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## Sweepstakes, Contests and Lotteries: Businesses Win by Following the Rules

When running a game, the participants are not the only ones beholden to rules. Attorneys versed in this field of law know that in order to create a successful sweepstakes or contest, the business hosting such a game has the burden of ensuring all rules of the game are clear and it does not run afoul of any local, state or federal gaming laws.

By **Maxwell Briskman Stanfield** | July 07, 2020



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During a fraught economic time when businesses may be seeking to engage with consumers any way possible, a great marketing technique is hosting a game, including a sweepstakes (game of chance) or contest (game of skill). It's as simple as having people fill out a form or drop a business card into a fishbowl to win a random drawing or submit a creative photo or sketch to earn a prize.

However, when running a game, the participants are not the only ones beholden to rules. Attorneys versed in this field of law know that in order to create a successful sweepstakes or contest, the business hosting such a game has the burden of ensuring all rules of the game are clear and it does not run afoul of any local, state or federal gaming laws.

Notably, businesses and their legal advisors need to be sure any game is not actually an illegal lottery.

As we examine each type of game, we will see planning is the key to implementation and making the game a winner.

## Defining a Lottery

With lotteries limited to the realm of governmental entities, unsurprisingly, it is illegal for businesses to conduct one of their own. Some common games, however, share elements of lotteries without actually being one.

Lotteries have three elements:

- Entering the lottery requires some type of payment or consideration (typically money, but not necessarily so);
- An element of chance determines the winner (pulling the name out of a hat or a ball out of a machine, etc.).  
and
- The prize (money, vehicle, vacation, etc.) is given to the winner,

Businesses can avoid breaking lottery laws by simply excluding one of these elements. The most common ways to do this is by eliminating the consideration element, as in a sweepstakes, or the chance element, as in a contest or game of skill.

Certain nonprofit entities have the very limited ability to host so-called lotteries, but these are limited in scope and duration.

## Separating Sweepstakes From Lotteries

We have all heard the phrase before: “No purchase necessary to enter and win.” This is more than marketing; it plainly outlines what makes most sweepstakes different from lotteries — there is a free method of entry.

A sweepstakes may still have a monetary way to enter the raffle, giveaway, etc., but if people can also enter by filling out a form requiring their name, email or other personal information, or some other substantial act with no required payment, it is not a lottery. Importantly, the “free” entries must be treated the same as “paid” entries, including having equal odds of winning for each entry and the same method for selecting the winner.

A drawing for the winning entry cannot occur until all free entries have been received. To keep things fair, the rules should plainly establish a cut-off date by which all mail-in entries must be received (not postmarked).

## Separating Contests From Lotteries

Differing from lotteries in a clearer fashion than sweepstakes do, contests include three elements, in general:

- Skill determines the winner
- Entry into the contest may require payment or be free
- A prize is awarded to the winner

The first element is most important here. If the contest is based on *skill*, even if a form of payment is required to enter, it is not an illegal lottery. There is no element of chance.

## Writing the Rules

No matter if it is a game of chance or skill, businesses should include an accompanying set of official rules and related information when announcing it, listing them in marketing materials or online. Some of the most important rules include but are not limited to:

- Dates of the contest/sweepstakes

- Odds of winning
- Who is eligible to play
- Description of the prize(s) and approximate retail value
- Whether substitutes for prizes will be permitted
- What happens if the winner dies before claiming the prize
- How the winner is selected and tiebreaker information
- Free method of entry
- If content is generated by a participant, who owns it
- Privacy policy
- Identity of any sponsor(s)
- Geographic exclusions, if necessary (e.g., "Residents of New York are not eligible to play.")
- A catch-all statement that the contest or sweepstakes is "Void where prohibited by law."

## Ending the Game

Once a contest or sweepstakes reaches its end date, the business running it has a number of duties. It must select the winner(s), distribute the prize(s), obtain necessary waivers and related paperwork, and prepare 1099 tax forms for the winners, if they won anything with a value over \$600, because these are taxable events. Also, the group running the contest or sweepstakes must retain information surrounding it for two years.

It is important to note certain states have extremely strict registration requirements if the total amount of prizes exceed a certain amount. New York and Florida have a prize threshold of \$5,000, and Rhode Island has a threshold of \$500. Additionally, bonds must be filed in the amount of the prizes. With those restrictions, it is no surprise these states are often excluded from contests and sweepstakes because of the burden of complying with the applicable laws.

Outside of the United States, there are additional rules and regulations governing contests and sweepstakes. Attorneys and leaders at a business hosting a game should be aware of the audience and potential participants to be sure the competition does not break another country or jurisdiction's laws. If it does, or the burden to meet the extra rules is too much, an exclusion may be necessary in the official rules.

Indeed, following the rules is just as important for the entity hosting the contest or sweepstakes as it is for those who participate. Failing to do so can lead to a loss without even playing the game.

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