WHAT, ME WORRY? WHEN TO SAY NO (OR YES!) TO A GIFT

PG CALC WEBINAR

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Presented by:

Jeff Lydenberg, Vice President, Consulting
PG Calc
129 Mt. Auburn Street
Cambridge, MA 02138
617-497-4997
jeff@pgcalc.com
http://www.pgcalc.com

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I. Introduction

Cash and publicly-traded securities are the assets donors give most often. They are easy to transfer, easy to value, and charities are happy to accept them. At the same time, charities regularly receive offers of timeshares, artwork, life insurance, cryptocurrency, and other assets that can take significant resources to accept or present other complications. In this paper, we will discuss how to go about evaluating proposed gifts of these sorts of assets, so you know when to say "no" and when to say "yes" to such a gift.

Gifts of assets other than cash and publicly-traded securities are inherently hard to value, difficult to liquidate, and may subject a charity to liability. These three characteristics form the basis for this webinar: evaluation, liquidity, and risk. The willingness of a charity to accept non-cash assets varies depending on the profile of the charity, the relationship between the charity and the donor, and the mission of the charity. Most development professionals assume larger, better-funded charities are more willing to accept unusual assets. The opposite is often true.

The risk of holding these assets makes a charity with six figures in operating revenue extremely nervous. The well-heeled charity can become a target of liability because the perception of the charity's "deep pockets." A lawsuit, or even the threat of bad publicity against such an organization makes the charity a prime target for threats of legal action associated with difficult assets.

At the other end of the spectrum, smaller charities may lack the resources to evaluate the risk and benefits of accepting hard to accept assets. Smaller charities may be pressured into accepting gifts that become a net liability because of the cost to accept and hold the asset or the difficulty in converting these assets into cash.

This webinar will prepare charities of all types to evaluate unusual gifts or gifts with restrictive conditions. You will learn about risk control strategies and how to identify resources to decide whether to accept an uncommon gift. We will discuss the danger signals that suggest that it might be better to say no to a gift early on rather than spend limited resources pursuing a bad gift.

II. Recognize the Danger Signals of a Bad Gift

The Unknown Donor

The motivation to make charitable gifts is deeply seated in the emotional attachment of the donor to the charity. Donors make gifts that express their values, are a part of their life story, and as an expression of gratitude. Those who make periodic annual gifts or major gifts have established a relationship with the charities they support. Other supporters may have attended events, educational offerings, or acted as volunteers. Some people will be alumni of a secondary or higher education institution but may not have made a gift. Patrons of the arts may be regular subscribers, but not necessarily have been donors. The individuals described above are a charity's natural constituency. Offers of gifts of any kind from this core constituency are to be expected and given careful consideration.

Offers of gifts of complex assets or non-standard gift vehicles from those with no prior relationship with a charity are immediately suspect. It is unusual for someone to make a generous offer of a valuable asset to an organization that is not the natural object of one's bounty. In short, beware strangers bearing gifts. Research the prospect. What can you find about their history and how they made their money? What other assets can you find in the public record? Can you find press reports of philanthropy to other

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charities? Does the prospect have a superficial or non-existent knowledge of your charity's history and mission? Are there signs the prospect could create a reputational or public relations problem?

Too Good to Be True

The value proposition of any gift should be readily apparent. Offers of illiquid assets (real estate, tangible personal property, closely held business assets) must be accompanied by a clear explanation of how the asset can be monetized, that is, converted to cash. Assets that the prospect promises will be "worth a fortune someday" are suspect. Conditions or restrictions on the disposition of assets raise red flags. Gifts that require approval and participation from parties other than the prospect can create insurmountable barriers. Accelerated timelines and a rush to complete a gift can prevent the due diligence required to accurately assess whether to accept an asset.

The lure of exceptionally large gifts raises suspicion. Gifts that will raise "millions" also raise questions. If the gift is that valuable, why does the prospect want to give it away? The larger the reward, typically the larger the risk.

What are the exact terms of the gift? Planned giving specialists may have advanced training in law or finance. Nonetheless, the lay person should be able to grasp the general terms of any legitimate gift. Of course, some perfectly acceptable gift plans may require specialized assistance to evaluate. If the arrangement is that complicated, engage competent advisors to determine the risk and reward to charity. Don't rely exclusively on the donor and the donor's advisors if there is any question as to how the gift is structured.

Charity/Gift Shopping

"You know what, the president of the small college I offered this deal said the same thing." A donor actually said this to me. His "gift" was an offer of $10M in exchange for which he would receive a 12% income with escalating payments for 20 years. It was apparent the donor had been looking for a charity to accept this deal all over the Northeast. It will come as no surprise that the charity passed on this supposed gift.

Gift annuity rates are often the subject of charity shopping. A prospect claims charity X offered him a certain percentage. He'll make the gift if the charity meets or exceeds the annuity rate the other charity is offering. The American Council on Gift Annuities (ACGA) issues uniform rate tables that are followed by most charities in the United States. Uniform rates encourage donors to make gifts to the charity most important to them, not where they can get the higher rate.

Prospects may argue they are making a six or seven figure gift, so the charity should offer a higher rate. The exact opposite is true. The larger the gift, the larger the potential liability and even loss to the issuing charity. Keep in mind that gift annuities are an unlimited obligation of the issuing charity. If the donor's original donation is exhausted, the charity must still make annuity payments. A gift annuity that size would be better served by an annuity rate lower than the ACGA suggested rate. The prospect would be entitled to a larger income tax charitable deduction for a lower payout and ensure the likelihood of a gift to charity at the termination of the annuity. Prospects shopping for a high annuity payout should consider a commercial annuity along with an outright gift to charity.

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III. Strategies for Evaluating Whether to Accept a Gift; Gift Acceptance Policies

No matter if a charity is large or small, comprehensive gift acceptance policies are the first line of defense against accepting assets subject to unacceptable levels of risk. Such policies can't cover every possible gift situation or asset but do create a mechanism for careful systematic acceptance of any gift.

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 below 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.

A. The Gift Acceptance Committee

Gift acceptance policies will typically 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 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.

The gift acceptance committee should consider obvious liabilities like financial risk and environmental responsibility. The Committee may need input from outside experts on 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 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. Gift Acceptance Policy

a. Policies

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 as to whether to accept any particular asset is to provide a framework for evaluating each gift based on the facts unique to each gift situation. Acceptance

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policies are not intended as the only guidance to be considered in accepting a gift. The policies are intended to lay out a framework for analyzing the risks and benefits of each situation.

b. Drafting Planned Gift Acceptance 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 purpose of this paper is to assist in evaluating whether and how to accept certain gift assets, especially those considered more complex. What follows is a brief summary of other topics that should be covered in a planned gift acceptance policy:

c. Donor Advised Funds

DAF grants must be used only 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.

IRS Notice 2017-73 permits a DAF to fulfill a personal pledge of a donor advisor, even a legally binding pledge, and is not treated as a "more than incidental benefit." The IRS has adopted essentially a "don't ask, don't tell" approach to DAF grants fulfilling pledges. The DAF administrator can't reference the pledge in making the distribution, the donor advisor can't receive any other benefit except the fulfillment of the pledge payment and the donor advisor can't take an additional income tax charitable deduction for the grant.

Gift acknowledgements for grants from DAFs should not be written so that they might be mistaken for a receipt for an income tax charitable deduction. The standard receipt for other gifts containing the "no goods or services" language would not be appropriate. A sample DAF acknowledgment form is attached as Appendix A.

d. 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 likely not 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.

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e. 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.

f. 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.

g. 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.

h. 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.

i. 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 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.

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j. 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.

IV. Due Diligence and Risk Control Strategies

A. Due Diligence

The due diligence required prior to accepting complex or unusual assets varies with the size of the potential liabilities and downside, as well as the amount of unknown information upon which to make decisions. The evaluation of the liability as to whether to accept a particular asset is frequently proportional to potential upside benefit of an asset. With great risk, comes great reward. Potentially. An offer of a seven or eight figure gift generates significant excitement in the development department. The details of how a donor will fund such a gift and the terms of the gift become a subject of immediate interest and concern. What is the prospect offering? What does the prospect want in return?

Risk is not only financial or economic. When a charity accepts a significant donation, the charity is linked to the donor and the donor's reputation and character, both before and after the gift. The reputational risk is particularly acute if there are significant naming rights and publicity about the gift. Consider if accepting assets or ownership interests could conflict with the charity's mission and reputation. The less well known a prospect is to the charity, the greater the level of scrutiny of the prospect's history, family, education, business, and reputation become.

B. Risk Control Strategies

A tightly crafted gift acceptance policy and a gift acceptance committee both discussed above are the first line of defense in making sure you can and should say yes or no to any gift. In addition, there are strategies that can be of use when the risk of an asset is too great, the time and expertise required to accept a complicated gift are beyond the resources of the development office. These strategies are a way to get to yes when facing resistance from leadership or the business office when deciding to accept a gift.

a. Single-Member Limited Liability Company

The limited liability company ("LLC") is a popular from of business organization that combines the advantages of both corporations and partnerships. An LLC can protect the LLC owners from claims made against the LLC or the property owned by the LLC. An LLC that is organized by and owned by a single member, a charity for example, is a "disregarded entity" for tax purposes.

Nonprofits are often hesitant to accept real estate, closely-held businesses and other complex assets because of the potential liability arising from ownership of these assets. A charity-owned LLC can accept gifts of real estate with potential environmental hazards, premises liability risks, and the other risks inherent in owning real estate.

A charity-owned LLC does not need to register to become a 501(c)(3) organization to enjoy tax-exempt status. The charity-owned LLC is treated as if the activities of the LLC were those of the parent charity. In 2012, the IRS issued Notice 2012-52. Since then, this technique has grown in

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popularity. Notice 2012-52 concluded that charitable donations made to a charity-owned LLC qualify for an income tax charitable deduction. http://www.irs.gov/pub/irs-drop/n-12-52.pdf

The charity-owned LLC must be used exclusively to further the charity's tax-exempt purposes. If the LLC engages in taxable activities, that activity will be reportable on the parent charity's annual information return. For example, while non-profits may hold S corporation stock, income from the S corporation and potentially capital gain on the sale of the S corporation stock can generate unrelated business income ("UBI"). Fortunately, passive income from rental properties and the gain from sale of most assets by the LLC will not generate UBI. Proceeds from the disposition of investment property, do not constitute UBI. (See additional authority and examples of uses of charity-owned LLCs in Appendix B.)

b. Donor Advised Funds

It would be an understatement to say that the relationship of many non-profits with donor advised funds (DAFs) is tense. Charity argues that donations that were made directly to the charitable sector now sit on the sidelines in DAFs. DAF supporters argue that the DAF is a good vehicle for the thoughtful distribution of charitable gifts and can be a critically important resource when a donor has a cash event such as the sale of a business. DAF advocates also tout the ability of the funds to teach inter-generational philanthropy.

Love or hate the DAF, they do offer unique resources when gifts of complex and risky assets are on the table. Large nationally known DAFs and many community foundations will accept gifts of non-publicly traded stock, LLC or LLP interests, private equity, hedge funds, restricted stock, insurance, and real estate to establish a DAF. The costs of converting these assets to cash are deducted from the proceeds on the sale of the donated asset including any unrelated business income (UBI).

DAFs establish minimum gift values for complex assets that are typically much higher than for DAF accounts established with cash and publicly traded securities. For example, the minimum amount to establish a DAF with Vanguard Charitable is $25,000. However, the minimum value to fund a DAF account with closely held companies, hedge funds and other private equity assets at Vanguard Charitable is $750,000.

The DAF invests the proceeds of the sale of complex assets and manages the grant making process. A donor could contribute a valuable and risky interest to a DAF and the donor could immediately make a grant of some or all those assets to one or many charities they choose to support.

The downside to charity of using a DAF to accept complex assets is the potential loss of the relationship and communication with the donor. The DAF will be working exclusively with the donor throughout the process of liquidating the donated asset. The charity has no input on the terms or values of the sale of these assets. Once the DAF account is funded, there is no guarantee that there will be the grant anticipated or any grant at all from the DAF. Charity should continuously steward DAF donors and family to ensure the donors wishes are carried out.

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V. Deciding to Say Yes or No to 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 assets described below in more detail.

When to say yes to cash and publicly traded securities: Cash and publicly traded securities are always acceptable assets for gifts to charity. They are deductible at fair market value and easily valued and used in the charity's mission.

When to say no to cash and publicly traded securities: There are a narrow set of circumstances when a charity might refuse a gift of cash or publicly traded securities. The reputation of the donor could raise red flags that charity might not want to be associated with accepting such a gift. The source of the gift could be the proceeds of illegal or at least ethically dubious activity. Actual notice of fraud or criminality should be a prima facie reason to refuse such a gift. Mere suspicion as to the provenance of the assets raises the harder case.

Gifts from non-U.S. sources, even in the form of cash and publicly traded securities can raise legal concerns. The currency laws of some countries limit or even prohibit the transfer of assets out of the country without the approval and oversight of governmental regulation. Googling "currency restrictions china" as of the time of writing this paper reveals that the conversion of Chinese RMB (Renminbi) into foreign currencies is restricted to US$50,000 equivalent per person per year. Employ an expert in international banking and finance if there is concern about currency fraud or violation of international banking regulations.

B. Real Estate

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 C, 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

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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 by the gift acceptance committee.

When to say yes to real estate:

Never? Always? Sometimes? The real answer is, it depends. Whether to accept gifts of real estate can vary depending on the facts and circumstances. Even a charity with a low risk tolerance may be willing to accept real estate that can be used to further their charitable purposes. A gift or bargain sale of an apartment building adjacent to a college campus that can be converted to dorm space deserves serious consideration.

The easier cases are when the donor is known to the charity, the real estate is nearby, the property can be used in the charity's mission or easily converted to cash with minimal expense and liability. Nonetheless, the seemingly attractive gifts of real estate should be subjected to the same rigorous evaluation and due diligence as any other real estate gift. It is beyond the scope of this paper to list all the areas of due diligence and analysis prior to accepting real estate. Attached as Appendix C is a Questionnaire for Proposed Gift of Real Estate to begin the process of evaluating when to accept real estate.

Finally, charity can say yes to real estate using the single member LLC or donation to a DAF discussed above.

When to say no to real estate:

-Due Diligence Red Flags: In the case of gifts of any complex asset, particularly real estate, size matters. It is hard to justify accepting a home in an area of declining real estate prices that would likely sell for a modest amount. The diversion and investment of staff and outside resources will typically outweigh the trouble such gifts entail. Even sizable real estate gifts are suspect if issues uncovered by due diligence are expensive to remediate. If deciding to move forward, use a mechanism such as the single member LLC or a DAF to insulate charity from risk and liability.

-Lack of Marketability: With surprising regularity donors offer gifts of real estate after the donor has tried to sell the real estate without success. The threshold question in that situation is, will the real estate be more marketable, attractive, or valuable in the hands of the charity rather than the donor? The answer in almost all cases is no. Oddly shaped or inaccessible parcels, lack of clear title, or environmental liability are just a few reasons property can be difficult to dispose of. Until the property sells, charity is liable for taxes, maintenance, insurance, and commissions on the sale of the real estate.

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-Mortgaged Real Estate: Real estate may have an outstanding mortgage attached to it, which raises special tax issues when such property is contributed to charity. Real estate donated to charity subject to a mortgage is treated as a part sale, part gift; a bargain sale. The amount of the mortgage is treated as if the donor sold the property charity and the donor is taxed on the gain allocated to the sale portion. The amount of the charitable contribution of real estate subject to a mortgage is reduced by the outstanding debt. The donor's deduction is the excess of value over the mortgage.

When a charity receives mortgaged real estate, the charity must find the money to pay off the mortgage. If the charity doesn't put the real estate to a use related to its tax-exempt purpose, the charity will have to pay unrelated business income tax on the income from the sale, including capital gains tax.

-The Gift Would be a Prearranged Sale: In order to avoid realizing capital gain and paying tax on it, a donor must not be obligated to sell real estate (or other appreciated property) prior to giving it to charity. Gain on the sale of an appreciated asset is not considered attributable to the donor so long as the asset is given away before sale. However, this rule is inapplicable if the donor retains direct or indirect control over the asset or there is an express or implied prearranged obligation on the part of the donee to sell the property.

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 is great enough, 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.

When to say yes:

-C Corporations: A gift of a closely held C corporation is the easiest of all non-publicly traded securities to transfer and entails the least risk. A critical consideration when holding securities that are not traded on a public exchange is how is the stock going to be converted to cash? A C corporation may be able to buy back the donated stock from the charity quickly and easily. C corporation stock can be used in life income arrangements such as a FLIP CRUT as well as for outright gifts. A charity holding C corporation stock is insulated from liability for actions by the C corporation.

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-S Corporations: Charity might say yes to a donation of S corporation because the S corporation form is more common than all publicly and privately held C corporations and LLCs combined. Therefore, willingness to consider gifts of S corporation stock could tap into one of the single largest sources of wealth in the United States. Since an S corporation is a flow through entity for tax purposes, a gift of S stock will generate an income tax charitable deduction proportional to the percentage interests of all owners of the corporation.

-LLCs, LLPs, and Partnerships: Gifts of interests in limited liability companies, limited liability partnerships, or other partnerships offer great flexibility in achieving donor and charity goals. These business organizations are called pass-through entities because the income, losses, and tax liability flow through to the owner's pro-rata according to their ownership interests. Since the income distributed by a pass-through business is considered a passive investment, charity is not subject to UBI.

When to say no:

-C Corporations: The private foundation rules apply to private foundations and charitable remainder trusts. These rules restrict certain types of transactions that would not be a problem for a public charity. One of the private foundation rules prohibits self-dealing. Self-dealing prevents a "disqualified person" from engaging in almost any business or financial transactions between a private foundation or CRT. For example, C corporation stock given to fund a CRT cannot be sold by the CRT to the donor's children. The children are disqualified persons. However, the C corporation could redeem the stock from the CRT. Pay careful attention to these rules when discussing potential gifts to a CRT.

-S Corporations: While charities are eligible to own S corporation shares, there are multiple taxes and other barriers that make a gift of S corporation stock unattractive. A charity is subject to unrelated business income tax ("UBIT") on its portion of the S Corporation's accounting income. Also, the gain from the sale of S Corporation stock will be subject to UBIT. When a charity owns S Corporation stock, income generated from dividends, interest, and rents is taxable, and even gain on the sale of the S corporation stock is taxable. A gift of the assets (real estate, equipment) of an S corporation may be a more attractive option.

-LLCs, LLPs, and Partnerships: Some flow-through business interests generate positive cash flow, have good appreciation potential, and may be marketable. They can be valuable gifts to the charity. Others are virtually worthless and may saddle the charity with liabilities. In the case of partnerships, determine if charity owners are subject to potential liability such as cash calls. In the case of a limited partnership or LLC, the liability is generally limited to the initial investment. Depending on the assets the entity owns and its cash flow, there could be a limited market to convert the ownership interests to cash.

D. Life Insurance

Life insurance is 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.

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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 to leverage a gift to charity. 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.

When to say yes:

The two types of life insurance described below can be the easiest and least risky ways to accept life insurance gifts.

- **Transfer Ownership of Paid-Up Policy:** A life insurance policy is not a capital asset, such as securities or real estate, but rather an ordinary income asset. If a policy owner were to surrender a paid-up policy, the gain is potentially subject to a federal income tax rate as high as 37 percent, whereas if he or she were to sell long-term appreciated stock, the gain would be taxed at a maximum federal rate of 20 percent. When an ordinary income asset such as a paid-up life insurance policy is donated to charity, the donor is not taxed on the gain, but the charitable deduction is limited to the adjusted cost basis.

-Name the Charity as Primary Beneficiary of a Policy: Life insurance proceeds payable upon death are included in the policy owner's gross estate, but an estate tax charitable deduction is allowed for the entire amount paid to a charity. Consequently, no estate tax will be payable on the proceeds received by a charity. If an individual were named as beneficiary, the proceeds would be subject to estate tax, and the federal estate rate could be as high as 40 percent, depending on the size of the estate. In certain states, proceeds paid to an individual would also be subject to state estate tax.

When to say no (or at least don't encourage):

-Transfer Ownership of an Existing Policy on Which Premiums are Still Owing: The donor is entitled to a deduction for each premium payment regardless of whether the donor contributes to the charity, which uses it to pay the premium, or the donor pays the premium directly to the insurance company. If the first option is selected, the donor could contribute long-term appreciated securities instead of cash, thereby getting the double benefit of a charitable deduction plus avoidance of tax on the capital gain.

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-Purchase a New Policy, Naming the Charity as Owner: The donor is entitled to an income tax charitable deduction for premiums paid to the insurance company after ownership has been transferred to the charity and, of course, for any contributions made to the charity to cover the premiums. The donor should either name the charity as owner on the application or pay the minimum premium required before transferring ownership. If the donor is the initial owner, pays an entire year's premium, and then transfers ownership, the initial charitable deduction will be limited to the cash surrender value, which will likely be zero. A charitable deduction is allowed for the full amount of the premium paid but only after the charity is named as owner. (Note: Be sure that the charity would have an insurable interest under applicable state law before the purchase of a life insurance policy on the life of a donor where the charity is the owner.)

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 enough 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.

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.

When to say yes:

-Fee Interests, Royalty Interests, and Non-operating Interests: Charities located in states with active exploitation of mineral resources should be prepared to evaluate gifts of these interests. There can be valuation issues, environmental issues, unrelated business income issues, and management issues with the acceptance of this asset type. Despite their complexity mineral interests can be quite valuable. In nearly every case charity should engage an expert in mineral interests to evaluate whether to accept such an interest.

When to say no:

-Working Interests: Charity should not accept working interests as a rule because of the liability and tax consequences associated with these interests. As mentioned above in the definition section, the working interest holder has the right to use the surface of the property to obtain the minerals, the right to incur costs of exploration and production of the minerals and to retain profits subject to the lessor's retained rights. All liability issues flow to the holder of the working interest. This includes all environmental issues caused by exploration and production of the asset. Income derived from working

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interests is considered unrelated business income and therefore subject to unrelated business income tax, as discussed in the last section of this paper.

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 she paid for the china.

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 its decision making.

When to say yes:

-When Property Can Be Put to A Related Use: Ideally, a charity can put a gift of tangible personal property to use for its charitable purposes. IRC Sec 170(e)(1)(B)(i) allows a donor of tangible personal property to deduct the full present market value if the object is related to the exempt purpose of the charity. Examples would be a painting given to an art gallery and a wooden boat for display at a nautical museum. If the object is unrelated to the charity's exempt purpose, a donor's deduction will be the lesser of present fair market value and cost basis (what the donor paid for the property).

A gift of tangible personal property to a museum will be for a related use if the object is of a type normally retained in the museum's collections unless the donor has been informed that the museum intends to sell or otherwise dispose of the object.

A gift of artwork doesn't necessarily have to be to a museum to be considered for a related use. In Private Letter Ruling 9833011, the IRS ruled that gifts of artworks to a Jewish community center would

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be for a related use because they would have religious and cultural significance. Similarly, gifts of artworks to a hospital may be for a related use if their display in common and patient rooms contributes to a healing environment. It is recommended that the donor secure from the charity a letter stating the charity's intent to use the property in a way that is related to the charity's exempt purpose. Should changed circumstances cause the charity to sell the object sometime in the future, the donor's related-use deduction will not be disallowed if the donor, at the time of the contribution, could reasonably expect the donated object to be used for a related purpose. See Reg. 1-170A-4(b)(3)(ii).

When to say no:

-When Property Is Unrelated to The Charitable Mission: Personal property often has significant emotional value to the donor. If the property can't be used for charitable purposes or if cash from the sale of the property is more useful to the charity, there can be significant donor relations issues. The donor's income tax charitable deduction is limited to the donor's cost basis, which may be quite modest compared to the value (actual or perceived) of the property.

-Disposition and Carrying Costs: The cost of disposition of fragile and valuable tangible personal property can materially reduce the net proceeds from sale of the property. Tangible personal property is often fragile, sensitive to climate conditions, must be secured during transportation and while awaiting sale, and requires insurance to protect against loss or damage. Dealers in tangible personal property charge commissions that can be material. Consider what happens if the property doesn't sell. Charity will still be responsible for the costs to protect and hold the property until it is sold.

-When Tangible Personal Property is Ordinary Income Property: If an artwork or other tangible personal property was (1) created by the donor, (2) acquired by a gift from the creator, or (3) is part of the inventory of a dealer, it is ordinary income property. Even if it is contributed for a related purpose, the deduction will be the lesser of fair market value and cost basis. The cost basis for the creator would be the outlay for materials. The value of the time spent fashioning the object cannot be included in the cost basis. If the donor acquired the property by gift from the creator while the creator was alive, the donor assumed the creator's cost basis and, again, the deduction will be the lesser of the property's fair market value and the donor's cost basis. In short, the income tax benefits to the donor of gifts of tangible personal property that are considered an ordinary income asset are minimal at best and unattractive to the typical donor.

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 (known as a Qualified Charitable Distribution, QCD, to tax professionals) is permanent law. To avoid subjecting gifts intended as IRA rollovers to negative tax consequences, gift policies should require that the donor meet the 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

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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.

When to say yes:

-Qualified Charitable Distributions: A QCD must be otherwise 100% deductible. Therefore, QCDs can't be used to fund gift annuities, charitable remainder trusts, or other split interest or life income gifts. Likewise, donors may not receive quid pro quo benefits. If the donor receives any benefits that would typically reduce his or her charitable deduction, such as football tickets, the IRA distribution will be taxable income to the donor.

QCDs may not be made to private foundations, donor-advised funds, or supporting organizations. Many charitable foundations are organized as supporting organizations (defined in IRC section 509(a)(3)) are explicitly excluded from the new tax benefits.

-Naming Charity as the Beneficiary of an IRA: The simplicity of adding charity as the death beneficiary of an IRA has made it an increasingly attractive asset with which to make charitable estate gifts. The donor does not have to consult a lawyer to change their beneficiary designation. The donor can divide up interests in the IRA among charitable beneficiaries and heirs. The IRA beneficiary designation gift is one of the most tax-efficient testamentary gifts available.

When to say no:

While the testamentary IRA gift is one of the easiest to arrange and most tax-efficient for the donor, the administration of the IRA gift by the charitable beneficiary can be one of the most frustrating. Many IRA administrators treat charitable beneficiaries of inherited IRAs as if they were natural persons. These administrators insist the charity must establish a new inherited IRA account to receive the donor's gift. The account establishment process is intrusive, complex, and time-consuming. The IRA administrator expects the charity to provide the social security number and other personally identifiable information of a representative of the charity. Typically, the administrator's forms do not contemplate the beneficiary of the IRA will be an entity such as a charity. See PG Calc's blog on some ideas on how to navigate the IRA processing conundrum.

H. Cryptocurrency

Cryptocurrency, also known as virtual currencies like Bitcoin, are an increasing source of discussion in the philanthropic community. What is cryptocurrency? How is it transferred? Does this asset present potential liability issues for charity? What is the mechanism for accepting cryptocurrency?

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While Bitcoin is considered the original cryptocurrency, there are many other currencies. These include Litecoin, Ethereum, Ripple, and thousands of others. This list includes 894 virtual currencies in circulation traded on hundreds of virtual exchanges.

There are unresolved legal, tax, and regulatory issues regarding cryptocurrency. Nonetheless, virtual currency offers the opportunity to accept assets of significant value. Gifts from non-U.S. citizens can run afoul of complex currency regulations and expensive exchange fees. Foreign donors may be able to make gifts to U.S. charities more easily and quickly using cryptocurrency.

These virtual currencies work like cash in that they have a value that can be exchanged for goods and services. There is no centralized authority that issues and regulates these currencies in the same way as cash. The distinguishing features of virtual currency are that they can be exchanged anonymously without comprehensive regulation. The IRS has ruled that virtual currency is to be treated as property and therefore the rules governing tax treatment of gain or loss applicable to noncash gifts also apply to virtual currency. The long and short-term holding period rules applicable to the tax treatment of gifts of other property apply to virtual currency. To take an income tax charitable deduction in excess of $5,000 for a gift of cryptocurrency the donor will need a qualified independent appraisal.

Other than the risk of fluctuation in value, gifts of these currencies don't present a financial liability to charity. (Electronic accounts are subject to the risk of hacking, however.) Since cryptocurrency is anonymous, it has been associated with illegal activity, such as the purchase of illicit drugs. As such, there is a reputational risk to a charity accepting Bitcoins, for example. Refer to the earlier discussion of warning signs of potentially risky gifts. A donor with a history of giving and volunteer service with a well-known public reputation is unlikely to attract bad publicity.

The mechanics of accepting a gift of virtual currency is deceptively simple for individuals as compared to accounts for organizations. For individuals, to start trading in cryptocurrency the first step is to create a wallet. The wallet can be a paper wallet like a gift card or a hardware wallet that is like an electronic mobile bank account. These wallets are quick and easy for individuals to establish. Unfortunately, the process of establishing a wallet for charity can be time-consuming and intrusive. Therefore, don't wait until a prospect is offering a gift of virtual currency to prepare to complete the process to accept such currency. The volatility of the currency and pressure to complete a year-end transaction can create a very frustrated donor.

Finally, you will need a processor to accept and process gifts of cryptocurrency. BitPay and Coinbase are the two most popular processors, CoinGate is another vendor to consider. Each of these processors can exchange most of the common forms of cryptocurrency such as Bitcoin and Ethereum. The processor can quickly liquidate the gift into currency, deposit it into the charity account and if necessary, handle conversion into U.S. dollars. Fees for these accounts are typically lower than credit card processing fees.

When to say yes:

Cryptocurrency donors will tend to be younger tech-savvy entrepreneurs. Accepting cryptocurrency offers a tool to tap into this high value non-traditional source of major and principal gifts. Be prepared to accept cryptocurrency before your first donor asks about making a gift. Investigate and establish accounts with vendors like BitPay, Coinbase, or Coingate to be prepared to accept cryptocurrency. Compliance and account set up can be intrusive and cumbersome.

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Gift policies should be consistent with managing stock donations and require the immediate sale of cryptocurrency once it's received. Immediately liquidating the currency avoids potential fluctuations in the market. The policy also encourages putting the gift to work immediately. Cryptocurrency is highly speculative and not likely to be consistent with most nonprofit investment policies.

When to say no:

Cryptocurrency gifts raise few liability issues per se. Nonetheless, the donor may have acquired cryptocurrency through illegal activity such as illicit drugs. Know the donor. Look for the warning signs of potentially risky gifts from donor's unknown to the charity or with questionable ties to businesses that may be inconsistent with the recipient charity's mission.

I. Timeshares

Any fundraiser who has been in development for exceptionally long has been offered a timeshare interest as a charitable gift. What is a timeshare, how do they work, and should they be acceptable assets for gifts? A timeshare is a way for groups of people to share ownership of a vacation property usually in a resort location. The use and ownership interests in timeshares can take many forms. There are scams in the timeshare resale market that discourage sellers from using those channels to convert their timeshare to cash.

Legal Structure of a Timeshare

What kind of property interest the donor owns in a timeshare depends on the type of timeshare purchased. Timeshares are typically structured either as shared deeded ownership or shared leased ownership.

- **Shared Deeded Ownership**

With shared deeded ownership, each owner is granted a percentage of the real property itself, correlating to the amount of time purchased. The owner receives a deed for his or her percentage of the unit, specifying when the owner can use the property. Only deeded timeshare property interests are eligible for an income tax charitable deduction. As with other gifts of non-cash assets valued in excess of $5,000, the donor will need a qualified, independent appraisal to claim the deduction. Inflated appraisals and subsequent sales for a fraction of the appraised value on a Form 8282 can raise audit flags for the donor's tax return.

- **Shared Lease Ownership**

If the timeshare is structured as a shared leased ownership, the developer retains deeded title to the property, and each owner holds a leased interest in the property. Each lease agreement entitles the owner to use a particular property each year for a set week, or a "floating" week during a set of dates.

Timeshare Expenses

A timeshare owner (even if owned by a non-profit) must pay annual maintenance fees to cover for the upkeep of the timeshare. These fees can be hundreds or even thousands of dollars a year and escalate continuously as the property ages.

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Timeshares Make a Poor Gift to Charity

- **Donation for the use of a timeshare week or weeks**

A donation of the use of a timeshare for charity use is equivalent to personal use by the donor. For example, a donation of a week of timeshare use to a charity auction produces no income tax charitable deduction. The donor is making a gift of less than her entire interest in the property and therefore the use of the timeshare is not deductible. See Revenue Ruling 89-51. Despite the lack of a tax benefit for the donor, a week of timeshare use can make an attractive auction item.

- **Gifts of a deeded interest in a timeshare**

The fair market value of a timeshare is minimal due to a glut of timeshare interests offered for sale. The expenses to market and sell a timeshare can easily exceed the proceeds from the sale of the timeshare. In addition to the difficulty of selling a time share with a low market value, there are significant maintenance fees that could easily exceed the proceeds from the sale of the timeshare.

When to say yes: Almost never.

When to say no: Almost always.

VI. Conclusion

Accepting or rejecting an offer of a gift is often driven initially by the resources of the charity and whether the potential gift is worth the resources to be expended. Be alert to "strangers bearing gifts" or the gift that is too good to be true (because it probably is). Good gift acceptance policies are the first line of defense to protect against accepting risky or worthless assets. Consider the due diligence and risk control strategies above that can facilitate even the most complex gift to any charity. Finally, consider each asset on a case-by-case basis. This paper is by no means an exhaustive summary of every possible quirky or tricky asset. Rather, the principles described herein can be a roadmap to evaluating nearly any asset before accepting it as a gift. Applied consistently, these principles will help you avoid accepting gifts that you later regret.

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Appendix A: Sample DAF Grant Acknowledgment

[Donor advisor name]
[Donor advisor address]

Dear [Donor]:
Thank you for recommending a grant of [Grant amount] from your donor advised fund at [Name of DAF] for [enter area of support if designated]. Your grant enables [insert mission language] at [Charity] to pursue their advanced and groundbreaking work. If restricted gift: [We will notify [appropriate Charity staff member] of your generous grant.

Your generosity is integral to our ability to carry out our important mission and to constantly seek improvements, and we are grateful for your dedication to our important efforts.

You will appear as [Donor] in our annual Donor Report. Should you have any questions or concerns, please contact [Insert contact in Charity development office]

Thank you again for your many efforts to support [Charity].

Sincerely,

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Appendix B:
Charity owned single member limited liability company to hold real estate

In LTR 199909056, the Service held that an amendment of the operating agreement of an LLC, which is controlled by a 501(c) (3) organization, will not adversely affect the organization's tax-exempt status and that income derived from the activities of the LLC will not be considered unrelated business taxable income.

http://www.pgdc.com/pgdc/irs-approves-llc-managed-public-charity

In 2012 the IRS ruled that charitable donations made to a charity owned LLC qualify for an income tax charitable deduction.

http://www.irs.gov/pub/irs-drop/n-12-52.pdf
http://www.millernash.com/irs-charitable-deduction-gotcha-eliminated-for-donated-real-estate-08-09-2012/

Here is an article written by a law firm endorsing the use of a charity owned LLC to hold real property. The liability for the real property is limited to the LLC and the parent is unaffected.
http://www.pselaw.com/2013/10/11/should-a-charity-set-up-and-use-an-llc-to-hold-property/

Below is a list of private letter rulings and the 2012 notice with a squib describing the holdings relating to charity owned LLCs.

Limited Liability Companies:

A. Organization engaged in charitable housing programs held able to create single-member LLC (disregarded entity) as owner of each HUD-insured property without adverse impact on exemption (PLR 201049046).

B. Private foundation ruled able to use single-member LLC (disregarded entity) to acquire real estate and fund construction of exempt school, to be operated by unrelated organization (PLR 201134023).

C. Tax-exempt union ruled able to use single-member LLC (disregarded entity) to operate pharmacy program for benefit of its members as related business (PLR 201222043).

D. IRS, on July 31, 2012, stated that contributions to single-member limited liability company that is disregarded entity for federal tax purposes, where SMLLC is wholly owned and controlled by U.S. charity are deductible, with gift treated as being to branch or division of charity (Notice 2012-52).

E. Ownership, through wholly owned disregarded entity, in S corporation, along with flow-through allocation of S tax items (subject to unrelated business income tax), held to have no adverse effect on exempt organization's exempt status (PLR 201328035).

The net result suggests charity should consider establishing a single member LLC for the purpose of holding real estate. The LLC would be treated as a disregarded entity and income and expenses would flow through to charity. The selling point is that liability for property owned by the LLC appears to be limited to the LLC's assets. Charity's deep pockets stay out of the chain of title.

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Appendix C: 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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