

PG Calc | Invested in your mission

Adventures in Accepting Restricted Gifts



Date: June 25, 2015
 Time: 1:00 – 2:30 Eastern Time
 Presenter: Elaine Eberhart
 Chair, Department of Development
 Mayo Clinic in Florida



PG Calc | Invested in your mission

Caveat

At Mayo Clinic, we
 call donors
 benefactors.

© 2015 Elaine Eberhart Adventures in Accepting Restricted Gifts 7

PG Calc | Invested in your mission


Agenda: Problems with Restricted Gifts

- Administrative
- Financial
- Legal
- Stewardship

© 2015 Elaine Eberhart Adventures in Accepting Restricted Gifts 8

PG Calc | Invested in your mission

Agenda: Laying the Foundation for Yes



Risk
Exception Precedents
Memoranda of Understanding and Gift Agreements
Gift Acceptance Policies and Review Teams (GAT, Dev Administrators)

© 2015 Elaine Eberhart Adventures in Accepting Restricted Gifts 9

PG Calc | Invested in your mission

Agenda: Detour or Road Closed



Changing a restriction with the benefactor or in court

Disclaiming a restricted testamentary gift



© 2015 Elaine Eberhart Adventures in Accepting Restricted Gifts 10

PG Calc | Invested in your mission

Agenda: When Restrictions go to Heck in a Handbasket: A Few Examples

Where are we going, and why are we in this handbasket?



© 2015 Elaine Eberhart Adventures in Accepting Restricted Gifts 11

PG Calc | Invested in your mission

What is the Difference Between a Restricted and Unrestricted Gift?

We often think of unrestricted gifts as undesignated, but they can be *broadly designated* and truly unrestricted

Most common restricted gift: **Restricted Purpose**

Gifts can also be restricted by:

- Terms
- Gift vehicle
- Funding Asset

© 2015 Elaine Eberhart | Adventures in Accepting Restricted Gifts | 12

PG Calc | Invested in your mission

Best Case Scenario for Restricted Gifts

Every gift fits neatly under a strategic fundraising initiative, is easily administered, is legal, and advances the institution financially.

Center for Biomedical Discovery	Center for Individualized Medicine	Center for Regenerative Medicine	Mayo Model of Care
Proton Beam Therapy Program	Robert A. and Patricia E. Kern Center for the Science of Healthcare Delivery	Mayo Medical School	


© 2015 Elaine Eberhart | Adventures in Accepting Restricted Gifts | 13

PG Calc | Invested in your mission

But that is...




© 2015 Elaine Eberhart | Adventures in Accepting Restricted Gifts | 14

PG Calc | Invested in your mission 

Problems with Restricted Gifts

- Administrative
- Financial
- Legal
- Stewardship


© 2015 Elaine Eberhart Adventures in Accepting Restricted Gifts 15

PG Calc | Invested in your mission 

Administrative Difficulties

- Narrow eligibility criteria that may prohibit use of the gift long-term
- Programs that are difficult and expensive to execute or that simply lie outside the missional priorities of the organization
- Funds that are dependent on the continued employment of a particular employee

© 2015 Elaine Eberhart Adventures in Accepting Restricted Gifts 16

PG Calc | Invested in your mission 

Legal Difficulties

- Benefactor wishes to retain control over the gifted asset
- Benefactor wishes to impose restrictions that are illegal or unethical
- Gift acceptance issues regarding assets (Pre-arranged sales of real estate gifts or debt-encumbered property)

© 2015 Elaine Eberhart Adventures in Accepting Restricted Gifts 17



Financial Difficulties

- Cannot meet the investment expectations of the benefactor
- Doesn't meet institutional minimums for type of fund or for endowment
- Benefactor has a complicated financial relationship with the institution: vendor, investor in for-profit activities, board member who sits on investment committee



Stewardship Difficulties

- Benefactor seeks more recognition than stewardship policy allows
 - Wants same recognition for deferred gifts and current gifts
 - Wants more recognition than institutional standards
- Benefactor seeks the stewardship "deal" a friend received eons ago



Laying the Foundation for **Yes**


- Gift acceptance policies and teams
- Gift agreements
- Exceptions to policy
- Risk tolerance

PG Calc | Invested in your mission 

A Layer of Facilitation and Review at Mayo Clinic

- Development Administrators (DAs) are fundraising initiative experts and liaisons to clinical, research, and educational areas
- DAs vet restrictions with area leaders and sometimes suggest alternatives to development officers and benefactors

© 2015 Elaine Eberhart Adventures in Accepting Restricted Gifts 21

PG Calc | Invested in your mission 

A Layer of Facilitation and Review at Mayo Clinic

- DAs prepare Memoranda of Understanding (MOU) to assure that restrictions can be honored, particularly above a certain dollar threshold, and assure that proposal language properly captures the restriction

© 2015 Elaine Eberhart Adventures in Accepting Restricted Gifts 22

PG Calc | Invested in your mission 

Gift Acceptance Policies

- Help minimize inconsistency
- Manage benefactor expectations
- Help rein in “entrepreneurial” development officers and volunteers
- Maintain institutional integrity

“A foolish consistency is the hobgoblin of little minds, adored by little states and philosophers and divines.” - Emerson

© 2015 Elaine Eberhart Adventures in Accepting Restricted Gifts 23

PG Calc | Invested in your mission 

Components of Most Gift Acceptance Policies

- Mission
- Conflict of interest
- Gift Acceptance Committee
- Gifts that the organization will not accept
- Gift vehicles
- Assets accepted as gifts
- Trustee appointment

© 2015 Elaine Eberhart Adventures in Accepting Restricted Gifts 24

PG Calc | Invested in your mission 

You might want to include:

- Booking, valuation, and counting standards
- Stewardship policy
- Real estate acceptance and management policies
- Policy on gold coins
- Use of outside counsel
- Escalation policy


© 2015 Elaine Eberhart Adventures in Accepting Restricted Gifts 25

PG Calc | Invested in your mission 

Gift Acceptance Team at Mayo Clinic

- Gift Planning Associate Chair ~ Chair
- OGP Gift Planning Administrator ~ Administrator
- Legal Officer
- Director of Finance
- Director of Stewardship
- Principal Gift Officer
- Major Gift Officer
- Administrative Assistant


© 2015 Elaine Eberhart Adventures in Accepting Restricted Gifts 26

PG Calc | Invested in your mission 

The Gift Acceptance Team

- Is committed to facilitating gift closures
- Interprets and enforces policy
- Does not make policy
- Members have tolerance for ambiguity

© 2015 Elaine Eberhart Adventures in Accepting Restricted Gifts 27

PG Calc | Invested in your mission 


Every Rule has an Exception, and Most Exceptions are Governed by Rules

- Mayo Clinic Gift Acceptance Team maintains a record of prior exception decisions
- Documenting gift acceptance exceptions creates guidelines for future exception decisions

BUT

- Not all exceptions set precedents
- Some exceptions eventually will be codified in the gift acceptance policy


© 2015 Elaine Eberhart Adventures in Accepting Restricted Gifts 28

PG Calc | Invested in your mission 

Documentation is Everything

- Call reports should document all encounters in which benefactor discusses restricted intention
- Capturing the restricted intention from its earliest iteration
- Documenting institutional promises made regarding restrictions
- Confirming the benefactor's intention during every conversation
- Including family members in conversations as appropriate and documenting conversations with them


© 2015 Elaine Eberhart Adventures in Accepting Restricted Gifts 29

PG Calc | Invested in your mission 

Nothing is as Important as a Well-Drafted Gift Agreement

- Be prepared: have several templates for various types of gifts
- Always include changed circumstance language
- Review regularly to assure compliance with current law


© 2015 Elaine Eberhart Adventures in Accepting Restricted Gifts 30

PG Calc | Invested in your mission 

Nothing is as Important as a Well-Drafted Gift Agreement

- Assure layers of review prior to signatures
- Ask benefactor to seek advice of his/her advisor prior to signing

© 2015 Elaine Eberhart Adventures in Accepting Restricted Gifts 31

PG Calc | Invested in your mission 

Managing Risk

- Know the risk tolerance of the decision makers
- Outline the risk in internal documents; don't underestimate the risk
- Project risk long-term; err on side of worst-case scenario in describing risk for decision makers
- Though you are benefactor-centric, cue decision makers that you are committed to protecting the interests of the institution

© 2015 Elaine Eberhart Adventures in Accepting Restricted Gifts 32



Managing Expectations

- Move slowly; don't get ahead of the decision makers.
- Don't get stakeholders excited about gifts that may not happen.
- Attend to relationships with legal, finance, and programmatic colleagues before negotiating difficult gift scenarios.
- Take one for the team.
- Know when and how to escalate.



Changing Restrictions or Disclaiming Testamentary Restricted Gifts

Detours and Roadblocks



Changing Restrictions for Endowed Funds: UPMIFA

- Restrictions can be released with the written consent of the benefactor.
- If the benefactor's written consent cannot be obtained, a court of appropriate jurisdiction can release the restriction if the restriction "is obsolete, inappropriate, or impracticable."



Changing Restrictions for Endowed Funds: UPMIFA

- If the fund is over 20 years old and the amount is less than \$25K, the charity may not need to go to court
- A release cannot change the use of the funds to non-charitable purposes



Disclaiming a Restricted Testamentary Gift: Questions

- Can the gift be disclaimed under applicable federal and state law?
- What is the time period in which docs can be filed?
- Have you filed the appropriate state documents?
- Have you already accepted any part of the disclaimed asset, a trust distribution, for instance?



Going to Heck in a Handbasket

A few cases about which you probably have heard . . .

PG Calc | Invested in your mission

Cases That Suggest What Can Go Wrong and How Badly

- Sweet Briar College
- Garth Brooks
- The Barnes Foundation
- The United Daughters of the Confederacy v. Vanderbilt University

© 2015 Elaine Eberhart Adventures in Accepting Restricted Gifts 39

PG Calc | Invested in your mission

Finally, the **importance** of honoring restrictions...

© 2015 Elaine Eberhart Adventures in Accepting Restricted Gifts 40

PG Calc | Invested in your mission


The Enforcers

<p>Lori Swanson Attorney General State of Minnesota 9,496 Charities</p> 	<p>Carmen Keller Development Allocations Administrator Mayo Clinic 8,120 Restricted Accounts</p> 
---	---

© 2015 Elaine Eberhart Adventures in Accepting Restricted Gifts 41

PG Calc | Invested in your mission

Questions and Answers



© 2015 Elaine Eberhart Adventures in Accepting Restricted Gifts 42

PG Calc | Invested in your mission

Still Have a Question?

Contact: Elaine Eberhart
Chair, Department of Development
Mayo Clinic in Florida

E-mail: eberhart.elaine@mayo.edu

© 2015 Elaine Eberhart Adventures in Accepting Restricted Gifts 43
