

## **CREATING GIFT ACCEPTANCE POLICIES**

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Your organization is in the midst of a major fundraising campaign. The pressure is on. The telephone rings...it is a donor offering to give a spectacular mansion in Los Angeles! As a Development Director striving to hit a home run, you are ecstatic and immediately respond, "We'll take it!"

Later, however, your organization discovers that the land under the mansion was contaminated by hazardous waste from a gas station nearby. The cost of clean-up could be hundreds of thousands of dollars. Who must pay for the clean-up? Your charity! A gift of a spectacular mansion has turned into a financial disaster!

What could have prevented this disaster? A gift acceptance policy.

This cautionary tale is a real possibility and it emphasizes the urgency for any not-for-profit organization soliciting gifts other than unconditional cash gifts to have, in writing, a gift acceptance policy.

### **PURPOSE AND ROLE OF GIFT ACCEPTANCE POLICIES**

A gift acceptance policy is a written compilation of guidelines and suggestions for everyone involved in the gift process from the front-line fundraisers to the Board of Directors. The policy should describe the standards necessary to evaluate various kinds of gifts for acceptance and should allow for some flexibility in handling each case.

#### ***Provides Discipline***

The primary benefit of gift acceptance policies is to maintain discipline in gift acceptance and administration. The gift acceptance policy defines (i) the types of assets that are acceptable gifts (ii) the forms of gifts that are acceptable and (iii) your organization's role in gift administration. Discipline prevents the acceptance of gifts that will cost your organization time, money and possibly its reputation.

#### ***Provides Education***

A gift acceptance policy provides education to your organization's staff and Board of Directors about the critical issues triggered by certain gifts. At first glance a yacht may seem to be a fabulous gift. But if your organization is located in Chicago, after you consider storage costs (at least 9 out of 12 months) insurance, maintenance costs, etc. the yacht may be more of a liability than an asset.

Development staff members must be able to recognize a planned gift that is truly given by a donor who really wants to benefit the nonprofit, versus a "gift" that is motivated by the donor's personal financial gain, which could obligate the charity to a lifelong arrangement that could cost your organization time, money and possibly its reputation! A written gift acceptance policy helps everyone involved to understand the difference.

#### ***Preserves Donor Relationships***

Donors are a charitable organization's most valuable asset. Written gift acceptance policies can also be very beneficial in helping to preserve relations with donors when a gift must for one reason or another be rejected. If the donor can be furnished written policies, it is much easier for the fundraiser "on the ground" to handle any negative reactions. Written policies remove focus or blame from the contact person and make it clear that the rejection of a particular

gift is the result of policies that had been considered and determined in the past. A donor may even gain a greater respect for the professionalism of an organization that is prepared to quickly respond to an offer to make an unusual gift.

### **DRAFTING AND ADOPTING GIFT POLICIES**

When creating a gift acceptance policy it is critical that your organization does not simply copy another organization's gift acceptance policy. Copying another organization's gift acceptance policy is analogous to wearing somebody else's clothes ...it will rarely fit!!

So who should create the policy? Development of the policy should be a collaborative process involving your organization's planned giving staff, finance personnel, program administration staff, management and the Board's committee responsible for oversight. Involving staff from development, finance, program administrations and other areas of organizational management along with volunteer leadership from the board enhances a spirit of teamwork and mutual understanding. Those who are not involved in the day-to-day fundraising activities can gain a greater understanding of what drives the development process before the gift is completed. Likewise, those who work directly with donors can gain a greater understanding of the issues faced by those who must meet the expectations of donors *after* your organization actually receives the gifts.

After the policy is created, the Board of Directors should approve and adopt the policy and attach the date of this approval to the policy.

### **CRITICAL ELEMENTS OF A GIFT ACCEPTANCE POLICY**

The gift acceptance policy should include several elements:

- Your organization's mission;
- The purpose of the gift acceptance policy;
- Recommendation of donor's use of legal counsel;
- Circumstances in which your organization will engage legal counsel;
- Your organization's policy with respect to gift restrictions;
- Types of gifts and the forms of gifts that your organization will accept;
- Reporting requirements;
- Your organization's adherence to ethical standards;
- Gift acceptance committee; and
- Annual review.

This article will briefly discuss each of the elements listed above.

#### **Mission**

Prominently display your organization's mission on every document generated by your organization, especially its gift acceptance policy. It is important to keep your organization's goals in mind when drafting and using the policy.

#### **Purpose**

The gift acceptance policy should begin by stating its purpose, and how the policy relates to the mission of your organization. For example, "The purpose of this gift acceptance policy is to govern the acceptance of gifts and to provide guidance to donors and their professional advisors in completing gifts."

### **Donor's Use of Legal Counsel**

The gift acceptance policy should also clearly state that donors should seek his or her own legal or tax counsel before making a gift. This is critical for two reasons:

- (1) Your organization must avoid the conflict of interest that would occur if it functioned as the donor's adviser and received the donor's gifts; and
- (2) Your organization cannot involve itself in the unauthorized practice of law.

### **Organization's Use of Legal Counsel**

The gift acceptance policy should also inform the donor of the circumstances in which your organization will hire legal counsel to assist with the gift. For example, your organization may hire an attorney:

- To review certain gifts, such as closely held stock, or closely held stock subject to buy-sell agreements or other restrictions.
- To review all transactions governed by contracts or legal documents
- To review all transactions with potential conflicts of interest
- To review transactions in which the committee or board members believe that the use of counsel is appropriate.

### **Restrictions on Gifts**

All organizations prefer unrestricted gifts so they can use the funds as they wish. However, because most donors want to influence how their gift will be used, organizations that do not allow donors any input in their gifts often find it difficult to raise large amounts from relatively sophisticated donors.

Gift acceptance policies are an excellent place to explain your organization's attitude towards restricted gifts. Accordingly, your organization should determine the types of restrictions that can be placed on gifts and specify such restrictions in its gift acceptance policy. Options range from:

- A rigid policy prohibiting restrictions
- A policy which allows endowment pools for specific purposes;
- A broad policy stating that all gifts that fit your organization's mission and purpose will be accepted.

All policies, however, should state that gifts which are counter to or beyond the scope of the nonprofit's mission and purpose will be rejected!!

An organization may also include language about specific endowments, chairs or other naming opportunities and set out the dollar limits, pledge restrictions and other governing principles. Large schools and universities should have more extensive policies to ensure proper communication and consistency. Smaller organizations may be able to manage with a less detailed policy.

### **Types of Gifts**

The types of gifts an organization accepts are also an important component of a gift acceptance policy.

There are three primary options available to a donor: current outright gifts, charitable bequests and split interest gifts.

**I. Current Gifts.** A current gift involves the donor's transfer of money or property to the charity, without the receipt of consideration or economic benefit. Although the donor may place restrictions on the use of the property, the donor must retain no control over the money or property transferred to the charity to qualify as a current gift. Examples of current gifts include cash, securities, tangible personal property and some real estate gifts.

**II. Split interest Gifts.** A split-interest gift involves the donor's irrevocable transfer of an interest in an asset to the charity, but the donor generally retains either an income stream or the remainder interest. The planned giving program may include the following types of split-interest gifts:

- (a) Charitable gift annuities;
- (b) Gifts of remainder interest in a personal residence or farm;
- (c) Charitable remainder trusts;
- (d) Charitable lead trusts; or
- (e) Pooled income funds.

**III. Charitable Bequests.** A charitable bequest involves the donor's transfer of money or property to the charity *at the donor's death*, either through the donor's will or trust. The donor uses or controls the asset during his or her entire lifetime.

At this time you may be thinking, how will my organization decide what gifts to accept and what gifts to refuse?

The answer is self-assessment. Your organization needs to determine its ability to manage each type and form of gift. For example, your organization may not want to accept gifts of real estate if your organization is not staffed to manage and dispose of the property. With gifts of real estate, your organization could be obligated to act as landlord and realtor, even for out-of-state property. Tangible personal property, such as furniture or stamp collections gifts may need insurance storage and special display cases, which could commit your organization to incur substantial out-of-pocket costs for many years. Because split interest gift arrangements obligate a charity to make payments to a donor for life, your organization must have the staff and resources to monitor the gift for the protection of both the donor as well as your organization.

In summary, your organization needs to ask itself the following question: Does your organization want, and have the resources, to manage and be responsible for the gift?

Once your organization completes its self-assessment, your organization should list the types of gifts your organization will accept and those gifts it will not accept. The policy should also provide how the gifts will be managed, how the gifts will be disposed of and how the gifts will be invested after they are accepted.

## **I. Current Gifts**

### **A. Cash**

Cash is usually the perfect gift, unless the donor places restrictions on the cash gift that are unacceptable to your organization, are contrary to public policy, potentially illegal or are incompatible with its mission.

### **B. Tangible Personal Property**

Tangible personal property includes art, furniture, coin and stamp collections, livestock, jewelry, equipment, cars, boats, clothes, and any other personal property item owned by a donor. A gift acceptance policy should include restrictions on accepting gifts of tangible personal property and provide guidelines for analyzing such gifts. Your organization should examine a potential gift of personal property for the item's financial value, its potential use by your organization and if you will not use the item, whether the item could be sold quickly and converted into cash.

When your organization does its self-assessment, it should determine whether or not it will only accept gifts of tangible personal property that relate directly to its mission or whether it will also accept gifts of tangible personal property that are unrelated to its mission. Some organizations choose to accept only gifts of tangible personal property that relate directly to their organization's mission, such as books to a university and art to a museum. Those organizations believe that gifts with a less directly related use, such as a stamp collection to a hospital, cause more expense than value after considering moving and display costs and insurance.

If your organization decides that it will accept property that is not directly related to your organization's mission, it needs to determine whether it will be able to sell the property without incurring significant costs. Questions your organization should ask itself include:

- if it cannot sell the property immediately, can it afford the maintenance, insurance, taxes, and management costs for the property?
- Are there any undue restrictions on the use, display, or sale of the property?
- How expensive will it be to hire a specialist, if necessary to sell the property?
- Will the property require sale at a special auction held in London only once a year?

### **C. Securities**

Your organization should be aware that there are two kinds of securities: publicly traded and closely-held. Your gift acceptance policy should describe its procedures for acceptance of both publicly traded securities or closely-held securities.

#### **1. Publicly Traded Securities**

A publicly-traded security is readily traded on national or regional stock exchanges. All charities accept such securities. However, it is important that your gift acceptance policy requires your development professionals to tell the donor, before the gift is made, that your organization's general policy is to sell gifted securities as soon as it receives the gift.

This is important because donors often think that a charity should keep gifted securities because the donor is emotionally attached to the securities and feels that the securities are a particularly good investment. Charities, however, may not necessarily want to keep small blocks of stock representing different companies because those stocks may not fit into the charity's overall portfolio.

Additionally, having a gift acceptance policy that mandates the sale of gifted securities as soon as they are received helps the charity if the donor criticizes the charity's decision to sell securities that later increase in value, and also helps prevent donors from tracking the price of the securities, staying involved with the gift long after they should.

#### **2. Closely held securities**

Closely-held securities, those that are not publicly traded, can be accepted by most charitable organizations. In contrast to publicly-held securities, a gift of closely-held securities requires careful study, especially because its value is often difficult to determine. Accordingly, your gift acceptance policy should address:

- how value and marketability are determined prior to acceptance;
- how restrictions are examined and resolved; and
- when legal counsel is required prior to acceptance of the gift.

Because closely-held stock is not publicly traded, its value is difficult to determine. If your organization decides to accept closely-held stock, your gift acceptance policy should state that its value must be established by an independent appraisal.

With respect to marketability, your organization needs to find evidence of interest in the security. Will you be able to sell the security and to whom? Many times, the Board of Directors of the company or the company's employees will buy back the stock. Your gift acceptance policy should include determining who will buy back the shares of stock and the necessity of working with your organization's treasurer, business, or legal counsel's office before accepting the gift.

Although your organization needs to ensure that the security is marketable, it is important that no prearrangement with respect to the sale of stock is in place *before* the gift. Your organization must have full discretion to decide whether and when to sell. A preexisting agreement could cause the donor to be taxed.

Because most closely-held businesses do not want to see ownership move out of a small group of owners, many types of closely-held stock have restrictions on transfer. Your policy should require the development professional to review the face of the stock certificate to determine if the security is subject to restrictions, such as a buy-back agreement at a set price, or that it must first be offered to a specific group at a set price before being offered on the open market and then should describe the method of resolving any restrictions.

Lastly, your gift acceptance policy should require consultation with legal counsel and tax advisors to determine that the security will not generate undesirable tax consequences for your organization. Certain interests, such as Sub-S stock and certain partnerships or LLC's, generate unrelated taxable business income. While most organizations will be willing to pay the tax in order to take the gift, the consequences of the gift should be understood in advance.

#### **D. Real Estate**

Real estate gifts include real property both improved and unimproved, detached single-family residences, condominiums, apartment buildings, rental property, commercial property, farms, and even includes gifts subject to a retained life estate. Because real estate is a commonly-owned asset, people are likely to make a gift of real estate. But as indicated in the introductory cautionary tale, substantial liabilities could be attached to real estate. Therefore, your organization should establish guidelines to handle real estate gifts. The policies will help deal with issues such as whether to accept the gift, when to use of an outside appraiser, and how to handle your environmental concerns.

##### **1. Deciding to Accept the Gift**

First, your organization needs guidelines to determine whether it should even explore taking the potential gift of real estate. The first guideline should be that a professional with real estate experience representing your organization should make a site visit to examine the property, indicate its estimated value and note any potential problems associated with the property. In addition, your policy should require the donor to do the following:

**(a) Provide your organization with a reasonably current appraisal**

Your organization should establish guidelines for valuing a potential gift of property by an outside, independent appraiser. In addition to the fair market value, appraisers can also help determine the property's potential for resale and discover environmental problems with the property. Accordingly, in order to accept the property, your organization's gift acceptance policy should require the donor to provide to the charity a reasonably current appraisal of the fair market value of the property and interest in the property the charity would receive if the proposed gift were approved.

**(b) Disclose any limitations or encumbrances on the property**

The donor must disclose the existence of any and all mortgages, deeds of trust, restrictions, reservations, easements, mechanics liens and other limitations of record. No gift of real estate will be accepted until all mortgages, deeds of trust, liens and other encumbrances have been discharged, except in very unusual cases where the fair market value of your organization's interest in the property net of all encumbrances is substantial.

**(c) Disclose any carrying costs**

The donor must disclose the existence and amount of any carrying costs, including but not limited to property owners' association dues, country club membership dues and transfer charges, taxes and insurance.

**(d) Provide your organization with title information**

The donor must furnish a copy of any title information in the possession of the donor, such as the most recent survey of the property, a title insurance policy and/ or an attorney's title opinion.

Based on information from the donor and from the site visit, the real estate committee or gift acceptance committee should consider the following issues when deciding whether the charity should take the potential gift:

- Estimated value of the real estate;
- Likelihood of selling the property;
- Whether the property is mortgaged;
- Whether there are any restrictions, reservations, easements or other limitations associated with the property;
- Whether there are carrying costs, such as insurance, property taxes, mortgages, or notes, etc., associated with the property
- Location of the property;
- Likelihood of the nonprofit's using the property;
- The relationship of the donor to the nonprofit; and
- Whether the environmental audit shows that the property is not damaged (further described below).

**2. Environmental Concerns**

One of the greatest risks facing owners of real property – including charities - is environmental liability. The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), enacted in December 1980, provides that when an environmental hazard is discovered on a piece of property, the present owner is generally responsible for curing the

problem, including any charity that was given damaged property as a gift!! The liability for clean up exists without regard to the actual knowledge of the owner or the material participation of the owner. This potential liability, which can turn a gift into a financial disaster, makes an environmental examination of the property absolutely necessary before accepting it!

Accordingly, your organization should have detailed policies that require a specialist to conduct a Phase One Environmental Audit of all anticipated gifts of real property to rule out any hazards that, if discovered, would require your organization to reject the potential real estate gift. The audit may be waived for residential property that has been used solely for residential purposes for over 20 years. However, if the audit is waived, your policy may require that the donor sign an environmental indemnity agreement.

Your organization must also be cautious when serving as trustee of a charitable remainder trust or charitable lead trust that owns real estate, because exposure may extend beyond the assets of the trust.

## **E. Life Insurance**

Life insurance can be a valuable part of your organization's planned giving program. Your gift acceptance policy should provide guidelines to state the minimum face value accepted, the type of insurance products accepted (term, whole life, etc.) and the rating minimum that the insurance company offering the policy must meet.

Your organization must have guidelines that spell out action to take on the receipt of an insurance policy. For example, gifts of term life insurance that require your organization to accept a donor's premium payments as gifts and send them to the life insurance company on a regular basis should generally be discouraged because the administrative burdens often outweigh the benefit to the charity. Additionally, if the donor stops making the premium payments, your organization is confronted with an awkward decision as to whether to continue the payments.

However, if the policy is a whole life policy, and premium payments are due, your organization needs to do its self-assessment to determine whether or not it is in the best interest of your organization to make those payments. If your organization decides to accept policies that are not paid up, will your organization bill the donor for future premiums? If so, should the donor be required to sign a pledge agreement to ensure that the future premiums are paid? The decisions should be made on a case-by-case basis by a committee that reviews the policies. Alternatives include:

- **Continuing to make the premium payments.** This course of action must be based on economic/investment judgement. Is it a good investment for your organization? Can your organization afford the cash flow?
- **Conversion of the policy to a paid up policy.** Conversion will reduce the face value of the policy, but will capture the value of the policy on its date of gift.
- **Exchange of the policy for its cash value.** Exchange of the policy for its cash value is another way to realize or capture the value the policy on its date of gift.
- **Sale of the policy to a viatical company.** Viatical companies buy policies when the insured is age 65 and older. These companies may pay more than the cash surrender value.

If a completed gift of life insurance policy is to be made, it is crucial that your policy mandates that your organization be named as the owner and irrevocable beneficiary of the life insurance policy.



## **II. Deferred and Split Interest Gifts**

As mentioned above, a split-interest gift involves the irrevocable transfer of an interest in an asset to the charity, but the donor generally retains either an income stream or the remainder interest.

### **A. Life Income Gifts**

Life income gifts are, as the name implies, gifts in which the donor receives income from his or her gift. The following discussion summarizes general factors your gift acceptance policy should address for such gifts:

- **Amount of Initial Gift**

Most nonprofit organizations require a minimum-size life income gift because, in addition to other factors, the cost of investing and administering life income gifts is high. The gift minimums vary depending on the size of the charity's development program and the wishes of its vice-president for development, board of trustees, treasurer's office, and outside money manager. Your organization needs to balance the management and administrative costs of the gift (*fees charged by the asset manager for investing the assets and the administrator for sending income payments and tax information to beneficiaries*) with the possibility of discouraging donors from making a gift because of high gift minimums.

- **Payout Rates**

Many donors shop around at different charities in order to obtain the highest payout rate on their life income gifts. Your organization must create a strong policy for dealing with the payout rates on life income gifts and not be swayed by the donors seeking the highest payout rates.

- **Ages of Beneficiaries**

Based on the type of life income gift, your organization needs to decide the minimum age of the youngest beneficiary. Your organization should not commit to pay income to donors who are too young, because of the great chance of depleting the principal of the gift, leaving your organization with little or no gift.

- **Number of Beneficiaries**

The number of beneficiaries depends on the life income vehicle, the amount of the gift as well as various other factors as further described below. All life income gifts require that the beneficiaries be alive at the time the gift is created.

This article will discuss the following two types of life income gifts: charitable gift annuities and charitable remainder trusts.

#### **1. Charitable Gift Annuities**

A charitable gift annuity is a lifetime contract between your organization and the donor. The donor makes a gift to your organization and receives a fixed amount of income for the donor's lifetime, and if desired, for another beneficiary's lifetime. Upon the death of the last beneficiary, your organization will receive the remainder. The donor may not make additional contributions to a charitable gift annuity; however, the donor may enter into additional contracts.

Although gift annuities are wonderful gifts, your organization must clearly understand the liability and obligations created in issuing the annuity. For example, your organization must

register with the state insurance commission where required by state law in any state where it will solicit gift annuities. In addition, state laws often require nonprofits to have segregated reserves on their books to cover payments due to annuitants.

Your organization should also determine whether it wishes to initiate a deferred gift annuity program in addition to the regular gift annuity program. Deferred gift annuities should be articulated separately in the policy. Deferred gift annuities involve the donor making a current gift and the donor (or other beneficiary) receives an income stream beginning at a point in the future.

If your organization decides to establish a gift annuity program, the gift acceptance policy should define the following:

- ***Minimum size of the gift annuity***

Many charities require a gift minimum of \$5,000 to establish a charitable gift annuity or deferred gift annuity; others have increased that amount to \$10,000.

- ***Additional gifts to the gift annuity***

Charitable gift annuities cannot be augmented, but must be established as new gift annuities each time a donor wishes to establish one. Accordingly, many organizations choose to keep the establishment of a second charitable gift annuity at the same minimum amount as the first gift annuity. To encourage subsequent gifts, however, your organization may want to allow donors to establish a second charitable gift annuity at a lower amount. However, before your organization allows the donor to establish a second annuity at a lower amount, it should determine how much benefit it receives from smaller subsequent gifts after considering the cost of administration.

- ***Minimum age requirement***

Because the payout rates are based on actuarial tables, the older the donor, the higher the rate of return. Accordingly, it is generally not financially worthwhile to donors younger than 55 who wish to receive a high annual payout rate to establish a charitable gift annuity.

- ***Number of beneficiaries***

The Internal Revenue Service allows a maximum of two beneficiaries for a charitable gift annuity.

- ***Payout requirement***

The need for a written gift acceptance policy that establishes maximum payout rates allowed by the charity for donors at certain ages is important because, as mentioned earlier, some donors shop for the highest gift annuity payout rates among charities. The American Council on Gift Annuities ("ACGA") publishes suggested rates based on actuarial information that factors life expectancies, inflation, and investment returns.

The planned giving director, consulting with your organization's treasurer should decide whether to follow the ACGA's suggested rates. Many charities choose to follow the ACGA's suggested rates, but place a cap on their highest payout rate at a number lower than the ACGA's current highest rate of 14%.

With respect to deferred gift annuities, because a deferred gift annuity does not begin to pay an income to the donor until a date in the future, your organization should consider whether

rates should be capped at a certain amount, and whether your organization will establish deferred gift annuities for donors who are quite young, such as 25 or 30 years old.

- ***Types of property accepted in exchange for the annuity;***

Your organization may not wish to accept property that does not generate an income stream (such as personal property) because a gift annuity obligates your organization to pay an income stream based upon the gift's value on the date of the gift. The charity must be able to determine the gift's value and marketability before accepting it or run the risk of creating a negative cash flow transaction (instead of a gift).

On the other hand, your organization may accept gifts of real property for a deferred gift annuity that it would not accept for one that requires payments to begin immediately.

- ***Discussion of the management of the annuities; and***

Will the annuities be managed within your organization or by outside managers?

- ***States where the annuities will be offered.***

As mentioned earlier, your organization must register with the state insurance commission where required by state law in any state where it will solicit gift annuities. State laws often require nonprofits to have segregated reserves on their books to cover payments due to annuitants.

## **2. Charitable Remainder Trusts**

A charitable remainder trust is a flexible arrangement, which involves an irrevocable contribution of property. The trust can be created either during the donor's life or at the donor's death through language contained in the donor's will. The trust can be created for a predetermined number of years, not to exceed 20 years, or for the lives of the named non-charitable beneficiaries. At least one income beneficiary must be non-charitable. The trust income (*not less than five percent or more than fifty percent of the value of the trust assets*) will be paid to the donor and/or other designated beneficiaries on an annual or more frequent basis, such as semi-annually or quarterly. The trust remainder will be distributed to your organization. The trust may be funded with contributions of cash, securities or real property. Encumbered property, such as mortgaged real estate, is generally unsuitable as an asset to be transferred to a charitable remainder trust.

There are two types of charitable remainder trusts:

**a. Unitrust.** A unitrust pays a fixed percentage of trust assets (*not less than 5%*) determined annually to the income beneficiary or beneficiaries. The percentage of assets that are required to be distributed at least annually cannot be greater than 50% percent.

**b. Annuity Trust.** An annuity trust pays a fixed annuity and requires that a sum certain (*not less than five percent of the initial fair market value of trust assets*) be paid at least annually to the named income beneficiary or beneficiaries. The annuity for any year may not be greater than 50% of the initial fair market value of the trust assets.

Your organization should not enter into life income gift arrangements lightly. Life income gifts can cause conflict between your organization and a donor. Your organization must have an investment strategy that allows it to meet its financial obligation to pay lifetime income to the donor, as well as administrative systems that can be maintained many years into the future. Your organization must balance the desires of the donor to make a gift, and the development staff's

wish to receive it, along with your organization's goal to build endowment with your organization's need for current income and its willingness to spend time and money on administering a gift for many years without the use of the principal.

If your organization decides to establish accept charitable remainder trusts, the gift acceptance policy should define the following:

- ***Minimum size of charitable remainder trust***

Many charities that have their programs managed by asset managers feel that a charitable remainder trust cannot be established for less than \$100,000 because of the time required to manage separately invested funds. For a donor who wishes to establish a charitable remainder trust for a smaller amount, the asset manager may be willing to accept a charitable remainder trust for \$75,000 if the trust's assets can be combined with the financial institution's common trust funds, reducing the time involved in managing the account. Some nonprofit organizations, often larger organizations such as Ivy League and older colleges, universities and secondary schools with well-established development programs, manage their own charitable remainder trusts in house and may elect a lower gift minimum.

- ***Additional gifts to the trust***

A donor may *not* make additional gifts to a charitable remainder annuity trust, but may make additional gifts a charitable remainder unitrust. Many charities prefer not to establish gift minimums for additional gifts to unitrusts and allow donors to make additional gifts of any amount. Other charities, especially those that have older, more established development programs, set gift minimums for additional gifts to a unitrust as low as \$1,000. Many organizations find that the time and expense associated with processing the additional gift requires a specific minimum dollar amount.

- ***Minimum age requirement;***

Your organization should determine the minimum age allowed for a beneficiary of a charitable remainder trust on a case-by-case basis, if at all. Many donors want to benefit their children in their estate planning, which may include naming the children as beneficiaries of a charitable remainder trust. The younger the beneficiary, the longer the trust will run, incurring greater administrative costs, and, because of the long time the trust must pay an income to beneficiaries, perhaps a smaller remainder gift will be left to the charity. Factors to consider when determining a minimum age requirement include the following

- ◆ whether the trust is being established for a term of years;
- ◆ whether the charity has a special relationship with the donor;
- ◆ the total number of beneficiaries of the trust;
- ◆ the trust's proposed size;
- ◆ the expected total return of the trust.

Many charitable remainder trusts are established without involvement from the charity, so the planned giving officer who is brought into the planning process by the donor must be diplomatic in making suggestions, but remind the donor about the size of the gift that will eventually come to the charity.

- ***Number of beneficiaries***

If a charitable trust has too many non-charitable income beneficiaries it may be administratively unmanageable and likely to reduce the ultimate gift to your organization.

Accordingly, when your organization is involved in its establishment of a charitable remainder trust, it may wish to limit the number of beneficiaries.

- ***Payout requirement***

Although Congress has established a 5% minimum payout rate, donors are more concerned with the maximum rate allowed by charity that serves as the trustee of the donor's trust. Many charities prefer a maximum payout rate of 5% or 6%. Your organization may accept a payout of 7% or higher if the youngest beneficiary of the trust is older, if the size of the trust is substantial, or if the donor has a special relationship with your organization. Your organization can also select rates between whole percentage points, such as 5.5%, to pay a donor.

Your organization may accept a higher payout rate for a trust that is established for a term of years rather than for a donor's lifetime. Trusts established for a small number of years, such as fewer than 10 years, may be as high as 7% or 8%, especially if the donor has a specific objective that can be accomplished in a small number of years, such as paying college tuition for 4 years. Your organization may also accept a higher payout rate if the size of the gift is substantial because, although more income will be paid to the beneficiary, the remainder amount to your organization will still be significant because of the gift's size.

Donors may also select an outside institutional trustee, such as a bank or trust company to serve as trustee of the charitable remainder trust. In this situation, the donor and the institutional trust determine the payout rate; your organization would be excluded from the process and, in many cases, may never know about the trust until the death of the donor, when your organization receives the remainder.

- ***Types of property accepted to fund a charitable remainder trust; and***

As with charitable gift annuities, your organization may not wish to accept trusts funded with property that does not generate an income stream (*such as personal property*) because a charitable remainder trust obligates your organization to pay an income stream based upon the gift's value on the date of the gift.

In addition, mortgaged property must not be contributed to a charitable remainder trust. Lastly, if a donor contributes real estate, the gift acceptance policy should require the development officer to tell the donor that the donor can not continue to enjoy use of the property after it is contributed to the trust.

- ***Trustee appointments and the fiduciary responsibility***

While your organization may choose to accept a gift of a charitable remainder trust, it may choose not to serve as trustee. Your gift acceptance policy should describe the circumstances when your organization will or will not serve as trustee. For example, suppose a donor wishes to establish a charitable trust that benefits multiple charities, but wants your organization to manage it. Will your organization do so, and under what circumstances? Some charitable organizations serve as trustee only when that organization is the sole irrevocable beneficiary where others are willing to serve as trustee as long as it is the irrevocable beneficiary of 50% or more of the remainder.

If your organization does serve as trustee, it should ensure that state law allows it to serve as a fiduciary, it understands its fiduciary obligations and it is careful to avoid unnecessary exposure to liability for serving as trustee for other organizations.

## **B. Other Types of Deferred Split Interest Gifts**

Your organization should also provide guidelines for acceptance of charitable bequests, life insurance proceeds and retirement plan proceeds.

### **1. Testamentary charitable gifts (charitable bequests)**

A testamentary charitable gift or bequest is a gift made to the charity named in the donor's will or trust and is payable according to the terms in the dispositive document. Bequests may provide for a specific dollar amount in cash, specific securities, or specific articles of tangible personal property. A gift in any amount may be accepted as a contribution to an existing fund so long as the terms and conditions of the existing fund so permit.

Your organization may want to include language in its gift acceptance policy to assist donors or their counsel in drafting testamentary language such as:

- **For a specific bequest:** "I hereby give and bequeath \$\_\_\_\_\_ from my estate to the ABC CHARITY, an Illinois not-for-profit corporation, Chicago, Illinois, for its general purposes.
- **For a remainder gift:** "I give and bequeath all (or \_\_\_%) of the rest, residue and remainder of my estate to the ABC CHARITY, an Illinois not-for-profit corporation, Chicago, Illinois, for its general purposes."

Your organization should also specify in its gift acceptance policy that donors are encouraged to recognize that the needs, policies and circumstances of the charity can change in the future following the establishment of an endowment. Your organization's administration must have flexibility to use the funds in the best interest of your organization and in accord with donor interests and specifications. Therefore, the gift acceptance policy should advise donors to describe the specific purposes of their gifts as broadly as possible and to avoid detailed limitations and restrictions.

Further, because conditions do change over time, gift acceptance policies should have a provision that all endowments must contain the following (*or a similar*) contingency clause:

"If in the opinion of the Charity, all or part of the funds cannot be applied in strict conformance with the purpose(s) previously stated, the Charity may use these funds for other appropriate purposes as nearly aligned to the original intent of the donor as good conscience and need dictate within the authorized powers of the Charity."

### **B. Retirement Plans and Life Insurance Designations**

Your organization's gift acceptance policy should direct your development professionals to encourage donors to name your organization as beneficiary of their retirement plan and life insurance policy. Development professionals should educate donors how to properly name your organization and encourage the donors to work with you to plan gifts for special purposes. The policy should emphasize that when a donor informs your organization of his or her intent to designate your organization as a beneficiary, the development professional should ask the donor for a copy of the actual beneficiary designation. Your organization should confirm that the donor completed the designation properly, including obtaining the necessary waivers from the donor's spouse.

### **Reporting Requirements**

Your organization's gift acceptance policy should describe its reporting obligations, both to donors and to the Internal Revenue Service (the "IRS").

### **A. Policy for sending Form 8283 to Donors**

A gift acceptance policy's section on tangible personal property should include a statement about whether your organization will send, as a matter of course, copies of IRS Form 8283 to a donor. A donor attaches Form 8283 to his or her tax return in the year the donor makes a gift of noncash property over \$500 to a charity. Although your organization is not legally responsible for sending the form to donors, your organization should routinely send it to the donors for stewardship purposes.

### **B. Form 8282 – Donee Information Return**

The IRS requires your organization to file Form 8282 with the IRS if it sells, exchanges, or otherwise disposes of property within two years of the date the donor originally contributed the property. Your gift acceptance policy should direct the appropriate individuals within your organization to file Form 8282 with the IRS on or before the 125<sup>th</sup> day after your organization sells, exchanges, or otherwise disposes of such property.

Your policy should also emphasize that it shall be impermissible to agree with a donor to delay the sale or liquidation of property solely for the purpose of avoiding the filing of Form 8282.

### **C. Acknowledgement of Gifts**

Your gift acceptance policy should require the appropriate individuals within your organization to provide a written acknowledgement to donors who make any single charitable contribution of greater than \$250. The gift acknowledgement must make a good faith estimate of the value of any goods or services, if any, provided by your organization in exchange for a gift and should describe (*not value*) any property the donor donates. If your organization does not provide such written acknowledgement to the donors, the donors may be denied a charitable income tax deduction and you may lose any future donations from your donors

### **Ethical Standards**

Your gift acceptance policies should also include the Model Standards of Practice for the Charitable Planner. The Model Standards, promulgated by the National Committee on Planned Giving, establish ethical standards for everyone involved in the planned giving profession. For example, the Model Standards state that a charitable gift planner must make every effort to give the donor a full explanation of all aspects of the proposed planned gift. The standards also state that charitable gift planners should suggest donors seek independent counsel whenever they are considering a planned gift. Including the Model Standards in your organization's gift acceptance policy will incorporate those ethical standards into your gift planning operation.

### **Gift Acceptance Committee**

You are probably asking yourself now: "How will my organization be able to anticipate everything?" Well, luckily, your organization does not have to anticipate everything because your gift acceptance committee will be available to review proposed gifts that are not defined in the gift acceptance policy or that have special circumstances. The gift acceptance committee may also have the authority to make exceptions to the policy under certain circumstances. Although exceptions should be rare, your gift acceptance policy should have a review process in place for deviation under special circumstances. Any deviation should be well-supported and well-reasoned.

Therefore, it is important that the policy establish a gift acceptance committee in your organization. This committee should be separate from the planned giving committee of the board. It is typically composed of staff who represent such organizational functions as business affairs, gift administration, and development. At smaller nonprofits this committee may be

composed of the executive director, development director, and a board member from your organization's finance committee one who is very familiar with the charity's fiscal circumstances. This committee should be small enough to respond to the proposed gifts on a timely basis.

Your gift acceptance policy should grant the gift acceptance committee access to outside legal counsel when committee members feel such advice is necessary. Outside legal counsel can advise and protect your organization when donors propose gifts with unusual legal ramifications, such as gifts of closely held stock with buy-sell agreements or other restrictions and gifts governed by contracts such as bargain sales.

Your gift acceptance policy should also establish a procedure for the gift acceptance committee to access board expertise and approval when necessary. The decision to go to the board should be reached by the committee together with its legal adviser.

### **Annual Review**

Once a gift acceptance policy is adopted by the Board of Directors, the Gift Acceptance Committee should review the policy annually to determine if any amendments are necessary to reflect changes in law or your organization and to address new situations not previously addressed by the gift acceptance policy. The Committee should make a presentation to your organization's Board of Directors and the meeting's minutes should reflect the Board's approval of the continued use of policy with any agreed-upon modifications.

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It is especially important that organizations have well developed gift acceptance policies in the current age of increased scrutiny over governance of institutions in this country. Gift acceptance policies serve as helpful roadmaps and demonstrate to donors and potential leaders of an organization that your organization intends to operate professionally and ethically. While surprises cannot be completely avoided, gift acceptance policies will substantially reduce unanticipated problems and will increase the knowledge of key individuals in your organization regarding sophisticated charitable gifting techniques.