

Frequently Asked Questions

Idaho Charitable Assets Protection Act (ICAPA)

Title 48, Chapter 19, Idaho Code

1.0 GENERAL MATTERS

1.1 Where can I find the Idaho Charitable Assets Protection Act (ICAPA)?

ICAPA is codified at title 48, chapter 19, Idaho Code. The Idaho Code is accessible on the Idaho Legislature's website at www.legislature.idaho.gov.

1.2 Are there any administrative rules associated with ICAPA?

No.

1.3 Who enforces ICAPA?

The Attorney General enforces ICAPA.

1.4 Can the public or an officer, director, member, or employee of a charitable organization enforce ICAPA?

No. Only the Attorney General has authority to enforce ICAPA. Individuals have no private right of action under the statute.

1.5 Who can a charitable organization, its representatives, or the public contact at the Attorney General's Office about ICAPA?

Charitable organizations, their representatives, and the public may call, email, or write to the Attorney General's Consumer Protection Division at:

Phone: 208-334-2424
800-432-3545 (toll-free in Idaho)

Mail: Attorney General's Office
Consumer Protection Division
ATTN: James Simeri
P.O. Box 83720
Boise, ID 83720-0010

Hand-Delivery: Attorney General's Office
Consumer Protection Division
954 W. Jefferson St., 2nd Fl.
Boise, ID 83702

Email: consumer_cg@ag.idaho.gov

Fax: 208-334-4151

Please keep in mind, however, that the Attorney General’s Office cannot advise private persons about their legal rights or options in a particular situation. (See FAQ 1.6)

1.6 Who can a charitable organization, its representatives, or the public contact to obtain legal advice or assistance related to ICAPA?

A charitable organization, its representatives, and the public should contact a private attorney if they need legal advice or assistance. The Idaho State Bar’s Lawyer Referral Service provides referrals to attorneys who agree to provide potential clients with a 30-minute consultation for only \$35. The Service is available at 208-334-4500 or www.isb.idaho.gov.

2.0 ICAPA’S PURPOSE AND APPLICATION

2.1 What is the purpose of ICAPA?

The Legislature enacted ICAPA to better define the Attorney General’s duties concerning Idaho’s charitable assets and to provide the Attorney General with the necessary authorities and enforcement tools to fulfill those duties. ICAPA prohibits the misuse of charitable assets and provides a procedure for a charitable organization to notify the Attorney General of the organization’s intent to dissolve, convert to a noncharitable organization, or terminate and dispose of all or substantially all of its charitable assets.

2.2 Who must comply with ICAPA?

ICAPA covers “*charitable organizations*” as defined in Idaho Code § 48-1903(4) and “*accountable persons*” as defined in Idaho Code § 48-1903(1).

- “*Charitable organization*” means “a person who holds *charitable assets*.”
- “*Accountable person*” means a director, officer, executive, manager, trustee, agent, or employee of a charitable organization.”

2.3 What is a charitable asset under ICAPA?

ICAPA defines a “*charitable asset*” as “any interest in real or personal property and any other article, commodity, or thing of value that is impressed with a *charitable purpose*.” See Idaho Code § 48-1903(3).

2.4 What does “charitable purpose” mean under ICAPA?

ICAPA broadly defines “*charitable purpose*” as “the relief of poverty, the advancement of knowledge, education, or religion, or the promotion of health, the environment, civic or patriotic matters, or any other purpose, the achievement of which is beneficial to the community.” See Idaho Code § 48-1903(5).

2.5 Generally, what acts are considered unlawful under ICAPA?

ICAPA prohibits a charitable organization or an accountable person from knowingly using charitable assets or allowing charitable assets to be used in a manner that is inconsistent with the:

- law applicable to the charitable asset.
- restrictions contained in a gift instrument regarding the charitable assets. (Nothing, however, prevents a person from seeking a release or modifying the charitable purposes or restrictions within a gift instrument as Idaho law allows.)
- charitable purpose of the charitable organization that holds the charitable asset.

See Section 3.0 of these FAQs for more details on the misuse of charitable assets.

2.6 Generally, what does ICAPA require?

In addition to prohibiting charitable organizations and accountable persons from misusing charitable assets, ICAPA requires a charitable organization to notify the Attorney General in writing of the charitable organization's intent to dissolve, convert to a noncharitable organization, or terminate and dispose of all or substantially all of its charitable assets. *See Section 4.0 of these FAQs for more details about ICAPA's notice requirement.*

2.7 Does ICAPA include any registration requirements for charitable organizations or telefundors?

No. ICAPA does not require charitable organizations and those who solicit contributions on their behalf to register with the Attorney General.

Please note, however, under the Idaho Telephone Solicitation Act (ITSA), title 48, chapter 10, Idaho Code, if a charitable organization is *selling a good or service via an unsolicited telephone call*, the charitable organization must register with the Attorney General as a telephone solicitor. A registration application is available on the Attorney General's website at www.ag.idaho.gov. While third-party telefundors selling a good or service via an unsolicited telephone call are not required to register under the ITSA, the charitable organization they represent must register with the Attorney General.

2.8 Who is exempt from ICAPA's requirements?

ICAPA specifically exempts (i.e., does not cover):

- a state or federally chartered bank, savings bank, savings and loan association, thrift institution, trust company, or credit union; or
- an individual who is acting within the scope of his position and duties as a director, officer, executive, manager, or employee of a state or federally chartered bank, savings bank, savings and loan association, thrift institution, trust company, or credit union.

The above entities and split-interest trusts, as described in Internal Revenue Code § 4947(a)(2), must comply with *all other applicable Idaho laws* concerning charitable trusts, including all provisions that require notice to the Attorney General. (*See* FAQs 4.3 - 4.6)

2.9 Are all nonprofit corporations subject to ICAPA?

No. Not all nonprofit corporations hold charitable assets or engage in charitable activities. For example, homeowners associations, which usually organize as nonprofits, do not hold charitable assets or engage in charitable activities.

2.10 Are churches subject to ICAPA?

Yes. Churches that hold charitable assets and engage in charitable activities must comply with ICAPA.

2.11 Are nonprofit hospitals subject to ICAPA?

Yes. However, if the nonprofit hospital is subject to the Idaho Nonprofit Hospital Conversion Act, title 48, chapter 15, Idaho Code, the nonprofit hospital must comply with the notice requirements outlined in Idaho Code § 48-1503. (See FAQ 4.6).

3.0 MISUSE OF CHARITABLE ASSETS (IDAHO CODE § 48-1906)

3.1 What actions constitute the misuse of charitable assets under ICAPA?

Under ICAPA, a charitable organization or an accountable person misuses charitable assets if the charitable organization or accountable person *knowingly* uses charitable assets or allows charitable assets to be used in a manner that is inconsistent with:

- a law applicable to the charitable asset.
- the restrictions contained in a gift instrument regarding the charitable assets. (Nothing, however, prevents a person from seeking a release or modifying the charitable purposes or restrictions within a gift instrument as Idaho law allows.)
- the charitable purpose of the charitable organization that holds the charitable asset.

3.2 What does it mean to “knowingly” misuse charitable assets?

“Knowingly” is a legal term that describes a person’s specific state of mind. Under Idaho law, “the word ‘knowingly’ imports only a knowledge that the facts exist which bring the act or omission within the provisions of [the law]. It does not require any knowledge of the unlawfulness of such act or omission.” See Idaho Code § 18-101(5).

3.3 When is an accountable person liable for knowingly misusing charitable assets?

Charitable organizations make decisions through their boards of directors. A court may find that a charitable organization knowingly misused charitable assets if the board of directors, as a collective group, *knowingly* agreed—usually through a vote—to use the charitable organization’s charitable assets in a manner that is inconsistent with (a) a law applicable to the charitable assets, (b) the restrictions in a gift instrument governing charitable assets, or (c) the charitable organization’s charitable purpose.

3.4 Are there circumstances where an accountable person misused charitable assets but is not liable under ICAPA?

An accountable person is *not* liable under ICAPA for misusing charitable assets if the accountable person did not *knowingly* misuse charitable assets or:

- discharged his duties as an accountable person in compliance with the standards of conduct set forth in sections 30-30-618 and 30-30-623 of the Idaho Nonprofit Corporations Act, irrespective of whether the accountable person would otherwise be subject to the provisions of such sections.
- acted in compliance with the applicable trust instrument and that trust instrument complies with Idaho law.
- qualifies for immunity under Idaho Code § 6-1605.
- acted in compliance with a court order regarding a matter for which the Attorney General received timely notice as provided by applicable law, thereby providing the attorney general time to file any objection and be heard by the court regarding the matter.

3.5 What actions may the Attorney General take if he suspects a charitable organization or an accountable person knowingly misused or is misusing charitable assets?

Investigate. When the Attorney General has a reason to believe that a charitable organization or an accountable person has knowingly misused charitable assets or is knowingly misusing charitable assets, the Attorney General has authority under ICAPA to initiate an investigation of the charitable organization or the accountable person. (*See* FAQ 3.6)

Negotiate Agreements. If available evidence indicates a charitable organization or an accountable person knowingly misused or is misusing charitable assets, the Attorney General must offer the charitable organization or accountable person an opportunity to sign an assurance of voluntary compliance (*see* FAQ 3.10) or a consent judgment (*see* FAQ 3.12).

File a Lawsuit. ICAPA also allows the Attorney General to file a civil lawsuit against a charitable organization or an accountable person for the alleged misuse of charitable assets. The Attorney General files the action on behalf of the State of Idaho and asks the court to order certain injunctive and financial relief. (*See* FAQ 3.14)

3.6 What happens during the Attorney General's investigation?

Investigative Demands. The Attorney General may personally serve a charitable organization or an accountable person with an investigative demand asking the charitable organization or accountable person to provide the Attorney General with certain information and documentary materials. The primary purpose of the Attorney General's investigation is to determine whether evidence exists to establish that the charitable organization or accountable person misused charitable assets. The charitable organization or accountable person has 20 days from the date of service of the investigative demand to fully respond. Investigative demands are enforceable by a court. (*See* FAQ 3.9)

Inquiry Letters. In certain instances, the Attorney General, rather than serving an investigative demand on the charitable organization, may send the charitable organization or accountable person a letter inquiring about allegations of charitable asset misuse. Such “inquiries” are not enforceable by a court.

3.7 What should a charitable organization or an accountable person do if it receives an investigative demand from the Attorney General?

Consult a Private Attorney. The Attorney General encourages charitable organizations and accountable persons to speak to their private attorneys about their receiving an investigative demand. A private attorney is in the best position to advise charitable organizations and accountable persons about how to answer an investigative demand.

Obtain a Referral. The Idaho State Bar’s Lawyer Referral Service provides referrals to attorneys who agree to provide potential clients with a 30-minute consultation for only \$35. The Service is available at 208-334-4500 or www.isb.idaho.gov.

Contact the Attorney General. A charitable organization, accountable person, or representative may contact the Attorney General’s Office with general questions about an investigative demand. The Attorney General, however, cannot give legal advice or assistance to a charitable organization, accountable person, or representative. (*See* FAQ 1.5)

3.8 If a charitable organization or an accountable person cannot afford to hire a private attorney, can the charitable organization or accountable person get a public defender?

No. ICAPA is a civil statute, not a criminal statute. The State of Idaho is not required to provide a charitable organization or an accountable person with a lawyer. (*See* FAQ 3.7)

3.9 What are the consequences of a charitable organization or an accountable person failing to respond to an investigative demand?

If a charitable organization or an accountable person fails to respond to an investigative demand within the 20-day deadline (or the deadline agreed upon by the parties), the Attorney General may apply to the district court for an order compelling the charitable organization or accountable person to respond. The district court may order the charitable organization or accountable person to cease operating until the charitable organization or accountable person answers the investigative demand. Also, the district court may require the charitable organization or accountable person to pay the Attorney General’s fees and investigative expenses.

3.10 What is an assurance of voluntary compliance?

Purpose. An assurance of voluntary compliance is similar to a written settlement agreement where the Attorney General, on behalf of the State of Idaho, and the charitable organization or accountable person agree to certain terms and conditions. The purpose of an assurance of voluntary compliance is to amicably resolve the Attorney General’s concerns about a charitable organization’s or an accountable person’s alleged misuse of charitable assets.

Scope. By signing an assurance of voluntary compliance, the charitable organization or accountable person does not admit liability or wrongdoing, but instead agrees to make changes or refrain from engaging in certain conduct. As a part of the assurance of voluntary

compliance, the Attorney General may require the charitable organization or accountable person to pay restitution to donors or to the charitable organization for the alleged loss of charitable assets. Also, the charitable organization or accountable person may have to reimburse the Attorney General for any fees and expenses incurred during the Attorney General's investigation and to provide future reports to the Attorney General.

Court-Approved. The Attorney General files the signed assurance of voluntary compliance and a proposed order with the appropriate district court to obtain the court's approval of the assurance of voluntary compliance.

3.11 How is an assurance of voluntary compliance enforced?

An assurance of voluntary compliance is enforceable through a civil contempt action against the charitable organization or accountable person. The Attorney General may also reopen his investigation and file a lawsuit against the charitable organization or accountable person.

3.12 What is a consent judgment?

Purpose. Similar to an assurance of voluntary compliance (*see* FAQ 3.10), a consent judgment is a written agreement between the Attorney General, on behalf of the State of Idaho, and the charitable organization or accountable person to resolve the Attorney General's concerns. In most instances, the Attorney General and the charitable organization or accountable person enter into a consent judgment to amicably conclude a lawsuit the Attorney General has filed against the charitable organization or accountable person. Other times a consent judgment is required in lieu of the Attorney General filing a lawsuit against a charitable organization or an accountable person.

Scope. Signing a consent judgment does not mean the charitable organization or accountable person admits liability or wrongdoing. The terms of a consent judgment may require the charitable organization or accountable person to make changes, refrain from engaging in certain conduct, and submit future reports to the Attorney General. Additionally, the charitable organization or accountable person may have to pay: (a) restitution to donors or the charitable organization, (b) civil penalties of up to \$5,000 for each alleged misuse of charitable assets, and (c) the Attorney General's incurred fees and expenses.

Court-Approved. The Attorney General files the signed consent judgment, along with a proposed order and judgment, with the appropriate district court. The district court must approve the consent judgment by issuing an order and judgment.

3.13 How is a consent judgment enforced?

The Attorney General may file a petition with the district court requesting that the district court impose a civil penalty against the charitable organization or accountable person. The district court has authority to order the charitable organization or accountable person to pay the Attorney General civil penalties of up to \$10,000 for each violation of the consent judgment. The Attorney General also may reopen his investigation and file a lawsuit against the charitable organization or accountable person.

3.14 Is an assurance of voluntary compliance or a consent judgment confidential?

No. ICAPA requires the Attorney General to file a signed assurance of voluntary compliance or consent judgment with an Idaho district court. The assurance of voluntary compliance or consent judgment are available to the public and media upon request. Additionally, the Attorney General may issue a press release to inform the public of the settlement.

3.15 In what Idaho court does the Attorney General file lawsuits alleging the misuse of charitable assets?

The Attorney General must file lawsuits brought under ICAPA with the Idaho state district court.

3.16 In what Idaho county does the Attorney General file lawsuits alleging the misuse of charitable assets?

The county in which the Attorney General files his lawsuit depends on the location of the charitable organization or accountable person. Unless the parties agree otherwise, the Attorney General files ICAPA lawsuits in the county where the charitable organization is located or where the accountable person resides. For charitable organizations or accountable persons located outside of Idaho, the Attorney General may file ICAPA lawsuits in any Idaho county. As a matter of convenience, the Attorney General typically selects Ada County.

3.17 What penalties does a charitable organization or an accountable person face if a court determines the charitable organization or accountable person misused charitable assets?

Under ICAPA, the Attorney General may request and a court has authority to:

- issue a temporary restraining order or preliminary or permanent injunction to enjoin the alleged violator’s unlawful activities.
- appoint a master, receiver, or escrow agent to gather, account for, and oversee the charitable assets of the alleged violator and prevent further dissipation of any charitable assets.
- remove the alleged violator from his or her position as an accountable person of the charitable organization.
- terminate a charitable organization and liquidate its charitable assets in accordance with the charitable organization’s governing instrument(s) or applicable law.
- require the alleged violator to pay damages or restitution of any charitable assets misappropriated, lost, or diverted.
- require the alleged violator to pay civil penalties of up to \$50,000.
- order the alleged violator to perform a specific action.

- require the alleged violator to pay the attorney general’s fees, reasonable expenses, and investigative costs.
- order other appropriate relief.

3.18 Can an accountable person get jail or prison time if a court determines the accountable person knowingly misused charitable assets?

No. ICAPA is a civil statute, not a criminal statute. The Attorney General has no authority under ICAPA to seek criminal punishment (e.g., jail time, probation, fines), and the district court has no authority under ICAPA to impose a criminal punishment.

3.19 How does a board member, donor, or a member of the public notify the Attorney General if he or she has information about a charitable organization or an accountable person misusing charitable assets?

Anyone who believes a charitable organization or an accountable person has misused or is misusing charitable assets may file a “Charitable Organization Complaint” with the Attorney General. A complaint form is available on the Attorney General’s website at www.ag.idaho.gov. The Attorney General encourages complainants to provide documentation that substantiates any allegations made in the complaint.

4.0 WRITTEN NOTICE TO ATTORNEY GENERAL (IDAHO CODE § 48-1907)

4.1 When must a charitable organization provide written notice to the Attorney General under ICAPA?

A charitable organization must provide written notice to the Attorney General at least 30 days before the organization dissolves, converts to a noncharitable entity, or terminates and sells or transfers all or substantially all of its charitable assets.

4.2 Who must provide written notice to the Attorney General under ICAPA?

A charitable organization that:

- *holds charitable assets with an aggregate fair market value exceeding \$10,000* must provide written notice to the Attorney General if the organization plans to dissolve, convert to a noncharitable entity, or terminate and sell or transfer all or substantially all of its charitable assets.
- *received within the preceding 12 months or at any time held charitable assets with an aggregate fair market value exceeding \$10,000* must provide written notice to the Attorney General if the organization plans to dissolve, convert to a noncharitable entity, or terminate and sell or transfer all or substantially all of its charitable assets.

4.3 Must a charitable organization provide notice to the Attorney General under ICAPA each time a charitable organization sells or transfers a charitable asset?

No. Notice is required only when a charitable organization *sells or transfers all or substantially all* of its charitable assets as part of a charitable organization’s *dissolution*,

conversion to a noncharitable entity, or termination. Sales or transfers that occur in a charitable organization's ordinary course of business are not reported to the Attorney General under ICAPA.

Notice under Other Statutes. In instances where a charitable organization or person must provide notice to the Attorney General under other applicable laws, including, but not limited to Idaho Code §§ 68-1204 and 33-5006 and the Uniform Probate Code, title 15, Idaho Code, the charitable organization or person, for convenience purposes, may use the form ICAPA Notice. The charitable organization or person should check the box next to "Other" in section 1 of the form Notice and cite the applicable notice statute. (*See the instructions for the form Notice Instructions for more information.*)

4.4 Does ICAPA's notice requirement apply when a trustee seeks to amend the terms of a charitable trust's governing instrument?

No. ICAPA does not require notice when a trustee seeks to amend the terms of a charitable trust's governing instrument.

Please keep in mind, however, that *Idaho Code § 68-1204* requires a trustee to notify and obtain consent from the Attorney General when the trustee seeks to amend the terms of a charitable trust's governing instrument to:

- assure a charitable trust conforms with the tax exemption requirements of the Internal Revenue Code.
- terminate the status of the charitable trust as a private foundation pursuant to Internal Revenue Code § 507(b)(1).

For convenience purposes, a trustee responsible for notifying the Attorney General may use the form ICAPA Notice. The charitable organization or charitable trust should check the box next to "Other" in section 1 of the form Notice and cite the applicable notice statute. (*See the instructions for the form Notice Instructions for more information.*)

4.5 Does ICAPA's notice requirement apply to a trustee or a charitable organization seeking to release a restricted purpose within a charitable trust agreement or gift instrument, including those that establish an endowment fund?

No. ICAPA's notice requirement does not apply to instances where a trustee or a charitable organization seeks to release a restricted purpose of a charitable trust agreement or gift instrument.

Please keep in mind, however, that a trustee or a charitable organization seeking to release a restricted purpose of a charitable trust agreement or gift instrument *must comply with the notice requirements of other applicable laws*, including, but not limited to Idaho Code §§ 68-1204 and 33-5006 and the Uniform Probate Code, title 15, Idaho Code.

For convenience purposes, the trustee or charitable organization responsible for notifying the Attorney General may use the form ICAPA Notice. The trustee or charitable organization should check the box next to "Other" in section 1 of the form Notice and cite the applicable notice statute. (*See the instructions for the form Notice Instructions for more information.*)

4.6 Does ICAPA’s notice requirement apply to a nonprofit hospital that intends to sell, transfer, lease, option, or convey \$50 million in assets or 40% of its assets to an entity or person other than a nonprofit entity?

No. A nonprofit hospital that intends to sell, transfer, lease, option, or convey \$50 million in assets or 40% of its assets to a person other than a nonprofit must comply with the notice requirement outlined in Idaho Code § 48-1503 and all other provisions of the Idaho Nonprofit Hospital Conversion Act, title 48, chapter 15, Idaho Code.

4.7 What assistance does the Attorney General provide to the charitable organization to help it design a proposed plan?

The Attorney General can provide general guidance to a charitable organization that plans to dissolve, convert to a noncharitable organization, or terminate and dispose of all or substantially all of its charitable assets. If a charitable organization needs to speak with the Attorney General about its proposed plan or has questions about the notice process or any of ICAPA’s provisions, the charitable organization may call, email, or write to the Attorney General. (See FAQ 1.5)

A charitable organization that needs legal assistance may contact the Idaho State Bar’s Lawyer Referral Service to obtain a referral to an attorney who participates in the Service. These attorneys agree to provide potential clients with a 30-minute consultation for only \$35. The Service is available at 208-334-4500 or www.isb.idaho.gov.

4.8 At what point in the charitable organization’s planning process must the charitable organization give notice to the Attorney General about the charitable organization’s intent to dissolve, convert to a noncharitable organization, or terminate and dispose of all or substantially all of its charitable assets?

A charitable organization must provide its notice to the Attorney General at least 30 days before the charitable organization dissolves, converts to a noncharitable organization, or terminates and disposes of all or substantially all of its assets.

4.9 How does a charitable organization provide written notice to the Attorney General’s Office?

A charitable organization may complete and submit the form “*Notice of Intent to Dissolve/Convert to Noncharitable Entity/Transfer or Sell All or Substantially All Charitable Assets*” (“form Notice”) available on the Attorney General’s website at www.ag.idaho.gov or mail, deliver, email, or fax the required information to the Attorney General’s Consumer Protection Division. (See FAQ 1.5)

4.10 Are there instructions that explain how a charitable organization needs to complete the form Notice?

Yes. [Instructions for completing the form Notice are available here.](#)

4.11 May a charitable organization submit the form Notice to the Attorney General and include additional documents?

Yes. A charitable organization may upload additional documents at the time it submits its form Notice, or the charitable organization may deliver, mail, email, or fax its additional documents to the Attorney General.

4.12 Must a charitable organization use the form Notice?

No. The form Notice is made available as a courtesy to charitable organizations. Charitable organizations may submit the required notice information to the Attorney General in any format.

4.13 What information must a charitable organization provide to the Attorney General in its notice?

Idaho Code § 48-1907(3) requires the charitable organization to provide:

- the legal names and mailing addresses of the charitable organization's directors and officers;
- a description of the charitable organization's charitable assets and the charitable purpose of the charitable organization's charitable assets; and
- a copy or summary of the charitable organization's plan of dissolution, conversion to a noncharitable organization, or termination and disposal of all or substantially all of the charitable organization's charitable assets.

4.14 Are there any fees or other costs associated with providing notice to the Attorney General?

No. There is no fee to provide notice to the Attorney General.

4.15 What does the Attorney General do with the charitable organization's written notice?

The Attorney General has 30 days from his receipt of the charitable organization's written notice to review and object to the charitable organization's proposed plan.

4.16 Will the Attorney General notify the charitable organization that the Attorney General received the charitable organization's written notice?

Form Notice Receipt Confirmation. A charitable organization that submits a form Notice through the Attorney General's website receives immediate confirmation of the Attorney General's receipt. Additionally, the charitable organization will receive an emailed copy of the charitable organization's submitted form Notice.

Other Notice Receipt Confirmation. If a charitable organization wants to receive confirmation from the Attorney General that he received the charitable organization's written notice, the charitable organization may request in its written notice or in attached correspondence that it requests confirmation of receipt from the Attorney General. The Attorney General then will email or mail such confirmation to the charitable organization.

4.17 Does the Attorney General communicate with the charitable organization or its representative during the Attorney General’s 30-day review of a written notice?

Sometimes. If the Attorney General needs additional information from the charitable organization about its proposed plan, the Attorney General will contact the charitable organization or its representative.

The Attorney General also will provide the charitable organization or its representative with written notice of the Attorney General’s intent to object to the charitable organization’s proposed plan.

4.18 How does the Attorney General inform the charitable organization that the Attorney General consents to the charitable organization’s proposed plan?

Within 30 days of the Attorney General receiving the charitable organization’s complete notice, the Attorney General likely will send the charitable organization a letter stating that he does not oppose the charitable organization’s proposed plan. If the charitable organization receives nothing from the Attorney General within the 30-day review period, the charitable organization’s proposed plan is deemed approved, and the charitable organization may implement its plan.

4.19 For what reason(s) would the Attorney General oppose a charitable organization’s proposed plan?

Because every situation is unique, the Attorney General cannot provide a comprehensive list of reasons he may oppose a charitable organization’s proposed plan. The Attorney General likely would oppose a charitable organization’s proposed plan to:

- sell all or substantially all of the charitable organization’s charitable assets to a for-profit business for less than the charitable assets’ fair market value.
- transfer all or substantially all of the charitable organization’s charitable assets to a third-party that does not share the charitable organization’s charitable purpose.
- sell or transfer all or substantially all of the charitable organization’s charitable assets in violation of a restricted purpose or a donor’s intent.
- distribute all or substantially all of the charitable organization’s charitable assets to a private person.
- use the charitable organization’s charitable assets to pay personal debts or expenses of the charitable organization’s accountable persons or others.
- convert to a noncharitable entity and retain the charitable organization’s charitable assets.

4.20 What happens if the Attorney General opposes the charitable organization’s proposed plan?

Notice of Opposition to Proposed Plan. If the Attorney General opposes the charitable organization’s proposed plan the Attorney General will notify the charitable organization in writing and provide the reasons for the Attorney General’s opposition. The charitable organization must refrain from implementing its proposed plan for 14 days after it receives the Attorney General’s letter opposing the charitable organization’s proposed plan.

Attempt to Negotiate a Resolution. The Attorney General will work with the charitable organization during the 14-day waiting period to resolve the Attorney General’s opposition to the charitable organization’s proposed plan.

Lawsuit Filed. The Attorney General has discretion to file a lawsuit seeking to block the charitable organization’s proposed plan if the Attorney General and the charitable organization cannot reach a resolution within the 14-day waiting period. (*See* FAQ 4.20)

No Lawsuit Filed. If 14 days pass from when the charitable organization received the Attorney General’s written opposition and the Attorney General does *not* file suit seeking to block the charitable organization’s proposed plan, the charitable organization may proceed with its plan.

4.21 What happens if the Attorney General files suit seeking to block the charitable organization’s proposed plan?

Complaint and Answer. If the Attorney General files a lawsuit seeking to block the charitable organization’s proposed plan, the Attorney General will personally serve the charitable organization with the Attorney General’s filed complaint. The charitable organization then may file an answer to the Attorney General’s complaint.

Hearing. The district court will set a date and time for a hearing where the parties may present evidence or arguments regarding their respective positions. The district court also may use the hearing as an opportunity to question the parties about factual and legal issues.

District Court’s Decision. The district court must review the charitable organization’s proposed plan to determine if it complies with charitable trust law. If the district court determines the charitable organization’s proposed plan does not comply with charitable trust law, the district court may enter an order enjoining the charitable organization from implementing its proposed plan. On the other hand, a decision in favor of the charitable organization means it may proceed with its plan.

4.22 After a charitable organization completes its plan to dissolve, convert to a noncharitable organization, or terminate and dispose of all or substantially all of its charitable assets, must the charitable organization report to the Attorney General?

Yes. A charitable organization has 90 days from the date on which it completes its dissolution, conversion to a noncharitable organization, or termination and disposal of all or substantially all of its charitable assets to submit a *written list* to the Attorney General that includes, at a minimum, (a) the name and address of each person who received the charitable organization’s charitable assets, and (b) a description of which charitable assets the person received.

Where to Report. A charitable organization must submit its report to the Attorney General's Consumer Protection Division. Contact information for the Consumer Protection Division is provided in FAQ 1.5.

4.23 Will the Attorney General remind the charitable organization that it must report to the Attorney General after the charitable organization dissolves, converts to a noncharitable organization, or terminates and disposes of all or substantially all of its charitable assets?

No. The Attorney General will not know the date on which a charitable organization completes its plan to dissolve, convert to a noncharitable organization, or terminate and dispose of all or substantially all of its charitable assets. As such, the Attorney General cannot calculate the date on which the charitable organization's report is due.

Information about Reporting Requirement. The Attorney General will provide general information about the reporting requirement when the Attorney General provides his written consent to the charitable organization's proposed plan.

5.0 FAILURE TO COMPLY WITH THE NOTICE REQUIREMENT

5.1 May the Attorney General investigate a charitable organization for failing to give notice as required under Idaho Code § 48-1907?

Yes. When the Attorney General has reason to believe that a charitable organization has failed to give the required notice, the Attorney General may initiate an investigation into the charitable organization as discussed in FAQs 3.6 - 3.9.

5.2 What actions may the Attorney General take if he suspects a charitable organization failed to give proper notice as required under Idaho Code § 48-1907?

Investigate. When the Attorney General has a reason to believe that a charitable organization failed to give proper notice of the charitable organization's plan to dissolve, convert to a noncharitable organization, or terminate and dispose of all or substantially all of its charitable assets, the Attorney General has authority under ICAPA to initiate an investigation of the charitable organization or the accountable person. (*See* FAQ 3.6 - 3.9)

Negotiate Agreements. If available evidence indicates a charitable organization failed to give proper notice of the charitable organization's plan to dissolve, convert to a noncharitable organization, or terminate and dispose of all or substantially all of its charitable assets, the Attorney General, before filing a lawsuit, must offer the charitable organization or accountable person an opportunity to sign an assurance of voluntary compliance (*see generally* FAQ 3.10 - 3.11 & 3.14) or a consent judgment (*see generally* FAQ 3.12 - 3.14).

File a Lawsuit. ICAPA also allows the Attorney General to file a civil lawsuit against a charitable organization or accountable person for failing to give proper notice of the charitable organization's plan to dissolve, convert to a noncharitable organization, or terminate and dispose of all or substantially all of its charitable assets. The Attorney General files the action on behalf of the State of Idaho and asks the court to order certain injunctive and financial relief. (*See* FAQ 5.4)

5.3 In lieu of filing a court action for failing to provide proper notice, may the Attorney General require the charitable organization's accountable person(s) to sign an assurance of voluntary compliance or a consent judgment?

Yes. As discussed in FAQs 3.10 - 3.14, rather than filing a lawsuit against a charitable organization and its accountable person(s), the Attorney General may require the accountable person(s) to sign an assurance of voluntary compliance or a consent judgment.

5.4 What are the consequences of a charitable organization failing to give notice as required under Idaho Code § 48-1907?

Failure to comply with the notice requirement of Idaho Code § 48-1907 subjects the charitable organization and its accountable person(s) to liability and a civil action in district court as provided in Idaho Code § 48-1910(2). The Attorney General may bring an action against the charitable organization and its accountable person(s) to:

- stop the charitable organization from proceeding with its proposed plan to dissolve, convert to a noncharitable organization, or terminate and dispose of all or substantially all of its charitable assets.
- appoint a master, receiver, or escrow agent to gather, account for, and oversee charitable assets if it appears the charitable organization's charitable assets may be dissolved, converted, terminated, or disposed of during the Attorney General's lawsuit.
- terminate a charitable organization and liquidate its charitable assets in accordance with its governing instrument(s) or applicable law.
- recover from the charitable organization's accountable person(s) civil penalties of up to \$5,000 if the charitable organization's accountable person(s) knew of and intended to violate the notice provisions of Idaho Code § 48-1907.
- obtain other appropriate relief.

5.5 In what Idaho court does the Attorney General file a lawsuit against a charitable organization's accountable persons for failing to provide proper notice?

The Attorney General must file lawsuits brought under ICAPA with the Idaho state district court.

5.6 In what Idaho county does the Attorney General file a lawsuit against a charitable organization for failing to provide proper notice?

The county in which the Attorney General files depends on the location of the charitable organization. Unless the parties agree otherwise, the Attorney General files lawsuits under ICAPA in the county where the charitable organization is located. For charitable organizations located outside of Idaho, the Attorney General may file lawsuits under ICAPA in any Idaho county. As a matter of convenience, the Attorney General typically selects Ada County.

- 5.7 May a board member, donor, or a member of the public notify the Attorney General if he or she has information about a charitable organization failing to provide proper notice to the Attorney General about the charitable organization’s intent to dissolve, convert to a noncharitable organization, or terminate and terminate and dispose of all or substantially all of its charitable assets?**

Yes. Anyone may file a “Charitable Organization Complaint” with the Attorney General if he or she believes a charitable organization failed to notify the Attorney General about the charitable organization’s intent to dissolve, convert to a noncharitable organization, or terminate and dispose of all or substantially all of its charitable assets. A complaint form is available on the Attorney General’s website at www.ag.idaho.gov. The Attorney General encourages complainants to provide documentation that substantiates any allegations made in the complaint.

6.0 RECOVERED RESTITUTION, CHARITABLE ASSETS, CIVIL PENALTIES, AND FEES (IDAHO CODE §§ 48-1913 & 48-1914)

- 6.1 What happens to the restitution funds the Attorney General recovers for violations of ICAPA?**

The Attorney General may recover restitution through an ICAPA action to reimburse persons, including donors, who have incurred actual damages as a direct result of a violation under ICAPA. The funds are held in the state treasury until such time as the Attorney General directs the State of Idaho to reimburse a person for any actual damages the person incurred because of an ICAPA violation.

- 6.2 What happens to the charitable assets the Attorney General recovers for violations of ICAPA?**

Any charitable assets the Attorney General recovers under ICAPA either are (a) returned to the injured charitable organization to restore its misappropriated, lost, or diverted charitable assets, or (b) distributed pursuant to a court-approved cy pres distribution to a charitable organization that has a charitable purpose similar to that of the charitable organization from which the Attorney General recovered the charitable assets.

- 6.3 What is a cy pres distribution?**

“Cy pres” is a legal doctrine that means “as near as possible.” Under ICAPA, if the Attorney General cannot return recovered charitable assets to the charitable organization that previously held them, the Attorney General may ask the district court to approve transferring the charitable assets to another charitable organization with a similar charitable purpose. This ensures that charitable assets are not diverted from their original charitable purpose.

- 6.4 What happens to civil penalty funds the Attorney General recovers for violations of ICAPA?**

Civil penalties are remitted to the State of Idaho’s consumer protection fund, which was established in 2001 and are subject to legislative appropriation.

6.5 What happens to the attorney's fees and costs the Attorney General recovers for violations of ICAPA?

Recovered attorney's fees and costs are handled the same as civil penalties. (*See* FAQ 6.4)