

Don't Take Chances with Raffles and Giveaways

Q: We want to hold a raffle to encourage attendance at our meeting. Are there any legal issues we need to know?

A: Yes. Numerous state, federal and even local laws govern whether and how an organization may conduct raffles, promotional giveaways and contests.

In most states, raffles, sweepstakes and other games of chance are illegal unless run by the state itself. Illegal “games of chance” by any name — “raffle,” “sweepstakes,” “giveaway” or something else — are any games or contests that contain three elements: consideration, chance and a prize. The key, then, is to conduct a raffle or other giveaway that doesn’t meet the definition of an illegal lottery.

The simplest way to do that is to remove the element of consideration (by definition, each giveaway comprises a prize and, almost always, chance). If there is no consideration, there is no illegal game or contest. Contest sponsors must be careful, however, as “consideration” is broadly defined to include not only paying a fee or purchasing a product, but also requiring the entrant to expend some degree of effort.

For example, consideration could include requiring entrants to register for a meeting, visit a certain number of exhibit booths, “be present to win” or complete a lengthy survey. Even requiring entrants to have Internet access (i.e., an online only promotion) may constitute consideration.

Regardless of the type of consideration, the most common way to avoid consideration is to provide a free “alternate method of entry,” such as mailing in a postcard. To be valid, the alternate method of entry must be treated the same by the sponsor as any other entry and have an equal chance of winning. The option to enter through an alternate method also must be clearly and conspicuously disclosed in the promotional materials.

The only other practical way to avoid



an illegal lottery is to remove the element of chance (since removing the “prize” element would defeat the purpose of the giveaway). To do that, the winner must demonstrate “bona fide” skill. Examples include essay contests, jingle contests, and hole-in-one contests. Contestants must know the standards under which they are being judged, judges should be independent of the sponsor, if possible, and the standards — not chance — must govern which contestant wins. In other words, if two contestants are tied after the skill contest, the winner cannot be decided by a coin flip or a drawing.

It’s also important to make sure the giveaway is properly administered:

Official Rules. Detailed and understandable official rules should be prepared and published in advance. The rules serve as the contract between the sponsor and the entrant, and should contain all the important terms and conditions of participation. Among other things, the rules should describe the prizes, the approximate value of all prizes, odds of winning, methods of entry, eligibility, start and end dates, tax information, limitation of liability, how winners will be determined and how to obtain a list of winners. Additional disclosures also may be necessary for online promotions and skill contests.

Registration and Bonding. Several states require a sponsor to register with the state and/or post a bond to conduct

a sweepstakes in that state if the prize value is above a certain limit (e.g., \$5,000 in Florida and New York; \$500 in Rhode Island). Registration and bonding can take time, so contest sponsors should plan well in advance of any giveaway, especially if the prize value is significant.

Advertising. Where possible, the official rules should be included in any advertising for the giveaway. Because states’ advertising rules vary so widely, at a minimum each advertisement should include the following disclosures: no purchase necessary; void where prohibited; instructions on the alternate method of entry; odds of winning; retail value of the prize(s); sponsor’s identification and contact information; material eligibility requirements; how to view the official rules; and deadline dates.

The Drawing. The final drawing should be handled by a third party or, if done by the sponsor, well documented. Steps should be taken to ensure that different types of entries cannot be identified (e.g., blindfold and gloves). It is a good idea to have a witness and, if possible, even videotape the drawing.

Some states (and local jurisdictions, such as counties or cities) have special statutes allowing certain nonprofit organizations — typically charitable organizations — to conduct lotteries. Where allowed, special — and sometimes complex — rules for registration, licensing and reporting must be followed.

When considering a raffle or sweepstakes, it is important to check the state law where the giveaway will be held and consult legal counsel. If all the rules are followed, raffles and sweepstakes can be used to raise funds and/or encourage attendance, without having to take an unnecessary chance. ■

The answers provided here should not be construed as legal advice or a legal opinion. Consult a lawyer concerning your specific situation or legal questions.