

CHARITABLE ORGANIZATIONS PRIVACY PROTECTION ACT



Summary

The Charitable Organizations Privacy Protection Act specifies affidavit requirements for charitable organizations listed as beneficiaries in instruments designating a beneficiary, other than a will or an instrument creating a trust, seeking the transfer of property delineated in the instrument. The holder of the property is prohibited from requesting any additional personal information from any individual employed by or serving on the board of the charitable organization as part of the process for transferring the property. Provides cause of action should the property or information requested by the charitable organization not be received within thirty days.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF [STATE]:

Section 1. Charitable organization beneficiary affidavit and third-party protection.

(1) For the purposes of this section, “beneficiary designation” means the provision in an instrument designating a beneficiary, other than in a will or an instrument creating a trust, and may also mean the instrument itself, including but not limited to any of the following:

- (a) An annuity or insurance policy.
- (b) An account with a designation for payment on death.
- (c) A security registered in beneficiary form.
- (d) A pension, profit-sharing, retirement, or other employment-related benefit plan.
- (e) Any other non-probate transfer at death.

(2) If a charitable organization, as defined in [SECTION], is a beneficiary of an interest in property created by beneficiary designation, that charitable organization may present an affidavit to the holder of the property or to any person with information about the property for the purpose of obtaining the property or information regarding the property. The affidavit shall state all of the following:

- (a) The decedent’s name and last known address.
- (b) A general description of the property to the extent known.
- (c) The charitable organization’s name, address, and primary contact information.
- (d) The charitable organization is a charitable organization as defined in [SECTION].
- (e) A request that the property be paid or transferred to the charitable organization or that information about the property be given to the charitable organization.
- (f) No one other than the charitable organization has a right to the interest in the property listed in the affidavit.
- (g) The affidavit has been signed by a duly authorized representative of the charitable organization under penalty of perjury before a notary public as provided in [SECTION].
- (h) The information in the affidavit is true and correct.

(3) The affidavit shall be accompanied by all of the following:



(a) A copy of the charitable organization's determination letter from the Internal Revenue Service recognizing its tax-exempt status.

(b) A copy of the charitable organization's certificate of existence issued by the secretary of state as conclusive evidence that the domestic or foreign corporation is in good standing.

(c) A statement that on information or belief of the affiant, the property owner is deceased supported by a death certificate of the decedent, or probate notice published by the personal representative of the decedent's estate, or proof of payment of the decedent's funeral expenses, or the decedent's obituary as verification of the decedent's death.

(d) A corporate resolution or similar statement of authority of the affiant to act on behalf of the charitable organization.

(e) Federal Internal Revenue Service form W-9 completed by an authorized representative of the charitable organization.

(4) The holder of the property shall not request any additional personal information from any individual employed by, or serving on the board of the charitable organization, including but not limited to any of the following:

(a) Social security number or driver's license number.

(b) Contact information.

(c) Personal financial information.

(5) If the requirements of this section are satisfied, all of the following apply:

(a) The decedent's property shall be paid, delivered, or transferred to or for the benefit of the charitable organization if the affidavit has requested the transfer of ownership of the property to the charitable organization.

(b) A transfer agent of a security described in the affidavit shall change registered ownership on the books of the corporation from the decedent to or for the benefit of the charitable organization if the affidavit has requested the transfer of ownership of the property to the charitable organization.

(c) The information requested in the affidavit shall be delivered to the organization.

(6) The holder of the property and any person who in good faith delivers the property or information requested in reliance on information a charitable organization provides under this section, who has no knowledge that representations contained in the affidavit are incorrect, shall not be liable to any person for so acting and may assume without inquiry the existence of the facts contained in the affidavit. The time to verify a charitable organization's authority shall not exceed thirty days from the date of delivery of the affidavit. Any right or title acquired from the charitable organization in consideration of the provision of property or information under this section is not invalid in consequence of misapplication by the charitable organization. A transaction and a lien created by a transaction entered into by the charitable organization and anyone acting in reliance on the affidavit under this section is enforceable against the property the charitable organization has requested.

(7) If the holder of the property refuses to provide the requested property or information within thirty days after receiving the affidavit, the charitable organization may bring an action against the holder of the property to recover the property or receive the information or to compel the delivery of the property. An action brought under this section must be brought within one year after the date of the act or failure to. If the court finds that the holder of the property acted unreasonably in failing to deliver the property or information as requested in the affidavit, the court may award to the charitable organization any or all of the following:

(a) Damages sustained by the charitable organization.



(b) Costs of the action.

(c) A penalty in an amount determined by the court between five hundred dollars and ten thousand dollars.

(d) Reasonable attorney fees based on the value of the time reasonably expended by the attorney and not by the amount of the recovery on behalf of the charitable organization.

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