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## Are You in a Commercial Co-Venture?

You are a charity. You are interested in raising money. You have lots of ideas: you could hire a fundraiser; you could hire fundraising counsel; you could partner with a company that agrees to donate a portion of its profits; you could set up a donation box at the local grocery store.... Each of these is a legitimate way to raise money. Each also requires registration with the state attorney general, and failure to do so could result in significant fines.

### What Is “Cause Marketing”?

So-called “cause marketing” – which the law generally refers to as “commercial co-venturing” – is a term used to describe a kind of creative partnership between a charity and a for-profit business. While commercial fundraising is nothing new to most charities, the commercial co-venture is oftentimes overlooked. A commercial co-venture consists of a for-profit company partnering with a charity for the dual purpose of promoting a product and benefiting the charity. “For every purchase of a pink water bottle, a dollar goes to breast cancer research”; or, “If Company sells 100 cars before the end of the month, Company will donate \$100,000 to Charity.” The charity reaches a new audience of potential contributors, while the commercial co-venturer benefits both from increased sales and from the “halo effect” that it generates as a result of its charitably-minded endeavor.

Currently, 27 states define “commercial co-venturer” in their solicitation laws, and 11 require some form of registration or reporting (including California). However these numbers are likely to rise. Given the strict regulations surrounding commercial fundraisers, state attorneys general are not likely to give a free pass to commercial co-venturers. Moreover, with the increased popularity of mission-driven companies like “Tom’s Shoes” or “Newman’s Own,” many for-profit companies are turning to charitable causes to promote their products.

### Which Are You?

How do you know whether you are, or plan to engage in, a commercial co-venture? Ask yourself: Will your charity receive a portion or a percentage of profits from a business? Will any of your donations be contingent on another company’s product sales?

In California, commercial co-venturers must have a written contract in place with the charity which requires, among other things, that the company transfer all assets raised for the charity every 90 days during the campaign. Any commercial co-venturer without such a contract must complete a registration form and pay a \$350 fee to the Attorney

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#### ABOUT OUR BLOG

Nonprofit Law Matters looks at legal issues in the nonprofit and tax-exempt organizations world. Written by the attorneys and paralegals of Adler & Colvin, it provides updates and analysis regarding philanthropy, charity, and other exempt organization issues.

#### EDITORS

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General in lieu of the contract.

### **What If the For-Profit Gets Nothing?**

What about the donation box in the grocery store? No particular product is being sold, and any donations received are independent of store purchases. This is most likely not a commercial co-venture. Keep in mind, however, that even if your charity does none of the above, it is still most likely subject to [annual reporting](#) with the California Attorney General's Registry of Charitable Trusts.