

Legal Compliance for Nonprofits and the Role of the Secretary of State

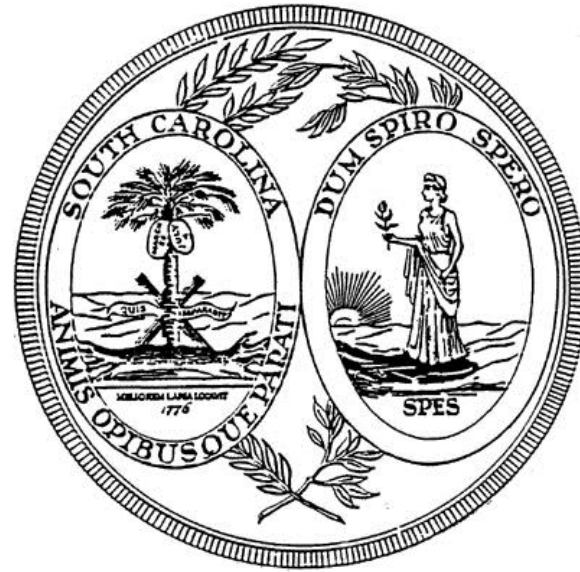
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General Counsel

South Carolina Office of the Secretary of State

Nonprofit Filing Requirements with the Secretary of State

- ❑ S.C. Nonprofit Corporation Act
- ❑ Solicitation of Charitable Funds Act
- ❑ Title 33, Chapter 57- Nonprofit Raffles for Charitable Purposes



S.C. Nonprofit Corporation Act

S.C. Code §§ 33-31-101 et. seq.

□ Under the Nonprofit Corporation Act, the Secretary of State is responsible for filing documents related to the formation of nonprofit corporations in South Carolina.

□ These documents are filed in the Secretary of State's Business Filings Division.

Print Form

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

ARTICLES OF INCORPORATION
Nonprofit Corporation - Domestic
Filing Fee \$25.00

TYPE OR PRINT CLEARLY IN BLACK INK

Pursuant to S.C. Code of Laws §33-31-202, the undersigned corporation submits the following information:

- The name of the nonprofit corporation is _____
- The initial registered office (registered agent's address in SC) of the nonprofit corporation is

Street Address

City County State Zip Code
The name of the registered agent of the nonprofit corporation at that office is

Print Name

I hereby consent to the appointment as registered agent of the corporation.

Agent's Signature

- Check "a", "b", or "c" whichever is applicable. Check only one box.
 - The nonprofit corporation is a public benefit corporation.
 - The nonprofit corporation is a religious corporation.
 - The nonprofit corporation is a mutual benefit corporation.
- Check "a" or "b", whichever is applicable.
 - This corporation will have members.
 - This corporation will not have members.
- The address of the principal office of the nonprofit corporation is

Street Address

City County State Zip Code

NP - Domestic - Articles of Incorporation

Form Revised by the South Carolina
Secretary of State, March 2012

Filing Duty of the Secretary of State

S.C Code § 33-31-125

- If a document delivered to the Secretary of State satisfies the requirements of law, the Secretary of State shall file it.
- The Secretary of State's duty to file documents under the Nonprofit Corporation Act is ministerial.



Types of Filings and Fees

S.C. Code §33-31-122

<input type="checkbox"/> Articles of Incorporation	\$25.00
<input type="checkbox"/> Amendment of Articles of Incorporation	\$10.00
<input type="checkbox"/> Application for Use of Indistinguishable Name	\$10.00
<input type="checkbox"/> Application for Reserved Name	\$10.00
<input type="checkbox"/> Articles of Correction	\$10.00
<input type="checkbox"/> Notice of Change of Principal Office	\$10.00
<input type="checkbox"/> Agent's Statement of Resignation	\$ 3.00
<input type="checkbox"/> Articles of Dissolution	\$10.00
<input type="checkbox"/> Articles of Merger	\$10.00
<input type="checkbox"/> Application for Certificate of Authority to Transact Business (Foreign Corporation)	\$10.00
<input type="checkbox"/> Application to Withdraw Certificate of Authority to Transact Business (Foreign Corporation)	\$10.00

Articles of Dissolution

S.C. Code §33-31-1404

- To dissolve a nonprofit corporation, the corporation must file articles of dissolution with the Secretary of State.
- The articles of dissolution must include an affidavit that the person executing the articles of dissolution has the authority to do so.

Notice to Attorney General

S.C. Code §33-31-1403

- ❑ Public benefit and religious nonprofit corporations must notify the Attorney General's Office of the dissolution, on or prior to the date the articles of dissolution are filed.
- ❑ No assets of the nonprofit corporation may be transferred until 20 days after notice has been provided or until the Attorney General's Office has consented in writing to the dissolution, whichever is earlier.
- ❑ Once most or all of the assets of a public benefit nonprofit corporation have been transferred, the board of directors must provide the Attorney General's Office a list of recipients of the assets.

South Carolina Solicitation of Charitable Funds Act

S.C. Code §§ 33-56-10 et. seq.

The Solicitation of Charitable Funds Act was enacted in 1994 in order to regulate the manner, conditions, and procedures in which organizations solicit charitable funds in the state of South Carolina.



Charitable Organizations

S.C. Code § 33-56-20

“Charitable organization” is defined as a person:

- ❑ That has been determined by the Internal Revenue Service to be a tax exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code;

Charitable Organizations

S.C. Code § 33-56-20

- That is or holds itself out to be established for any benevolent, social welfare, scientific, educational, environmental, philanthropic, humane, patriotic, public health, civic, or other eleemosynary purpose, or for the benefit of law enforcement personnel, firefighters, or other persons who protect the public safety; or

Charitable Organizations

S.C. Code § 33-56-20

- That employs a charitable appeal as the basis of solicitation or an appeal that suggests that there is a charitable purpose to a solicitation, or that solicits or obtains contributions solicited from the public for a charitable purpose.



Charitable Organizations

S.C. Code § 33-56-20

Some organizations that solicit contributions are excluded from the definition of “charitable organization” under the Act.

Charitable Organizations

S.C. Code § 33-56-20



Churches, synagogues, mosques, or other congregations organized for the purpose of divine worship, and their integrated auxiliaries.

Charitable Organizations

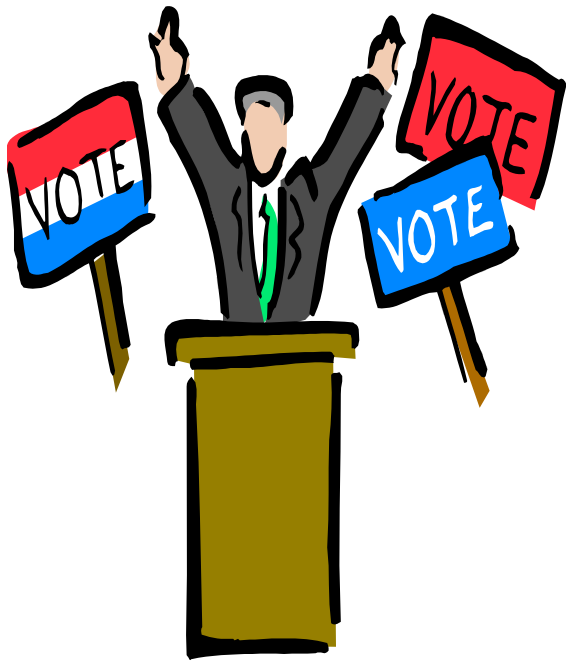
S.C. Code § 33-56-20

Religious organizations determined to be tax-exempt by the IRS, and that are not required to file IRS Form 990, 990-EZ, or 990-N based on their religious classification.



Charitable Organizations

S.C. Code § 33-56-20



Political candidates or parties required to file with the Federal Election Commission or State Election Commission.

Registration with the Secretary of State

S.C. Code § 33-56-30

A charitable organization which intends to solicit contributions in the state of South Carolina, or have contributions solicited on its behalf, must file a registration statement with the Secretary of State's Division of Public Charities.



Registration with the Secretary of State

S.C. Code § 33-56-30

- ❑ The registration statement must be filed prior to solicitation.
- ❑ Registration statements must be renewed annually and are due 4 ½ months after the end of the charitable organization's fiscal year.
- ❑ The annual registration fee is \$50.00.

Registration with the Secretary of State

S.C. Code § 33-56-30



Common Fiscal Years:

- FY Jan. 1st to Dec. 31st.
Due date is May 15th
- FY July 1st to June 30th.
Due date is Nov. 15th

Annual Financial Report

S.C. Code § 33-56-60

- ❑ Charitable organizations that register with the Secretary of State must also file annual financial reports. These are due 4 ½ months after the end of the charitable organization's fiscal year. An organization may request up to a 6 month extension to file its annual financial report.
- ❑ An organization may submit its annual financial report using an IRS Form 990, 990-EZ, or 990-PF, or the form provided by the Secretary of State.
- ❑ A charitable organization does not have to pay a fee to file its annual financial report.

Annual Application for Registration Exemption

S.C. Code § 33-56-50

- Some organizations may register as exempt if their fundraising activities are not conducted by professional solicitors, professional fundraising counsel, or commercial co-venturers:
 - Educational institutions
 - Person or organization soliciting contributions for a specific named individual and all proceeds to be turned over to that individual

Annual Application for Registration Exemption

S.C. Code § 33-56-50

- Tax-exempt organizations which intend to solicit less than \$20,000 and all functions of the organization (including fundraising) are conducted by persons compensated less than \$500
- Organizations that solicit only from members
- Veterans' organizations with a congressional charter
- The State and its political subdivisions subject to FOIA

Annual Application for Registration Exemption

S.C. Code § 33-56-50

- Some organizations may register as exempt regardless if fundraising activities are conducted by professional solicitors, professional fundraising counsel, or commercial co-venturers:
 - Public school districts and public schools
 - Organizations that solicit less than \$7,500 per year

Annual Application for Registration Exemption

S.C. Code § 33-56-50

- Charitable organizations seeking a registration exemption must file an annual application for exemption with the Secretary of State.
- Applications for registration exemption are due 4 ½ months after the end of the organization's fiscal year.
- Charitable organizations do not have to pay a filing fee for the application for exemption.
- Exempt charitable organization do not have to file annual financial reports.

Administrative Fines and Penalties

S.C. Code § 33-56-140

- ❑ The Office of the Secretary of State may impose administrative fines against both charitable organizations and professional fundraisers of up to \$2,000 for late registrations and filings of required reports.
- ❑ The Office of the Secretary of State may impose administrative fines of \$2,000 per violation for non-disclosures, misrepresentations and other violations of the Solicitation of Charitable Funds Act.

Administrative Fines and Penalties

S.C. Code § 33-56-140

- ❑ Violations and failure to pay fines may result in suspension of registration. Also, the Office of the Secretary of State may seek an injunction in the Administrative Law Court.
- ❑ A charitable organization or professional fundraiser may appeal the imposition of a fine in the Administrative Law Court.

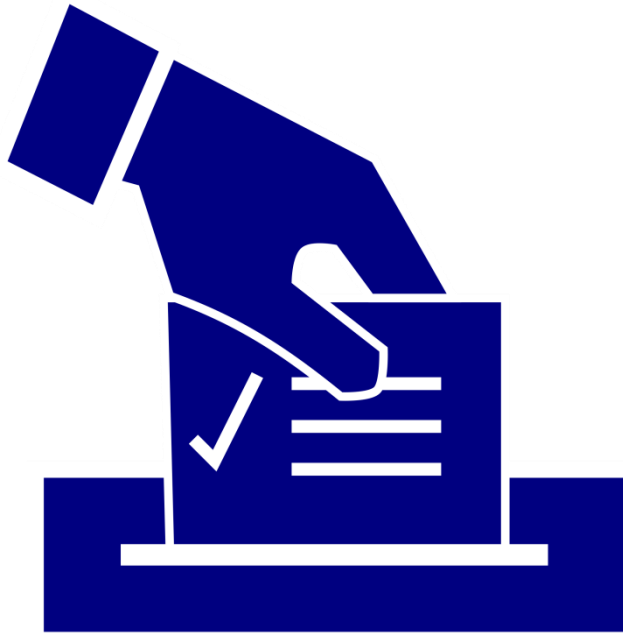


Voluntary Termination of Registration as a Charitable Organization

- ❑ If a charitable organization dissolves or ceases solicitation activities in the state of South Carolina, it should notify the Secretary of State's Division of Public Charities in writing.
- ❑ The charitable organization will be required to file any outstanding annual financial reports for the fiscal year(s) in which it was registered.

Nonprofit Raffles

S.C. Code §33-57-100 et. seq.



In 2014, South Carolinians voted to amend the state constitution to allow nonprofit organizations to conduct raffles. Raffles were officially legal in April 2015.

What Is a Raffle?

S.C. Code § 33-57-110

South Carolina law defines “raffle” as a game of chance in which a participant is required to pay something of value for a ticket for a chance to win a prize, and the winner is determined by a random drawing or similar process in which all participants have an equal chance of winning.



Who Can Hold a Raffle?

S.C. Code § 33-57-120(A)

In order to hold a raffle, a nonprofit organization must be:

- A tax-exempt organization, or an organization of educational institution;
- Operated for a charitable purpose; and
- In compliance with the Solicitation of Charitable Funds Act.

Who Cannot Hold a Raffle?

S.C. Code §§ 33-57-120 & 33-57-140



A for-profit entity or a professional fundraiser **cannot** conduct charitable raffles in the state of South Carolina, nor can a nonprofit organization contract with another entity to conduct raffles on its behalf.

Exempt vs. Nonexempt Raffles

S.C. Code § 33-57-120(B)

- Organizations which intend to conduct raffles may be required to register with the Secretary of State.
- Whether registration is required depends on the types of raffles the organization conducts.
- For purposes of registration, SC law categorizes raffles as either exempt or nonexempt.

Exempt vs. Nonexempt Raffles

S.C. Code § 33-57-120(B)

Raffles that are exempt for the purposes of registration include:

- Raffles in which a noncash prize is donated for the raffle and the total value of the prize or prizes for the raffle event are \$500 or less.



Exempt vs. Nonexempt Raffles

S.C. Code § 33-57-120(B)

Raffles that are exempt for the purposes of registration include:

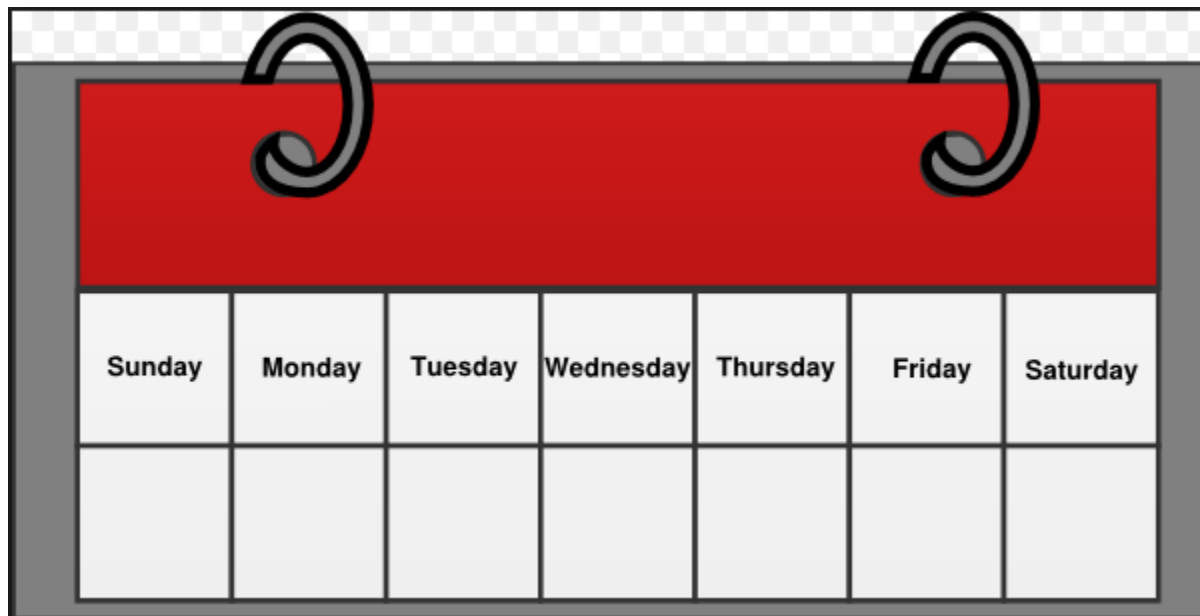
- ❑ Fifty-fifty raffles in which the raffle tickets are sold to members or guests of the nonprofit organization (not to the general public), and the total value of the proceeds collected is not more than \$950.00.



Exempt vs. Nonexempt Raffles

S.C. Code § 33-57-120(B)

- ❑ An organization that is authorized to conduct raffles under the law may only hold one exempt raffle every seven days.



Exempt vs. Nonexempt Raffles

S.C. Code § 33-57-120(B)

If a nonprofit organization intends to conduct nonexempt raffles, or both exempt and nonexempt raffles, then it must file a raffle registration with the Secretary of State.



Raffle Registration

S.C. Code §33-57-120(c)

- ❑ To register for the purpose of conducting raffles, a nonprofit organization must submit an annual raffle registration form to the Secretary of State, along with a registration fee of \$50.00.
- ❑ An organization need only file one raffle registration each year.
- ❑ The registration expires 4 ½ months after the end of the nonprofit organization's fiscal year.

Raffle Registration

S.C. Code §33-57-120(c)

- ❑ The raffle registration is separate from registration as a charitable organization under the Solicitation of Charitable Funds Act.
- ❑ Some organizations that are excluded from the registration requirements under the Solicitation of Charitable Funds Act must file a raffle registration if they conduct nonexempt raffles (e.g. religious institutions).

Frequency of Raffles

S.C. Code §33-57-130

- ❑ A nonprofit organization that has registered for the purpose of conducting raffles may conduct up to four nonexempt raffles each year.
- ❑ A registered organization may also conduct raffles that are exempt under SC Code §33-57-120(B) in addition to the raffles that are nonexempt.
- ❑ As previously stated, a nonprofit organization may conduct only one exempt raffle every seven days.

Raffle Prizes

S.C. Code §33-57-140

- ❑ An individual prize awarded to each winner in a nonexempt raffle may not exceed the fair market value of \$40,000.00.

- ❑ For each nonexempt raffle event, the total fair market value of prizes offered may not exceed \$250,000.00.

- ❑ A nonprofit may not offer real property as a raffle prize.

Raffle Tickets

S.C. Code §33-57-140

The purchase price of a raffle ticket may not exceed \$100.00.



Annual Raffle Financial Report

S.C. Code §33-57-150



Nonprofit organizations that register to conduct raffles must also file an annual raffle financial report with the Secretary of State.

Annual Raffle Financial Report

S.C. Code §33-57-150

- ❑ The annual raffle financial report is due 4 ½ months after the end of the nonprofit organization's fiscal year.
- ❑ The annual raffle financial report is due at the same time the organization's raffle registration expires.
- ❑ The annual raffle financial report is separate from the annual financial report filed by a charitable organization under the Solicitation of Charitable Funds Act.
- ❑ Unlike annual financial reports filed under the Solicitation of Charitable Funds Act, no filing extensions are provided for annual raffle financial reports.

Annual Raffle Financial Report

S.C. Code §33-57-150

The annual raffle financial report must contain the following information for each nonexempt raffle conducted by the nonprofit organization during the preceding fiscal year:

- The amount of gross receipts.



Annual Raffle Financial Report

S.C. Code §33-57-150

- ❑ An itemized list of expenses incurred or paid, or expenditures to be made, including:
 - ❑ The name of each person, company, or governmental entity to whom the expense was or will be paid, and
 - ❑ A detailed description of the merchandise purchased or services rendered.



Annual Raffle Financial Report

S.C. Code §33-57-150

- The amount of net receipts.
- The use to which the net receipts have been or are to be applied.
- A list of prizes offered and given, with an estimate of their respective values.
- The number of raffle tickets sold.

Administrative Fines and Penalties

S.C. Code § 33-57-160

- ❑ The Secretary of State may impose administrative fines of up to \$500.00 (or \$2,000.00 for late financial reports) and/or seek injunctive relief for any violations of the statutory provisions governing raffles. A \$500.00 fine may be assessed for each violation and each day a person is in violation of the law.
- ❑ If a person or organization is assessed an administrative fine, has its registration suspended or revoked, or is denied registration by the Secretary of State, that person or organization has 30 days to file an appeal with the Administrative Law Court.

Casino Nights—Still Illegal

S.C. Code § 33-57-100

“Casino nights” and other fundraising events using gambling devices remain illegal, unless the event is conducted for entertainment purposes only and no prizes, financial awards, or incentives are received by the players. Likewise, events using electronic gambling devices, video poker, slot machines, and wagering on sports events are not permitted.



Contact Information

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