

Contracting with Fundraising Professionals

Please note that this is not meant to replace legal advice provided by an experienced and qualified attorney that knows your specific needs and concerns and this is not meant to provide an exhaustive list of contract issues. States have specific requirements that must be followed when you are contracting with certain types of fundraising professionals whether they are fundraisers or counsel or another designation.

1. Renewal clauses-don't evergreen the term of the contract so that it automatically renews, provide specific expiration dates, and specific reasons to terminate the agreement.
2. Ensure that you may cancel the contract without penalty under stipulated conditions.
3. Provide benchmarks to ensure your quality expectations are met over the term of the agreement.
4. Avoid exclusivity with one provider when possible, or make it short-lived.
5. Avoid percentage-based compensation to the service provider, fee-based should suffice, many organizations are opposed to percentage-based contracts because the incentives move away from mission and focus on enriching the fundraiser and could lead to aggressive tactics.
6. Retain your list ownership and IP ownership.
7. Ensure you are able to audit the results on campaigns at specified intervals.
8. Ensure you have control over all outgoing communications to ensure there are no pressure tactics used and that the individuals that may be speaking on your organization's behalf are transparent in their dealings with potential supporters that may ask questions about the organization. If you are using telemarketing, ensure you are able to listen to a sampling of the recordings.
9. If it seems too good to be true, it probably is. Read it over a few more times and do not sign it without legal review.
10. Ensure the professional fundraiser is in compliance with state charitable registration requirements.
12. Have a clear description of the services to be provided and the exact financial terms.
13. Ensure contracts contain dated signatures of each party.

14, When a professional fundraiser receives funds from a solicitation on your organization's behalf, ensure a periodic accounting of the funds received, and that the fundraiser maintains accurate and current records of gross revenue received (to be forwarded to the charity) and expenses incurred (to be reimbursed by the charity).

For questions or comments, contact Senny Boone Executive Director, Nonprofit Federation of the DMA at sboone@the-dma.org.