

THE ONE-THIRD RULE

1. What is the “one-third rule” and when does it apply?

The so-called “one-third rule” set forth in the Federal Election Campaign Act (FECA) applies to corporate-sponsored fundraising events held to raise voluntary contributions to Federal political action committees where the event involves providing prizes, merchandise, or entertainment to contributors. The rule applies to RPAC fundraising events sponsored by NAR or state or local associations because 30% of each RPAC contribution is forwarded to National RPAC to support Federal candidates.

2. What is the reason for the one-third rule?

The one-third rule is intended to prevent a corporation from giving prizes, merchandise or entertainment to contributors at events such as dinner-dances, auctions and golf tournaments “in exchange” for voluntary individual political contributions. Since an incorporated Association of REALTORS® may use corporate monies to pay the costs of conducting an RPAC fundraising event, such an “exchange” might appear to occur if the prizes or entertainment provided to contributors had approximately the same value as the total contributions made by those individuals in attendance. Thus, the rule prevents the sponsor from providing prizes or entertainment in exchange for personal PAC contributions where the total amount contributed does not significantly exceed the value of the prizes or entertainment. The rule accomplishes this by establishing a “threshold” relationship between costs incurred in connection with the event and total contributions made by those in attendance.

3. How does the one-third rule work?

In order to prohibit “exchanges” of corporate money or merchandise for personal PAC contributions, the rule provides that the value of the prizes, merchandise, or entertainment distributed (**exclusive of food, beverage and facility expenses, but including professional entertainment expenses**) to contributors at a fundraising event may not exceed one-third of the total contributions made by contributors at the event. Stated conversely, *the event must result in total contributions not less than three times the costs of prizes and entertainment*. If that amount of contributions is not achieved, the sponsor must be reimbursed by the PAC in an amount necessary to reduce the net “expenditure” (for merchandise and entertainment) to one-third of the contributions collected.

4. Can you provide an example?

Assume, for example, an association spent \$400 for items to be auctioned off at a fundraising event and collected \$1200 or more in contributions at the event. No reimbursement would be necessary because the association’s costs are equal to one-third of the fundraising proceeds ($1/3$ of \$1200 = \$400). But if the association collected only \$900 in contributions, it would have to be reimbursed for the amount by which the expenses (\$400) exceeded one-third of the contributions collected ($\$900 \div 3 = \300), or \$100. [This calculation is complicated by the fact that this formula only applies to the National RPAC portion of the contributions, and any reimbursement must be made by National RPAC. In this example, National RPAC’s portion of the total contributions is 30% of \$900, or \$270, and one-third of that amount is \$90. Similarly, National RPAC’s allocable portion of the “expenditures” allocable to raising Federal PAC funds is 30% of \$400, or \$120. Thus, this example would require reimbursement by National RPAC of \$30, which is the difference between \$120 and one-third of \$270 (\$90.00).]

It is important to recognize two points in making these computations: (1) Each prize need not satisfy the one-third standard individually, as long as the costs of all items and contributions received for them do so collectively, and (2) In computing the association’s costs of the prizes distributed via the event, items donated to the association must be valued at their *fair market value*, since even though such items may have been acquired by the association without cost they have a market value and thus constitute an asset of the association with that fair market value.

FUNDRAISERS AND THE ONE-THIRD RULE

AUCTIONS

1. Purchase of an Auction Item is a Contribution to RPAC

The purchase of an item at an RPAC auction is considered an RPAC contribution equal to the entire purchase price, even if a portion of that price is paid by the association conducting the auction to the artist or other consignor who provided the item. Accordingly, persons outside the restricted class who are not permitted to be solicited to contribute to RPAC may not be invited to attend or allowed to purchase any auction items.

2. Publicizing an RPAC Auction Constitutes a Solicitation

Publicizing an RPAC auction constitutes a solicitation of contributions. Therefore, such publicity must include the necessary information regarding the appropriate distribution of the contribution between National RPAC and the state RPAC, and the fact that the federal portion is charged against the contributor's limits under 2 U.S.C. 441a. Moreover, as noted above, the distribution of publicity about the auction must be limited to persons within the restricted class.

3. Who Can Contribute Merchandise or Services

Any bona fide member of the association (that is, a "member" within the restricted class) can contribute merchandise or services for an RPAC auction. Those who do not qualify as solicitable members may not donate goods or services to be used to generate contributions to RPAC. Local businesses who are not members of the association or state association may not contribute cash, merchandise or services to be auctioned off to raise funds for RPAC. Additionally, the fair market value of donated items must be used in calculating expenses for purposes of the one-third rule. The association may purchase items for auction from other sources so long as the purchase price is the usual and normal charge for such items.

4. Handling Consigned Items

In some auctions, items such as artwork are received for auction on a consigned basis at a floor price. If the bidding exceeds the consigned price, the item is sold to the highest bidder, and the agreed upon consigned price paid to the artist or other consignor. If the bidding does not reach the consigned price, the item is not sold but is returned to the consignor. In either case, no contribution is made by the consignor. The entire price paid by the purchaser is, as noted above, treated as a contribution, but the compensation paid to the artist is treated as an expense of conducting the event.

DINNERS OR OTHER CATERED EVENTS

1. Purchase of a Dinner Ticket is a Contribution to RPAC

The entire purchase price of a ticket to a dinner or other RPAC fundraising event is considered a contribution to RPAC. The usual rules for RPAC solicitations and contributions apply: persons outside the restricted class cannot be solicited or permitted to purchase tickets.

2. Utilizing the Services of Vendors

It is permissible to purchase from a corporate vendor (e.g., an incorporated restaurant, caterer or other food service company) the food, facilities or services necessary to hold a food-related RPAC fundraising event. The vendor corporation must, however, apply its "usual and normal charge" and be paid "within a commercially reasonable time" for the food, facilities, or services provided. Thus, a state or local association or its RPAC committee conducting an RPAC fundraising dinner must pay the usual rental for the restaurant, hall or building where the dinner is held, and must pay the caterer at its normal rates for the food. Unless timely payment is made at the usual and normal charge, the corporate vendor providing food or facilities would violate the FECA by making an in-kind contribution to RPAC.

3. Paying the Costs of a Dinner

Unlike auctions or other events involving entertainment or prizes, payment by a state or local association of the food and beverage expenses associated with an RPAC fundraising event is not subject to the one-third rule. If prizes, gifts or other items are distributed at the event, however, the expenses associated with those aspects of the event are subject to the one-third rule as described above.

MERCHANDISE SALES

Associations and their RPAC committees may sell such items as T-shirts, posters, coffee mugs, caps, and the like (often bearing the RPAC logo) to raise RPAC funds. Under FECA, the entire purchase price paid for items sold to benefit RPAC also constitutes a contribution to RPAC. Since the purchase of such items constitutes an RPAC contribution, only those in the restricted class may be solicited to contribute by making such purchases.

An association or board may bear the costs of acquiring merchandise for sale to benefit RPAC, subject to the one-third rule. Merchandise offered for sale also may be donated by individuals who are within the restricted class as bona fide members of the association, but the fair market value of the items must be included in performing the one-third rule calculation even though the association received such items at no charge.

GOLF OUTINGS

Another popular RPAC fundraising event is a golf outing or tournament. Any event that attracts the attention of and participation by REALTOR® association members is, of course, a prime opportunity to raise funds for RPAC. Unfortunately, the usually substantial expense associated with golf outing fundraisers, coupled with the limitations of the one-third rule, makes conducting them lawfully more complex than many other fundraising events. The following describes these complexities and offers some suggestions to simplify compliance with the law.

1. Treatment of Ticket Sale Proceeds

The Federal Election Campaign Act provides that the entire price of a ticket to attend a PAC fundraising event constitutes a contribution to the PAC. This rule applies even though it is intended that only the net proceeds of the event, after expenses, are to be provided to the PAC. Thus, where each participant in a golf outing held to raise funds for RPAC pays \$100 to purchase a ticket, federal law requires that the entire \$100 amount be treated and reported as a contribution to RPAC.

Correspondingly, if it is intended that the expenses of the event be paid for with the proceeds from ticket sales, the payment of those expenses must be duly reported as expenditures by RPAC. These expenses cannot be “netted out,” so that only the net amount is transferred to and reported as a contribution to RPAC. Instead, the entire amount must be provided to RPAC. The expenditures of the event must be covered by the sponsor (the state or local board), or where permitted paid out of funds provided for that purpose by the State PAC.

Of course, Federal law applies only to the portion of each RPAC contribution transmitted for use by National RPAC (generally 30%). But the foregoing requirements nevertheless apply to the National RPAC portion: Thirty percent of the admission price must be reported as a contribution to National RPAC, and the *pro rata* portion of that 30% share used for expenses must be paid by, and reported as an expenditure by, National RPAC. Use of the remaining 70% State PAC portion of the proceeds to defray the expenses invokes application of the one-third rule, described below.

2. One-Third Rule Compliance

The one-third rule is designed to prevent a corporation from “exchanging” corporate funds for individual PAC contributions by, for example, providing entertainment or other like benefits to attendees at a fundraising event, paid for at corporate expense, for the contributions of individual contributors.

An example makes such an exchange and the purpose of the one-third rule clearer. Assume an incorporated association held a golf outing fundraiser for which it charged a ticket price of \$50. Purchase of a ticket entitles each participant/contributor to play golf and use a golf cart. Assume also that the fee normally charged by the golf course is \$50, and the fee for each player is to be paid by the association so that all proceeds from the sale of tickets would be provided to RPAC. What is the result? Each participant would essentially “break even,” because each makes a contribution to RPAC of \$50 for which each player receives “fair value” of a round of golf for which the usual price is \$50. The PAC receives \$50 per participant, but the corporation *pays out* \$50 per participant while receiving nothing in return. In essence, the corporation, rather than the individuals attending the event, makes a contribution to the PAC of \$50 per participant.

The “one-third rule” recognizes that corporations that sponsor PACs may pay solicitation costs associated with PAC fundraising events, but provides a “safe harbor” as to the extent to which a corporation may pay the expenses of such a fundraising event without being deemed to be “exchanging” corporate funds (by bearing the expenses of the event) for the personal contributions paid by event attendees, as described above. The rule provides that the corporation may pay the expenses of the event up to one-third of the total fundraising proceeds - i.e., the ticket receipts. In the example above, the event would be permissible if each participant had paid \$150 to attend the golf outing, since the corporation paid \$50 per participant to conduct the outing. Any expenses of the event which exceeded that amount must be paid by the PAC.

In this regard it is also important to note that the one-third rule computation must take into account all costs incurred in providing the prizes and entertainment (golf) at the event, even if some of those costs are paid directly or indirectly by sponsors. Where, for example, an affiliate member of the association subsidizes a portion of the greens fees for the event, those expenses must nevertheless be taken into account by the association in doing the above one-third rule calculation. (Such sponsor contributions may, however, be disregarded if they are used to pay food and beverage expenses.)

3. Permissible Attendees

Another important principle applicable to RPAC fundraising must also be carefully observed in conducting golf events. Since such events are RPAC fundraisers, the usual restriction on who may be solicited applies. Specifically, only association members and executives and administrative personnel, and their families, may be invited to attend, and the mere invitation to attend a fundraising event constitutes a solicitation. In particular, individuals or companies involved in real estate related businesses that are not members of the association may not be invited nor asked to contribute to the expenses of the event.

4. Alternative Method of Covering Costs

A simpler way of conducting a golf event and paying the costs thereof involves treating the golf activity and the RPAC fundraising aspect of the event independently. This method involves conducting the golf event without using or characterizing ticket purchases as contributions to RPAC, and correspondingly without providing any portion of ticket sale proceeds to RPAC. At an appropriate time during the event, however, attendees at the event are solicited to make a voluntary contribution to RPAC, and the entire amount of each contribution made in this fashion is provided to RPAC in the usual way.

RPAC fundraising at a golf outing done in this fashion is permissible and accounting for contributions and expenditures is substantially simplified. The usual restrictions regarding individuals who may be solicited apply, of course. If all attendees are to be openly solicited, then only association members or executive and administrative staff, their families, and individual affiliates may attend. If the solicitation activity is to be conducted “privately” and can be limited to only those who can lawfully be solicited, then the event may be opened and promoted to encourage and promote attendance by other interested individuals.