

Top Ten Legal Questions About RPAC Fundraising

(in no particular order)

1. What is the “disclaimer” or contribution notice that must be used when doing dues billing?

The notice to be used is the following:

Contributions are not deductible for Federal income tax purposes. Contributions to RPAC are voluntary and are used for political purposes. The amount indicated is merely a guideline and you may contribute more or less than the suggested amount. The Association will not favor or disadvantage anyone by reason of the amount of their contribution, and you may refuse to contribute without reprisal by the Association. 70% of each contribution is used by the State PAC to support state and local political candidates. The other 30% is sent to National RPAC to support Federal candidates and is charged against your limits under 2 U.S.C. 441a.

The third sentence (“The amount indicated is merely a guideline and you may contribute more or less than the suggested amount.”) is not required if no specific suggested contribution amount is included.

This notice must be on the dues statement, though it may appear on the reverse side if there is a clear reference to it (such as an asterisk) where the contribution is requested/suggested. Similar language should also be included on any other written solicitation for RPAC contributions.

2. What is the difference between “hard” and “soft” money?

“Hard” money is that which is acceptable for purpose of making contributions to Federal candidates. “Soft” money is that which cannot be used to make contributions of other forms of direct support (such as in-kind contributions) to Federal candidates. The distinction is generally between individual (hard) and corporate (soft) monies, but there are other forms of soft money as well. For example, foreign nationals may not contribute to Federal candidates, and an individual who has contributed \$25,000 to Federal candidates or committees in a calendar year is prohibited from making any further contributions to Federal candidates or committees, including Federal PACs. Thus, a contribution by either would be “soft” money even though not made by a corporation.

3. When does the time limit for transmitting RPAC contributions from the Board to the State Association start and end? Do they change when the Board is using dues billing?

The time period begins when the contributor makes the contribution, such as by giving a check to a Board member or staff person soliciting and collecting RPAC contributions. That date is usually the date appearing on the contributor’s check, and that check date is assumed to be the date the contribution is made unless there is evidence otherwise. The time period ends when the contribution is received by the State Association, acting as agent for RPAC in collecting contributions. The time period allowed is 30 days for contributions of \$50 or less and 10 days for

contributions in excess of \$50. For this reason, contributions in excess of \$50 must be forwarded to the State Association very promptly after receipt.

These time limits apply no matter what method is used to solicit and collect RPAC contributions, including dues billing.

4. If contributions are deposited into the Board's corporate account, do they become tainted corporate monies that are unacceptable by RPAC? Is the Board required, or permitted, to use a separate account to transmit contributions collected to the State Association?

Contributions received by a Board and deposited into the Board's account do not thereby become corporate monies that RPAC may not accept so long as (a) they are transmitted to the State Association within the applicable time limits (see #3, above), and (b) "separate and specific" records are maintained that clearly indicate the RPAC contributions deposited into the Board's account, and subsequently transferred to RPAC.

The Board may, ***but is not required***, to use a separate "transmittal" account for purpose of receiving, depositing and then transferring RPAC contributions to the State Association. It is recommended that such a separate account be used for this purpose because it makes the record keeping for RPAC contributions deposited into and transferred out of the Board's account (to the State PAC) considerably easier and more convenient, but the Board may elect to use its regular operating account for this purpose so long as adequate records are maintained.

5. If a broker collects from his salespeople for Board dues and some sales associates include an RPAC contribution in that payment, may the broker deposit that money in the firm's account and transmit it to the Board using a corporate firm check? Can the broker hold that money until he has collected from all his salespeople?

The broker may collect dues from sales associates, deposit the monies so collected in the broker's account, and forward to the Board such monies using a single check drawn by the broker on the firm's (corporate) account. In doing so, however, it is essential that the broker keep clear, unambiguous records regarding the RPAC contributions received from the associates. It is likely, however, that the FEC would consider the transmittal time limits to begin when the associate gives a check including an RPAC contribution to the broker. For that reason those contributions need to be sent to the Board sufficiently promptly to allow the Board to, in turn, transmit them to the State Association within the time limits. The broker also should not "hold" amounts collected from sales associates until having collected from all of them. If the broker wants to hold the amounts paid to him for Board dues until dues payments are collected from all sales associates, the best practice is to ask sales associates to write separate checks for the RPAC contribution portion and forward those checks to the Board immediately upon receipt.

6. Are RPAC contributions tax deductible?

No. There is presently no Federal tax deduction or credit provided for political contributions, including contributions to RPAC. Previously a Federal income tax deduction, and later a partial Federal income tax credit, was available, but both have been eliminated. For that reason, unlike in the case of making charitable contributions, there is no financial benefit to a contributor making a

contribution to RPAC in the form of appreciated property, such as shares of appreciated stock. Contributors should check state law to determine if there are any state income tax benefits provided to those who make political contributions.

7. Can affiliate members of a Board contribute to RPAC?

Yes, so long as they are bona fide members of the Board and otherwise permitted to contribute to RPAC. "Bona fide" means that such members hold membership in accordance with a legitimate category of membership, such as one prescribed in the Board's Bylaws. The usual contribution requirements apply to such affiliate contributions, and in particular, only individual affiliate members and not corporate affiliates may contribute to RPAC, since corporate contributions are not permitted.

8. From whom may the Board solicit and accept donations or merchandise to be sold/auctioned or otherwise used to defray the costs of a Board RPAC fundraising event?

The only persons or entities that may contribute to or otherwise donate money or items to be used in an RPAC fundraising event are members (REALTORS or affiliates) of the Board. Thus, local car dealers, insurance agencies, banks, or printers that are not affiliate members of the Board may not donate items to be auctioned or raffled off, nor may they provide money to be used to offset the costs of an RPAC fundraising event.

9. If the Board holds an RPAC fundraising dinner and charges \$50 for admission, and the cost of the dinner is \$20, may the Board simply forward to the State Association the net proceeds of \$30 per person and report each person in attendance as having made a contribution of \$30 to RPAC?

No. The Federal Election Campaign Act provides that the entire amount of the ticket price to a political fundraising event counts as a contribution- so that the entire ticket price must be treated as a contribution. In this case, each person must be reported as having made a contribution of \$50, and that entire amount must be forwarded to the State Association. 30% of that amount, or \$15, is then transferred to National RPAC for use in connection with Federal elections. The Board may pay for the costs of the dinner out of its treasury (dues) monies, or if the State Association agrees, the State PAC may provide to the Board a portion of the 70% State PAC share of the contributions received, for use in underwriting the costs of the fundraising event.

An alternative method to consider for such fundraising events is to charge a ticket price that is roughly equal to the Board's costs of the event, and to use all ticket proceeds to pay such costs, without treating the excess proceeds (if any) as RPAC contributions. During the course of the event, voluntary contributions to RPAC may be encouraged, solicited and collected by the Board, and transferred to the State Association (and National RPAC) in the usual way. This method is often particularly useful in the case of golf outings held to raise money for RPAC, where the costs of participation are frequently high.

10. We would like our firm to have 100% RPAC participation. We are almost there, but a few agents are not yet RPAC believers. Can other agents take up a collection to make a modest RPAC contribution "in the name of" those agents, so that we can achieve that 100% participation distinction?

No! The Federal Election Campaign Act and Regulations explicitly prohibit contributions being made “in the name of” another individual. The person indicated as the contributor to RPAC must be the person who actually donates the funds comprising that contribution.