

§ 131F-16. License required for solicitors.

(a) Licensure Required. – Unless exempted under G.S. 131F-3, a person shall not act as a solicitor in this State unless that person has obtained a license from the Department and paid the applicable fees.

(b) Applications. – Applications for a license or renewal of a license shall be submitted on a form provided by the Department, shall be signed under oath, and shall include the following information:

- (1) The street address and telephone number of the principal place of business of the applicant and any North Carolina street addresses if the principal place of business is located outside this State.
- (2) The form of the applicant's business.
- (3) The place and date when the applicant, if other than an individual, was legally established.
- (4) The names and residence addresses of all officers, directors, and owners.
- (5) A statement as to whether any of the owners, directors, officers, or employees of the applicant are related as parent, spouse, child, or sibling to:
 - a. Any other directors, officers, owners, or employees of the applicant.
 - b. Any officer, director, trustee, or employee of any charitable organization or sponsor under contract to the applicant.
 - c. Any supplier or vendor providing goods or services to any charitable organization or sponsor under contract to the applicant.
- (6) A statement as to whether the applicant or any of the directors, officers, persons with a controlling interest in the applicant, or employees or agents involved in solicitation have been convicted, within the last five years, of any felony, or of a misdemeanor arising from the conduct of a solicitation for any charitable organization or sponsor or charitable or sponsor purpose, or been enjoined from violating a charitable solicitation law in this or any other state.
- (7) The names of all persons in charge of any solicitation activity.

(c) Fees. – The application for an initial or renewal license shall be accompanied by a fee of two hundred dollars (\$200.00). A solicitor that is a partnership or corporation may register for and pay a single fee on behalf of all of the partners, members, officers, directors, agents, and employees. In that case, the names and street addresses of all the officers, employees, and agents of the solicitor and all other persons with whom the solicitor has contracted to work under that solicitor's direction, including solicitors, shall be listed in the license application or furnished to the Department within five days after the date of employment or contractual arrangement. Each license is valid for one year or a part of one year and expires on March 31 of each year. The license may be renewed on or before March 31 of each year for an additional one-year period upon application to the Department and payment of the license fee.

(d) Bond. – A solicitor shall, at the time of application or renewal of the license, file with and have approved by the Department a bond with a surety authorized to do business in this State and to which the solicitor is the principal obligor. The amount of the bond shall be determined as follows:

- (1) Twenty thousand dollars (\$20,000), if the contributions received for the last fiscal year were less than one hundred thousand dollars (\$100,000).
- (2) Thirty thousand dollars (\$30,000), if the contributions received for the last fiscal year were at least one hundred thousand dollars (\$100,000) but less than two hundred thousand dollars (\$200,000).

- (3) Fifty thousand dollars (\$50,000), if the contributions received for the last fiscal year were at least two hundred thousand dollars (\$200,000).

The solicitor shall maintain the bond in effect as long as the license is in effect. The liability of the surety under the bond shall not exceed an all-time aggregate liability of fifty thousand dollars (\$50,000). The bond, which may be in the form of a rider to a larger blanket liability bond, shall be payable to the State and to any person who may have a cause of action against the principal obligor of the bond for any liability arising out of a violation by the obligor of any provision of this Chapter or any rule adopted under this Chapter.

(d1) In lieu of the bond required under subsection (d) of this section, a solicitor may submit a certificate of deposit in the amount as for a bond pursuant to subsection (d) of this section. The certificate of deposit shall be payable to the State and unrestrictively endorsed to the Department; or, in the case of a negotiable certificate of deposit, unrestrictively endorsed to the Department; or, in the case of a nonnegotiable certificate of deposit, assigned to the Department in a form satisfactory to the Department. Access to the certificate of deposit in favor of the State is subject to the same conditions as for a bond under subsection (d) of this section and shall extend for a period not less than four years after the solicitor ceases activities that are subject to this Chapter. The Department shall deliver to the State Treasurer certificates of deposit submitted under this section.

(e) Departmental Review. – The Department shall examine each application filed by a solicitor. If the Department determines that the requirements are not satisfied, the Department shall notify the solicitor within 10 days after its receipt of the application. If the Department does not respond within 10 days, the license is deemed approved. Within seven days after receipt of a notification that the requirements are not satisfied, the applicant may request a hearing. The state shall bear the burden of proof at such hearing. The hearing shall be held within seven days after receipt of the request. Any recommended order, if one is issued, shall be rendered within three days after the hearing. The final order shall then be issued within two days after the recommended order. If there is no recommended order, the final order shall be issued within five days after the hearing. The proceedings shall be conducted in accordance with Chapter 150B of the General Statutes, except that the time limits and provision set forth in this subsection prevail to the extent of any conflict. The applicant shall be permitted to continue to operate or continue operations pending judicial review of the Department's denial of the application. The Department shall make rules regarding the custody and control of any funds collected during the review period and disposal of such funds in the event the denial of the application is affirmed on appeal.

(f) Solicitation Notice. – No less than five days before commencing any solicitation campaign or event, the solicitor shall file with the Department a solicitation notice on a form provided by the Department. The notice shall be signed and sworn to by the contracting officer of the solicitor and shall include:

- (1) A description of the solicitation event or campaign.
- (2) Each location and telephone number from which the solicitation is to be conducted.
- (3) The legal name and residence address of each person responsible for directing and supervising the conduct of the campaign.
- (4) A statement as to whether the solicitor will, at any time, have custody of contributions.
- (5) The account number and location of each bank account where receipts from the campaign are to be deposited.

- (6) A full and fair description of the charitable or sponsor program for which the solicitation campaign is being carried out as provided in the contract between the solicitor and the charitable organization or sponsor.
- (7) The fund-raising methods to be used.
- (8) A copy of the contract executed in accordance with subsection (g) of this section.

(g) **Contracts.** – Each contract or agreement between a solicitor and a charitable organization or sponsor for each solicitation campaign shall be in writing, shall be signed by two authorized officials of the charitable organization or sponsor, one of whom shall be a member of the organization's governing body and one of whom shall be the authorized contracting officer for the solicitor. Each contract or agreement shall contain all of the following provisions:

- (1) A statement of the charitable or sponsor purpose and program for which the solicitation campaign is being conducted.
- (2) A statement of the respective obligations of the solicitor and the charitable organization or sponsor.
- (3) A statement of the guaranteed minimum percentage of the gross receipts from contributions which will be remitted to the charitable organization or sponsor. If the solicitation involves the sale of goods, services, or tickets to a fund-raising event, the percentage of the purchase price which will be remitted to the charitable organization or sponsor. Any stated percentage shall exclude any amount which the charitable organization or sponsor shall pay as fund-raising costs.
- (4) A statement of the percentage of the gross revenue for which the solicitor shall be compensated. If the compensation of the professional solicitor is not contingent upon the number of contributions or the amount of revenue received, the compensation shall be expressed as a reasonable estimate of the percentage of the gross revenue, and the contract shall clearly disclose the assumptions upon which the estimate is based. The stated assumptions shall be based upon all of the relevant facts known to the solicitor regarding the solicitation to be conducted by the solicitor.
- (5) The effective and termination dates of the contract.

(h) **Financial Report.** – Within 90 days after a solicitation campaign has been completed and on the anniversary of the commencement of a solicitation campaign lasting more than one year, the solicitor shall provide to the charitable organization or sponsor and file with the Department a financial report of the campaign, including the gross revenue received, an itemization of all expenses incurred, and the fixed percentage of the gross revenue that the charitable organization or sponsor received as a benefit from the solicitation campaign. The report shall be completed on a form provided by the Department and shall be signed by an authorized official of the solicitor who shall certify under oath that the report is true and correct.

(i) **Handling of Contributions.** – Each contribution collected by or in the custody of the solicitor shall be solely in the name of the charitable organization or sponsor on whose behalf the contribution was solicited. Not later than two days after receipt of each contribution, the solicitor shall deposit the entire amount of the contribution in an account at a bank or other federally insured financial institution, which account shall be in the name of that charitable organization or sponsor. The charitable organization or sponsor shall have sole control of all withdrawals from the account and the solicitor shall not be given the authority to withdraw any deposited funds from the account.

(j) Records of Solicitors. – During each solicitation campaign, and for not less than three years after its completion, the solicitor shall maintain the following records:

- (1) The date and amount of each contribution received and the name, address, and telephone number of each contributor.
- (2) The name and residence street address of each employee, agent, and any other person, however designated, who is involved in the solicitation, the amount of compensation paid to each, and the dates on which the payments were made.
- (3) A record of all contributions that at any time are in the custody of the solicitor.
- (4) A record of all expenses incurred by the solicitor for the payment of which the solicitor is liable.
- (5) A record of all expenses incurred by the solicitor for the payment of which the charitable organization or sponsor is liable.
- (6) The location of each bank or financial institution in which the solicitor has deposited revenue from the solicitation campaign and the account number of each account in which the deposits were made.
- (7) A copy of each pitch sheet or solicitation script used during the completed solicitation campaign.
- (8) If a refund of a contribution has been requested, the name and address of each person requesting the refund. If a refund was made, the amount and the date it was made.

(k) Records of Tickets. – If the solicitor sells tickets to any event and represents that the tickets will be donated for use by another person, the solicitor shall maintain for at least three years the following records:

- (1) The name and address of each contributor who purchases or donates tickets and the number of tickets purchased or donated by the contributor.
- (2) The name and address of each organization that receives the donated tickets for the use of others, and the number of tickets received by the organization.

(l) Review of Records. – Any of the records described in this section shall be made available to the Department upon request and shall be furnished within 10 days after the request.

(m) Change in Information. – Unless otherwise provided in this Chapter, any change in any information filed with the Department under this section shall be reported in writing to the Department within seven days after the change occurs.

(n) License Rescinded. – Any person licensed as a solicitor shall permanently lose that person's license if it is determined that that person, any officer or director thereof, any person with a ten percent (10%) or greater interest therein, or any person the solicitor employs, engages, or procures to solicit for compensation, has been convicted in the last five years of a crime arising from the conduct of a solicitation for a charitable organization or sponsor or a charitable purpose or sponsor purpose. (1981, c. 886, s. 1; 1985, c. 497, s. 1; 1989, c. 566, s. 2; 1993 (Reg. Sess., 1994), c. 759, s. 2; 1997-124, s. 1; 2003-373, s. 2.)