RULES RULE: BEST PRACTICES IN GIFT ACCEPTANCE POLICIES

PG CALC WEBINAR

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I. Creating gift acceptance policies

Gift acceptance policies serve a number of important purposes. They provide a roadmap as to the assets and vehicles a charity is willing to accept. Policies describe the due diligence required to accept unusual assets. Also, policies ensure that a charity accepts only gifts that will advance the mission of the non-profit and match the risk tolerance of its board.

Gift acceptance policies are not a description of the procedures for acquiring, processing and using gifts. Instead, acceptance policies describe who has the authority to accept gifts on behalf of the charity. Although gifts of cash and publicly traded securities present few issues, gifts of assets other than cash, the cornerstone of a robust planned giving program, require some examination before deciding to accept those assets.

The intent of some policies is to protect the charity. Most prominently, any asset or gift arrangement that subjects the charity to liability requires special attention. Some gifts may present an acceptable level of risk but other arrangements may cause an undue burden to the charity. Good acceptance policies establish a process that is fair to the donor and transparent to the parties so that the charity accepts gifts that strengthen the organization.

This paper will lay out a process for developing good gift acceptance policies to support a robust development effort.

A. Policies v. Procedures

Gift acceptance policies are a set of rules as to acceptable assets and gift vehicles to minimize risk and maximize gift potential. Acceptance policies represent guidance for staff and leadership. Donors expect timely responses as to acceptable assets and vehicles. A clear set of acceptance policies facilitates a short decision cycle to accommodate donor expectations. Particularly if your organization is large and/or geographically diverse, a good set of policies facilitates consistent interpretations across multiple gift situations.

The intent of gift acceptance policies is not to act as a comprehensive guide to gift planning techniques. A brief description of assets and particularly gift vehicles in a policy document is a useful reminder of the general characteristics of each gift plan. A detailed recitation of each gift arrangement and in-depth discussions of the tax aspects of these gifts are not appropriate in a gift acceptance policy. Training manuals for staff and leadership are better suited for this information.

Procedures are guidelines for the processes and systems for operating a gift-planning program. Procedures describe the internal practices for accepting and administering gifts. A procedure is a series of steps to be followed as a consistent and repetitive approach to accomplish a result.

A procedures manual is a valuable checklist to ensure compliance. For example, a document separate from gift acceptance policies can describe how to handle gifts of securities, the process of administering realized estate and life income gifts, how to manage and sell illiquid assets such as real estate, and legal substantiation requirements such as the timely issuance of receipts. Such matters are not the subject of a gift acceptance policy.

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B. General Development Policies v. Planned Gift Policies

Some institutions have policies specifically dealing with planned gifts. Others have general policies applicable to all kinds of gifts including planned gifts. The policies pertaining to planned gifts should deal both with the criteria for accepting gifts. The purpose of the policies is to protect donors by requiring the charity to provide full disclosure of all relevant facts about a gift and to encourage donors to consult with independent advisors, and to protect the charity by assuring that gifts will be for a purpose compatible with the charity's mission and that gifts will be cost effective.

C. Drafting Planned Gift Policies

The first step in drafting gift acceptance polices is to define assets and gift vehicles that can be accepted without the approval or input from charity leadership or outside experts. As a general matter, gift acceptance policies should clearly describe assets, gift vehicles, and gift restrictions that can be accepted without oversight from outside the development office. Typically, the development office can accept gifts of cash and publicly traded securities without prior approval or examination. Gift annuities funded with these assets may be subject to age and dollar minimums, and at some charities, dollar maximums, but are otherwise not subject to review. The charity's chief development officer and her designees typically oversee routine gift arrangements. The policy document should explicitly describe who is vested with the discretion to accept these gifts and assets.

The next step in drafting policies is to define who has authority to accept more complex assets and gift vehicles, and the due diligence required prior to acceptance. Policies should not designate a specific individual by name with specific duties in the gift policies. Rather the policy should use the title or office to assign these duties. The policy may create a gift acceptance committee to determine whether to accept these more complex gifts. The Committee may have a modest standing membership of the chief executive officer, the chief development officer and the chief financial officer. While the Committee sounds formal and complicated, it is in fact an ad hoc group without regular meetings or structure. They are called upon only when gifts require due diligence prior to acceptance. The small numbers of standing members may call upon internal or external resources to evaluate a particular gift. For example, a proffered gift of real estate may require input from experts on the type of property offered, the potential risk of ownership and strategies for quickly disposing of the property. Depending on the level of potential liability, there may be some situations where Board approval is required.
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II. General Development Policies

A. The gift acceptance committee

The gift acceptance committee should take into account obvious liabilities like financial risk and environmental responsibility. The Committee may need input from outside experts on particular assets and unusual planned gift arrangements. The committee should consider the reputational risk to the charity in accepting gifts that could be problematic because of the identity of the donor. (Are there criminal ties or polarizing politics involved, for example?) The board should examine an asset that it is the subject of public controversy such as an industrial facility adjacent to residential property or a property of historical significance. The committee is charged with managing the potential liability of gifts. Most frequently, the financial risk of a gift is the

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sticking point. Nonetheless, after proper due diligence it may be that the benefits of the gift outweigh its potential risk. The work of the committee should be transparent, fair, and evenly applied. A perception, real or imagined, that the process favors insiders over others is going to create controversy.

B. Donor Advised Funds

Donor-Advised Fund (DAFs) have grown exponentially since passage of the Pension Protection Act of 2006. In 2016, the Fidelity Charitable Gift Fund received more gifts than any other charity in the United States. Donors can be subject to a 125% penalty tax if they make improper distributions. Because DAFs are an important source of gifts and due to the risk of improper distributions, gift acceptance policies and procedures must address handling of DAF gifts.

The donor is entitled to an income tax charitable deduction for contributions to DAFs. The donor retains the right to make recommendations for grants from the DAF to other public charities. The donor advisor is not entitled to a second income tax charitable deduction as a result of the DAF making a grant to a charitable organization at the recommendation of the donor advisor. DAF grants must be only used for charitable purposes and must not provide more than an incidental benefit to the donor. Prohibited benefits include tickets (even where the donor individually pays the non-charitable portion and a DAF grant pays only the charitable portion), memberships, meals, preferred parking, preferred seating, discounted merchandise, or other preferential treatment from a charity. DAF grants cannot be used to satisfy a donor's legally enforceable pledge. It is permissible for a DAF donor to enter into a letter of intent with the charity to recommend grants from the DAF. A sample letter of intent is attached as Appendix A. Gift acknowledgements for DAF contributions should not be written so that they might be mistaken for a receipt for an income tax charitable deduction. A sample DAF acknowledgment form is attached as Appendix B.

C. Restricted gifts

Restricted gifts may also be the subject of review by the gift acceptance committee. If the restrictions are obviously within the purpose of the charity, such as additions to existing funds, oversight is not likely necessary. Gift restrictions that are outside the charity's mission or for uses that are not likely to exist in the future are particularly subject to approval and possible rejection. Gifts intended to create new endowments are of concern. Endowed gifts should be reduced to writing so the restrictions are well understood. To ensure the continued relevance of endowed funds, endowment agreements should contain a variance power so the board can direct the endowment for purposes most closely reflecting the donor's intent.

D. Appraisals

An appraisal can be required to substantiate certain income tax charitable deductions and for a charity to evaluate whether to accept a gift. Gift policies should describe who would pay for appraisals. Typically, policies require donors to pay for appraisals to substantiate deductions. Charity pays for appraisals that are associated with the due diligence as to whether to accept a gift. There may be situations, often for the sake of donor relations, where the charity will pay for a donor's appraisal. The policy should address whether and when exceptions to the policy are permissible. If the charity pays for the donor's appraisal, the donor should be instructed to reduce their deduction by the cost of the appraisal. The reason for this reduction is the charity has assumed an expense of the donor and income is imputed to the donor.

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E. Donor advisors

Gift policies should encourage each donor (particularly if the gift is large and/or complex) to discuss the proposed gift with independent legal counsel as well as with other professional advisors of the donor's choice. This is to ensure that the donor receives a full and accurate explanation of all aspects of a proposed charitable gift. It also provides a review of the viability of the proposed planned gift within the context of the donor's financial and estate plans.

It is generally not advisable for a charity to pay for legal or accounting advice for the donor. Payment of these expenses raise issues of conflict of interest and imputed income. There may be extraordinary cases where the charity is willing to pay for the donor’s professional advisors. If the charity is willing to make exceptions to the policy, it should be clearly stated the circumstances under which a charity might pay a donor’s professional advisor fees.

F. Gift counting and crediting

Gift policies should address how planned gifts will be counted and credited for accounting purposes, fundraising attainment, and donor recognition. At a minimum, the policy should establish that for accounting purposes, planned gifts will be recorded in accordance with the standards described in Financial Accounting Standards Board (FASB) rules.

There are a number of guidelines for recording planned gifts for fundraising achievement and crediting purposes. The Committee for the Advancement and Support of Education and the National Association of Charitable Gift Planners have also published standards for valuing, recording and crediting planned gifts.

These guidelines are a useful benchmark, but there are varying practices as to how charities actually implement these policies. Regardless of the methodology adopted, they should address revocable and irrevocable gifts, how to handle revocable gifts of a portion of an estate, how to record planned gifts for campaign purposes and the methodology for adjusting the recording of these gifts at present value. The underlying intent of these guidelines is to create transparent and equitable rules for donors and gift officers.

Irrevocable planned gifts (split interest gifts) such as life income gifts, retained life estates, and bargain sales are reported at face value for accounting purposes and the charity records an offsetting liability for the benefit to the donor. For measuring fundraising performance, irrevocable planned gifts are usually counted at face value. For purposes of transparency and equity, these gifts are generally noted as deferred gifts. Split interest gifts managed by the charity (gift annuities and CRTs for example) are normally counted at the time the gift is made. On the death of the beneficiaries of these gifts, the remainders or residua are not counted as additional gifts since they were already reported at face value.

Revocable commitments such as bequests are not generally reported at all for accounting purposes. Revocable gifts are usually counted for fundraising performance at a discounted value. That discount might be the computed present value of the gift. Another method is to offer credit at a discounted value based on the donor’s age and the likelihood of receipt.

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G. Stewardship
Gift policies should offer guidelines for stewarding donors who have made outright gifts or disclosed their intention to leave a planned gift, as well as donors who have made irrevocable planned gifts. The first step in good stewardship is to provide a timely and accurate gift acknowledgment. The actual process of preparing gift acknowledgments is appropriate for the charity's procedures manual. The policy statement describes gift levels for various giving societies and recognition purposes.

The stewardship policies offer a good place to describe acceptable forms of gift agreements, naming policies, and recognition polices that are tied to the size of the donor's gift. The policy statement should <u>not</u> include the guidelines for development officers on personal stewardship. That topic is best addressed in the procedures manual.

H. Tax reporting and compliance policies
There are substantiation rules donors must follow to document some income tax charitable deductions beyond the standard acknowledgment of the gift. Policies should expressly prohibit the charity from providing legal or accounting advice. In the interest of donor relations, however, gift policies should instruct development staff to inform donors when a particular gift requires further substantiation. The computation of the income tax deduction for planned gifts should be provided as a service to donors. Additionally, gifts of non-cash assets might require reporting on IRS Form 8283. Likewise, when a charity sells a non-cash asset, the gift policy should delegate responsibility to development staff to oversee preparation of a Form 8282, if required.

I. Pledges
Donors often make pledges during their lifetimes to support charity. Gift policies should address what type of pledge agreement to use depending on the gift. If the charity is going to rely on receiving a pledge based on naming rights or capital construction, they will typically require a legally enforceable pledge. Whether a pledge to make a charitable donation is an enforceable debt of the donor depends on state contract law. Check with your general counsel or outside counsel as to what type of pledge forms are legally enforceable in your state. A sample pledge form is attached as Appendix C.

III. Policies Governing Acceptance of Particular Assets

A. Cash and publicly traded securities
While it may seem obvious that any charity will accept gifts of cash and publicly traded securities, there are nuances that can make accepting such gifts a challenge. For example, gifts of cash in foreign currency raise several questions. At what amount will the gift be honored, in its U.S. equivalent or at its value in the issuing country? This issue is particularly common with gifts of cash from Canadians to U.S. charities. Who will pay the fees associated with conversion of the currency, the charity or the donor?

Distributions on the termination of charitable remainder trusts, estate gifts such as bequests and beneficiary designations, and distributions from lead trusts are recorded as cash gifts. In-kind distributions of assets other than cash should be subject to the same due diligence applicable to the particular assets described below in more detail.

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B. Real Estate
It is essential for a charity to have well-defined policies codified in their gift acceptance policies. Drafting of the policies should be a collaborative effort among members of the development, finance, and legal departments, executive officers, and board. The gift acceptance committee described above will review the results of due diligence efforts and will make a recommendation to leadership as to whether a property should be accepted – or not.

The gift acceptance policy should outline the steps to be taken during due diligence, including the information to be obtained regarding the property, inspection and environmental reports, the qualified appraisal, site inspections, and who is to bear the responsibility for payment of the expenses associated with the due diligence. The procedures outlined in the gift acceptance policy are intended to ensure that the Gift Acceptance Committee has the information required to make an informed recommendation to organization leadership as to the advisability of accepting the property as a gift.

A sample questionnaire, attached as Appendix D, can gather the information needed to assess whether to accept a gift of real estate. The level of due diligence will vary depending on the nature and use of the property being offered as a gift. Commercial properties may require a higher level of scrutiny than residential real estate or vacant land, for example. Likewise, potential environmental concerns are greater with manufacturing properties than residential properties. Commercial properties subject to leases can limit their marketability. Is your charity prepared to serve as a landlord?

Unless the real estate is going to be used in your mission, the value and marketability of the property are of great interest. As to value, so long as the potential liability and transactional costs are less than the appraised value, the real estate may be considered for acceptance. Of great interest is likely to be the marketability of the property. Appraised value assumes a willing buyer and a willing seller. A marketability analysis assesses the market for the property given the desire to sell it quickly. Not negotiating for the best price and moving the sale quickly probably would mean the charity will have to accept less than the appraised value. These are all issues for consideration in the gift acceptance committee.

C. Closely Held Business Assets
A closely held business is an entity that is not publicly traded and could be in the form of a C or S corporation, limited liability company (LLC), or limited partnership (LP). As with real estate, the gift acceptancy policy should describe a due diligence process to determine the value of the business, its marketability, and potential liability. Acceptance of a closely held business will require approval of the Gift Acceptance Committee and most likely outside legal counsel.

An ownership interest in a closely held business may be subject to restrictions on its transfer. Such a restriction could mean that the security is not marketable or subject to conditions that make the security essentially unmarketable or not readily convertible to cash. The gift acceptance policy should address the charity's willingness to accept restricted assets.

There may be undesirable tax consequences to charities that accept closely held businesses. For example, S corporation stock generates unrelated business taxable income to the charity. These negative tax consequences do not necessarily mean the gift is not viable. If the value of the asset

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is sufficient, many charities will be willing to pay the tax in order to take the gift. Nonetheless, the gift acceptance policy and the Gift Acceptance Committee should assess the potential negative tax consequences of these gifts.

D. Life Insurance

Life insurance is typically a part of most planned giving programs. Persistent sales pitches from insurance agents can leave you confused as to how to proceed with gifts of life insurance. That is why a solid policy statement on gifts of life insurance is essential. The easiest and least risky life insurance gift is for the donor to transfer to charity an older policy that the donor no longer needs. Such a gift is ideal for the donor because the donor doesn't have to give up current income.

Some charities might accept a gift of cash or securities and purchase a policy on the life of the donor. Life insurance is often sold as a way to leverage a gift to charity. That being said, many charities would prefer the current outright gift. If the money that would have gone to pay premiums is invested in the charity's endowment, the net gift to the charity may be larger than waiting for the life insurance death benefit.

The nonprofit must have guidelines that spell out action to take on the receipt of an insurance policy. If the policy is a term policy and premium payments must be made to keep the policy in place, the nonprofit must have the cash flow to make those payments. There are few circumstances in which nonprofits should accept term policies.

A life insurance policy upon which premiums are still due raises serious policy considerations. Should you surrender the policy or keep paying the premium? The Gift Acceptance Committee may want to seek advice from a consultant qualified to evaluate the relative merits of keeping in force or cashing in the policy.

Policies regarding life insurance should give the charity, regardless of the terms of the policy, the discretion to continue to make premium payments, surrender the policy for cash value, sell the policy on the secondary market, or convert the policy to a paid-up policy. Premiums will not be due if the insurance is converted to a paid-up policy, but that will reduce the death benefit. Typically, a buyer of a life insurance policy will be willing to pay more than the surrender value.

E. Oil and Gas Interests

The proliferation of modern means for extracting petroleum products, particularly fracking, has created wealth in many parts of the country not typically associated with oil and gas interests. Oil and gas donors are not only in Texas any more.

As a threshold matter, charities should assess if these gifts have sufficient potential value to warrant a gift that might involve significant resources to complete. Particularly if your organization has no previous experience in accepting these assets, proceed with caution.

Royalties from oil and gas leases can be divided into two categories, working interests, and non-operating interests. These interests may be owned by the donor or they may be owned through a partnership. They are difficult to sell and generate unpredictable income.

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You may decide in your gift acceptance policy that you will not accept gifts of oil and gas interests. If you decide to accept them, your gift policy should direct the gift acceptance committee to engage a qualified professional to evaluate proffered gifts of oil and gas interests.

F. Tangible personal property

Examples of tangible personal property include artwork, motor vehicles, collections, antiques, livestock, crops, inventory, and equipment. These gifts present many of the issues previously mentioned, including how and whether to convert the property to cash. In addition, there is potential liability or cost associated with accepting such an asset. Therefore, policies for acceptance of tangible personal property should specify that only gifts that are readily marketable or useful in carrying out the charity's mission will be accepted.

Gifts of property also raise donor relations issues. The donor may be well-meaning in donating books to a university, but if the books can't be sold or used, the policy would mandate that such gifts will be declined. Nonetheless, what if refusing to accept the gift would damage the relationship of a valued benefactor? The gift acceptance policy can give development staff some discretion to accept gifts that don't strictly follow the policy, but don't subject the charity to liability.

Another donor relations issue is whether to sell or keep the property. Gifts of tangible personal property that are related to the mission of the charity are deductible at fair market value. Gifts of tangible personal property that are not put to a related use are only deductible at the donor's cost basis. This rule could have significant tax implications for the donor. If the property has increased significantly in value, donors will want a fair market value deduction. Let's say a hospital is offered a valuable collection of china. The donor acquired the china at a very low price years ago. To get the fair market value deduction, the hospital would have to put the china to a related use. Since the china can't be used for the hospital's charitable purposes, the gift acceptance policy would require sale of the china, but the donor could only deduct what they paid for the property.

The gift acceptance policies should specify that the due diligence before accepting tangible personal property includes the costs and risks of owning the property. The charity will have to arrange for transportation, security, climate control, and insuring gifts of valuable property such as jewelry or artwork. The gift acceptance committee will have to consider these factors in their decision making.

G. Retirement Plan Assets

Donors may wish to use traditional Individual Retirement Accounts, Roth IRAs, 401(k)s, 403(b)s or other qualified retirement plans to make gifts. These gifts may be made during life, but it may be generally preferable for the donor to donate these assets at death.

Current outright gifts of assets withdrawn from retirement plans are treated as a cash gift deductible at fair market value. The gift policy should encourage the donor to seek tax advice to ensure that the tax implications of such a gift are fully understood by, and acceptable to, the donor.

Since 2013, the charitable IRA rollover is permanent law. To avoid subjecting gifts intended as IRA rollovers to negative tax consequences, gift policies should require that the donor meet the

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requirements of the law in making such a gift. The donor must be over 70 ½, the maximum rollover is limited to $100,000, the source of the rollover must be a traditional or Roth IRA, and the transfer of the rollover must come directly to the charity from the IRA administrator. A policy that requires adherence to the law is beneficial to the donor and the charity.

Gift policies should allow the charity to accept retirement plan assets upon the death of the donor in nearly every case. The acceptance of testamentary gifts of qualified plans present few issues of risk or liability so wouldn't routinely require review by the gift acceptance committee. Unfortunately, the administrative and regulatory rules applicable to qualified plans can be cumbersome. That process, however, should be outlined in the charity's procedures, not in a gift acceptance policy.

IV. Policies Governing Acceptance of Particular Planned Gifts

A. Bequests and Beneficiary Designations

Distributions from estates are generally in the form of cash. As such, they will not routinely be subject to review by the gift acceptance committee. On the other hand, some estates may make in-kind distributions of assets, such as real estate or tangible personal policy. These assets will be subject to the same due diligence applicable to the particular assets described in more detail elsewhere in this paper.

The gift acceptance policy should indicate the title (not the name) of the person in the development office responsible for oversight of receiving bequests and beneficiary designation gifts. This staff member will oversee receiving and processing of these gifts. Gifts from estates in probate can take a long time.

Some executors are more transparent than others about the process. An estate gift that is designated as a percentage of the residue of the donor's estate requires particular attention. The charity administrator should not hesitate to request an accounting and inventory of the estate before signing a release of claims against the estate. Before receiving beneficiary designation gifts from IRAs there is typically extensive paperwork to document the distribution. In short, the staff person assigned to overseeing gifts is responsible for ensuring that the charity receives all of the gift to which it is entitled.

B. Bargain sales

A bargain sale is a sale of property to charity for an amount that is less than the property's current fair market value. The excess value over the sales price represents a contribution. The bargain sale price may be paid either in a lump sum or in installments.

Since the bargain sale creates a payment obligation for the charity, the gift acceptance policy should require the approval of the gift acceptance committee before the charity enters into a bargain sale agreement. The policy should also require the charity to obtain its own appraisal. If the property sold to charity at a bargain sale price is worth less than assumed, the gift could be a liability. Some policy statements specify a minimum charitable gift amount that the bargain sale must yield. For example, a policy might specify that the terms of a bargain sale must result in a minimum gift of $100,000. This is to ensure time and resources devoted to the sale will yield a valuable gift to the organization.

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The property appropriate for a bargain sale could include any of the assets previously described above, such as real estate, a closely-held business, or tangible personal property. All of the due diligence associated with acceptance of the type of property subject to the bargain sale applies to the gift in addition to the bargain sale policies. That being said, real estate is the most common asset used in bargain sales to charity.

C. Gift annuities

The gift acceptance policy should indicate whether the charity is willing to enter into contracts for charitable gift annuities. The decision of whether or not a particular charity should or should not issue gift annuities is beyond the scope of this paper. The development office should first get a board resolution authorizing the creation of a gift annuity program, which often spells out the policies. While not always helpful in terms of complicating things when starting an annuity program, board authorization of a gift acceptance policy that includes gift annuities is as good as a separate resolution.

The gift acceptance policy should indicate the minimum amount and minimum age for which a gift annuity will be issued. The most common gift minimum is $10,000. There are charities with higher (often $25,000) and lower gift (occasionally $5,000) minimums. These decisions are typically driven by the finance or business office of the charity. Many charities will agree to issue gift annuities for less than the minimum amount if the donor has previously funded a gift annuity.

The most common minimum age for annuitants at the time annuity payments commence is 65. Deferred gift annuity policies sometimes require the annuitant to be 55 on the date of funding, although they will often only specify that the donor shall have attained the minimum age at the time of first payment. The logic of this approach is that the mortality risk of immediate and deferred annuities is the same if the same minimum age applies to both gifts.

It is prudent for a charity to offer the gift annuity rates suggested from time to time by the American Council on Gift Annuities (“ACGA”). A gift acceptance policy could allow a donor to agree to payment of a rate lower than the ACGA rate, provided the charity complies with applicable state law in offering the lower rate. Offering an annuity rate higher than the one recommended by the ACGA typically requires approval of the gift acceptance committee and should not be in violation of applicable state law. Some gift acceptance policies don’t allow annuity rates in excess of the ACGA suggested rates to give the charity’s development officers full deniability.

The frequency of making annuity payments may be monthly, quarterly, semi-annually or annually. Most gift policies state a preference that payments be made quarterly at the end of each calendar quarter. Discretion to make exceptions as to payment frequency is typically assigned to the business or finance office.

Charities must comply with the laws governing gift annuities in their own state. In addition, if a charity is issuing gift annuities to donors in other states, the gift policy should require compliance with registration requirements pertaining to gift annuities in the donor’s state of residence. A charity should register or otherwise comply with state requirements if it is “doing business” in the state, and from the states’ perspective this includes sending marketing material into the state, visiting with prospective donors in the state, or any kind of communication with

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prospective donors within a state regarding contribution for a gift annuity. A charity that is in compliance in the states where it is issuing gift annuities removes the risk of fines or legal action, and the resultant negative publicity which could follow non-compliance, and can comfortably respond to donors' questions should they ask about regulations governing gift annuities. A sample gift annuity agreement is attached as Appendix E.

D. Charitable remainder trusts

Distributions to charity from outside managed charitable remainder trusts are essentially gifts of cash, so they do not require strict oversight of the receipt of these distributions. The trustee will typically liquidate the trust investments and distribute the remainder as instructed in the trust agreement. Policies relating to these trusts should direct the development office to ensure the charity has received the amount to which it is entitled from the trust. The documentation required can vary depending on the trust arrangement, so policies would not normally specify exactly which documents to request.

Gift acceptance policies should plainly state whether a charity will or will not act as trustee of a charitable remainder trust. The decision to act as trustee of any charitable trust should not be taken lightly. Such a trustee is acting as a fiduciary on behalf of the trust beneficiaries. This imposes the highest standard of care under the law. Your business office may be sophisticated, but management of charitable trusts is not your charity's core business. If a charity acts as trustee, unless the charity has its own trust department, the best practice is to engage an institutional trustee such as a bank or trust company.

Willingness of a charity to act as trustee of a CRT can be attractive to donors. The cost and involvement of the donor is usually lower than an intuitional trustee picked by the donor. If charity acts as trustee the policy should state gift size and age minimums, what forms of CRTs are acceptable, and what assets a donor can use to fund a CRT. The charity's financial services partner will typically provide the acceptable gift and age minimums in accordance with its policies. Sample forms of charitable remainder trust agreements are published in Revenue Procedures 2003-53 through 2003-60 and 2005-52 through 2005-60.

E. Charitable lead trusts

Unless a charity has its own management company to supervise trust operations, it is rare for a charity to act as trustee of a charitable lead trust. Policies may state that gifts of income as a beneficiary of a charitable lead trust are acceptable without prior approval of the gift acceptance committee because these payments are equivalent to cash gifts. If the distributions are subject to gift restrictions, the policy governing acceptable restrictions discussed above would apply.

Outside institutional trust companies manage most charitable lead trusts. Some state laws require fiduciaries of vested, irrevocable trusts to provide at least annually a statement of accounting of the trust. Policies should describe the office or title of the person responsible for reviewing these statements, if applicable. Sample forms of charitable lead trust agreements are published in Revenue Procedures 2007-45, 2007-46, 2008-45, and 2008-46.

Charitable lead trusts are counted differently than other irrevocable planned gifts discussed above. The Council for Advancement and Support of Education (CASE) publishes standards for reporting gifts made during a capital campaign. While these standards are intended for use by educational institutions, many charities follow the guidelines as an example of best practice.

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These standards contain guidelines for crediting planned gifts of all kinds including lead trusts. CASE views the first five years of lead trust payments as current gifts but the charitable payments made after the first five years are discounted to present value. It would be reasonable to recognize additional lead trust payments as current gifts if the campaign period were longer than five years.

F. Retained life estates

A retained life estate raises all of the issues discussed regarding gifts of real estate. Because the gift asset is the donor's personal residence or farm, the policy should clearly state that the due diligence associated with gifts of real estate apply to a retained life estate.

The additional complexity with a retained life estate is that the donor reserves the right to occupy the property for a term of years or life before the real estate passes to charity. As with other gifts of real property, the donor needs a qualified independent appraisal to substantiate the income tax charitable deduction. In addition, the charity may wish to have an additional appraisal to ensure that the property is likely to be worth the time, expense, and risk associated with these gifts.

It is prudent to draft an agreement when entering into a retained life estate as to the rights and responsibilities of the donor and charity. That agreement should address the donor's right to rent the property, contribute the balance of the life tenancy to charity, and the ability to sell the property and allocate the proceeds.

The policy and donor agreement should require that the donor continue to be responsible for all expenses related to the property including real estate taxes, insurance, utilities, and maintenance. There are private letter rulings in which donors have been entitled to an additional deduction for capital improvements that increase the value of the property that will pass to charity. Since these capital improvements increase the value of the property, the gift policy may allow the charity to share the costs of capital improvements in proportion to their interests in the real estate. Nonetheless, a cost sharing arrangement for capital improvements should be contingent on the prior approval of the gift acceptance committee.

G. Pooled income funds

Pooled income funds, as of the writing of this paper, are an unpopular gift plan because of the low interest and dividend rates generated by most funds. If your charity already has one or more pooled income funds, the investment, management, and payments from the fund are governed by a master trust agreement. If you do not have a copy of that trust agreement, check with your investment managers and business office to obtain a copy. The gift agreement to record a pooled fund gift is typically a relatively brief document. While these gifts are currently infrequent, the development office should have ready access to the gift agreement if a donor decides to make a gift to the pooled income fund.

Policies governing operation of the pooled income fund should describe the acceptable assets that can be contributed to the fund, which should normally be restricted to cash or publicly traded securities. Pooled income funds are prohibited from accepting tax-exempt securities by law and should not accept illiquid assets because of the nature of the pooled income fund payment requirements.

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Pooled income funds represent a nominal risk to the trustee charity. Primarily, the risk of a pooled income fund is that excessive management fees can reduce the principle of small pooled funds. In fact, there are many advantages to the pooled income fund from the charity's perspective. Since the fund only distributes earned income, any growth in the fund benefits the trustee charity. Unlike a gift annuity, most pooled fund charitable distributions are in excess of the original gift, making them more attractive to charity with less risk. Typically, gift policies set lower age and gift minimums for pooled income funds than other life income gifts. Age 50 is a common minimum age, gift minimums are often only $5,000, and donors often are allowed to make additions to a fund for as little as $1,000.

V. Endowment Policies

An endowment is created when funds are invested for creating present and future income to be used for a particular purpose. The terms of most endowments are that they are perpetual. There are three general types of endowments and policies should address them all. True endowment and term endowments are created subject to donor restrictions. Other funds functioning as endowments (often referred to as quasi or board-designated endowments) are subject to restrictions determined by the governing board and are to be managed like an endowment. These quasi or board-designated endowments are unlike true and term endowments because principal and income may be utilized at the discretion of the governing board.

Endowment policies must address how the endowment is to be managed and the conditions of spending from the endowment. The Uniform Prudent Management of Institutional Funds Act (UPMIFA) has been adopted in all states except Pennsylvania. The purpose of UPMIFA was to better align endowment policies with modern investment portfolio theory. UPMIFA serves as a guide to the requirements and limitations of operating an endowment fund. UPMIFA law only applies to funds given to a charity by a donor who has specified that the funds be permanently restricted whether perpetually or for a term of years, and not to board-designated endowment.

It is beyond the scope of this paper to discuss the nuances of implementing UPMIFA. However, the most radical change in UPMIFA was that it did away with the concept of "historic dollar value." UPMIFA allows a charity to spend or hold in the fund so much of the endowment as the charity determines is prudent for the purposes for which the fund was established.

Giving donors the power to restrict their gifts for a specific purpose or program or to restrict the timing and amount of expenditures can be a powerful giving incentive. Gift restrictions give donors comfort that their gift will be used as they envision, and often result in gift sizes that are multiples of what they would otherwise give for unrestricted use. Charities that accept donor restricted gifts need to understand that they are legally required to use restricted gifts as specified by the donor. Sometimes, however, the restrictions are not clear or are not tracked over time, which can lead to misunderstandings between the donor and the charity. If the violation is significant, the Attorney General may bring an action to enforce the restriction or object to an attempt to seek a court order permitting a modification of a restriction.

To avoid misunderstandings with donors and potential legal violations and to demonstrate good stewardship of its funds, charitable organizations soliciting or managing restricted gifts should have a written agreement, particularly with large endowed gifts, as to the purposes of the fund.

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Testamentary endowed gifts can create challenging situations. If the donor has not entered into a gift agreement negotiated with the charity prior to death, there may be restrictions set forth that are illegal or conflict with the charity's values. The charity can seek a variance from the probate court and Attorney General, but may have to disclaim the gift if the restrictions are unacceptable. There has been significant litigation over the use and spending of endowments, so use caution in agreeing to restrictions that may not be able to be honored.

Gift policies should address the creation of new endowed funds. New endowed funds usually require at least the gift acceptance committee and the Board of the charity to approve all restrictions placed on how the gift may be used. Depending on the donor restrictions, the charity's investment committee and program staff may evaluate whether particular donor restrictions are reasonable.

All endowed gifts should include a variance power exercisable at the discretion of the Board. This variance power allows gifts received for restricted endowment purposes to be accepted only on the condition that should the purpose for which the funds have been provided ceases to exist, the charity may redesignate the purpose of the fund and release the restriction, provided that the fund adheres as closely as possible to the donor's original intent.

Endowment funds typically permit that the endowment may be supplemented by gifts from other donors with similar interests once the fund is established. Policies should address how manage a fund upon the death or disability of the donor. It is considered a best practice that the charity can change the purpose of the fund if there are changed circumstances. If the fund is found by the Board to be inappropriate or impractical, or the restrictions are obsolete, inappropriate or impracticable, then the charity may re-designate the purpose of the fund.

Endowment policies should cover the minimum gift required to establish a new endowment fund. The minimum funding requirements can vary significantly depending on the restrictions imposed by the donor and the needs of the charity.

A planned giving program and an endowment program are not the same. Planned gifts can be unrestricted, designated for a particular current need, or designated for endowment. However, most endowments have been built through planned gifts, so there is a strong relationship between the two. Any organization that is establishing or enhancing a planned giving program should simultaneously review and, if necessary, develop policies regarding the investment of endowed funds and the establishment of named endowments.

Another question to be addressed in the endowment policies is whether the charity will commit itself to establish a named endowment with a deferred gift, such as a bequest or the residuum of a gift annuity. One approach is to require that the discounted present value of the future gift be no less than the current minimum for a named endowment established with an outright gift. Another approach is to require the donor to guarantee that to the extent the planned gift fails to meet the gift minimums in place at the time it funds the endowment, the balance is payable from the donor's estate.

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VI. Conclusion

A written gift acceptance policy is the cornerstone of a sophisticated development and planned giving office. It helps the charity's representatives treat donors with respect and manage their expectations, and serves as a guide for board and staff members as to what policies, assets, and gift vehicles are acceptable to the charity.

We have established that some gifts, such as real estate, gift annuities, and tangible personal property, can expose the charity to potential liability and risk that outweigh the value of the gift. Gift acceptance policies allow a graceful way to say no to donors who want to make gifts unacceptable or inappropriate for the charity. Charities should only accept gifts that are consistent with their values and mission.

Some gifts put an undue burden on the charity to use or sell certain types of property and to honor donor restrictions. Solid, clear policies to evaluate equitably what assets, gift vehicles, and restrictions are acceptable to the charity can head off donor relations issues before they come up. Your donors will thank you and your lawyers will thank you for having gift acceptance policies that ensure good gifts that advance the mission of your charity.

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Appendix A Sample donor advised fund letter of intent

Agreement for
[DONOR NAME]

In support of the important [work/research] being done at [Charity] and in honor of the [insert mission of Charity], I/we, DONOR NAME(S), intend to recommend that (a) distribution(s) be made through my (our) Donor Advised Fund held with _____________ (name of DAF Company) in the sum of $___________ to [Charity].

I/we recommend that the $X00,000 distribution from my (our) Donor Advised Fund be used to support the work of [Charity] This work/program/effort provides funding to [description of effort supported by philanthropy].

It is my/our intent to recommend a grant in the amount of $X00,000 from my (our) Donor Advised Fund over number (#) years beginning with an initial payment of $X00,000 to be received on or before Month 31, Year, followed by number (#) additional payments to be made in Month of subsequent years, ending in Year.

While this agreement sets forth the Donor’s present intention, this commitment is not intended as a legally binding pledge and is not to be enforceable against the Donor, the Donor’s estate or (Name of DAF Company).

[Charity] looks forward to continuing this partnership with Donor Name to further the mission of the hospital and share with him/her/them the impact of his/her/their philanthropy.

[Charity] and will be proud to recognize Donor Name for his/her/their generosity in the annual Donor Report.

Donor Name Date

With gratitude from [Charity]:

Date

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Appendix B Sample donor advised fund acknowledgment

Donor Name
Address

Salutation,
Thank you for your recommendation of a grant (use the word "grant" not "gift") of $1,000.00 from The Fidelity Charitable Gift Fund to [Charity]. Unrestricted support makes possible great strides for our charitable mission.

By recommending a grant to the [Charity Annual Fund], you enable us to respond to its most pressing needs, regardless of challenges or circumstances. Committed friends like you further [Charity's]

Your support makes a difference. Your partnership is invaluable. We are most grateful.

Sincerely,

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Appendix C Sample Pledge Form*

The Donor ("Donor") hereby pledges to make a contribution to The ABC College at [______] ("College") in the total amount of $200,000, designated for the "Janet and John Jackson Chair in Leadership." Fifty percent of the total pledge amount ($100,000) will be paid by November 1, 2008, and the remainder ($100,000) will be paid no later than May 1, 2009.

By signing this Pledge Agreement, the Donor hereby intends to be legally bound to contribute the pledged amount and understands that the College intends to act in reliance on this pledge to move forward with its academic programming.

Accordingly, the Donor hereby acknowledges and agrees that the $200,000 pledge amount is a legally binding obligation of the Donor and that the College has provided full and adequate consideration for the pledge. This Pledge Agreement shall be interpreted and enforced in accordance with the laws of the State of [_____], regardless of the place of execution or performance.

ACKNOWLEDGED, AGREED, AND ACCEPTED:

The Donor
Signed by: ____________________
Name: ____________________
Date: ____________________

The ABC College
Signed by: ____________________
Name: ____________________
Date: ____________________

*Consult local counsel as to the enforceability of this pledge form in your state.

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Appendix D: Questionnaire for Proposed Gift of Real Estate

Donor Name:____

Address: ____

City, State, Zip: ____

Phone: ____________________

Address/Location of Property (☐ check if same as above)

____

____

Name of Current Owner(s): ________________________________

Date Acquired: ______________ **Purchase Price:** ____________

Type of Property: ______________________________________

(i.e. building lot, home, condo, business)

Approximate age of dwellings: _____________________________

Current Use of Property:

____

____

____

History of property (how it has been used for past 50 years)

____

____

____

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Approximated Fair Market Value: ______________________________________

Date and Value of Most Recent Appraisal: ________________________________

Balance of Mortgage, if any: ____

Other liens or debt: ____

Has property been listed for sale in the past 12 months: ☐ Yes ☐ No

If yes, at what listing price? ____

Were any offers made? ☐ Yes ☐ No

If yes, please describe: ____

____

Are there any known environmental issues? ☐ Yes ☐ No

If yes, please describe: ____

____

____

Has there been any litigation or other issues that could impact marketability?

☐ Yes ☐ No

If yes, please describe: ____

____

Is property near floodplain, wetlands, conservation land? ☐ Yes ☐ No

If yes, please describe: ____

____

How are adjacent parcels used? ____

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Appendix E Sample Gift Annuity Agreement

GIFT ANNUITY AGREEMENT
One Life - Donor is the Annuitant
Immediate Payments

This Agreement is made between [name of donor] of [street address], [city], [state] [zip code] (hereinafter "the Donor"), and Charity, of (hereinafter "Charity").

1. **Transfer of Property by Donor** Charity certifies that the Donor, as an evidence of [his/her] desire to support the work of Charity and to make a charitable gift, on [contribution date -- month,day,year] contributed to Charity the property described in Schedule A attached hereto, the fair market value of which is $[amount].

2. **Payment of Annuity** In consideration of the property transferred by the Donor, Charity shall pay an annual annuity of $[amount] from the date of this Agreement and shall pay such amount to the Donor so long as [he/she] is living.

3. **Payment Dates; First Installment** The annuity shall be paid in [monthly, quarterly, semi-annual, annual] installments of $[amount]. The first installment shall be payable on [month,day,year] in the amount of $[amount], prorated on the basis of the number of days in the initial payment period. Subsequent installments beginning on [month,day,year] and continuing every [month,quarter,half-year,year] thereafter shall be in the full amount of $[amount]. [If the contribution is received on the first day of the period or if the first payment will be for the full amount in any case, delete the reference to proration and subsequent installments.]

4. **Birth Date of Donor** The birth date of the Donor is [month,day,year].

5. **Irrevocability; Non-assignability; Termination** This annuity is irrevocable and non-assignable, except that it may be assigned to Charity. Charity's obligation under this Agreement shall terminate with the regular payment preceding the Donor's death.

6. **Uses and Purposes of Gift** Upon Charity's satisfaction of its obligation under this Agreement, an amount equal to the residuum of the gift shall be used by Charity for ["its general purposes" if unrestricted; if restricted, state purpose].

7. **Entire Agreement; Governing Law** This Agreement, together with Schedule A attached hereto, constitutes the entire agreement of the parties. This Agreement shall be governed by the laws of the State of [donor state of residence].

This Agreement is effective as of [contribution date -- month,day,year].

DONOR:

____
[name of donor]

Charity:

By: ________________________________
[name of officer]
[title of officer]

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