

CGB REPORTS



Special Report: **Business Marketing**

Legal Considerations for Lotteries and Contests

Our clients sometimes ask us to review rules for contests designed to attract new business or reward current customers. Businesses desiring to conduct such contests must be very careful not to violate California's laws against lotteries. Article 4, section 19 of the California Constitution prohibits the legislature from authorizing lotteries in California. The legislature is also required to prohibit sales of lottery tickets.

This strict prohibition is subject to a single exception – the California State Lottery (California Constitution, Article 4, section 19 (d)). The State of California is the only entity authorized to conduct lotteries in the state.

What about the contests we see at fast food restaurants, gas stations, tax preparers, and other businesses? These contests are legal because they are not considered lotteries under California law.

According to California Penal Code section 319 a lottery is defined as "...any scheme for the disposal or distribution of property by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property

or a portion of it, or for any share or any interest in such property, upon any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle, or gift enterprise, or by whatever name the same may be known."

This definition of a lottery contains three elements. First, in order to be a lottery there must be a distribution of property. The property distributed is the prize, whether that prize consists of money, goods, or services.

The next element is that the property must be distributed by chance. The chance element is satisfied by a random drawing or randomly distributed game pieces or "scratchers".

The final, and perhaps most important element, is that the chance to win is obtained by paying valuable consideration. Consideration is anything of value that is given in order to satisfy the terms of a contract. Money, goods, and services are the most common types of consideration. In connection with lotteries, consideration might take the form of a purchase, money given in exchange

for a chance to win, or a referral of new business.

Rules for contests and drawings held by major businesses all contain a disclaimer stating "no purchase necessary" or words to that effect. The fact that no purchase, or giving of consideration, is required means the consideration element of a lottery is not present in the contest. Therefore, as you contemplate holding a drawing or contest to promote your business, you need to state within the rules that no purchase is necessary.

Another exception to the statutes prohibiting lotteries is for non-profit charitable organizations that hold raffles. The rules for these contests are found in California Penal Code section 320.5. A raffle to benefit a charitable organization must receive approval from state agencies and return a high percentage of proceeds to the charity.

If you are contemplating a contest to promote your business, it is a good idea to consult an attorney who can assist you in determining whether your contest complies with California's strict prohibition against lotteries.

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