



**GOVERN
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State Law Compliance

for Nonprofits and Charities



Washington State

Office of the Attorney General



WASHINGTON

Secretary of State

Introductions and Caveats

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- There is always subtlety that effect the general rule. If you have specific questions consult your attorney
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Learning Objectives

Become familiar with:

- The sources of law effecting nonprofits and charities
- Charitable Organization filing requirements
- Washington's requirements for entities soliciting charitable contributions





What is a Charity?

Washington

Definitions - Charities

- A charity is:
 - A legal entity with exclusively **charitable purposes**,
 - Established for the benefit of **indefinite beneficiaries**, and
 - Prohibited from providing **impermissible private benefit**.
 - A purpose is not charitable if it is unlawful, its performance requires the commission of criminal or tortious activity, or it is otherwise contrary to fundamental public policy.
 - Restatement of Charitable Nonprofit Organizations § 1.01
- Also Short for “Charitable Organization” in RCW 19.09.020(2)
 - Any entity that solicits or collects funds from the general public for a charitable purpose
 - *An entity does not have to be a charitable corporation to be a charitable organization*



Definitions - Charities

- Not charitable organizations (in Washington):
 - Commercial Fund-Raiser (RCW 19.09.020(5))
 - Commercial Coventurer (RCW 19.09.020(4))
 - Fund-raising counsel (RCW 19.09.020(10))
 - Churches and their Integrated Auxiliaries (Not Defined)
 - Political Organizations (RCW 19.09.020(15))
 - Subject to the regulation by the PDC or FEC
- Homeowners' associations ARE NOT charities



Definitions - Charities

- What is a Charitable Purpose?
- Common Law definition is broad and includes
 - (1) the relief of poverty;
 - (2) the advancement of knowledge or education;
 - (3) the advancement of religion;
 - (4) the promotion of health;
 - (5) governmental or municipal purposes; and
 - (6) other purposes that are beneficial to the community.

- REST-NONPROFIT § 1.01



Definitions – Charity

- **Indefinite beneficiaries:** Although individuals may be aided by charitable activities, the specific benefits they receive are considered incidental to benefiting the public more generally. There cannot be identifiable, individual members specifically included in the beneficiary class, unless the beneficiaries themselves are charities.
- **Impermissible private benefit:** Charity cannot be used for profit or private inurement.



Nonprofits & Charities

- IRS Terminology

- 501(c)(something or other)

- IRS designations for (most) tax exempt organizations
 - 501(c)(3) is a charity, a church, a private foundation, etc. – does charitable work and does not engage in political activity at all
 - Donations to a (c)(3) are tax deductible for the donor
 - 501(c)(4) is a social welfare organization
 - 501(c)(7) Recreation Clubs
 - 501(c)(8) Fraternal Orgs
 - 501(c)(19) Veterans Orgs





Requirements for Charitable Solicitations

Washington

Purpose of the CSA

- (1) Provide the public information about charities to:
 - a) prevent deceptive and dishonest practices; and
 - b) ensure contributions are used for their intended purposes
 - (2) Improve transparency and accountability of charitable organizations; and
 - (3) Educate stake holders and donors
- RCW 19.09.010

Charitable Organization – Definitions

- Primarily, the CSA regulates charitable organizations
- What is a charitable organization: RCW 19.09.020
 - An **entity** (including an individual) who/that
 - **Solicits** OR collects
 - **Contributions**
 - From the **general public**
 - “Where the contribution is or is purported to be used to support a **charitable purpose**...”
- Definitionally not charitable organizations:
 - “Churches and their integrated auxiliaries”
 - **Political Organizations**
 - **Commercial fund-raisers**
 - **Commercial coventurers**
 - **Fund-raising counsel**

Bolded words
are statutorily
defined terms

Charitable Solicitations

- What is a Solicitation? RCW 19.09.020(19):
 - A direct appeal for a contribution
 - The solicitation is completed *when made* even if the potential donor doesn't give
 - Includes offers to sell things *if*
 - “An appeal is made for any charitable purpose”
 - It uses the name of a charitable organization to induce the sale
 - It includes any statement that implies any of the proceeds will benefit charity
 - Bingo, raffles, and amusement games are not solicitations
- Anyone can make a charitable solicitation
 - Individuals
 - Charities
 - Religious Groups
 - For-Profit Businesses

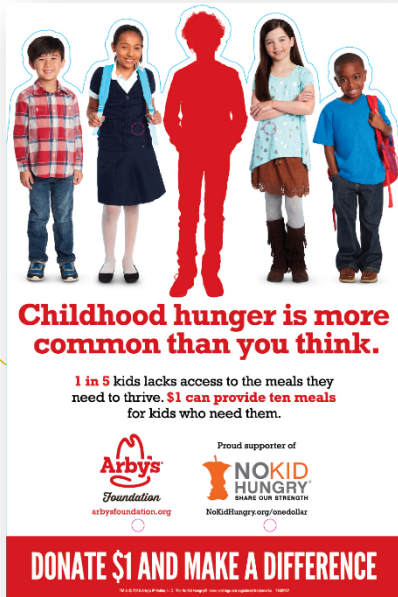
Charitable Solicitations

- A solicitation is any request for charitable contributions regardless of the form it takes!



Charitable Solicitations

- A solicitation includes an advertisement that includes a charitable pitch (also called “Cause Marketing”)



Charitable Organization – Definitions

- What qualifies as a “**contribution?**” (RCW 19.09.020(7))
 - Money
 - Property of value
 - A promise or pledge to provide money or other property
- What is the “**general public?**” (RCW 19.09.020(11))
 - Any individual or entity
 - Located in Washington state
 - Without a **membership** or other official relationship with the charitable organization prior to the solicitation
- Volunteerism is not a contribution

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Definitions - Charities

- Charitable Purpose (statutory definitions)
 - Charitable Solicitations Act (RCW 19.09.020(3))
 - Nonprofit Corporations Act (RCW 24.03A.010(6))
 - **IRC 501(c)(3):**
 - Charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and the prevention of cruelty to children or animals. The term charitable is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.

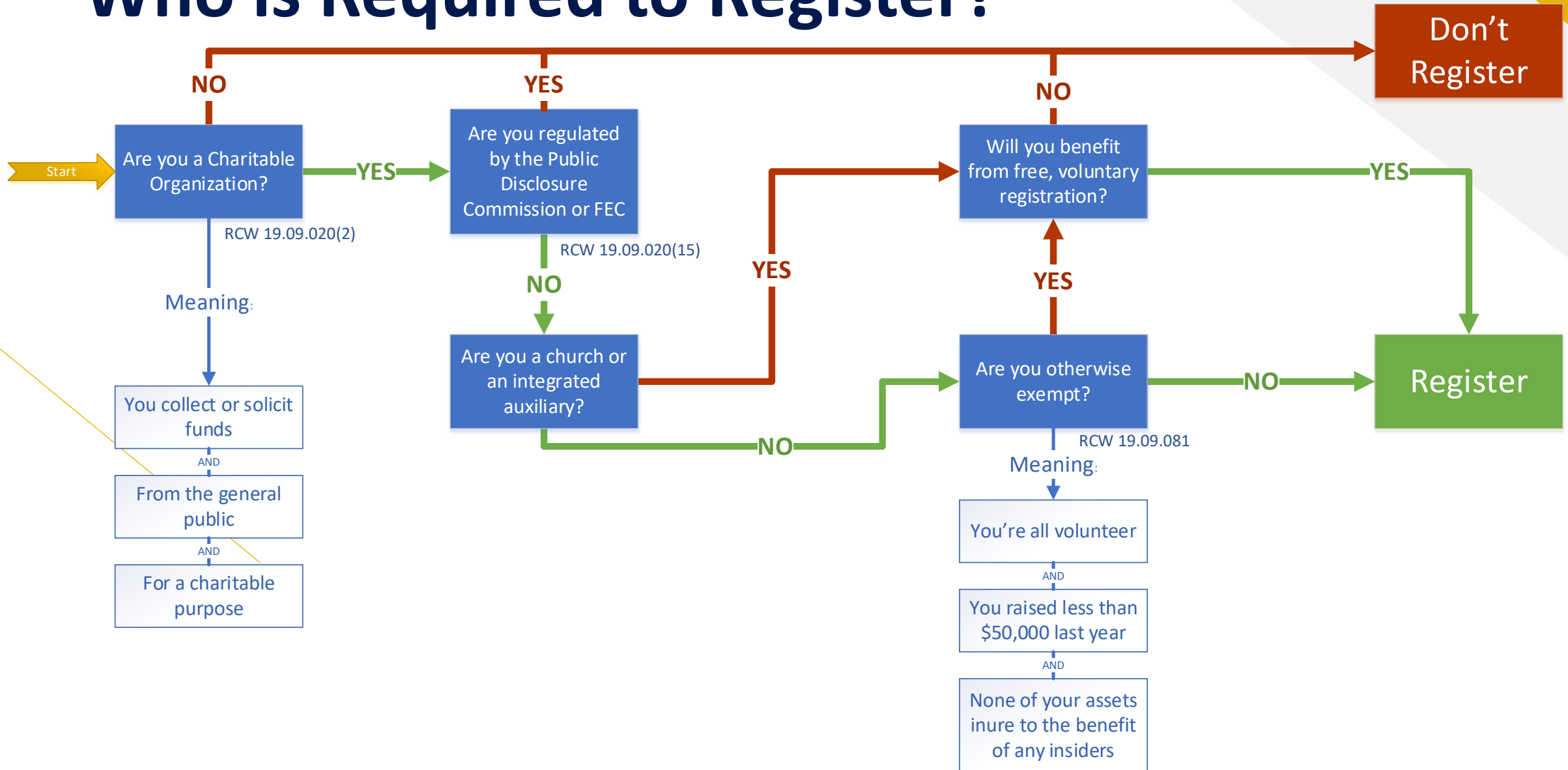
Charitable Organization - Registration

- Charitable Organizations are required to register with the Secretary of State on an annual basis *prior to conducting any solicitations* (RCW 19.09.065)
 - Some states require a license – we only require registration
- Exceptions
 - Charitable organizations that raise less than \$50,000 in any accounting year;
 - Everyone involved – including all professional services and fund-raisers – are unpaid; *and*
 - None of the charitable organization’s assets are given or paid to any directors, officers, members, or trustees of the organization
- Optional registration
 - Provides transparency for the public and
 - Allows participation in the Combined Fund Drive (if other requirements are met)
- **REGISTRATION AS A CHARITABLE ORGANIZATION IS A SEPARATE FILING**

Charitable Organizations

- NOT Charitable Organizations
 - Churches
 - Not defined (consider using IRS definition)
 - Includes any bona fide religious institutions (synagogue, mosque, temple, monastery, etc.)
 - Integrated Auxiliaries of Churches
 - E.g.: a soup kitchen or thrift shop run out of a church
 - Political Organizations
 - “Those organizations whose activities are subject to chapter [42.17A](#) RCW or the federal elections campaign act of 1971, as amended.”
 - Required to register with the PDC or the FEC because they engage in electoral politics
 - *Not just lobbying*
- Washington law considers what the entity does not what it claims to be

Who is Required to Register?



How to File with OSOS – Charities & Trusts

- Online with CCFS (<https://ccfs.sos.wa.gov/#/>) This is required per WAC 434-120-035.
- **How to file online:**
 - **Detailed Instructions:** We provide detailed instructions for each submission available through our online filing system.
 - **Online troubleshooting:** A document which outlines known technical issues and the resolution by supplemental uploads.
<https://www.sos.wa.gov/corporations-charities/nonprofits-charities/charities/all-forms>
- **In-Person**
 - All filings able to be submitted for the Charities Program can be processed at our front counter. In-person services are completed while you are at our office.
 - A \$50 expedite fee is assessed for in-person services.
- **Mail-In Processing**
 - **Trust Registration and Trust Amendments:** Currently can only be provided by mail as these submissions are not available through our online filing system at this time.



Solicitation Disclosures

All solicitations must:

- Fully and fairly disclose the identity of the entity on whose behalf the solicitation is being made (RCW 19.09.100(15))
- Disclose if the solicitation is being conducted by a commercial fund-raiser (RCW 19.09.100)
- Comply with any local rules (RCW 19.09.100(11))
- Comply with all the provisions of the CSA (RCW 19.09.100(12))



Solicitation Disclosures

All disclosure must be made clearly and conspicuously in the body of the solicitation

- Mass-distributed Solicitation (RCW 19.09.100(4))
 - Includes advertisement, direct mail, e-mail, posters, leaflets, audio and video broadcasts, WEBSITES
- Disclosures Required
 1. That the solicitation is being conducted by a commercial fund-raiser (if it is);
 2. That required registration is on file with the OSOS; and
 3. That potential donors can obtain more information by calling the OSOS or visiting the Secretary's website

Solicitation Disclosures

All disclosure must be made clearly and conspicuously

- “Containers” or “Vending Machines” (RCW 19.09.100(5)) must display:
 1. The name of the charitable organization for which the funds are solicited;
 2. The name, business address, and telephone number of the individual or commercial fundraiser responsible for collecting the funds; and
 3. “This organization is currently registered with the secretary’s office under the charitable solicitation act – call 1-800-322-4483” (if registration is required).



DONATE

Solicitation Disclosures

When Made? All disclosures must be made clearly and conspicuously at the point of the solicitation

- Direct solicitation (RCW 19.09.100(1))
 1. Name of the *individual* soliciting;
 2. The charitable organization's principal place of business; and
 3. The phone number and website of the OSOS (if requested)
- Oral: Made during the solicitation
- Written: At the same time as the solicitation
- If Telephone: Also must provide disclosures in writing within five business days to anyone who makes a pledge (RCW 19.09.100(3))



Telephone Solicitation – State

- Additional Rules for Telephone Solicitation
 - Must disclose the purpose of the call w/ in the first 30 seconds (RCW 80.36.390(3));
 - A solicitor must ask whether the recipient wants to continue the call, end the call, or be removed from the solicitor’s telephone lists (RCW 80.36.390(4));
 - If the recipient wants to end the call, the solicitor must end within 10 seconds of the request (RCW 80.36.390(5)); and
 - No calls before 8 a.m. or after 8 p.m. (RCW 80.36.390(7))



Telephone Solicitation – Federal

- Telemarketing Sales Rule (TSR)
 - <https://www.ftc.gov/legal-library/browse/rules/telemarketing-sales-rule>
 - Applies to sales and charitable solicitations
 - Generally mimic restrictions in state law
 - In addition telephone solicitors (aka “telefunders”)
 - Must promptly disclose if one purpose of the call is to ask for a donation
 - Generally can’t use robocalls or prerecorded messages
 - Must allow consumers to opt out
 - Telefundors must maintain a Do Not Call list for that charity and stop calling if requested

Solicitations – Prohibitions

Solicitations MAY NOT:

- Engage in harassing, intimidating, or tormenting conduct (RCW 19.09.100(17))
- Misrepresent:
 - Tax deductibility of a contribution (RCW 19.09.100(7)(a))
 - The volunteer status of a solicitor (RCW 19.09.100(7)(b))
 - The relationship between the charitable organization and a commercial fund-raiser (RCW 19.09.100(7)(c))
- Represent or imply that registration is endorsement (RCW 19.09.100(14))
- Make statements that are false, misleading, or deceptive (RCW 19.09.100(15)) – applies to all organization including those exempt from registration
- Use couriers to collect solicitations (with some exceptions) (RCW 19.09.100(18))

Solicitations – Naming Rules

- “Shield” Charities
 - MAY NOT use the words police, sheriff, firefighters, EMT, etc. “unless properly authorized” by the organization it is representing (RCW 19.09.100(9))
- Veteran’s Charities
 - MAY NOT use the name of a federally chartered or nationally recognized military veterans’ service organization unless authorized by the organization itself (RCW 19.09.100(10))
- Government-related Charities
 - Must affirmatively disclose the true nature of the relationship to the government entity (RCW 19.09.100(8))
- Other
 - MAY NOT use the name of another organization without their express permission (RCW 19.09.230)



Gambling Restrictions

- Gambling rules are complicated – be sure to review carefully
- Raffles*
 - Only charities/nonprofits can engage in unlicensed raffles
 - Max of two unlicensed raffles a year
 - Max revenue from unlicensed raffles cannot exceed \$5,000 annually
 - Licensing is required for all sorts of reasons
- Promotional Contests of Chance
 - Think a raffle with no purchase necessary
 - Only for-profit businesses may offer PCCs
- Check with Gambling Commission for more!



* <https://wsgc.wa.gov/licensing/apply-your-license/raffles-excluding-electronic-or-enhanced-raffles>

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Commercial Fund-Raisers

- **RCW 19.09.020(5) Commercial fund-raiser (CFR) or commercial fund-raising entity** means
 - An **entity**
 - that for **compensation** or other consideration (salaries, wages, fees, commissions, or any other remuneration or valuable consideration (RCW 19.09.020(6))).
 - directly or indirectly
 - **solicits** or receives
 - **contributions**
 - within this state
 - for or on behalf of any **charitable organization** or **charitable purpose**; **OR**
 - An entity that represents it is in the business of commercial fund-raising.
 - **Commercial coventurer** and **fund-raising counsel/consultants** are not commercial fund-raisers

Commercial Fund-Raisers

- CFRs are required to register (RCW 19.09.065, .079)
- CFRs must maintain a surety bond in certain circumstances (RCW 19.09.191)
- Contracts w/ CFRs must
 - Required both parties comply with the law
 - Permit officers of the charity (charitable organization) reasonable access to
 - Financial records
 - The CFR's operations (including the right to be present during a telephone solicitation)
 - The names of the CFR's employees
 - Specify the amount of raised funds the charity will receive or the method for computing the amount and other terms
- Both the charity and the CFR must register the terms of the contract (RCW 19.09.097(2)) and provide OSOS with a copy of the contract

Records Retention

- All entities subject to registration under the CSA must maintain accurate, current, and readily available books and records covering at least the last three years (RCW 19.09.200(1))
 - Must contain documents that support the information included in a solicitation report,
 - Gross amount of contributions pledged and collected
 - The amount dedicated to the organization's charitable purpose along with the manner of distribution
 - The aggregate amount paid and to be paid for expenses
 - Copies of annual and periodic reports
- Must also maintain copies of commercial fund-raising contracts
- Records must be able to be produced within 10 days of a written request by the OSOS, the AGO, or the county prosecutor (RCW 19.09.200(2), .210)

Violations – Penalties

*Violations of the CSA are **per se violations** of the Consumer Protection Act (RCW 19.09.340)*

Under the CPA

- RCW 19.86.140
 - Penalties up to \$7,500 per violation
 - Enhanced penalty of \$5,000 (additional) for targeting or impacting protected groups
- Injunctions
- Attorney costs and fees

Specific to CSA

- Gross misdemeanor to
 - Knowingly violate the CSA or
 - Knowingly gives false information in filing statements
 - Jail up to 365 days
 - Fine up to \$5,000

Powers of The AGO

- Publically or privately investigate charitable organizations
 - Take testimony and compel attendance of witnesses
 - Require the production of documents and other records
 - Use the courts to compel obedience
- Publish information concerning violations
- Enforce provisions of the act with lawsuits
 - Enter into Assurances of Discontinuance

Additional Resources

- Washington Secretary of State
 - <https://www.sos.wa.gov/corporations-charities>
- Washington Nonprofit Handbook: How to Form & Maintain a Nonprofit Corporation in Washington State (2022 Edition)
 - <https://www.sos.wa.gov/sites/default/files/2022-09/2022-Nonprofit-Handbook.pdf?uid=6416867adcee0>
- The Nonprofit Association of Washington
 - <https://nonprofitwa.org/>
 - Let's Go Legal! (<https://nonprofitwa.org/learning-library/lets-go-legal/>)
- Communities Rise
 - <https://communities-rise.org/>
- Washington State Attorney General's Office
 - [Charities | Washington State](#)

Additional Trainings

From the Charitable Asset Protection Team

- The Attorney General's Office does outreach presentations on nonprofit and charity governance issues, consumer protection issues, charitable solicitation issues, and other donor outreach.
- For more info contact cpoutreach@ATG.WA.GOV

