

SWEEPSTAKES AND RAFFLES: DO NOT GAMBLE ON COMPLIANCE

BY KATHERINE L. HOFFMAN, ESQ.

Sweepstakes and raffles can be a great way for businesses or charitable organizations to promote themselves while adding an element of excitement to events or marketing campaigns. However, businesses offering sweepstakes and charitable groups operating raffles should take care in setting up these events to ensure that they are not unknowingly violating lottery laws and risking criminal penalties.

The Elements of a Lottery: Prize, Chance and Consideration

The first step in advising clients who want to conduct sweepstakes or raffles is recognizing when an activity potentially violates criminal lottery laws. Generally, except for those sponsored by governments, lotteries are unlawful. In most U.S. jurisdictions, activity is considered to be a lottery when three specific elements are present: prize, chance and consideration. As discussed in further detail below, these elements are considered to be present when a participant risks something of value (the consideration element) on the outcome of an uncertain event determined predominantly by chance (the chance element), for an opportunity to win something of value (the prize element). In most states, when any one of the three elements is missing, the activity is not considered a lottery. Thus, organizers should make sure at least one of the three elements is absent in any business-conducted sweepstakes. While many states do allow charitable organizations to conduct raffles in which all three lottery elements are present, the organization must still comply with its state's specific requirements and limitations for raffles.

The prize element in lotteries is present when a participant stands to win something of value.

In addition to traditional cash or merchandise prizes, free replays of a game, reimbursement of a payment or even virtual items could also serve to fulfil this element in certain jurisdictions. Because the opportunity to win a

prize is what generates the interest and excitement in both sweepstakes and raffles, this element is almost always present in this type of promotion.

The element of chance centers on how the winner of the raffle or sweepstakes is selected.

In a majority of states, the chance element is considered to be present if chance outweighs the skills of the individual participants in determining a winner. In most raffles and sweepstakes, winners are chosen through a drawing or other purely random selection method, and participants cannot influence the outcome through the application of skills or talents. For that reason chance is typically present in most sweepstakes and raffles.

The element of consideration is generally determined to be present if participants must make payments or purchases in order to enter the sweepstakes.

To ensure that a sweepstakes is not an unlawful lottery, businesses will usually eliminate the element of consideration. In most jurisdictions, this result can be achieved by offering participants a free way to enter the sweepstakes (often called a no-purchase option). A no-purchase option can be effective in eliminating the consideration element if it is:

1. Readily available;
2. Truly free; and
3. Offers no-purchase-option players substantially the same opportunity to win a prize as all other players.

Such criteria are often referred to as equal dignity rules. A common no-purchase option allows participants to enter the sweepstakes by submitting their name and contact information through the mail or the internet. If the no-purchase option is cumbersome, or it places participants at a disadvantage compared to those who made a purchase or otherwise paid consideration, courts may find

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that the consideration element is still present. Indeed, in a handful of U.S. jurisdictions, courts or attorney general opinions have concluded that consideration is present if participants must expend significant time or effort in order to enter a promotion, even if they have not paid any money. Notably, standards for what constitutes consideration vary from state to state. For this reason, attorneys advising sweepstakes sponsors must look at the laws and regulations for each jurisdiction in which the sweepstakes will be offered.

Sweepstakes Terms and Conditions and Other Considerations for Businesses

Once a business has decided on a sweepstakes structure that eliminates consideration in the jurisdictions where the promotion will be available to participants, the next step is to ensure that the business has a comprehensive set of terms

and conditions to serve as the official rules of the sweepstakes. Having a thorough set of terms and conditions is the best way for a business to protect itself in the event of a dispute with a sweepstakes participant or winner. These rules serve as a contract between the sponsor and the participants, and they should lay out the circumstances under which the sweepstakes will be conducted.

These official rules should provide information such as the following:

- Who is eligible to participate (including age or residency restrictions);
- How one enters the sweepstakes (including the free methods of entry);
- How the winner is selected and the odds of winning;
- What the prize and its retail value will be;
- How the winner will be selected;
- How disputes will be handled; and
- Notification that the winner is responsible for payment of all taxes on the prize or prizes won.

Having a detailed set of sweepstakes rules is also useful for businesses, because these rules can help demonstrate that the business is complying with a jurisdiction's specific regulatory requirements. If there are jurisdictions where the sweepstakes is not lawful, the terms and conditions should clearly state that residents of those jurisdictions are prohibited from entering the promotion.

Businesses wanting to incorporate social media into their sweepstakes must be careful to comply with the platform's specific terms and conditions. Facebook, for example, prohibits sweepstakes sponsors from requiring participants to share a post or tag their friends in a post in order to enter. Social media platforms also commonly require sponsors to include specific language in their sweepstakes' official rules if the promotion is conducted through their services.

Some states have specific registration or bonding requirements for businesses that offer sweepstakes. In Florida and New York, for example, sweepstakes' sponsors must post a bond and register with the state if their sweepstakes' prizes exceed certain statutory thresholds. Businesses should also consider the tax implications of their sweepstakes. Depending upon the value of the prizes awarded to individual winners, the business may be obligated to collect certain information from winners for tax reporting or withholding purposes. Thorough record keeping is also important for businesses sponsoring sweepstakes. Sponsors should maintain a copy of their sweepstakes' terms and conditions, any correspondence with participants, and lists of winners and their contact information for the minimum term specified in applicable state law.

Nevada Requirements and Restrictions for Charitable Organizations Offering Raffles

If the promotion sponsor is a charitable organization authorized by law to offer raffles (also referred to as charitable lotteries), the organization must still comply with that jurisdiction's specific restrictions

Parsons Behle & Latimer is pleased to announce that **Gregory Morrison** has joined the firm as an associate in the Reno office.



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Greg's experience includes water, natural resources, environmental and real property law matters. He advises clients on a variety of private and public interests on matters involving water acquisition and permitting, private water company formation, state and federal environmental compliance and property development and disputes.

Greg earned a J.D. from the University of the Pacific, McGeorge School of Law and received a B.A. from Miami University.

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and limitations. In the state of Nevada, the Gaming Control Board is responsible for regulating the operation of raffles. Only qualified nonprofit alumni, charitable, civic, educational, fraternal, patriotic, political, religious, state or local, legal, or veterans organizations may lawfully hold raffles.¹

Generally, notifying the Gaming Control Board is required if the total value of all raffle prizes is less than \$2,500 in a calendar year. Registration with the Gaming Control Board is necessary if the total yearly value of all raffle prizes is between \$2,500 and \$25,000.² Notably, however, no registration is required if raffle tickets are sold only to members (and their guests) of the organization, while they are attending a special event sponsored by that organization, and if the total value of all the prizes offered in charitable lotteries operated by the organization during the same calendar year does not exceed \$15,000.³ Approval from the Gaming Control Board is required if the total yearly value of all raffle prizes is between \$25,000 and \$500,000.⁴ Nonprofit organizations must submit the applicable forms to the Gaming Control Board at least 30 days before advertising the raffle or selling raffle tickets.

Nevada nonprofit organizations are limited regarding how and where they may sell raffle tickets. Tickets may not be sold over the internet, and mailing raffle tickets to out-of-state purchasers can violate federal law. Permission from the Gaming Control Board is required before an organization may sell tickets outside of the primary Nevada county in which the raffle will occur.⁵ Importantly, proceeds from charitable raffles must be used “only for the benefit of charitable or nonprofit activities

in this state.”⁶ Approved organizations must obtain Gaming Control Board authorization before conducting more than one raffle in any calendar quarter, and these organizations must also file an annual financial report with the Gaming Control Board.⁷ As with sweepstakes, charitable organizations should also develop a set of official rules for their raffles in order to govern raffle operations and protect the organization in any disputes with participants. Charitable organizations may also need to comply with certain tax reporting or withholding requirements, depending on the value of the raffle prizes. **NL**

1. NRS § 462.125 (defining “qualified organization”).
2. NRS § 462.140(2).
3. NRS § 462.140(4).
4. NRS § 462.140(1).
5. NRS § 462.180.
6. NRS § 462.200.
7. *Id.*



KATHERINE L. HOFFMAN is an attorney with the law firm of Fennemore Craig. She practices in administrative and regulatory law before state and local agencies and advocates for clients in the areas of gaming, sweepstakes and promotional contests, privileged business licenses, financial institutions and public utilities. She can be reached at khoffman@fclaw.com.

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