Drafting a Gift Acceptance Policy
- An Overview -

A Gift Acceptance Policy is rarely adopted at the time a nonprofit organization is established. Fundraising discussions and activities usually focus on outright gifts of cash and investment securities. There is seldom any discussion of other types of assets donors might be willing to give or the various gift methods donors might be willing to consider.

A Gift Acceptance Policy is often a hurried by-product of a capital campaign in which concepts, such as gifts of real estate, personal property, split interest gifts and deferred gifts are addressed – usually as an afterthought. Many organizations that do adopt a Gift Acceptance Policy tend to file it in the back of their general policy manual where it is forgotten and fails to provide the intended benefit.

This overview is intended to introduce the governing body of your organization (hereafter "Board") to many of the major issues that should be addressed and incorporated into a written Gift Acceptance Policy. Ultimately we hope to help you to make better decisions about gift acceptance in general, and accepting planned gifts in particular.

The Purpose of a Gift Acceptance Policy

An effective Gift Acceptance Policy should provide guidance and consistency in your fundraising efforts in several ways. First, the Policy should identify the types of gift assets that are acceptable and unacceptable. For example, cash or investment securities may be acceptable to you while commercial real estate may be unacceptable.

Second, the Policy should identify the types of gift methods or arrangements that are acceptable and unacceptable. For example, you may be willing to accept cash as a bequest by will, but be unwilling to accept cash in the form of a deferred charitable gift annuity.

Finally, the Policy should define the organization's role in gift administration. For example, you may be willing to serve as trustee of a pooled life income fund, but be unwilling to serve as trustee of a charitable remainder trust.

Without the guidance provided by a formal Policy the organization is likely to respond in an inconsistent manner with different donors and from one gift to the next. Some organizations resort to a "make-policy-as-we-go" approach because there is no established source of guidance. One could argue that this approach preserves flexibility and discretion in policy making. More often this approach leads to poor decisions.

Decisions based on case-by-case assessments breed inconsistency. Nonprofit boards change continually. While some board members remain from year to year, the full board may turn over in a three-year to five-year cycle. Since each member brings a different personal experience and attitude to the table when making decisions, judgments change as the Board changes. A gift that was acceptable to a prior board may be unacceptable to another. The results reflect the turnover of the Board and not consistent policy.

The glittering appeal of a large or high-profile gift can challenge sound judgment. It is difficult to make a list of potential problems and issues while you stare at the gift. The tendency of the board is to do everything possible to accept the gift.

This reactive approach can complicate donor relations, reduce the effectiveness of your fundraising efforts, and increase your financial and legal liability. Disciplined application of your Policy helps prevent accepting gifts that will cost the organization time, money, and possibly its reputation, by reminding the organization when to say “No.”

Policies also serve to educate the staff, board and volunteers about critical issues associated with certain types of assets and certain types of gift arrangements. It’s difficult to absorb and appreciate the practical implications of accepting certain gifts without working through them and making choices about how to handle them. The process of formulating and adopting a Policy allows the organization to work through these practical issues and is a far more valuable educational tool than a seminar or article on the subject.

New board members or those who have never evaluated potential gifts may at first see the offer of a valuable yacht as an exciting possibility. After considering the carrying costs such as insurance, transport, storage, maintenance and expenses related to its sale, they will better understand the gift evaluation process.

The process of creating a gift acceptance policy also helps to focus and strengthen the organization’s ability to administer gifts. Regular review ensures that the staff and the Board bring up and answer questions critical to the organization’s integrity and the success of your fundraising efforts. It ensures that legal counsel is sought prior to the emergence of legal issues and that professional assistance is identified as a resource prior to the attempted resolution of problems.

The adoption process is also a good way to introduce planning ideas to Board members who may be less receptive to education, brochures and solicitations. A better understanding of the gift acceptance process frequently produces new gifts. Rarely do Board members go through the process without generating questions relating to their personal assets and opportunities. Invariably, there is a new gift of an asset not previously considered or a gift in a form not previously understood.

Drafting and Adopting a Gift Acceptance Policy

Developing a Policy should be a collaborative process involving the development staff, Executive Director and the Board. The combined insight of this group provides the broadest perspective and guidance on the issues. Simply adopting the gift acceptance policy of another organization - without understanding the issues and without tailoring the policy to fit your organization - will provide little benefit or protection. Again, a significant benefit of the review and adoption process is the education of Board, staff and volunteers.

The Policy should be approved and adopted by the Board. The date of this approval should be attached to the Policy. After adoption, the Policy should be reviewed annually. This review is an important process in which the document is dusted off and reread and forgotten items reinstated in memory. Review also allows fine-tuning or amendment to the Policy in the event that changed circumstances allow the organization to accept new gifts, or to restrict or expand the manner in which current gift arrangements are handled.

The Policy should provide a mechanism for exceptions to the rules, although such exceptions should be rare. Consider including an exception process that requires the approval of the Executive Committee or the full Board. Make sure that any action that runs counter to the Policy is well documented.

In addition to drafting the Policy, the organization must ensure that it has access to the expertise necessary to follow through in critical areas. The Policy should authorize and encourage the use of outside professionals (real estate appraisers, environmental analysts, brokers, attorneys, accountants, financial advisors, etc.) before a need arises. Only then can the nonprofit engage professional advice quickly to make a timely analysis without leaving the donor waiting for an answer.

Critical Elements of the Policy

Some elements of the Policy are straightforward and simply provide the context for making decisions. Other areas, such as acceptance of unusual assets, may create more liability and will be discussed in greater detail.

Mission

The organization‘s mission and purpose should be a part of the Policy. It is important to keep the organization‘s goals in mind when drafting and using a gift acceptance policy. Place the mission statement prominently at the top of the document to remind everyone of the vital role the organization serves.

Purpose of the Policy

The purpose of the Policy should be clearly stated. In most instances, the purpose is to govern the organization’s acceptance of gifts and to provide guidance to the organization, donors and their advisors in completing gifts. The Policy should identify (1) the types of assets that are acceptable/unacceptable (2) the types of gift arrangements that are acceptable/unacceptable; and (3) define the organization‘s role in gift administration.

Purpose may also include more elaborate language related to discharging fiduciary responsibility, protecting the Board from third party liability and IRS sanctions, and protecting the organization from unanticipated costs and negative publicity.

Use of Legal Counsel

The Policy should clearly state that the organization will seek the advice of independent legal counsel when appropriate. The purpose of independent legal counsel is to provide protection and ensure objectivity. Acknowledge that use of counsel, when appropriate, is part of the fiduciary role exercised by the Board. The Board has a duty to protect the organization‘s assets and reputation and to provide proper guidance to its management.

Legal counsel generally represents an unbudgeted expense and the organization may be reluctant to suggest adding expense to the transaction. Placing use of counsel in the context of the Board‘s fiduciary role, rather than as an unbudgeted expense, may make it easier to engage professional help when needed. Every planned giving program budget should contain provision for this critical function.

The Policy should list the circumstances under which legal counsel will be engaged. This might include:

- Reviewing gifts involving certain assets such as:
    a. Closely held stock
    b. Real estate
    c. Partnership shares
    d. Other unusual assets

- Reviewing all transactions governed by contracts or legal documents such as:
    a. Bargain sales
    b. Retained Life Estates
    c. Charitable Gift Annuities
    d. Conservation Easements
    e. Pooled Life Income Funds

- Reviewing all transactions with potential conflicts of interest such as:
    a. Transactions where members of the Board, staff or volunteers are directly involved
    b. Transactions where members of the Board, staff or volunteers may appear to be affected

- Other circumstance in which the Board believes that use of counsel is appropriate.

The detail is not meant to restrict or force the Board to use counsel, but rather to provide some guidance when the advice of an attorney might be prudent.

It is not advisable to use a Board member as legal counsel. When a board member serves as a legal advisor, it is difficult to separate the person‘s role as a Board member from his/ her role as legal counsel. Counsel should serve as an independent observer and advisor. Even when the counsel/Board member achieves objectivity, it can be difficult for the Board to take legal advice from an equal on the Board. Finally, there are the troublesome personal benefit issues that always arise. While these issues can generally be addressed and overcome, it is generally better to hire outside counsel to ensure complete objectivity.

Donor Conflict of Interest

The Policy should require the organization to advise donors to seek independent counsel prior to making a gift. It may be appropriate to reference the ethical standards promoted by one of the national charitable giving organizations like the Model Standards of Practice for the Charitable Gift Planner of the Partnership for Philanthropic Planning (PPP), or the Donor Bill of Rights of the National Society of Fund Raising Executives (NSFRE).

Discuss donor-conflict issues with the Board. Board members may be quick to question the donor‘s need for outside counsel and be eager to offer documents, advice and encouragement to complete the gift. The Board will have a better understanding of the issues once those points are considered.

Restrictions on Gifts

The Policy should explain the organization's preference regarding donor restricted gifts. Will restrictions be permitted? Most organizations prefer unrestricted gifts. However, many donors will have a specific purpose in mind for their gift.

The organization should consider including language that specifies that all gifts that are not specifically restricted by a donor will be considered unrestricted or "Board Designated." Board Designated funds are generally held, invested and expended at the discretion of the Board.

If restrictions will be permitted, what limitations will apply? Will donors be limited to restricting their gift to an endowment fund? Will you allow donors to specify a particular program, service or project to support? Will you allow restrictions on gifts of any size, asset type or gift method? Will you allow time restrictions? It may be appropriate to include language about specific endowments, chairs or other naming opportunities and specify dollar limits, pledge restrictions and other governing principles.

Gifts that are restricted by a donor are generally considered "Donor Restricted" and must be held, invested and expended in accordance with the donor restriction. Maine nonprofits are subject to the Maine Uniform Prudent Management of Institutional Funds Act (Title 13 MRSA §5101 - §5111). The organization should become familiar with this statute and incorporate it into the Policy by reference.

There are no "wrong" policies on these issues. The goal is to consider these issues before you are presented with a restricted gift and ensure the Policy reflects the needs and capabilities of the organization.

Gift Acceptance Authority

The Policy should identify the parties authorized to accept gifts on behalf of the organization. In the interest of efficiency, it may be practical to authorize the Executive Director and a few other individuals to accept "routine" gifts. The Policy should define "routine" gifts. Authority to accept all other gifts should be granted to a committee.

It is generally best to designate a committee to decide whether an unusual gift meets the criteria set forth in the organization's Policy. A committee can act faster than the full Board to accept, decline or negotiate the gift. Ideally, the committee would consist of individuals with knowledge of both the organization and its gift acceptance policies. Committee members should also have the expertise and experience to make decisions and/or recommendations to the Board. This committee should be small enough to respond quickly to unusual gift offers and to make timely decisions. Most organizations are well served by delegating this function to the Executive Committee or the Development Committee.

Section 1 - Types of Assets that are Acceptable as Gifts

A list of assets that may be acceptable to the organization is included in the sample policy below and requires careful attention. Most organizations - especially those just initiating a planned giving program - will not be able to accept all types of assets because they lack the expertise or the resources to manage each of them effectively. Look at each type of asset as part of the evaluation process. Your Policy should state clearly the types of assets that are appropriate and inappropriate for your organization. Assets commonly accepted as gifts include:

Cash: It is difficult to find a downside with cash. Since the PPP's 1993 Survey of Donors indicated that the majority of bequests were funded with cash this asset should definitely be on the list of "acceptable" assets.

Marketable Securities: Marketable securities include stocks, bonds, mutual fund shares and other common investment securities. They are generally listed and traded on a daily basis on a public exchange like the New York Stock Exchange (NYSE) or "over the counter" on the National Association of Securities Dealers Automated Quotation System (NASDAQ). Accepting such assets represents little or no risk to the organization. In general, the Policy should state that such securities will be sold upon receipt. If the organization uses a professional investment manager, the securities should be transferred "in-kind" by the donor's investment firm to the organization's account with the professional investment manager.

Closely Held Securities: Closely held securities are generally defined as securities that are not broadly or publicly traded as described above. The lack of a market to determine the fair market value of such assets affects valuation and liquidity upon receipt. If such securities will be accepted, the Policy should address how value and marketability will be determined prior to acceptance, how restrictions are examined and resolved, and when legal counsel is required prior to acceptance of the asset.

The Policy should require the donor of such assets to:

- Confirm the security is not restricted. There may be restrictions noted on the face of the certificate indicating that the security is subject to 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 or as a gift.

- Confirm the security is marketable. This means there is evidence of interest and some trading in the security. Often this trading occurs at the company as stock is purchased by the board or company employees.

The Policy should require prior coordination between the donor (or his/her advisors) and a qualified representative of the organization regarding these issues.

The organization should also confirm whether accepting the security will generate undesirable tax consequences. Certain assets such as Sub-S shares, partnership or LLC interests can 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.

Investigating these issues may require the use of outside legal or financial counsel as described above. The Policy should address how the cost, if any, of such professional advisors will be addressed.

Tangible Personal Property: Tangible personal property might include art, furniture, coins, guns, stamps, livestock, jewelry, equipment, cars, boats, clothes and any other personal property item owned by a donor. The organization should be careful about accepting tangible personal property in exchange for a life income arrangement. The charity may be obligated to pay an income stream based upon the asset's value on the date of the gift. The charity should determine the value of the asset and its marketability before accepting it or risk creating a negative cash flow transaction instead of a gift.

The Policy might address “related use items” that will be accepted and held by the organization and used for its charitable purposes. In general, donors are entitled to an income tax deduction equal to the fair market value of a related use item when the organization will retain and use the asset for its charitable purposes. Assets that will be sold are considered “unrelated use items” and may generate a lower income tax deduction for the donor.

Real Estate: Real estate gifts are some of the most dangerous gifts for charity. There are liability issues associated with acceptance and practical issues related to disposition of the property. At the same time, real estate is one of the most commonly owned assets and is often considered for gifting. Two significant considerations related to real estate are 1) environmental liability and 2) carrying/disposition cost and complexity.

<u>Environmental Liability</u> - The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 created a merciless liability structure for “responsible parties” in the chain of title to an environmentally damaged property. The liability for clean-up exists without regard to the actual knowledge of the owner or the material participation of the owner. Costs for removal of the hazardous materials and restoration of the property, including clean-up of soil and ground water, can far exceed the value of the property involved. The Policy should require a thorough environmental review of all anticipated gifts of real property. Investigating these issues may require the use of outside legal or other professional counsel. The Policy should address how the cost, if any, of such professional advisors will be addressed.

<u>Carrying/Disposition Complexity and Cost</u> - Some properties can be so complex to hold and/or sell as to significantly divert the focus and resources of the organization. Similarly, some properties can be so costly to carry/sell as to result in a loss to the organization. As with tangible personal property, the Policy might address real property that will be accepted and held by the organization for its charitable purposes. In such a case the cost and complexity may be acceptable. On the other hand, real property that will be sold may be declined if the cost/complexity is deemed to be excessive.

Consideration of real property should include:

- Is the organization interested in the property because it will be retained and used to further the mission of the organization?
- Is the organization interested in the property because it will be sold and the sale proceeds will be used to support the organization?
- Is the property marketable?
- Are there any restrictions, reservations, easements, or other limitations associated with the property?
- Are there carrying costs such as insurance, property taxes, mortgages, maintenance, etc., associated with the property?
- Are there any negative environmental issues?

If the responses to these questions are satisfactory, the organization must then examine the form of the charitable gift arrangement and ask additional questions.

Life Insurance Policies: Life insurance policies can be a valuable type of asset to include in a planned giving program because of the special donor niches it can reach. There are several ways that a life insurance policy can be used as a gift.

A donor can simply name the charity as a partial beneficiary of an existing policy. Typically, the donor continues to pay the annual premium. At the donor's death the charity receives a portion of the death benefit. There is nothing required of the charity. There is no additional cost to the donor. The charity receives no benefit until the donor's death. Under this scenario there is no "asset" to accept.

A donor and charity can agree to purchase a new policy on the life of the donor. Typically, the charity owns the policy. The donor makes annual cash gifts to the charity equal to the amount of the annual premium. At the donor's death the charity receives the death benefit. The donor and the charity are equally involved in the initial and ongoing administration of the arrangement. The donor makes an annual payment to the charity equal to the annual premium and receives a charitable income tax deduction. The charity receives no benefit until the donor's death. Under this scenario the organization would own the insurance policy and therefore must consider whether or not to accept the policy as an "asset."

A donor can transfer ownership of an existing policy to the charity. The donor makes annual cash gifts to the charity equal to the amount of the annual premium. At the donor's death the charity receives the death benefit. The donor and the charity are equally involved in the initial and ongoing administration of the arrangement. The donor pays the annual premium, but receives an immediate income tax deduction equal to the cash value, if any, of the existing policy. The donor also receives an ongoing charitable income tax deduction by paying the annual premium to the charity. The charity has immediate use of the policy's cash value, if any, and receives the face amount of the policy at the donor's death. Under this scenario the organization would own the insurance policy and therefore must consider whether or not to accept the policy as an "asset."

This section of the Policy should deal solely with existing life insurance policies that will be transferred to the organization. The organization must have guidelines that identify the types of insurance policies that will and will not be accepted.

Term Life Insurance: Term life insurance policies do not accumulate cash value. Their financial value to the charity is limited to the death benefit. Generally speaking, the charity should consider only accepting the transfer and ownership of an existing term policy if the donor will continue to pay the annual premium.

Permanent Life Insurance: Permanent life insurance policies accumulate cash value. This includes whole life, universal life, variable universal life and many other types. The financial value of a permanent life insurance policy includes the cash value, if any, and the death benefit. Generally speaking, the charity should consider only accepting the transfer and ownership of an existing permanent life insurance policy if the policy has a meaningful cash value or if the donor will continue to pay the annual premium.

There a many other issues to consider regarding life insurance as a gift. Assuming the type of insurance policy being considered is acceptable, other issues to consider are addressed in section 2 (Gift Arrangements) and section 3 (Gift Administration).

Other Types of Assets: There are many other types of assets a donor might consider as a gift. Rather than attempting to address each asset type in the Policy it is more practical to require Board review in order to accept/decline all assets that are not specifically listed in the Policy.

Section 2 – Methods of Giving that are Acceptable

In addition to determining whether or not the type of asset is acceptable it is also necessary to determine whether or not the type of gift arrangement is acceptable. It's possible that the asset is acceptable, but the gift arrangement is not. For example, an undeveloped piece of real estate may be acceptable as an outright gift, but unacceptable if the donor wants to use it to fund a charitable gift annuity. The most common types of gift arrangements most organizations see include:

Outright Gift: An outright gift is the most common type of gift arrangement. It involves the transfer of ownership of an asset from the donor to the charity. Typically, gifts to your annual campaign or capital campaign are outright gifts of cash. An outright gift is often the most attractive gift arrangement for the charity unless the type of asset to be gifted is unattractive. Generally speaking, the organization will accept any outright gift unless the type of asset to be gifted is unacceptable.

In some cases it may be possible to facilitate a gift of an unacceptable asset by asking the donor to consider another gift arrangement. For example, a donor might place a piece of commercial real estate into a charitable remainder trust with their bank as trustee and your organization named as the remainder beneficiary.

Remainder Interest: Under this gift arrangement a donor transfers ownership of the property to the charity, but retains for himself the right to occupy/use the property for his lifetime. This typically involves a donor's home or vacation property. The issues related to remainder interests in property relate to economic responsibilities during the term of the life interest, as well as review of conduct and control of the property during the term of the life interest. In some instances the charity may not know of the remainder interest gift. In others, the charity will be actively involved in the arrangement. When involved, the charity should ensure maximum protection from environmental liability by remaining continuously in touch with the donor and the condition of the property throughout the life term.

Pooled Income Fund: A pooled income fund (PIF) is a formal trust, established and operated by the charity. If the organization does not establish a PIF then donors cannot make gifts of this type. Typically, gifts to a PIF are limited to cash or investment securities. Most organizations that offer a PIF have policies that prohibit gifts of real estate and other illiquid assets. The PIF accepts and holds gifts from multiple donors, combines the contributions for investment purposes, and distributes a pro rata portion of the Fund's annual income to each donor. The organization is responsible for prudent management of the PIF, but is not liable for income payments to donors.

Charitable Gift Annuity: A charitable gift annuity (CGA) is a legal agreement between a donor and a charitable organization under which the organization agrees to pay a lifetime income in exchange for the gift. Like a pooled income fund, if the organization does not offer CGAs then donors cannot make gifts of this type. Unlike a pooled income fund the organization is liable for income payments to donors regardless of the investment experience of the CGA investment pool. The organization must clearly understand the liability created in issuing CGAs. For this reason the decision to offer CGAs should be carefully considered.

Most organizations who offer CGAs adopt specific policies and procedures for investing CGA funds and administering the CGA program. As a minimum the CGA policy should include:

- The types of CGAs to be offered;
- Establishment of a separate CGA Reserve Fund;
- The minimum/maximum age of annuitants;
- The minimum/maximum size of gifts;
- The types of assets accepted in exchange for CGA agreements;
- The states in which the organization will offer CGAs;
- The manner in which CGAs will be invested and administered;
- The disposition of funds at the maturity of each CGA.

Immediate Annuities: An immediate CGA begins income payments within one year of the donor's gift. It is important that assets accepted in exchange for an immediate CGA can be quickly converted to cash and invested in order to generate the income necessary to make payments to the donor.

Deferred Annuities: A deferred CGA begins income payments one year or more after the donor's gift. Because the organization has more time to liquidate the gifted asset some organizations accept additional types of assets beyond cash and marketable securities. Accepting potentially illiquid types of assets increases the risk to the organization and should be carefully considered.

Bargain Sale: A bargain sale is the sale of an asset to charity for less than its fair market value. These transactions are part sale and part charitable gift. A bargain sale can be an effective gift tool in some circumstances and most often involves gifts of real property. The Policy should reflect that bargain sales of real estate undergo the same evaluation required for outright gifts of real estate. In most instances, the final decision on a bargain sale should be made by the Gift Acceptance Committee since acceptance should depend on whether the bargain sale is in the best interest of the organization. Factors for consideration include:

- Will the nonprofit use the property or sell it?
- What is the environmental condition of the property?
- What is the overall condition of the property?
- Is the property held as collateral for any debt?
- The need to assume the carrying costs of the property (tax, insurance, maintenance, etc.)
- Are there unrelated business tax issues?

Remember that the bargain sale has a special impact on the donor as well since it triggers special rules applicable to basis. These rules require the donor to allocate the basis in the property in a pro rata fashion between the gift and sale portions of the transactions.

Bequest: Donors should be encouraged to name the organization as a beneficiary under their Wills and/or Trusts. Consider publishing sample language on your website, in written communications and other printed materials. Educate your donors to contact you to discuss their intentions. A bequest is also an effective way for a donor to "endow" their annual gift which will stop upon their death.

Beneficiary Designation: Donors should be encouraged to name the organization as sole or partial beneficiary of company retirement plan accounts, IRAs, life insurance policies, annuity contracts, etc. Like a bequest, a beneficiary designation may allow a donor to make a larger gift at the time of their death than they may have been able to make during life. A beneficiary designation is another effective way for donors to “endow” their annual gifts which will stop upon their deaths.

Trustee Appointment: It’s one thing to accept an income interest or a remainder interest in a charitable trust. It is quite another to assume the duties as trustee of a trust. The fiduciary, legal, financial, and reputational risk can be significant. Most nonprofits - especially smaller nonprofits - choose not to serve as a trustee.

This is not to say the organization should discourage donors from establishing charitable trusts. In fact, such gift arrangements should be encouraged. The organization should simply inform the donor of the organization’s policy against serving as trustee and suggest the donor speak with his favorite financial institution about serving as trustee.

Charitable Remainder Trust – A charitable remainder trust is a legal entity set up by a donor to hold certain assets chosen by the donor. The trust pays income to one or more recipients chosen by the donor. Income payment can continue for life or for a specified number of years chosen by the donor. Upon the death of the last income recipient the remaining trust assets transfer to one or more charities of the donor’s choice. A charitable remainder *annuity trust* or CRAT pays a fixed amount of income while a charitable remainder *unitrust* or CRUT pays a variable amount of income.

Charitable Lead Trust - A charitable lead trust is also a legal entity set up by a donor to hold certain assets chosen by the donor. Typically, the trust pays income to the charity of the donor’s choice for the donor’s lifetime or a specified period of years. Upon the donor’s death or at the end of the specified period of years the trust terminates and remaining trust assets transfer to the donor’s heirs. A charitable lead annuity trust or CLAT pays a fixed amount of income while a charitable lead unitrust or CLUT pays a variable amount of income.

Section 3 - Gift Administration

Appraisals: The Policy should state clearly that the donor is responsible for any appraisals associated with the gift. The Policy should also state if, and under what circumstances, if any exceptions to the Policy can be made. Policies should also list situations in which the charity will obtain an independent appraisal. Some charities also require that the donor pay for the charity‘s confirming appraisal.

Legal / Professional Fees: Legal or professional fees for completion of the gift are generally considered the responsibility of the donor. It is helpful to have this statement incorporated in the Policy. In the event that the nonprofit provides for an exception, the exception rules should address the conditions under which the nonprofit will pay such fees, how the conflict of interest issues will be avoided and how the payment of fees will be reported for tax purposes.

Valuation of Gifts on the Nonprofit Books: There are at least three points at which gift valuation is important. The first is the valuation of the gift for tax purposes. These rules are clearly established in the Internal Revenue Code. The second is the valuation of the gift for gift credit purposes. Some gifts are recorded at the donor‘s date of gift value, while others are recorded net of sales costs. The third is the value of the gift on the organization‘s books. How to value the gift in this case is governed in most instances by the Financial Accounting Standards Board (FASB) rules. The most important point is that the valuation on the nonprofit development records and books should be consistently calculated. Discuss these issues at the outset so that records reflect “apples to apples" results over time.

Filing of IRS Forms on Sale: Few organizations focus on the filing requirements for Forms 8282 and 8283. It is helpful to include a statement delegating this duty to a particular office or individual by title and to include copies of the forms and instructions as an attachment to the Policy.

Acknowledgement of gifts: Provide the names of the individuals responsible for acknowledging gifts, and set a standard for the time in which acknowledgement is to be completed.

Changes to policies: Changes to the Policy should be adopted only by the Board. However, the Policy should anticipate change and provide a process for amendment.

Reference Information: The organization should understand the IRS reporting requirements related to gifts of real property and tangible personal property. “Best practice” may be to review with outside counsel the acceptance and disposition of all such gifts.

IRS Form 8282 and Instructions:	Donee Information Return
IRS Form 8283 and Instructions:	Noncash Charitable Contributions
IRS Publication 526:	Charitable Contributions
IRS Publication 561:	Determining the Value of Donated Property

The Good the Bad and the Ugly: The importance of learning from others’ disasters.

Review of gift acceptance policies is a tedious process at best. Frequently, the committee working to draft or review the Policy loses its focus by the second or third reading and begins to wonder about the need for such painstaking detail. At this point, a cautionary tale or two generally provides the incentive to keep moving. Sometimes experience is the best teacher, and learning from the mistakes of others is always less expensive and less painful. There are many cautionary tales to learn from, but the following stories address the need for current Policies.

Good Intentions; Bad Gifts - Examples of bad personal property gifts are easy to find. Consider the following:

A longtime donor to a college - and a personal friend of the college President - contributed a large, orange, clay vessel purchased on a trip to South America. The gift was presented with the restriction that it be displayed in the school‘s lobby (perhaps to address the related use rules?) Although the gift was accepted, the school eventually was forced to go back to the donor to rescind the display agreement. There was no market for the pot, which was relegated to a storage closet. The donor was offended and discontinued support of the school.

A high profile alumnus of a Northeastern preparatory school made a gift of a 64-foot Hatteras motor yacht docked in Fort Lauderdale at Pier 77. The prep-school began to receive the harbormaster‘s bills the next month, which included dockage (by the foot), connection fees, and maintenance. In addition, the school was forced to insure the boat (replacement and liability). The sale took two and a half years and netted less than half of the anticipated value (which was further reduced by the out-of-pocket carrying costs for the two and a half years).

A major donor satisfied his pledge to an arts organization's capital campaign (a named room in the new building) with the gift of a 40-carat emerald ring. The appraised value of the ring was $43,000, but the charity received only $19,000 after deducting the out-of-pocket costs to insure, transport, and market the jewel in the wholesale market in New York. Should the room still be named for the donor? Should the donor be asked to contribute the balance? Should a donor making a cash gift of $19,000 get equal recognition?

Bad Gifts Made Worse - There are more true tales of woe resulting from gifts of real estate than any other asset. Consider the following:

A well-known Midwestern charity received a gift of not one, but two, paint factories in the early 1980's. These gifts soon matured into Environmental Protection Agency Superfund sites. It cost the charity over $1 million more than the properties were worth to settle the joint and several liability claims imposed by CERCLA to extricate itself from the gifts.

A school foundation received a $250,000 gift of residential real estate from a new donor to the institution. The property remained on the market for two years, but failed to sell, even after a reduction in price to $100,000, because of a squatter on the property. The property was eventually transferred to the church next door - as a gift.

A hospital foundation accepted an $84,000 gift of non-income producing real estate in exchange for a charitable gift annuity. At the donor's request, the nonprofit agreed that it would not sell the property for two years. In reviewing this transaction, one phrase that might come to mind is "tax fraud." A second phrase that may come to mind is "cash flow." A third phrase might be "Directors and Officers Insurance."

Ugly Gifts and Angry Donors - Donors can become angry about gift transactions when the tax result is different than anticipated. Consider the following:

A donor contributed a painting, valued at $35,000 with a cost basis of $2,500, to a performing arts organization. The charity intended to sell the painting upon receipt, but did not discuss this with the donor. The painting was sold within three months of the gift. Although the donor's accountant was aware of the gift he was not familiar with the related use rules and did not ask whether the painting would be used as a part of the organization's nonprofit operations. The donor's $35,000 deduction withered to $2,500.

A longtime donor, who made significant annual gifts to a charity each December, called on December 3rd to inform the charity of the pending year-end gift. A few days later the donor's brokerage firm sent the development office the forms needed to open an account in the charity's name. The development officer placed the forms in her "In Box" eventually completing and mailing them on Friday, December 26th. The development officer made an entry for the gift in December. She didn't think about the gift again until early February, when she received a brokerage account statement showing a transfer of mutual fund shares on January 15th. Imagine the discussion with the donor . . .

The Importance of Regular Review

Once you have a Policy in place, review it regularly. Associate the review with the first meeting of the gift acceptance committee, professional advisory committee, or development committee each year. Use the review as an opportunity to educate, to preach, and to probe for potential gift opportunities. Involve the committee and the board through cautionary tales, or solicitation of experiences with other organizations that could have been avoided. Treat them as your most valuable insurance policy. Make changes where current Policy did not provide protection, produced a bad result, or fell short of providing guidance. Every organization is different. Draft your policies to meet your needs, your problems and to reflect your values.

**** SAMPLE ****

GIFT ACCEPTANCE POLICIES AND GUIDELINES

The ABC Library, a not for profit corporation organized under the laws of the State of Maine (hereafter "Library"), encourages the solicitation and acceptance of gifts for purposes that will help the Library to further and fulfill its mission. The following policies and guidelines govern acceptance of all gifts made to the Library or for the benefit of any of its programs.

This policy should promote financial support of the Library without encumbering it with gifts that may generate more cost than benefit; are restricted in a manner that is not in keeping with its stated goals, and/or by virtue of their acceptance might create a perception of the Library that is not in keeping with its mission.

I. Purpose

The Library may solicit current and deferred gifts from individuals, corporations, and foundations to secure the future growth and missions of the Library. These policies and guidelines govern the acceptance of gifts by the Library and provide guidance to prospective donors and their advisors when making gifts to the Library. The provisions of these policies shall apply to all gifts received by the Library for any of its programs or services.

II. Conflicts of Interest

In general, the Library will avoid all gifts with the potential for an actual or perceived conflict of interest. In addition, the Library will advise each prospective donor to seek the assistance of personal legal and financial counsel in matters relating to their gift.

III. Use of Legal Counsel

The Library shall seek the advice of legal counsel in matters relating to acceptance of gifts when appropriate. Review by counsel is recommended for:

- Gifts of closely held stock;
- Gifts involving a contract;
- Gifts requiring the Library to assume an obligation;
- Gifts with potential for an actual or perceived conflict of interest;
- Any other gift in which the use of counsel is deemed appropriate.

IV. Authority to Accept Gifts

Only the Board of Trustees (hereafter "Board") has authority to accept gifts on behalf of the Library. The Board may, by majority vote, authorize the Board President, Library Director, or other individuals to accept gifts considered routine in nature as described below. Any such authorization shall be documented in the minutes of the next scheduled Board meeting.

Routine Gifts: Gifts shall be considered “routine” if neither the asset nor the method of transfer will:

- Result in any cost or expense to the Library
- Place any obligation or restriction on the Library
- Create an actual or perceived conflict of interest
- Be inconsistent with the mission of the Library

Examples of routine gifts include outright gifts of intangible personal property including cash, investment securities, etc. that may be readily converted to cash. Routine gifts may also include outright gifts of tangible personal property including books, documents, collectables, furnishings, etc. that may be readily converted to cash.

Non-Routine Gifts: Any gift that does not meet the definition of “routine” as described above shall be considered “non-routine” and may only be accepted by majority vote of the Board.

V. Restricted Gifts

The Library may accept restricted gifts in support of specific programs and purposes in accordance with this Policy and provided such gifts are not inconsistent with the Library’s mission, purpose and priorities. The Library will not accept gifts that are deemed too restrictive in nature, too difficult to administer, or gifts that are for purposes outside the mission of the Library. Annual distributions from donor restricted funds shall be in accordance with applicable donor restrictions.

Donor Named Funds: Subject to prior Board approval, any gift of $_________ or more, may, at the request of the donor, be established in the Library Endowment Fund as a Donor Named Fund, to be carried permanently as a discrete fund bearing the identification designated by the donor. The income from a Donor Named Fund may be restricted by the donor as to a specific purpose. In the absence of such restriction the income shall be appropriated and expended as the Board may designate.

VI. Unrestricted Gifts

All gifts that are not restricted by a donor shall be considered Board Designated Funds to be utilized at the discretion of the Board. Board Designated Funds intended for long term investment shall be placed with an investment manager and managed in accordance with the Library’s Investment Policy.

The Board has approved an annual distribution amount from the Board Designated Funds. This amount shall increase annually by the annual rate of inflation. Additional information can be found in the Library’s Investment Policy.

VII. Types of Assets Accepted

The Library may accept the following assets:

- Cash
- Tangible Personal Property
- Marketable Investment Securities
- Closely Held Securities
- Real Property (Real Estate)
- Oil, Gas, and Mineral Interests
- Life Insurance Policies
- Other Assets

The following considerations should guide the acceptance of each type of asset:

Tangible Personal Property: All gifts of tangible personal property shall be considered in light of the following criteria:

- Is the property marketable?
- Will the property be retained or sold?
- Does the property fulfill the mission of the Library?
- Are there any undue restrictions on the use, display, or sale of the property?
- Will the Library bear any carrying costs for the property?

Routine gifts of tangible personal property may be accepted by the Board or a duly authorized individual. Non-routine gifts of tangible personal property may only be accepted by the Board.

Materials intended for retention and/or display shall be accepted in accordance with the scope and collection development policies of the Library. Such gifts are subject to the following conditions:

1. Gifts are accepted without conditions attached. Special housing or shelving cannot be promised, nor can the Library agree to keep intact a group of donated items.
2. Decisions to add gift materials to the collection are subject to the same criteria as decisions to acquire materials by purchase. The Library reserves the right to decide where accepted gifts will be housed, and whether they will be cataloged or bound.
3. Materials outside the scope of the Library's collection, by subject or format, may not be added. The Library reserves the right to dispose of gift materials as it sees fit.
4. The Library does not appraise gifts. If the donor needs an appraisal for income tax purposes, it is the donor's responsibility to have the appraisal made.

Cash: Gifts of cash are generally acceptable; however, gifts of currency should be discouraged. Cash gifts may include:

- Physical checks made payable to the Library;
- Electronic transfers from a donor account to the appropriate Library account;
- Wire transfers from a donor account to the appropriate Library account;

Marketable Investment Securities: Marketable investment securities may include stocks, bonds, mutual fund shares, exchange traded funds, limited partnership interests, etc. Such securities may be delivered electronically or in physical form to an appropriate account maintained by the Library. As a general rule, all marketable securities shall be sold upon receipt. The proceeds shall be reinvested or transferred to another Library account as directed by the Library.

Closely Held Securities: Closely held securities shall be considered non-routine and must be reviewed by the Board prior to acceptance to confirm there are no restrictions that would prevent its conversion to cash or that accepting the security will not generate any undesirable tax consequences.

If problems arise on initial review of the security, further review and counsel by an outside professional may be sought before making a final decision on acceptance of the gift.

Closely held securities may be delivered electronically or in physical form to an account maintained by the Library. As a general rule, closely held securities shall be sold upon receipt unless otherwise directed by the Library.

Real Property (Real Estate): Gifts involving real estate shall be considered non-routine and may only be accepted by the Board. Gifts of real estate may include developed property, undeveloped property, or gifts subject to a prior life interest. An initial environmental review of the property shall be conducted prior to consideration of any real estate gift to ensure the property has no environmental issues.

If the initial inspection reveals a potential problem, the Library shall request that the donor engage a qualified inspection firm to conduct an environmental audit. The cost of the environmental audit shall generally be an expense of the donor.

When appropriate, a title binder shall be obtained prior to the acceptance of the property. The cost of this title binder shall generally be an expense of the donor.

Oil, Gas, and Mineral Interests: Gifts involving oil, gas, and mineral interests shall be considered non-routine and may only be accepted by the Board. Considerations for accepting such gifts may include:

- What is the current and expected future value of the property?
- Will the property generate annual income?
- Are there environmental or other liabilities?

Life Insurance Policies: Gifts involving the Library's ownership of a life insurance policy shall be considered non-routine and may only be accepted by the Board. A donor may transfer ownership of an existing life insurance policy, or the Library may agree to use funds contributed by a donor to purchase a new life insurance policy. If accepted, the value of the gift shall be determined by the Board.

If the donor will not contribute future payments to the Library, the Library may continue to pay annual premiums; convert the policy to paid-up insurance; surrender the policy for its current cash value or other appropriate options.

If the donor will contribute future payments to the Library, such payments may be applied to the annual insurance premium at the discretion of the Library.

Other Assets: The Library may accept any other type of asset as a gift subject to prior review and approval of the Board.

VIII. Types of Gift Arrangements Accepted

Outright Gifts: Outright gifts provide the Library with an immediate and unrestricted interest in the gifted asset. The Board or a duly authorized individual may accept an outright gift of any asset considered routine in nature as described above. Outright gifts of assets considered non-routine shall only be accepted by the Board.

Bequests & Beneficiary Designations: A bequest is any gift made at the death of a donor under a will, trust or beneficiary designation in a retirement account, a life insurance policy or an annuity contract. In general, these gifts provide the Library with an immediate and unrestricted interest in the gifted asset.

The Library may accept a bequest of any asset considered routine in nature. A bequest involving a non-routine asset shall only be accepted with Board approval.

Remainder Interest in Real Property (Retained Life Estate): The Library may accept a remainder interest in real property (personal residence, farm, or vacation property). The donor or other occupants may continue to occupy the property for the duration of the stated life. At the death of the donor, the Library may use the property or reduce it to cash. In general, expenses for maintenance, property tax, mortgage debt, insurance, etc. shall not be paid by the Library.

Gifts involving a remainder interest in real property shall be considered non-routine and may only be accepted by the Board.

Bargain Sales: The Library may enter into bargain sale arrangements. All bargain sales shall be considered non-routine and shall only be accepted with Board approval. Considerations in determining the appropriateness of such gifts include:

- Will the property be retained or sold?
- What is the current and expected future value of the property?
- Are there environmental or other liabilities?
- Is there mortgage debt on the property?

Charitable Remainder Trusts: A donor may or may not inform the Library of its designation as a remainder beneficiary of a charitable remainder trust. When the Library is informed of such designation the Library may request a copy of the trust document. Prior to accepting any distribution from such a trust the Library shall review the type of assets to be received in accordance with this policy. Assets considered routine may be accepted by the Board or a duly authorized individual. Assets considered non-routine shall only be accepted by the Board.

The Library shall not serve as trustee or co-trustee of a charitable remainder trust.

Charitable Lead Trusts: The Library may accept a designation as income beneficiary of a charitable lead trust. The Library shall not serve as trustee or co-trustee of a charitable lead trust.

Charitable Gift Annuities: As of the date this Policy is adopted the Library shall not offer charitable gift annuities to its donors. If a donor expresses interest in such a gift the Library will coordinate with the University of Maine Foundation and/or the Maine Community Foundation to assist the donor.

IX. Miscellaneous Provisions

- Securing appraisals and legal fees: It will be the responsibility of the donor to secure an appraisal (where required) and independent legal counsel for all gifts.

- Valuation of gifts for development purposes: The Library shall record a gift received at its valuation for gift purposes on the date of gift.

- Responsibility for IRS Filings upon sale of gift items: The Board shall be responsible for filing all required tax forms upon the sale or disposition of any asset sold within two years of receipt by the Library when the charitable deduction value of the item is more than $5,000. The Library shall file all forms in accordance with applicable IRS filing requirements.

- Acknowledgement of gifts and compliance with the IRS requirements: The Board shall be responsible for determining the value of gifts and acknowledging gifts in accordance with IRS requirements. (IRS Publication 561, Determining the Value of Donated Property and IRS Publication 526, Charitable Contributions, etc.)

X. Donor Privacy

All information collected by the Library about donors, prospective donors, gifts or prospective gifts shall be kept confidential. The Library shall use such information only for Library purposes and shall not disclose such information to third parties. To prevent unauthorized access, maintain data accuracy and to ensure the appropriate use of such information the Library shall maintain appropriate physical, electronic and managerial procedures. If a donor informs the Library that they do not wish to have further contact the Library shall respect this wish.

XI. Corporate Donor & Sponsor Recognition

The Library welcomes gifts to support its work and may, upon request, publicly recognize corporate donors/sponsors. The Library will attempt to recognize corporate donors/sponsors in the manner they request, but the Library will make the final determination of the manner in which such recognition is made.

XII Changes to Gift Acceptance Policies

The Board shall review and approve this Policy annually.