



# Commercial Co-Venture Terms

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# COMMERCIAL CO-VENTURE TERMS

*Written by Robert Laplaca*

## A. "Commercial co-venturer"

A person or entity regularly and primarily engaged in commerce (other than in connection with raising funds for charities) who conducts a "charitable sales promotion."

NOTE: AL, MA and MS laws are drafted broadly to include any company that, for a profit or other commercial consideration, "conducts, produces, promotes, underwrites, arranges or sponsors a performance, event or sale to the public of a good or service which is advertised in conjunction with the name of a charitable organization or as benefitting to any extent any charitable purpose."

By a strict reading of these state statutes, a commercial co-venture could conceivably include anytime a company requests some consumer action (such as "liking" a page) in order to trigger a donation from the company. However, this may be an overbroad interpretation of these statutes and is not likely the intent behind these statutes.

## B. "Commercial co-venture"

A "charitable sales promotion" which is typically defined as an advertising or sales campaign, conducted by a commercial co-venturer, which represents that the purchase or use of goods or services offered by the commercial co-venturer will benefit a

charitable organization or purpose. Typically, this is tied into the “solicitation” of funds to benefit a charity.

C. “Solicitation”

A “request directly or indirectly for money, credit, property, financial assistance or other thing of any kind or value on the plea or representation that such money, credit, property, financial assistance or other thing of any kind or value is to be used for a charitable purpose or to benefit a charitable organization.”

## **LEGAL REQUIREMENTS**

23 states have specific commercial co-venture laws.

A. General Requirements

1. Charity must be registered in applicable states, except if within a generally exempt category (e.g., religious institutions and accredited educational institutions).
  - a. 46 states require charity registration (all except, AZ, DE, ID, MT).
  - b. 5 states (HI, NJ, NY, TN, VA) expressly prohibit commercial coventurers from soliciting where a charity is not registered.
2. Written contract between the charity and the commercial co-venturer.

3. File the contract with certain states (either commercial co-venturer's or charity's obligation).
4. Registration and/or bonding in certain states. (AL, HI, IL, MA, MS, SC).
5. Provide donation on a regular basis along with an accounting.
6. Keep a copy of the final accounting for three years.

B. Mandatory Contract Provisions

1. Description of goods or services offered.
2. Estimated number of goods sold/total donation.
3. Geography of promotion.
4. Start/end dates.
5. How name of charity will be used.
6. Per unit % or \$ amount to be donated.
7. Any maximum or minimum donation.
8. Date and manner in which charity will receive donation.

NOTE: To avoid registration in CA, CA law requires a provision that the charity receive the first donation within 90 days of the start of the promotion, every 90 days thereafter, and within 90 days of the end of the promotion, with an accounting provided with each donation.

9. Statement that GA, NH and NJ ccv laws apply.
10. Statement that contract is cancelable within 15 days in NY.
11. Signed by 2 officers of the charity.

C. Mandatory Advertising Disclosures

1. Start/End date.
2. Geography of promotion.
3. Per-unit % or \$ amount going to charity.
4. Any maximum or minimum donation.
5. Statement that effort being conducted by a "paid-fundraiser." (MA)
6. Statement that donation is not tax deductible. (CA) (at least at point of-sale/on package)
7. Television: No formal standards, but for example, ABC requires beginning and end dates of promotion, name of organization to be benefited, and amount of benefit to be given.
8. MA law also states that disclosures include: telephone number of charity, statement of how funds will be used and a statement that the effort is being conducted by a "paid-fundraiser."

D. Registration and Bonding

Six states require some form of registration and/or bonding.

1. ALABAMA (Ala. Code § 13A-9-70)

a. Annual registration

- i. Obtain a surety bond in the amount of \$10,000.
- ii. Pay the initial registration and annual fee of \$100.00
- iii. Registration is good until the following September 30th.

b. For each promotion

- i. File a copy of the ccv contract with the Attorney General within 10 days of execution.
- ii. The promotion cannot start (and no services to be performed under the contract) until 15 days after the contract is filed.
- iii. File a closing statement with the Attorney General disclosing gross receipts and expenditures within 90 days of termination of the ccv contract.

Failure to comply penalty of up to \$5,000

2. HAWAII (Ha. Rev. Stat. § 467B-5.5)

- a. File Consent Form at least 10 days prior to the start of the promotion.

- b. Prepare a final accounting at the completion of the promotion and file with Attorney General, if requested, within twenty days.

Failure to comply penalties of up to \$1,000 per act and up to \$100 per each day a violation continues.

### 3. ILLINOIS (14 Ill. Admin. Code § 480.30)

- a. Complete Registration Statement and Financial Information Form to register as a charitable trustee if you have held \$4,000 or more in charitable assets at any time in the previous twelve months.
- b. Pay \$15 registration fee.
- c. File with Attorney General's Office within 6 months of initially receiving charitable assets.
- d. Submit Annual Report Form within 6 months of end of fiscal year, unless trustee holds less than \$25,000.
- e. Annual registration is based on trustee's fiscal year.

Failure to comply penalty of \$500 to \$1,000.

### 4. MASSACHUSETTS (Mass. L. Ch. 68, § 24)

- a. Annual registration
  - i. Obtain a \$25,000 surety bond.
  - ii. Pay the filing fee of \$200
  - iii. Registration is good for calendar year.

b. For each promotion

- i. File a copy of the ccv contract within 10 days of the start of the promotion.
- ii. Complete and file an Annual Financial Report for all activity within the calendar year; due February 28 of the following year.

Failure to comply penalty of up to \$500 per day up to a maximum of \$25,000.

5. MISSISSIPPI (15 Miss. Admin. Code, Rule 3.17)

- a. Complete the online registration form. ALL FILINGS MUST BE ONLINE ONLY.
- b. Provide a “User contact” of the co-venturer – MS will then send an email to the user contact to login and complete the registration process.
- c. File a Notice of Charitable Sales Promotion and a copy of the ccv contract at least 7 days prior to the start of the promotion.
- d. Pay a \$50 filing fee.
- e. File a financial accounting of the promotion no later than 30 days after the end of the promotion if the promotion is less than 1 year. If the promotion is longer than 1 year, file a financial accounting no later than 30 days after the anniversary date of the first notice of

promotion filing and a final accounting within 30 days of the end of the promotion.

6. SOUTH CAROLINA (S.C Code §§ 33-56-70; 33-56-110(A))

a. Annual registration:

i. Complete state form.

ii. Pay \$50 fee.

b. For each promotion:

i. File a Notice of Solicitation and a copy of the ccv contract at least 10 days prior to the start of the promotion. Commercial co-venturer cannot start any solicitation activity or other activity contemplated by the contract until 10 days after the Notice is filed.

ii. Submit a Joint Financial Report for Commercial Co-Venture for each promotion within 90 days of the end of the promotion. If the promotion is longer than 1 year, file a financial report within 90 days of the anniversary of the start of the promotion and a final report within 90 days of the end of the promotion.

Failure to comply penalty of up to \$2,000.

E. Other Regulation

1. Federal and state false, deceptive or misleading advertising laws apply.
2. The Better Business Bureau Standards, similar to many CCV laws, require disclosure of per unit amount of donation, time period of offer, and any maximum or minimum donation.
3. Proposed Multi-State Guidelines
  - a. Proposed in 1999 by 16 states.
  - b. Key concepts include disclosing financial relationship between advertiser and charity, avoiding misrepresentation of endorsement by charity, and not misleading consumers as to the effect purchases will have on the donation.

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