

**ADOPTED REGULATION OF
THE SECRETARY OF STATE**

LCB File No. R068-13

Effective January 1, 2014

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-5, section 9 of Assembly Bill No. 60, chapter 192, Statutes of Nevada 2013, at page 722 (NRS 82.417).

A REGULATION relating to solicitations for charitable contributions; setting forth certain information relating to certain nonprofit corporations that intend to solicit charitable contributions which must be provided on a form prescribed by the Secretary of State; establishing certain requirements for disclosures relating to solicitations of contributions or donations; and providing other matters properly relating thereto.

Section 1. Chapter 82 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. *For the purposes of section 3 of Assembly Bill No. 60, chapter 192, Statutes of Nevada 2013, at page 719 (NRS 82.392):*

1. “Contribution, donation, gift or the like” means the actual receipt of, or promise to pay or grant, money or an item of value, including, without limitation, a tangible good or asset, real property, a product or a service.

2. “Solicit” or “solicitation” shall be deemed not to include a request for the payment of bona fide fees, dues or assessments by members of an organization, provided membership is not conferred solely as consideration for making a contribution or donation in response to a solicitation.

3. The Secretary of State will interpret “executive personnel” to mean one or more persons, whether paid or volunteer, at the highest level of management of the corporation who has or have the day-to-day responsibilities for the management of the corporation, including, without limitation, responsibilities for policy making, planning and implementation, decision making, fundraising, supervising paid and volunteer staff, budget management, reporting and accountability, and working with the board of directors.

Sec. 3. 1. The form prescribed by the Secretary of State pursuant to section 3 of Assembly Bill No. 60, chapter 192, Statutes of Nevada 2013, at page 719 (NRS 82.392) must offer a corporation the option of:

(a) Providing the Internet address of a website which may be accessed via the Nevada Business Search web page on the Internet website of the Secretary of State. The Internet address provided by the corporation must be:

- (1) The official website of the corporation; and*
- (2) Kept active and maintained by the corporation.*

(b) Certifying that all funds received by the corporation will be used in compliance with the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT ACT) of 2001, Public Law 107-56.

2. For the purpose of providing the financial information required by sections 3 and 4 of Assembly Bill No. 60, chapter 192, Statutes of Nevada 2013, at pages 719 and 720 (NRS 82.392 and 82.397):

(a) A corporation which intends to solicit charitable contributions must provide on the form prescribed by the Secretary of State pursuant to section 3 of Assembly Bill No. 60,

chapter 192, Statutes of Nevada 2013, at page 719 (NRS 82.392) the following information as reported to the Internal Revenue Service for the most recent fiscal year:

- (1) Total revenue, as reported on line 12 of Form 990 or on line 9 of Form 990-EZ;*
 - (2) Total expenses, as reported on line 18 of Form 990 or on line 17 of Form 990-EZ;*
 - (3) Revenue less expenses, as reported on line 19 of Form 990, or excess (or deficit) for the year, as reported on line 18 of Form 990-EZ;*
 - (4) Total assets, as reported on line 20 of Form 990 or on line 25 of Form 990-EZ;*
 - (5) Total liabilities, as reported on line 21 of Form 990 or on line 26 of Form 990-EZ;*
- and*
- (6) Net assets or fund balances, as reported on line 22 of Form 990 or on line 27 of Form 990-EZ.*

(b) If a corporation is not required to file a Form 990 or Form 990-EZ, but filed a Form 990-N or was first formed within the past year and does not have any financial information available, the corporation must check the box provided on the form prescribed by the Secretary of State to indicate that the corporation is providing good faith estimates based on the records of the corporation.

3. The form prescribed by the Secretary of State pursuant to section 3 of Assembly Bill No. 60, chapter 192, Statutes of Nevada 2013, at page 719 (NRS 82.392) must be signed under penalty of perjury by the person who provided the information contained in the form stating that the information is true and accurate to the best of the person's knowledge.

Sec. 4. Chapter 598 of NAC is hereby amended by adding thereto a new section to read as follows:

1. For the purposes of NRS 598.1305, as amended by section 12 of Assembly Bill No. 60, chapter 192, Statutes of Nevada 2013, at page 723:

(a) A solicitation is presumed to have been made whether or not the person making the solicitation receives a contribution or donation.

(b) A person's or charitable organization's use of his, her or its own name in any communication shall not, by itself, be deemed sufficient to constitute a solicitation.

2. A disclosure made pursuant to NRS 598.1305, as amended by section 12 of Assembly Bill No. 60, chapter 192, Statutes of Nevada 2013, at page 723, must:

(a) For solicitations made electronically or in written form, be:

(1) Clear and conspicuous on any printed material, social media account or other Internet website or electronic media which contains information about support for or contributions or donations to the person or charitable organization and on any printed material, social media account or other Internet website or electronic media whereby a solicitation is made, including, without limitation, materials provided for making a response to the solicitation and on a web page that authorizes or performs fulfillment of a contribution or donation.

(2) If the solicitation consists of more than one piece or page, prominently displayed on any material on which a solicitation occurs.

(3) Set apart from the other printed content in the communication.

(4) Of a type size that is sufficient to be clearly readable by the recipient of the communication.

(5) Printed in black or blue on a white background or, if on a background of another color or with graphics, there must be a reasonable degree of contrast of colors between the print of the disclosure and the background so as to be clearly readable.

(b) For solicitations made orally or verbally, be provided by the person making the solicitation before the prospective donor makes a commitment to contribute.

(c) For solicitations made on the Internet and for web pages on an Internet website that contain information about support for or contributions or donations to a person or charitable organization, appear on each web page where the solicitation is made and on the web page that authorizes or performs fulfillment of a contribution or donation.

3. A disclosure is not required to be made pursuant to NRS 598.1305, as amended by section 12 of Assembly Bill No. 60, chapter 192, Statutes of Nevada 2013, at page 723, if:

(a) A person or charitable organization receives a contribution or donation that is not the result of a solicitation.

(b) Materials or verbal communications do not infer, ask or mention a solicitation or a request for support, contribution or donation.

4. As used in this section, “social media account” means any electronic service or account or electronic content, including, without limitation, videos, photographs, blogs, video blogs, podcasts, instant and text messages, electronic mail programs or services, online services or Internet website profiles.

Sec. 5. This regulation becomes effective on January 1, 2014.

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS - NRS 233B.066
Informational Statement
LCB File Nos. R068-13, R077-13, R078-13, R079-13, R080-13 & R081-13
Regulations Relating to Commercial Recordings

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapters 68, 77, 78, 79, 80, 81, 86, 87, 87A, 88, 88A, 89 and 598.

- 1) **R068-13**: Adopting provisions relating to filing a Charitable Solicitation Registration Statement for certain Chapter 82 entities and adopting certain requirements for solicitation disclosures. This regulation is necessary to further define certain terms and to clarify the contents of and the financial information required in the Charitable Registration Information Statement.
- 2) **R077-13**: Adopting provisions governing the process by which an individual or entity may register a willingness to serve as a registered agent for an entity; governing the publication and updating of the list of such individuals and entities by the Secretary of State and other matters properly relating thereto. This regulation is necessary to place the regulation in the proper chapter of NAC relating to NRS Chapter 77 requirement. It adopts the same provisions as in current (now repealed) NAC Chapter 77 and adopts the provisions relating to the removal and reinstatement of a registered agent from the list under certain circumstances.
- 3) **R078-13**: Adopting provision relating to the selection of an alternative due date for filing certain required lists with the Secretary of State. This regulation provides the requirements for an entity to select an alternate due date pursuant to 78.150, 80.110, 82.523, 86.263, 86.5461, 87.510, 87.541, 87A.290, 87A.560, 88.395, 88.591, 88A.600, 88A.732 and 89.250 as amended by SB 60 of the 2013 session of the Nevada Legislature.
- 4) **R079-13**: Adopting provisions governing commercial registered agents and commercial registered agent registration statements; revising provisions governing written materials produced by or at the direction of registered agents. This regulation provides the requirements for the Commercial Registered Agent Registration Statement required pursuant to NRS Chapter 77 and clarifies the requirements therein. It also provides additional guidance for solicitations made to Nevada and Nevada qualified entities by registered agents.
- 5) **R080-13**: Revising provisions relating to the institution of proceedings against certain persons conducting business in Nevada for the recovery of certain fines. This regulation is necessary to use the same wording regarding the referral of matters to the district attorney or Attorney General as in Title 7 as amended by SB 60 of the 2013 session of the Nevada Legislature.
- 6) **R081-13**: Adopting provisions relating to the procedures for the imposition of penalties on persons who conduct business in Nevada and willfully fail or neglect to obtain or renew a state business license; requiring a person claiming exemption from the state business license to annually submit a claim for said exemption that contains certain required information. This Regulation is necessary to clarify provisions in NRS Chapter 76 relating to those conducting business in Nevada and adopts similar provisions in to NAC Chapter 76 as is currently in regulation for business entities filed in the Office of the Secretary of State.

2) Public comments were solicited at the November 20, 2013 public workshop to solicit comments on proposed regulations and the December 3, 2013 hearing for the adoption of regulations. Copies of the proposed regulations, notices of workshop and notices of intent to act upon the regulations were sent via fax and email to persons known to have an interest in the subjects pertaining to registration requirements for entities which solicit or intend to solicit charitable contributions; commercial resident agent registration requirements, resident agent requirements; alternative due dates for filing certain required lists and procedures for imposing penalties on persons conducting business in the state who willfully fail or neglect to maintain a state business license. These documents were provided to the main libraries in each county. These documents were also made available on the Secretary of State website, www.NVSOS.gov and posted at the following locations:

- The Capitol Building, 101 North Carson Street, Carson City, Nevada 89701
- The State Library, 100 North Stewart Street, Carson City, Nevada 89701
- The Secretary of State-Reno, 500 Damonte Ranch Pkwy, Suite 657-A, Reno, Nevada 89521
- The Grant Sawyer Building, 555 East Washington Avenue, Las Vegas, Nevada 89101
- Nevada State Legislative Building, 401 South Carson Street, Carson City, Nevada 89701

The minutes of the November 20, 2013 public workshop to solicit comments on proposed regulations and the December 3, 2013 hearing for the adoption of regulations are attached hereto and contain a summary of the brief discussion held regarding the proposed amendments. A copy of the workshop and hearing minutes may be obtained from the office of the Secretary of State, 101 N. Carson Street, Suite 3, Carson City, Nevada 89701, 775-684-5720 or via email sent to scotta@sos.nv.gov.

3) The number of persons who:

- (a) **Attended the November 20, 2013 public workshop: 11**
- (b) **Testified at the November 20, 2013 public workshop: 3**
- (c) **Submitted to the agency written comments: 1**
- (d) **Attended the December 3, 2013 hearing for the adoption of regulations: 2**
- (e) **Testified at the December 3, 2013 hearing for the adoption of regulations: 1**
- (f) **Submitted to the Agency written comments: 1**

4) **For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing:**

- (a) **Name; Matthew Taylor - Both workshop and hearing**
- (b) **Telephone number; 775-888-4070**
- (c) **Business address; 311 N. Third Street, Carson City, NV 89703**
- (d) **Business telephone number; 775-888-4070**
- (e) **Electronic mail address; mtaylor@nvbiz.com**
- (f) **Name of entity or organization represented Nevada Registered Agents' Association**

- (a) **Name; Phil Johncock**
- (b) **Telephone number; 702-486-1266**
- (c) **Business address; 639 Isbell Court, Suite 460, Reno, NV 89509**
- (d) **Business telephone number; 702-486-1266**
- (e) **Electronic mail address; UNK**
- (f) **Name of entity or organization represented; Alliance for Nevada Nonprofits**

- (a) **Name; Andrew Platt**
- (b) **Telephone number; 702-433-9696**
- (c) **Business address; 1349 W. Galleria Drive, Suite 200, Henderson, NV 89014**
- (d) **Business telephone number; 702-433-9696**
- (e) **Electronic mail address; aplatt@woodserickson.com**
- (f) **Name of entity or organization represented: Woods Erickson**

5) Comments were solicited from affected businesses in the same manner as they were solicited from the public. In addition discussions were had with the Registered Agents Association, Business Law Section of the State Bar of Nevada and representatives from Alliance for Nevada Nonprofits (ANN) and other nonprofit organizations.

6) The permanent regulations were adopted on December 3, 2013 and included changes suggested at the November 20, 2013 public workshop to solicit comments on proposed regulations. There were no changes made as a result of the public workshop to regulations R077-13, R080-13 and R081-13 as no changes were suggested. Amendments were made as a result of the public workshop to regulations R078-013 and R079-13. These amendments did not substantively change the regulations as proposed and are included in the regulations transmitted to the Legislative Counsel Bureau. R068-13 had amendments offered at the hearing. The regulations are adopted without these amendments as they had been submitted to the Legislative Counsel Bureau for review and had not been returned by the adoption hearing. The amendments to R068-13 will be scheduled for future workshop and hearing.

7) There is no estimated economic effect of the adopted regulation on the businesses which it is to regulate or on the public.

8) There is no additional cost to the agency for enforcement of this regulation.

9) There are no other state or government agency regulations that the regulation overlaps or duplicates.

10) The proposed regulation does not include provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

11) The proposed regulation does not involve a new fee or increases an existing fee.