

# LEGAL CONSIDERATIONS

## **USE OF UMBRELLA GROUPS** (IF YOU ARE NOT A LEGAL STRUCTURE)

Most groups without legal status (usually groups which do not have paid staff such as youth groups, care and craft or ad hoc groups set up to hold a small festival) are able to apply for grants in their own right for amounts of \$5,000 or less for any purpose except salaries or vehicles. But only groups with a legal status are usually able to apply for amounts of more than \$5,000 or for salaries or vehicles.

Legal entities able to apply for grants of more than \$5,000 include:

- (a) an incorporated society under the Incorporated Societies Act 1908
- (b) a charitable trust registered under the Charitable Trusts Act 1908
- (c) A School Board of Trustees constituted under the Education Act 1989 applying for purposes relating to the school for which it is responsible
- (d) A Maori Trust Board constituted under the Maori Trusts Board Act 1955 -  
providing the application is for the general benefit of its beneficiaries as specified in its establishing document. Beneficiaries will usually be members of that iwi, but may be restricted to iwi members living in a particular area.
- (e) A district or City Council under the Local Government Act.
- (f) A Trust established under a court order made by the Maori Land Court under section 438 or 439 of the Maori Affairs Act 1953 where the order specifically includes the power to undertake the charitable purpose for which funding is being sought.
- (g) Maori Committees, Maori Executive Committees and District Maori Councils established under the Maori Community Development Act 1962 applying for purposes relating to their statutory functions.
- (h) a body established under an Act of Parliament where that Act permits them to receive funding and to carry out the kinds of functions for which they are seeking funding

This is not exhaustive and other legal entities such as churches and community companies may be suitable. These will be examined on a case by case basis.

Sometimes you may wish to contract a professional fundraiser to help you with your programme. The following Code of Ethics and Code of Conduct has been adopted by the Fundraising Institute of New Zealand.

## **CODE OF ETHICS**

- Members will direct or manage only fundraising programmes for causes that are consistent with the enhancement of human, environmental or animal welfare.
- In the field of philanthropic fundraising, members deem it unprofessional to accept remuneration on the basis of percentage of the amount raised (or relate remuneration in any way to the amount raised).

- Members will involve clients in significant expenditure only after thorough analysis indicates that the costs in relation to amount raised represent a valid investment to the agency, and agreement in writing by an authorised member of the organisation has been provided.
- Members may not make proposals to clients that involve hidden costs.
- Members shall predict financial results to clients only when such predictions have been validated by thorough fundraising analysis. Members shall not accept personal payment, in cash or in kind, from a supplier of goods or services to an agency of which the member is an employee, or agent, in recompense for business placed with that suppliers.
- No member shall make payment in cash or kind to any employee, officer, director, trustee, or adviser of an agency for using influence to retain the services of a member.
- Members will maintain professionalism in all other activities in accordance with the FINZ Code of Conduct.

## **CODE OF CONDUCT**

All members of the Institute are required, as a condition of membership, to conform to the following Code of Conduct in relation to their work.

1. **PROFESSIONAL CONDUCT:** Members shall at all times conduct themselves with complete integrity. They shall respect the dignity of their profession and ensure that their actions enhance the reputation of themselves and their Institute. **Furthermore**
  - They shall not misuse their authority or office for personal gain
  - They shall comply with the laws of New Zealand which relate to their professional activities, both in letter and in spirit.
  - They shall not knowingly act in a manner inconsistent with the Code, or cause or permit others to do so.
2. **INJURY TO OTHERS:** Members shall not recklessly or maliciously injure the professional reputation or practice of other members of this or any other profession.
3. **HONESTY:** Members shall at all times act honestly and in such a manner that donors are not misled. They shall not knowingly or recklessly disseminate false or misleading information in the course of their professional duties, nor permit their subordinates to do so. Members will state their charges and terms of business without ambiguity before commencement of an assignment.
4. **PROFESSIONAL COMPETENCE:** Members are expected to strive to attain and apply a high level of competence to the efficient conduct of the work entrusted to them. Members will ensure, their own awareness and practices of ethical fundraising through continuing education and training and will foster the sharing of fundraising knowledge and skill.
5. **CONFLICT OF INTERESTS:** Members shall not represent conflicting or competing interests without the express consent of the parties concerned after full disclosure of the fact.
6. **CONFIDENTIALITY:** Members shall not disclose (except as may be required by statute or law) or make use of information given or obtained in confidence from their employers or clients, the donating public or any other source without express prior consent.
7. **ENFORCEMENT OF CODE:** It is the duty of all members to assist the Institute in implementing and enforcing the Code and they will be supported by the Institute for so doing.

## **DIRECT MAIL**

The code of ethics and standards of practice for members of the New Zealand Direct Marketing Association covers:

- Clarity and accuracy of information and illustrations;
- Use and availability of bona fide testimonials;
- Full disclosure of all terms, conditions (including rules of contests);
- Display of street address and phone number of contactable manager when responses are directed to a PO Box;
- Non permissibility of offensive or illegal mailings or contacts; clear statement of 'negative option' sales operations;
- Complete and efficient records of customer information;
- Manner, timing and delays in shipment of goods;
- Timing of banking of payments in relation to delivery of goods;
- Refunds and exchanges and timing of such;
- Use of NZDMA name and Seal of Approval.

## **TELEPHONE MARKETING**

The Telecommunications Act prohibits the use of any telephone station for the purpose of disturbing, annoying or irritating any person, whether by speech or by wantonly transmitting communication or sound, with the intention of offending the recipient.

- The NZDMA telemarketing Code of Ethics is extensive (including 34 clauses) and covers the following areas (in addition to the general codes above) which are relevant to fundraising:
- clear disclosure of callers identity and purpose of their call at commencement of call;
- if the called party expresses a wish to terminate, the caller must do so as soon as possible.
- Offers/solicitations must not be made in the guise of a research or survey when the real purpose is to sell or to raise funds;
- name and address of organisation on whose behalf calls are made, must be in the phone directory;
- prior to calling, telemarketers must ensure the prospects name is not on the NRS.
- calls to private homes should only be made between 8am and 8.30pm unless requested;
- calls should be avoided on Sundays and public holidays unless requested;
- when prospecting, deception must not be used to obtain the names of people who call;
- unlisted or unpublished numbers must not be called, unless requested.
- Unsolicited calls on private business must not be made to a consumers place of work without that consumers prior permission;
- telemarketers should ask recipient if it is a convenient time to call or if another is preferable;
- if the call is a survey, telemarketers must state honestly the expected length of the call;
- statements must not be untrue, misleading, deceptive, fraudulent or unjustly disparaging;
- documents confirming a transaction or appointment must contain organisation contact details;

- recipients must be given a clear opportunity for refusal and that refusal immediately accepted;
- a seven (7) day “cooling off” period must be allowed and the customer made aware of this;
- no products must be knowingly offered to minors;
- if requested to do so telemarketers must remove the customers name from their contact list and such customers should be made aware of the NRS list and if necessary the telemarketer must pass the customers name on to the NZDMA for inclusion on this list;
- there are restrictions with regard to taping of telephone conversations;
- telemarketers must abide by the general rules set by the Telecommunications Act;
- Automatic dialing systems must make the called party aware that the caller is a machine;
- telemarketers should advise the appropriate telecommunications carrier when they are going to generate large volumes of calls in a specific time frame and in a specific area.

### **MAILING LISTS AND THEIR USAGE**

- All lists must be accurately described ie contents, ages, quantity, etc.
- When advertising or distributing lists the promoter must be prepared to substantiate all claims.
- Lists must not be made available until the owner agrees to the exact nature of use by the purchaser and has received and approved copies of intended mailings
- owners and purchasers of lists are responsible for ensuring against unauthorised access, alteration or dissemination of data
- unless the owner agrees to the contrary, a mailing list may only be used once by a purchaser.
- Respondents to the purchasers mailing are, by agreement with the list owner, deemed to be customers of the purchaser
- list owners must ensure lists are up to date and names are removed as requested.
- lists should consist only of data which is pertinent and necessary and must be used only for marketing and related purposes
- list owners, brokers, etc must be aware of and sensitive to the consumer’s right to privacy
- list owners and users should operate in accordance with all applicable laws, codes, etc.

### **NRS (NAME REMOVAL SERVICE) THE DON’T CALL ME OR WRITE TO ME LIST**

The name removal service has been set up by the NZDMA in order to decrease the amount of unwanted, unsolicited phone calls, mailings and faxes consumers receive from organisations. The NZDMA do not guarantee that 100% of contacts will cease, but there should be a noticeable difference in the volume. This service will not stop communications from organisations with which a relationship exists, such as a persons banker, lawyer etc. The service is available on 800 DIRECT (0800 347 328 or by mail to Freepost 2189 PO Box 33432 Auckland.

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