

## Top Ten Legal Questions About RPAC Fundraising

(In no particular order)

1. May we do “above the line” dues billing for RPAC contributions?

**Yes! You may include a request for an RPAC contribution on the dues statement that is “above the line” – that is, a request for a specified amount included in the “total due” of the dues shown on the statement. You must, however include a proper “solicitation notice” (also called a disclaimer) explaining the voluntary political nature of the contribution requested, and members must be permitted to deduct the amount of the requested RPAC contribution. You may not “reverse dues bill” – that is, require payment of a total amount and offer to provide refund to anyone who does not want to make an RPAC contribution. Dues billing, including “above the line” dues billing, is subject to state law also, since a portion of the contributions made are provided to the State PAC. Thus, you must also comply with any requirements of state law applicable to dues billing.**

The solicitation notice to be used is the following:

*“Contributions are not deductible for income tax purposes. Contributions to RPAC are voluntary and are used for political purposes. You may contribute more or less than the suggested amount. You may refuse to contribute without reprisal and the National Association of REALTORS®, the New York State Association of REALTORS®, and their local associations and boards will not favor or disfavor any member because of the amount contributed. 70% of each contribution is used by your state PAC to support state and local political candidates. Until your state reaches its RPAC goal 30% is sent to National RPAC to support federal candidates and is charges against your limits under 2 U.S.C. 441a; after NYSAR RPAC reaches its RPAC goal it may elect to retain your entire contribution for use in supporting state and local candidates.”*

**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 or electronic solicitation for RPAC contributions.**

**Note also that while the above notice must appear on all written solicitations for RPAC, federal law requires that whenever a member is solicited to make an RPAC contribution he or she must be advised of the (i) political purpose of RPAC and (ii) that he or she “may refuse to contribute without reprisal.”**

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 PAC’s.**

**Thus, a contribution by either would be “soft” money even though not made by a corporation. “Soft” money is generally prohibited for use in connection with Federal elections, although some important uses of it still remain lawful. It may be used in connection with solicitation of hard money contributions to RPAC, and may be used to communicate with members about specific candidates for election to Federal office.**

3. If contributions are deposited into the local board’s corporate account, do they become tainted corporate monies that are unacceptable to RPAC? Is the local board required, or permitted to use a separate account to transmit contributions collected to the state association?

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

**The local 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 local board’s account (to the state PAC) considerably easier and more convenient, but the local board may elect to use its regular operating account for this purpose so long as adequate records are maintained.**

4. If a broker collects from their salespeople for local 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 local board using a corporate firm check? Can the broker hold the money until they have collected from all salespeople?

**The broker may collect dues from sales associates, including dues billing RPAC contributions made by the sales associates, deposit the monies so collected in the broker’s account, and forward to the local 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 that the FEC would consider the transmittal time limits to begin when the associate gives a check includes an RPAC contribution to the broker. For that reason those contributions need to be sent to the local board sufficiently promptly to allow the local 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 them for local 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 local board immediately upon receipt.**

5. 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 a charitable contribution, 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.**

6. Can affiliate members of a local board contribute to RPAC?

**Yes, so long as they are active NRDS-holding members and otherwise permitted to contribute to RPAC.**

7. From whom may the local board solicit and accept donations or merchandise to be sold/auctioned or otherwise used to defray the costs of a local 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 active NRDS-holding members of the local board. Thus, the local car dealer, insurance agency, bank or print shop that are not NRDS-holding members of the local board may not donate items to be auctioned off, nor may they provide money to be used to offset the costs of an RPAC fundraising event.**

8. What must be done with contributions returned to a state PAC because they were not transmitted to RPAC in a timely manner?

**RPAC contributions not delivered to the state PAC and to RPAC in a timely fashion must be returned to the contributor. Those contributions may not be simply diverted to and deposited into a corporate contribution account, such as the NAR Political Advocacy Fund or a state corporate political account by a state association where that is permitted by law. The contribution must be refunded to the contributor or the contributor must be offered a refund and given the choice to receive that refund or expressly agree that the contribution may be used elsewhere, such as the corporate political fund. If the contributor so agrees, that consent should be documented.**

9. Our board wants to hold a fundraiser for our Congressman, who we really like and who already received a maximum contribution from RPAC, may we do that?

**No the board (a corporation, in most cases) may not hold a typical “fundraiser” for a federal candidate. But the board may invite a federal candidate to address the members at a board-sponsored event to which only board members and their families are invited and permitted to attend. At that event, representatives of the board may if desired, expressly encourage members in attendance to vote for the candidate or contribute to or volunteer for the candidate’s campaign. Contributions to the candidate may also be made at the event as long as (i) contributions are not required as a condition of admission to the event, and (ii) the board and its employees, officers**

**and other “official” representatives, are not involved in collecting any contributions made. More specifically, only the candidate or members of the candidate’s campaign staff may “touch the money.”**

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 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.**