organizations and government agencies that provide targeted assistance to those in need, in many cases people want to aid directly those who are suffering. These Guidelines are designed to apply to this sort of private activity.

These Guidelines do not apply to funds set up to benefit others as a memorial to a deceased person. Memorial funds are often charitable trusts that require compliance with specific statutes. For further information on memorial funds, go to the Charitable Trusts Unit's web page or contact us directly for questions about these types of funds.

These Guidelines summarize issues that arise with fundraising conducted for the benefit of an individual. They are not meant to be a substitute for legal counsel but, instead, provide an introduction to the matters you will need to think about before asking for donations. We strongly urge those who plan to conduct fundraising for individuals to obtain legal advice. These Guidelines simply offer suggestions to avoid common problems the Charitable Trusts Unit has seen in the past.

Fundraising for Individuals is Not a Charitable Activity

The Charitable Trusts Unit has oversight responsibilities for charitable fundraising activities in New Hampshire. That is, fundraising meant to benefit the public at large or an indefinite portion of the public. For example, when the Red Cross raises money following a flood, it does so not just for a specific person, but for all victims of a flood. Similarly the American Cancer Society raises money widely to support cancer research and cancer victims, but not just for an identified person dealing with chemotherapy treatment. By contrast, fundraising using the GoFundMe® website to pay the burial costs of a heroin overdose victim is not considered to be charitable fundraising, since the larger public does not benefit. It does not matter what words are used to describe the activity: a fundraising campaign to support one or more specific individuals is not defined as a charitable activity.

The Charitable Trusts Unit does not regulate and does not impose any filing requirements on fundraising for a specific person. If you have a question whether a fundraising campaign is broad enough to require registration with the Charitable Trusts Unit, please call us at 603-271-3591.

However, if there is fraud or criminal activity involved with the fundraising or the handling of the money raised for an individual, the Attorney General's office may become involved. It is

never acceptable to raise money for one purpose, for example, paying for a child's cancer treatment, and then to spend the money for something else, like buying airplane tickets for a vacation. And it is never acceptable to raise money for an individual and then claim that the donation is tax deductible.

State the Purpose Clearly

To avoid confusion and potential future claims, always state the specific purpose of your appeal, whether on GoFundMe® or in a fundraising letter or other solicitation material. Descriptions like: "Help Heather with her illness" are too vague. Instead say: "Help Heather pay her medical and physical therapy bills for treatment of muscular dystrophy". Don't just say we are raising money for the "Cooper family fire fund". Say we are raising money for the "Cooper family emergency housing and home rebuilding fund".

Also, make sure your appeal includes a statement regarding the distribution of any surplus money raised after the primary purpose has been satisfied. For example, "all donations will go toward Joshua's funeral expenses; any extra amount raised will be given to Joshua's parents". Alternatively, you might say "all donations will be used to pay for Fluffy's veterinary bills; any extra amount raised will be donated to Anytown Animal Shelter." If your appeal does not mention what will happen to any surplus, you may end up in court in order to determine how the money will be distributed.

Open a Separate Bank Account

In planning your fundraising activities, consider how to handle the money as you raise it. The Charitable Trusts Unit recommends that you open a separate bank account to hold all the funds received. A separate bank account ensures that the money raised for an individual remains separate from your personal funds. It also allows donors to make a credit card donation on a social media site or write checks with some confidence the money will be used for the benefit of the designated beneficiary. Still, opening a bank account is not foolproof. It is important to understand that banks have limited responsibilities in this area and donors should not make the assumption the bank will manage or oversee the use of the money after the funds are withdrawn from the account.

Explain what your purposes are to the bank when you open the account as the bank may have specific requirements not outlined in these guidelines. You should title the account something like "Friends of John Smith" or "For the Benefit of Mary Jones." Whatever you decide, the title of the account should indicate who is the person receiving the benefit. That person is known as the **beneficiary**.

Instructing the public to make gifts directly into that bank account may give donors greater confidence that the funds will be used as intended. Always get approval from your bank before stating that donors can mail donations for the "Friends of John Smith" to "State Bank" at the

bank's address. Keep in mind, however, direct payments to a bank may mean that you do not learn the names of those who donate to the fund.

You next need to decide who should have access to the funds (i.e. signature authority and online banking access) and therefore can make distributions to the beneficiary. You will want to be certain the persons who have access to the bank account will use the funds only for the purposes represented to the donors. For example, if money is being raised to pay for a funeral, it is not acceptable for the daughter of the deceased to ask for funds from the account to pay her rent. Anyone with access to the account should keep good records, Debit card and cash withdrawals may not leave a clear record, so should be avoided. Also remember to talk with the bank about whether dual signatures on checks are recommended.

There are different procedures to open a bank account, depending on who is the beneficiary:

- **One Living Adult:** When you want to raise funds for a living adult, open the account using the beneficiary's Social Security Number as disclosed on an IRS W-9 form signed by the beneficiary. The person opening the account should be a relative or guardian of the beneficiary or, at the very least, have some established relationship with the beneficiary. You should try to have the beneficiary present with you when opening the account. It may be difficult to open an account using a person's Social Security Number if that person cannot be present in person. Check with the bank. As discussed above, decide who should have access to the funds and be a signatory on the account. If the beneficiary is competent and capable, there should be no need for another signatory. Otherwise, a relative or a legal guardian should be a signatory.
- **Multiple Living Adults:** When you want to raise funds for multiple individuals, open a single account. This simplifies things and keeps your costs down, and it is much easier for a donor to make a single payment. The person opening the account should be a relative of a beneficiary or, at least, have some established relationship with the beneficiary. It is a good idea to obtain an Employer Identification Number (EIN) from the Internal Revenue Service (Form SS-4; check off "Trust" in Section 9a and fill in your Social Security Number, then check off "Banking Purposes" in Section 10, "Reason for applying") for the account instead of using an individual beneficiary's Social Security Number. That way you will avoid confusion on ownership of the funds as well as on tax reporting issues. Please note that only the account signatory will be able to withdraw funds.
- **Deceased Persons:** When you want to raise money to cover the person's funeral expenses or to support that person's family, you face additional issues. The person opening the account should be a relative or, at least, have some established relationship with the beneficiary. You cannot use the deceased person's Social Security Number to open the account. Instead obtain an EIN from the Internal Revenue Service (Form SS-4;

check off "Trust" in Section 9a and fill in your Social Security Number, then check off "Banking Purposes" in Section 10, "Reason for applying") for the account. The name of the account should reflect the deceased's name and the purpose of the fund, such as "The John Smith Funeral Fund." If you want to set up a memorial fund to benefit others in remembrance of a deceased person, that may create a charitable trust. For memorial funds, contact the Charitable Trusts Unit.

- **Minors:** There are special problems with fundraising to provide ongoing benefits to minors or people with limited mental capacity. They may lack the maturity or judgment to use the money for its intended purpose. If substantial fundraising is anticipated, the parties could create an express trust, which likely requires the involvement of an attorney. If it is not likely that enough money will be raised to set up a trust, then the minor's parent, guardian or someone with an established relationship could open a bank account.

For a simple bank account, we recommend you set up the account in accordance with the New Hampshire Uniform Transfers to Minors Act, NH RSA Chapter 463-A. The UTMA allows you to transfer money to a custodian, who may be a parent or guardian, and who manages the money on behalf of the minor. The custodian has broad powers to invest or use the money for the minor's benefit. The UTMA applies simply by establishing a bank account in the custodian's name, "as custodian for" the minor "under the New Hampshire Uniform Transfers to Minors Act." The account is set up using the minor's Social Security Number. Note that there can be only one custodian and one minor on a UTMA account.

No matter what bank account or other fundraising vehicle you set up, be sure to keep accurate and complete records of the money you receive from the fundraising activities, the place of deposit, and the payments made to or for the beneficiary.

Tax and Government Benefit Consequences

Gifts to or on behalf of an individual are not considered charitable donations for tax purposes. A donor may claim a donation to a public charity as a charitable deduction on his or her income tax return *only if* the organization has been recognized as a §501(c)(3) organization by the Internal Revenue Service.

If you make a large donation to an individual in a single year – over \$14,000 – you must file a federal gift tax return, IRS Form 709. You do not have to pay any tax at the time you file Form 709, but there may be a tax obligation after your death if the value of your estate exceeds certain monetary levels (currently more than \$5 million).

Generally speaking, the beneficiary will not have to pay income taxes on the money raised. The IRS considers that money to be a gift to the beneficiary and gifts are not included in a person's taxable income. There are, however, exceptions to this rule.

If the account holding the money generates interest or other income, there may be an income tax liability to the person whose Social Security Number is connected with the account. To avoid a tax liability, speak to the bank about setting up a non-interest bearing account, especially where the funds will not be held for too long a time.

If the beneficiary or the person whose Social Security Number is connected with the account receives government benefits, such as Medicaid, the government may include the funds in the account as countable assets of the account holder for purposes of benefits eligibility.

Gaming, Raffles and Door-to-door Solicitations

Bingo, raffles and charitable gaming may be conducted ONLY by certain New Hampshire charitable organizations that have been in existence for more than two years. Gaming, raffles and door to door fundraising are not available to collect money for individuals.

Please note door-to-door solicitations may also be regulated by local towns and cities.

For more information, contact:

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