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## Practice 5A: Legal and Ethical Practices

- ❑ The land trust complies with all charitable solicitation laws, does not engage in commission-based fundraising, and limits fundraising costs to a reasonable percentage of overall expenses.
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There is increasing federal and state regulation of fundraising practices, and public and donor scrutiny of nonprofit fundraising activities. Charitable solicitation laws are designed to enhance public accountability and to aid potential donors by making government-required registration material and financial reports available to the public. Compliance with the standards of the fundraising industry is considered prudent for land trusts.

Professional fundraisers are discouraged from engaging in commission-based fundraising by national associations. The *Code of Ethical Principles and Standards of Professional Practice* of the Association of Fundraising Professionals states: “Members shall not accept compensation that is based on a percentage of charitable contributions; nor shall they accept finder’s fees.” (See [www.afpnet.org](http://www.afpnet.org).) As public charities, land trusts are trustees of other people’s money. As such, they have ethical obligations to keep the costs of doing business—raising funds and administering the office—within acceptable bounds. The [Wise Giving Alliance](#) standards suggest that organizations spend less than 35 percent of related contributions on fundraising. The Wise Giving Alliance also suggests that at least 65 percent of expenses be spent on program activities.

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### What Is the Law?

Approximately 40 states have charitable solicitations laws. While their provisions vary, they typically include requirements in the following areas:

- **Registration.** These laws generally require organizations to register one time or annually with a state agency, generally the office of the attorney general, secretary of state or consumer protection agency. Registration involves filing basic information about the organization, including the purpose for which it raises funds and whether it is tax exempt.
- **Filing of financial reports.** Many states require charities to file an annual report and/or some version of the charity’s [IRS Form 990](#) (the federal return for tax-exempt organizations). Many states also require independent financial audits for charities whose budgets exceed certain levels.
- **Paid solicitor requirements.** Many state charitable solicitation statutes also impose requirements on outside persons who solicit on behalf of the charity (paid solicitors) or who provide advice (fundraising counsel). These laws cover the registration,

licensing, and bonding of solicitors and counsel, and whether contracts between the charity and these individuals must be filed with the state.

- **Prohibitions.** Many solicitation laws also specifically prohibit the charity or its representatives from engaging in certain actions, such as misrepresenting the purpose for which solicited money will be used, and making false and misleading solicitation statements.

Charitable solicitation laws are designed to enhance public accountability and to aid potential donors by making the registration material and financial reports available to the public. At the same time, state law enforcement agencies may use the material to detect and prosecute illegal conduct. States impose civil and/or criminal penalties for violations. In recent years, in the wake of widely publicized abuses, a number of states have imposed tougher penalties for noncompliance and are more aggressively enforcing their charitable solicitation laws. To find out more about the laws that apply in their states, land trusts should contact the office of the secretary of state (which handles administrative functions relating to charitable solicitation in most states) or office of the attorney general (which enforces the laws). The land trust should consult with its attorney to be sure it is meeting the requirements of state law.

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## What Is Reasonable?

Land trusts, like other fundraising organizations, know that it takes money to make money. How does a trust determine when its fundraising expenditures are reasonable, and when they have become excessive?

The Wise Giving Alliance standards recommend that an organization spend at least 65 percent of its expenses on program activities. It also suggests that an organization spend no more than 35 percent of related contributions on fundraising. Related contributions include donations, legacies and other gifts received as a result of fundraising expenditures.

There may be legitimate reasons for fundraising costs to exceed these recommendations. For example, the higher fundraising and administrative costs of a newly created organization, donor restrictions on the use of funds, exceptional bequests, and environmental and political events beyond an organization's control are among the factors that may result in costs that could be deemed reasonable, even though the costs are above the percentage recommendations.

Many people consider the percentages recommended by the Wise Giving Alliance to be high. Many of the larger, more established charities keep their combined fundraising and overhead costs down in the 10 to 30 percent range. In addition, land trusts can use low fundraising and overhead costs to their advantage in fundraising appeals. In one new-member solicitation letter, the San Juan Preservation Trust in Washington State made the point that its members get a lot of conservation for their contribution, writing: "Last

year, 95 percent of all Trust revenues was applied directly to our land conservation programs or set aside for future preservation projects.” How much a nonprofit spends on its program is frequently used as a measure of good governance and operations by workplace giving campaigns, foundations, donors, and in comparison studies of the effectiveness of different environmental groups.

The Land Trust Alliance has not heard of abuses in the land trust community involving excessive fundraising costs, but such abuses certainly do exist in the nonprofit world, and they create problems for everyone. Investigations have found that some charities have spent as much as 97 cents of each dollar, or more, on fundraising and overhead expenses. In some cases the fundraising costs even exceeded 100 percent: one organization testified that its direct mail firm spent \$1.08 for every \$1.00 that was raised. Unusually high fundraising and administrative costs may raise the suspicions of state regulators and possibly lead to fraud investigations.

All of this scrutiny suggests that land trusts carefully police their fundraising outlays and be conservative in their fundraising expenses.

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## Other Advisable Steps

Other steps land trusts can take to be careful in its fundraising expenditures include:

- Have an active and responsible governing board whose members closely control the administration of the organization and its expenditures.
  - Carefully and accurately calculate fundraising expenses using generally accepted accounting procedures.
  - Truthfully disclose fundraising costs upon request.
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## Links to Other LTA Resources

- [“Land Trust Ethics – Part II: Fundraising and Grant Funding”](#), *Exchange*, Fall 2004 (Vol. 23 No. 4)

## Links to Other Helpful Resources and Publications

- [Association of Fundraising Professionals](#) – for more than 40 years, AFP has been the standard-bearer for professionalism in fundraising.
- [Code of Ethical Principles and Standards](#), Association of Fundraising Professionals, amended September 2007.
- [IRS Form 990 – Return of Organization Exempt from Income Tax](#)

- [Standards for Charity Accountability](#), Wise Giving Alliance, Better Business Bureau, 2003.
- Wise Giving Alliance – part of the Better Business Bureau. The Alliance reports on nationally [soliciting](#) charitable organizations that are the subject of donor inquiries.

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