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How to Draft and Implement Effective Gift Planning Policies and Procedures

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I. Introduction.

A. Evolution of Gift Planning.

1. A gift planning policies and procedures manual must be a dynamic document, allowing for change over time.
2. Many factors can cause a policies or procedures manual to be amended over time, such as:
    a. New laws.
    b. New gift planning techniques deemed appropriate for a particular charity.
    c. Enhanced ability of a charity to consider new or different gift planning techniques.
    d. Changing donor demographics.

B. What are Policies and Procedures?

1. *Policies* may be defined as:
    a. Broad statements.
    b. Guides general course of action.
    c. Approved by governing Board.
2. *Procedures* may be defined as:
    a. Implements policies.
    b. Specific statements detailing action.
    c. Defines course of action or conduct.
    d. May be Board approved.
3. The policies/procedures manual should <u>*not*</u> be a legal treatise, though it may cite and reference specific laws.
4. The policies/procedures manual should <u>*not*</u> be a "cook book" detailing each administrative step by all staff. Rather, such procedural routing sheets are important and can be included in an appendix.

C. Why are Policies and Procedures Important?

1. Document philosophy or mission of program.
2. Informed approval of gift planning program.
3. Education of staff, Board, donors and other key internal and external constituents.
4. Clarify staff duties.
5. Legal compliance: Federal laws, state laws and other applicable rules and regulations.
6. Risk management. Limitation of liability.
7. Privacy pursuant to state public records acts for governmental units (public universities, libraries, etc.).
8. Compliance with applicable privacy laws (HIPPA, FERPA, etc.)
9. Coordination of all forms of giving: annual, major, planned.
10. Equitable treatment of donors with regard to recognition.
11. Uniform treatment of exceptions.
12. Use of National Committee on Planned Giving (NCPG) Valuation Standards. See at www.ncpg.org.
13. Use of NCPG, CASE or other campaign reporting standards. See at www.ncpg.org or www.case.org.
14. Implementation of FASB accounting standards.
15. Adherence to NCPG Model Standards of Practice and other applicable ethical standards. See www.ncpg.org for a printable version of the Model Standards. Other nonprofit organizations offer ethical standards such as Association of Fundraising Professionals, Independent Sector, Council on Foundations, CASE, Association of Healthcare Philanthropy and others. The Donor Bill of Rights is endorsed by several organizations and is available at www.case.org.
16. Prevent conflicts of interest.

17. Disclosure of laws, endowment policies and other essential matters to donors, Board and others.
18. Consistent explanation of tax benefits.
19. Endowment management: investment, spending and fee policies.
20. Efficient and effective gift management.
21. Enhances teamwork.
22. Documentation for historic record.
23. Dealing with restrictions.
24. Spectacular stewardship!
25. Allows for the graceful "no" to gifts that may be inappropriate.

II. Drafting Effective Gift Planning Policies and Procedures.

A. When Should Policies and Procedures be Prepared?

1. Inception of fundraising program.
2. Inception of planned giving or endowment giving program.
3. Preparation for capital campaign.
4. After a "problem gift" raises concerns.
5. Anytime! Once created: a "working" and dynamic document.

B. How Should Policies and Procedures be Prepared?

Consider a *__personal__* process, unique to your organization . . .

1. Who is Involved?

a. Development staff.
b. Business / Finance office.
c. Legal counsel.
d. Investment advisors.
e. Consultants.
f. Planned gift administrators.
g. Accountants.
h. Auditor.
i. Chief Executive Officer, Chief Financial Officer, Chief Development Officer.
j. Board Committee(s) and full Board of Directors/Trustees.
k. Donors.

2. What is a Successful Process?

a. Preparation:
   - Review samples from colleagues, peers, consultants or other resources.
   - Collect existing policies or procedures: minutes, legal counsel, business office, memos, letters.
   - Solicit input, ideas, complaints and other comments from internal and external constituents.
   - Prepare an initial outline or checklist - share with others for input and comment.

b. Consider Best Practices:
   - Proactive contact person.
   - Organized committees re: investment strategies, accounting issues, gift acceptance, etc.
   - Regular meetings of Development, Finance, Business, Investment and other offices.
   - Integrated structure for recognition, accounting, investment, administration, reporting and other functions.
   - Graphs, charts, software illustrations, gift acknowledgement letter with tax information, brochures and other high quality materials for donor education and stewardship.
   - Tough, but fair and consistent, gift negotiations.
   - Personal touch!

c. Possible successful process:

- Gift planning staff prepares an initial draft.
- Share with others for input, comments and revisions.
- Edit and share revised versions.
- Final draft for staff approval.
- Share staff's final draft with appropriate Board committee(s) for review and possible revisions.
- Final approval by governing Board.
- Amend as appropriate to reflect best practices, new laws, new programs, changing donor demographics and other significant factors.

III. What to Include?

A. Policies to Consider.

1. Mission statement.
2. Encourage independent counsel for donors.
3. Authorization of staff who may negotiate on behalf of organization.
4. Procedure for final approval by authorized staff or Board.
5. Legal counsel approval of policies and procedures.
6. Ethical standards to be followed.
7. Campaign reporting standards to implement.
8. Donor recognition of planned gifts and integration with comprehensive recognition system.
9. Protection of donor confidentiality.
10. Honor all requests for anonymity
11. Avoid inappropriate conflicts of interest.
12. Financial accounting standards to be followed.
13. Authorization for gift annuities.
14. Local, state and federal law compliance in all respects.
15. Authorization for charity to serve as trustee, executor and/or other fiduciary capacities.
16. Requesting copies of legal documents from donors.
17. Allowance of exceptions pursuant to approved protocol.

B. Procedures to Consider: Types of Planned Gifts.

1. Charitable Gift Annuities.

a. Definition: Contractual obligation. Immediate and/or Deferred (commutation and/or optional beginning payment options).
b. American Council on Gift Annuities (ACGA) recommended rates. Be careful with negotiating exceptions! Some considerations:
    - Equity among donors.
    - Costs of asset (real estate especially) disposition (environmental review, title insurance, etc.) may justify a lower rate.
    - Giving decisions should be based on charitable mission, not rates of return!
c. State laws: certification, investment, reserves, fees, agreement language and other requirements. See website of ACGA for details: www.acga-web.org.
d. Minimum gift amount (initial and subsequent gifts).
e. Compliance with federal rules: Minimum charitable deduction of 10%.
f. Compliance with federal rules: Two beneficiaries per contract.
g. Minimum age.
h. Assets acceptable for gifts. Special considerations for marketability.
i. Disclosure pursuant to Philanthropy Protection Act. See www.acga-web.org.
j. Contract format approved by legal counsel.

k. Administration. In-house or outsource?
    - Payments. Encourage direct deposit.
    - Consider recommended payment schedule such as quarterly for ease of administration.
    - 1099-R to donors and IRS.

l. Stewardship.
    - Summary of accounting and tax information at time of gift with 8283 form, etc.
    - Recognition.
    - Confirmation of payments.
    - News from your charity.
    - Birthday cards.
    - Invitations to events.

2. Charitable Remainder Trusts.

a. Definition of types of charitable remainder trusts:
    a. Unitrusts (regular, net income, net income with make-up, flip provision) and annuity trust.
    b. Lifetime or term of years payments (not to exceed 20).
    c. *Inter vivos* or testamentary.

b. May charitable organization serve as trustee? Consider potential conflicts of interest, time, expense, expertise, and whether allowed under state law. Approval by Board.

c. Approval of trust document.

d. Authority to share IRS model templates with donor and his/her legal counsel.

e. Minimum gift amount (initial and/or subsequent additions if allowed). No additional payments for charitable remainder annuity trusts.

f. Compliance with federal laws: 10% minimum charitable deduction.

g. Compliance with federal laws: 5% minimum/50% maximum payout percentages. Fixed payment for charitable remainder annuity trusts.

h. Compliance with federal laws: 5% probability test for charitable remainder annuity trusts.

i. Minimum age for lifetime payments.

j. Assets acceptable for gifts. Special considerations:
    - Marketability considerations for payment of income
    - Unrelated Business Income Tax.
    - Avoid debt encumbered property.
    - Comply with Private Foundation Rules (e.g., prohibition on self-dealing). For example, donor or other disqualified persons cannot live in or use personal residence or real estate donated to a charitable remainder trust.
    - No pre-arranged sales.

k. Administration. In-house or outsource?
    - Payments. Encourage direct deposit.
    - Consider recommended payment schedule such as quarterly for ease of administration.
    - 1041/K-1 to donors and IRS. Tiered taxation system.
    - 5227 IRS information return.

l. Annual Investment Policy Statement.
    - Evidence of due diligence.
    - Executed by charity, donor and income beneficiaries.
    - Summarizes investment policy and current portfolio asset allocation with annual return.
    - Resource: Center for Fiduciary Studies: www.fi360.com

m. Stewardship.
    - Summary of accounting and tax information at time of gift with 8283 form, etc.
    - Recognition.
    - Confirmation of payments.
    - News from your charity.
    - Birthday cards.
    - Invitations to events.

3. Charitable Lead Trusts.

a. Definition of types of charitable lead trusts:
   - Grantor (income tax charitable deduction) or non-grantor (gift tax paid now leveraging long-run gift/estate tax savings).
   - Unitrust or annuity trust.
   - *Inter vivos* or testamentary.
   - Lifetime or term of years payments (no maximum).

b. May charitable organization serve as trustee? Consider potential conflicts of interest, time, expense, expertise, and whether allowed under state law. Approval by Board.

c. Approval of trust document.

d. Authority to share templates with donor and his/her legal counsel.

e. Minimum gift amount (initial and/or subsequent additions if allowed)

f. Compliance with federal laws: no minimum or maximum payout percentages.

g. Compliance with federal laws: avoid retention of powers by donor that would disqualify trust:
   a. Power to revoke the trust.
   b. Power to divert trust income to non-charitable persons.
   c. Power to purchase or borrow trust assets for less than adequate price.
   d. Power to control investments.
   e. Power to pre-pay charitable interest.

h. Assets acceptable for gifts. Special considerations:
   - Marketability or ability of donated assets to generate income for payments to charity.
   - Private Foundation Rules (prohibitions on self-dealing, jeopardizing investments, excess business holdings, taxable expenditures).
   - No pre-arranged sales.

i. Administration. In-house or outsource?
   - Payments. Encourage direct deposit to charity. Donor can change purpose each year if agreed to.
   - Consider recommended payment schedule such as quarterly for ease of administration.
   - 5227 IRS information return. Taxable complex trust.
   - Payments qualify for charitable deduction for trust.

j. Annual Investment Policy Statement.
   - Evidence of due diligence.
   - Executed by charity, donor and income beneficiaries.
   - Summarizes investment policy and current portfolio asset allocation with annual return.
   - Resource: Center for Fiduciary Studies: www.fi360.com

k. Stewardship.
   - Summary of accounting and tax information at time of gift with 8283 form, etc.
   - Recognition.
   - Confirmation and thank you note for payments.
   - News from your charity.
   - Birthday cards.
   - Invitations to events.

4. Pooled Income Fund.

a. Definition of pooled income fund.

b. Charitable organization must serve as trustee.

c. Implement IRS model templates: governing trust document and individual donation agreements.

d. Minimum gift amount (initial and/or subsequent additions).

e. Minimum age of income beneficiaries.

f. Compliance with federal laws: Must use highest payout rate from past three years to calculate income tax charitable deduction.

g. Compliance with federal laws: All annual net income is paid on a per unit/pro rata basis.

h. Compliance with federal laws: Disclosure statement to prospective donors pursuant to Securities and Exchange Commission regulation.

i. Assets acceptable for gifts. Special considerations:
    - Marketability considerations for payment of income.
    - Depreciation reserve for real estate.
    - No tax-free asset investments or gifts.
    - Unrelated Business Income Tax.
    - Avoid debt encumbered property.
    - Comply with Private Foundation Rules (e.g., prohibition on self-dealing).
    - No pre-arranged sales.

i. Administration. In-house or outsource?
    - Payments. Encourage direct deposit.
    - Consider recommended payment schedule such as quarterly for ease of administration.
    - 1041/K-1 to donors and IRS.
    - 5227 IRS information return.

l. Annual Investment Policy Statement.
    - Evidence of due diligence.
    - Executed by charity, donor and income beneficiaries.
    - Summarizes investment policy and current portfolio asset allocation with annual return.
    - Consider separate pooled income funds with different investment strategies: long-term growth, current income orientation, etc.

m. Stewardship.
    - Summary of accounting and tax information at time of gift with 8283 form, etc.
    - Recognition.
    - Confirmation of payments.
    - News from your charity.
    - Birthday cards.
    - Invitations to events.

5. Life Insurance.

a. Definition. Charity may be beneficiary only or owner/beneficiary.
b. Compliance with state insurable interest laws.
c. IRS form 712(*Life Insurance Statement*) required for donor to claim charitable deduction of gift of existing policy.
d. Annual premium payments supported by gifts from donors. Charity assures payment of premium.
e. Annual due diligence review of all policies owned by charity to determine if policies should be kept in force, cashed in, viability of use of policy loans, etc.
f. Avoid potentially abusive life insurance products.
    - Avoid illegal charitable reverse split dollar.
    - Due diligence review of other proposals: premium financing, FOLI, CHOLI, group insured policies, annuity arbitrage, viatical or life settlements, etc.
    - See www.ncpg.org for life insurance valuation guidelines.
    - New reporting requirements for certain life insurance contracts are required by the Pension Protection Act of 2006. See www.ncpg.org.

6. Bequests.

a. Definition. Bequests in wills, trusts or payment on death (e.g., bank accounts, stock funds, etc.) should be a priority for any planned giving program.
b. Available sample bequest language with correct legal name and location of organization.
    - Sample format for unrestricted bequest: percentage, specific dollar amount, specific asset.
    - Sample format for a restricted purpose. Encourage consultation for approved purposes.
    - Sample format for an endowment fund. Encourage creation of an endowment fund agreement to be incorporated into the bequest language by reference in order to assure compliance with organization's endowment policies.
    - Sample formats approved by legal counsel.
c. Request copies of bequest language.

d. Will organization serve as executor? Consider potential conflicts of interest, time, expense, expertise, and whether allowed under state law. Approval by Board.
e. Consider procedures to be followed for open estates:
    - One contact person for executor/estate attorney.
    - Extend appreciation to surviving family and friends.
    - Copies of estate filings: inventory, pleadings, contests, etc.
    - Will organization need counsel to represent its interests during estate proceedings? May be necessary with size of estate, complexity of issues, jurisdiction (out-of-state), etc.
    - Resource: BIPSTER at www.bipster.com

7. Gift of Remainder Interest with Retained Life Estate.

a. Definition. Applies only to personal residences or farms.
b. Required due diligence as with any real estate gift. See discussion below for outright gifts of real estate. Define who has authority to negotiate and sign gift agreement.
c. Remainder Interest Agreement must be signed with donor to stipulate responsibility for essential terms of the shared property:
    - Property tax payment.
    - Insurance coverage.
    - Maintenance costs.
    - Approval of major improvements.
    - Conditions for leasing or other use.
    - Other.
d. If donor wishes to move or donate life estate, the charity may negotiate a subsequent agreement or gift.

8. Bargain Sale.

a. Definition. Purchase by charity for less than fair market value as determined by a qualified independent appraisal.
b. Due diligence as with an outright gift of the asset should be followed. See discussion below relative to outright gifts of real estate. Define who has authority to negotiate and sign gift agreement.
c. In certain cases, installment bargain sales may be considered whereby the purchase price is paid in installments at times and in amounts as negotiated.

9. Retirement Plan Beneficiary Designation.

a. Definition. Assets classified as "income in respect of a decedent" (IRD) are subject tom potential income <u>and</u> estate tax. IRD includes other assets such as U.S. Savings Bonds in addition to qualified retirement plans.
b. Priority for any planned giving program. Limited charitable IRA rollover allowed through 2007. Per the Pension Protection Act of 2006. See www.ncpg.org.
c. Donors must designate charity or testamentary charitable remainder trust, gift annuity, etc. as beneficiary on the beneficiary designation form provided by plan administrator.
d. Donors should include designation of gift with IRD assets in bequest language of will or trust as with a "savings clause".
e. Charity may request copies of bequest designations and retirement plan beneficiary forms to assure correct legal name, tax identification number, appropriate gift designation or restriction, etc.

10. Qualified Conservation Easement.

a. Perpetual restrictions the qualified use of land or structures. Strictly defined and regulated by federal and state law (e.g., Uniform Conservation Easement Act). Available income tax deduction, estate tax deduction and estate tax exclusion. See www.lta.org for helpful information from the Land Trust Alliance. Subject to enhanced tax deduction limits per the Pension Protection Act of 2006. Also façade easements are subject to new rules per the Act. See www.ncpg.org.
b. Only governmental units or charities with conservation missions are qualified to hold conservation easement interests. Assure staff expertise.

c. Due diligence as with an outright gift of the asset should be followed. See discussion below relative to outright gifts of real estate. Define who has authority to negotiate and sign gift conservation easement agreement.
d. Conservation easement agreement must be reviewed by legal counsel.
e. Perpetual interest may need renewal pursuant to applicable state Marketable Title Act.
f. Consider permanent endowment gift of cash, stock or other assets to provide perpetual funds for maintenance of the conservation easement interest.
g. Promote possible gift of entire real estate in fee outright or by testamentary plan (bequest, remainder interest with life estate, etc.) in which case the easement merges with the fee ownership interest.

11. Endowment and Fund Gifts.

a. Definition. Endowments are permanent pursuant to applicable state law (Uniform Management of Institutional Funds Act - UMIFA). "Funds" are wholly expendable at any time by the charity. Accounting standards (FASB) also define endowments and quasi-endowments (i.e., otherwise unrestricted gifts that are treated as endowments by action of the governing Board). For UMIFA state laws and current status see www.nccusl.org and for FASB statements see www.fasb.org.
b. Required endowment and fund agreement, templates approved by legal counsel, to be signed by donor and charity representative, including essential terms such as:
   - Name of the fund or endowment.
   - Preferences for use of the gift. Avoid legally binding criteria.
   - History or biographical information about the donor.
   - Outright and /or planned gifts to create the endowment or fund.
   - Definitions of unique terms.
   - Reference to use of an Investment Policy subject to annual Board approval.
   - Reference to use of a Spending Policy subject to annual Board approval.
   - Reference to use of a Fee Policy subject to annual Board approval.
   - Gift not in trust.
   - Amendment or variance power of the charity.
c. The charity's governing Board must annually review and approve key policies that should be disclosed to donors prior to their gifts:
   - Investment Policy, e.g.: asset allocations, benchmarks, due diligence oversight, etc.
   - Spending Policy, e.g.: percentage of annual or rolling average.
   - Fee Policy, e.g.: tiered percentages based on values of endowments or funds.
   - Amendment or variance power authority.
d. ***Donor Advised Funds and Supporting Organizations*** require special considerations:
   - If grants are to be paid to other charitable organizations, be certain that the host charity's mission and purpose as defined in the applicable state incorporation documents, bylaws and IRS determination letter permits such payments for other charitable missions.
   - Some charities require a minimum percentage to the host charity each year from the spendable amount.
   - In addition to annual spendable advised awards, determine use of residual upon the death of the final donor/advisor. Some charities require all the residual for the host charity.
   - Requirements or limitations for multi-generational advising.
   - Detailed procedures to determine qualified charitable uses of grant awards. For example:
     a. *Guidestar* to check 990 forms. See www.guidestar.com.
     b. IRS Publication 78 to check tax exempt status. See www.irs.gov.
     c. Applicable state records (e.g., filed with Secretary of State) for nonprofit incorporation status.
     d. Signed letters or agreements with recipient entities assuring qualified use.
     e. Site visits, phone calls or other communication.
   - No private inurement or benefit to the donors. For example, no pledge payments, payment for dinners, grants to private foundations, or other return benefit transactions.
   - Prevent stock-piling of donor advised funds without current grant-making.

- Note: Donor advised funds and supporting organizations are under study by the Treasury Department, IRS and Congress pursuant to the Pension Protection Act of 2006. See www.ncpg.org.

B. Procedures to Consider: Assets for Gifts.

1. Real Estate.

a. Definition. Real property and that which is affixed to the property. Many types of real estate interests: fee simple, bargain sale, real estate investment trusts, family limited partnerships, LLC interests, remainder interests, easements, residences, farmland, commercial, vacant land, natural resource interests, etc. Outright gifts or planned gifts (gift annuity, charitable remainder trust, lead trust, etc.) may be considered if appropriate.

b. Procedure for acceptance is essential. Approved parties to negotiate and accept on a case-by-case basis. Board approval for each case may be required.

c. Due diligence protocol is required. Components of due diligence may include:

- Qualified and independent appraisal to be secured and paid for by donor to substantiate his/her claim of a charitable tax deduction. Encourage donors to consult IRS Publication 561, *Determining the Value of Donated Property.* The Pension Protection Act of 2006 includes reform of the penalties for failure to use accurate appraisals as well as definitions of qualified appraisers and appraisals. See www.ncpg.org.
- Title review and insurance to be secured from qualified attorneys and paid for by recipient charity to protect its title interest.
- Qualified environmental review by expert to be secured and paid for by recipient charity to protect against strict liability per CERCLA law. Phase 1, or higher (2 or 3) environmental audits contingent on discovered indicators of contamination.
- Assessment of marketability by qualified expert if real estate is intended to be sold for reinvestment. Resale may be essential if real estate is donated to a charitable remainder trust or for a gift annuity. Beware legally binding pre-arranged sales.
- Debts, liens, mortgages and other encumbrances or restrictions must be revealed and resolved. Possible resolution includes payment or removal by donor, debt shifted to other property, or perhaps payment or acceptance by charity if considered appropriate under the circumstances. Approval by required officers or the governing Board.
- Insurance coverage must be assured to protect against liability or loss.
- Zoning review to assure intended use or sale is possible.
- Note: Donors may be subject to unique rules when claiming tax benefits. For example:
  1. Real estate owned by a land developer may be deemed ordinary income property (inventory) and the tax deduction limited to cost basis rather than fair market value.
  2. Gift of the free use of property (not the property itself) is not a tax deductible gift since it is an improper partial interest gift. See IRS Publication 526, *Charitable Contributions* at www.irs.gov.

d. Real estate for planned gifts carry unique considerations. For example, mortgaged property is unacceptable for a charitable remainder trust. Slow to sell property is often unacceptable for a regular fixed percentage payment unitrust, annuity trust or gift annuity. A "flip" trust can be a good alternative.

e. Share IRS 8283 form and instructions with donors in order to claim a tax deduction for a non-cash gift. Charity must be careful not to fill out the form for the donor. Signature on a blank 8283 form is problematic if the donor claims an inflated tax benefit. Some charities require donors to complete the form before signature by the charity representative. If the real estate is sold within two years of gift, then the charity is required to file IRS form 8282. See www.irs.gov. Inform donor of subsequent sale value as courtesy.

2. Intangible Personal Property.

a. Definition. Value represented in ownership interest. Examples: publicly traded stock, closely held stock, S stock, stock options, mutual funds, bonds (corporate, government, U.S. Savings), intellectual property (patents, copyrights, royalties, trademarks), partnership or LLC interests, natural resources, etc. May be donated outright or with a planned giving technique if appropriate.

b. Procedure for acceptance is essential. Approved parties to negotiate and accept on a case-by-case basis with some exceptions such as publicly traded stock, bonds, etc. Board approval for most cases may be required with some exceptions such as publicly traded stock, bonds, etc.

c. Share IRS 8283 form and instructions with donors in order to claim a tax deduction for a non-cash gift. Charity must be careful not to fill out the form for the donor. Signature on a blank 8283 form is problematic if the donor claims an inflated tax benefit. Some charities require donors to complete the form before signature by the charity representative. If the property is sold within two years of gift, then the charity is required to file IRS form 8282 with some exceptions as with certain publicly traded stock. Inform donor of subsequent sale value as courtesy.

d. Note: Donors may be subject to unique tax rules depending on the type of intangible personal property being donated. A few examples:
   - Gifts of S stock are subject to new basis adjustment and other rules pursuant to the Pension Protection Act of 2006. See www.ncpg.org.
   - Gifts of U.S. Savings bonds (IRD assets) and stock options may incur immediate income tax liability to the owner/donor.
   - Intellectual property gifts are subject to relatively new tax deduction limits and rules as of January 1, 2005 per P.L. 2004-357.
   - Gifts of partnership interests such as family limited partnerships may be subject to enhanced IRS scrutiny on audit to assure proper valuation of the tax benefit for gifts to charity. See White Paper discussion at www.ncpg.org.

e. Due diligence protocol is required. Components of due diligence may include:
   - Qualified and independent appraisal to be secured and paid for by donor to substantiate his/her claim of a charitable tax deduction. Encourage donors to consult IRS Publication 561, *Determining the Value of Donated Property.* The Pension Protection Act of 2006 includes reform of the penalties for failure to use accurate appraisals as well as definitions of qualified appraisers and appraisals. See www.ncpg.org.
   - Assessment of marketability by qualified expert if property is intended to be sold for reinvestment.
   - Legal counsel review on behalf of the charity may be required in certain cases to assess potential debts, liabilities as well as to assure appropriate transfer in the name of the charity. Legal review may be essential for gifts of closely held stock, S stock, partnership or LLC interests, intellectual property and natural resources.
   - Delivery by the most efficient means possible, understanding that the tax benefit value is generally determined by the date of irrevocable receipt by charity. Options include:
     1. Hand delivery. Valuation is fixed on date of hand delivery.
     2. Mailing, if appropriate. Valuation is fixed by postmark rule, unless check or other instrument is dated later for purpose of negotiation of the gift instrument such as the date on a personal check. If a stock certificate or bond is mailed, it should be unsigned with a signed stock/bond power form mailed separately for purposes of security.
     3. Wire delivery for certain types of intangible property such as publicly traded stock. Depository Trust Company (DTC) procedure is possible with the use of qualified fiduciary agents for the charity, such as a bank or brokerage firm.
     4. Delivery may be effectuated by a signed deed or other legal instrument of transfer in some cases. Certain property transfers such as for stock options, S stock, intellectual property, partnership or LLC interests and closely held stock may require specific procedures or forms pursuant to legal counsel review and assistance on a case-by-case basis to comply with governing legal instruments for the gift entity in question.

3. Tangible Personal Property.

a. Definition. Value inherent in the tangible item but tax benefits are subject to unique and specific rules. Examples: Artwork, antiques, automobiles, boats, jewelry, coins, stamps, clothing, food, books, crops, animals, equipment, etc. May be donated outright or with a planned giving technique if appropriate.

b. Procedure for acceptance is essential. Approved parties to negotiate and accept on a case-by-case basis with exceptions for charities that accept tangible personal property on a regular basis. Board approval for some gifts may be required if the property is uniquely valuable (concern for insurance, special handling, etc.) or carries unique liabilities.
c. Share IRS 8283 form and instructions with donors in order to claim a tax deduction for a non-cash gift. Charity must be careful not to fill out the form for the donor. Signature on a blank 8283 form is problematic if the donor claims an inflated tax benefit. Some charities require donors to complete the form before signature by the charity representative. If the property is sold within two years of gift, then the charity is required to file IRS form 8282 with some exceptions as with certain tangible personal property that is used or consumed by the charity (e.g., food by a soup kitchen, medical equipment by healthcare mission, etc.). Inform donor of subsequent sale value as courtesy.
d. Note: Donors may be subject to unique tax rules depending on the type of tangible personal property being donated. A few examples:
    - If tangible personal property is used for the exempt mission of the charity, then a fair market value deduction is available. Otherwise, the deduction is limited to cost basis. Therefore, the charity may provide the donor with a letter evidencing the related use of the donated item for the donor's tax file in the event of an audit.
    - Artwork donated by the original artist (i.e., ordinary income inventory) is limited to a cost basis deduction.
    - Books and food inventory are subject to enhanced (above cost basis) deductions pursuant to the Pension Protection Act of 2006. New rules are also stated for valuation of taxidermy gifts, clothing or household items.
    - The Pension Protection Act of 2006 provides new rules for gifts of a partial or fractional interest in donated tangible personal property. For example, the charity must take complete ownership within ten years or by the date of death of the donor whichever occurs first. See www.ncpg.org.
    - Gifts of automobiles, boats and airplanes are subject to new tax deduction rules as of January 1, 2005 per P.L. 2004-357. In general, the deduction is limited to the sale price in cases where the gift is immediately sold. A fair market value or cost basis (whichever is less) deduction is available in cases where the property item is actually used by the charity.
e. Due diligence protocol is required. Components of due diligence may include:
    - Qualified and independent appraisal to be secured and paid for by donor to substantiate his/her claim of a charitable tax deduction. Encourage donors to consult IRS Publication 561, *Determining the Value of Donated Property.* The Pension Protection Act of 2006 includes reform of the penalties for failure to use accurate appraisals as well as definitions of qualified appraisers and appraisals. See www.ncpg.org.
    - Assessment of marketability by qualified expert if property is intended to be sold for reinvestment.
    - Insurance coverage must be assured to protect against liability or loss.
    - Legal counsel review on behalf of the charity may be required in certain cases to assess potential debts, liabilities as well as to assure appropriate transfer in the name of the charity.
    - Delivery by the most efficient means possible, understanding that the tax benefit value is generally determined by the date of irrevocable receipt by charity. Options include:
        1. Hand delivery. Valuation is fixed on date of hand delivery.
        2. Mailing or other secured delivery system, if appropriate. Valuation is fixed by U.S. postmark rule.
        3. Delivery may be accompanied by a signed deed of gift or other legal instrument of transfer in some cases. However, actual delivery of the property is required for the gift to be complete in most cases. Retained control or possession by the donor is suspect by the IRS upon audit.

C. Procedures to Consider: Documentation.

1. Receipting (written acknowledgement and substantiation) protocol for outright and planned gifts.

a. Pledges may be documented by letter or other written form as required by auditors. FASB statements require display of pledge obligations. See www.fasb.org. Consider ultimate fulfillment of a pledge by a planned gift commitment should donor pass before lifetime payments are completed. This planned gift commitment should be stated in the original pledge letter and appropriate planned gift (will, trust, etc.).

b. Outright cash and non-cash gifts must comply with rules as defined in Reg. Sec. 1.170A-1 and 13 and described in IRS Publication 1771. See www.irs.gov.

c. Examples of specific receipting rules for outright gifts:

- Required for any cash gift over $250. Required for any cash gift over $75 when a return benefit is provided to the donor.
- A good faith estimate of the value of any return benefit above a *de minimis* amount (annually indexed for inflation) must be disclosed by the charity. Exceptions include member benefits and insubstantial religious benefits. If no benefit is received, then the receipt must affirmatively state that no goods or services were received in exchange for the gift.
- The Pension Protection Act of 2006 imposes new requirements relative to a receipt, check or bank record including the name of donee, date of gift and amount of contribution (cash gifts). See www.ncpg.org.
- Non-cash gifts do not need to state a value but the property must be described.
- The receipt must be contemporaneous, i.e., received by the donor on or before the earlier of the filing of his/her tax return for the year of the gift or the due date of the return, including extensions.
- For gifts of cars, boats and airplanes over $500 in value, see IRS Publications 4302 and 4303 for applicable receipting rules. See www.irs.gov.

c. Irrevocable planned gifts may be acknowledged by a letter of appreciation accompanied by:

- Summary of accounting and tax information.
- Tax benefits review.
- Tax reporting review (e.g., 1099, K-1, 5227).
- Software illustration.
- IRS 8283 form and instructions if appropriate.
- Disclosures as appropriate: Philanthropy Protection Act requirements for gift annuities (financial viability) and charitable remainder trusts (if investments are co-mingled with endowment); applicable AFR rate election; secure independent counsel review.

2. Copies of Planned Gift Documents.

a. Respectfully request copies with rationale:

- Confirm that correct legal name and location of charity is stated.
- Review of any designations or restrictions for appropriateness and potential problems.
- Requirement for donor recognition.
- Provisions for endowments may call for a separate agreement.
- Assists charity to ultimately steward gift when the time comes.
- Internal planning and reporting. Dollar values are helpful.
- Always honoring confidentiality and requests for anonymity.

b. Examples:

- Will or trust bequest.
- Retirement plan beneficiary form.
- Life insurance beneficiary form.
- Copies of charitable remainder or lead trust if charity is not trust.
- Copies of deeds of remainder interests.

3. Documentation of Gift Preferences.

a. Avoid legally binding gift restrictions.
b. State as preferences.
c. Include variance or amendment power in gift agreements.
d. Include statement that gift is not "in trust".
e. Disclose to donors the long-term necessity of charity's flexibility always, ethically honoring donor intent in good faith as closely as possible, but being able to deal with changing conditions that may render preferences illegal, impossible or impractical.

4. Endowment and Fund Agreements. See discussion above in III. B. 11.

D. Procedures to Consider: Reporting Gifts, Donors and Prospects.

1. Consider different standards depending on the purpose involved:

a. ***Valuation*** of gifts for long-range planning and other purposes. Consider NCPG Valuation Standards which allow for institution-specific considerations at www.ncpg.org.
b. ***Financial accounting and auditing*** purposes. Follow appropriate FASB or GASB Accounting Standards at www.fasb.org and as required by auditor.
c. ***IRS approved tax benefits***. Follow appropriate laws, regulations and other rules. See www.irs.gov and consult legal counsel.
d. ***Campaign reporting*** for fair and accurate disclosure. See recommended standards promulgated by NCPG at www.ncpg.org and CASE at www.case.org.
e. ***Work performance goals and achievement*** reports are institution-specific.

- Consider reasonable goals that reflect the sophistication and historic track record of planned giving and the total development program.
- Regular (monthly, quarterly, annual) reports to CEO, CDO, President, governing Board displaying data (using graphs, pie charts, spreadsheets, etc.) such as:
    1. New planned gift expectancies and matured planned gifts since the last report organized by donor name, type, use designation, actual or estimated dollar value.
    2. Total number of planned gift expectancies by type, use designation and estimated expectancy period.
    3. Total number of matured planned gifts by type and use designation.
    4. Total dollar value of planned gift expectancies by type, use designation and estimated expectancy period.
    5. Total dollar value of matured planned gifts by type and use designation.
    6. Special notations for deleted expectancies due to revocation or changed plans.
    7. Growth over time of number and dollar value of expectancies and matured gifts.

2. Donor Recognition. Unique to each charitable organization.

a. Outright Gifts:

- Annual giving. Consider categories to prompt renewal and upgrades.
- Major gifts. Consider categories to prompt renewal and upgrades.
- Naming opportunities on or in buildings. Consider minimum levels as appropriate. Outright and/or planned gifts.
- Naming opportunities with endowments and other funds. Outright and/or planned gifts.

b. Cumulative Lifetime Giving categories, accounting for:

- Outright gifts.
- Endowment gifts.
- Planned gifts:
    1. Irrevocable gifts: Full original gift amount value or discounted present value.
    2. Revocable gifts: Full original gift amount above a certain age (e.g., age 60) and discounted present value for donors under a certain age.

c. Planned Gift Recognition. Select a creative and inspirational name.

- Recognition society. Membership requirements may include signed verification of planned gift. Copy of gift documentation and/or dollar value may be divulged later if donor wishes.

- Annual event for recognition society.
- Unique gift for recognition society.
- Publish list of names on plaque, in annual report, etc. Honor all requests for anonymity. Respect confidentiality of individual gift plans.
- System for sending thank you letters of appreciation to donors for new planned gifts as well as to surviving family or loved ones (if appropriate) for matured gifts. Letters of appreciation may be sent by appropriate staff, including the CEO or President.

3. Prospect Contact Reports. Regular reporting to assure effective donor coordination and planned gift integration in the total development program. Reports may include:

a. Name spelling.
b. Contact information.
c. Linkage to charity.
d. Personal (spouse, children).
e. Career information.
f. Success stories.
g. Asset issues and ownership (stock, bonds, insurance, real estate, retirement plan, business).
h. Tax issues (income, estate, capital gains)
i. Giving history.
j. Interest in planned giving options.

4. Protecting Donor Privacy. Applicable laws for legal counsel review and consideration:

a. Health Insurance Portability and Accounting Act of 1996 (HIPPA). See www.ahp.org
b. Gramm-Leach-Bliley Act. See www.ncpg.org
c. Family Educational Rights and Privacy Act. See www.case.org
d. Applicable state public records act and open door law for public (tax-supported organizations). For status of donor record privacy and public university foundations, see www.case.org.

IV. Appendix. See Sample Attached.

- Real Estate Checklist.
- Asset Transfer Procedures.
- Trustee Agent Procedures.
- Model Standards of Practice.
- Routing Sheets.
- Sample Forms and Documents.
- Sample Reports.

6/23/06 DRAFT

BALL STATE UNIVERSITY FOUNDATION

Planned Giving and Endowment Stewardship Program

Policies and Procedures

Approved by Ball State University Foundation Board of Directors

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Ball State University Foundation

Planned Giving and Endowment Stewardship Program

Policies and Procedures

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Ball State University Foundation

Planned Giving and Endowment Stewardship Program

Policies and Procedures

EXECUTIVE SUMMARY

POLICIES OF THE FOUNDATION FOR PLANNED GIVING AND ENDOWMENT STEWARDSHIP

1. **Mission.** The mission of the Ball State University Foundation (hereinafter "Foundation") and its Planned Giving and Endowment Stewardship Program is to support the mission of Ball State University (hereinafter "University").

2. **Independent counsel encouraged.** Persons acting on behalf of the Foundation shall not provide legal and/or tax advice and shall in all cases encourage the donor to discuss the proposed gift with independent legal and/or tax advisors of the donor's choice so as to ensure that the donor receives a full and accurate explanation of all legal and/or tax implications of the proposed charitable gift.

3. **Confidentiality.** The Foundation staff shall adhere to strict confidentiality with regard to any information, records, letters and personal documents pertaining to donors and gifts. Breaches of confidentiality by staff may result in disciplinary action.

4. **Charitable gift annuities authorized.** The Foundation is authorized to issue charitable gift annuities, immediate and deferred.

5. **Foundation as trustee.** The Foundation may serve as trustee of charitable remainder trusts, charitable lead trusts and pooled income funds where the Foundation is the sole named charitable beneficiary.

TYPES OF PLANNED GIFT ARRANGEMENTS: PROCEDURES

1. **Charitable Gift Annuity (Immediate and Deferred).** The minimum initial amount for an annuity agreement is $5,000. Additional gift annuities from the same donor may be issued for $2,500 per annuity. Rates offered for immediate and deferred gift annuities will be as currently recommended by the American Council on Gift Annuities.

2. **Charitable Remainder Trust.** The minimum amount for a charitable remainder trust for which the Foundation is trustee will be $100,000 (i.e., the initial amount donated to the trust).

3. **Pooled Income Fund.** The minimum initial contribution to the pooled income fund is $5,000. Additional contributions may be made at any time, and they shall be at least $2,500.

4. **Charitable Lead Trust.** The minimum amount for a charitable lead trust with the Foundation as trustee is $100,000.

5. **Life Insurance.** A donor may irrevocably assign a paid up policy to the Foundation. A donor may irrevocably assign to the Foundation a life insurance policy on which premiums remain to be paid. A donor may name the Foundation as primary or successor beneficiary (but not owner) of a life insurance policy.

6. **Gift of Remainder Interest with Retained Life Estate.** The Foundation and the donor shall execute an agreement or contract that will stipulate that the donor shall continue to be responsible for all real estate taxes, property insurance, utilities, and maintenance.

7. **Bargain Sale.** The Foundation may purchase real estate, stock, personal property, or other property for less than fair market value. The price paid for the property should generally not exceed 60 percent of its appraised value.

8. **Bequest.** Sample bequest language for unrestricted and restricted gifts, including endowments, will be available to donors and their attorneys to ensure that the bequest is properly designated.

9. **Retirement Plan Designation.** Donors will be encouraged to designate the Foundation as primary or contingent beneficiary of a retirement plan pursuant to the plan's appropriate designation procedure, such as a specific form.

10. **Qualified Conservation Easement.** As a general matter, the Foundation will consider gifts of qualified conservation easements only on real estate ultimately donated to the Foundation in fee such as by bequest or remainder interest.

11. **Endowment and Fund Gifts.** The Foundation accepts gifts for expendable, annually funded and permanent endowment funds. All endowments and funds, whether established by outright and/or planned gifts, will be documented with a written agreement signed by the donor and Foundation President.

12. **Donor Advised Fund.** The Foundation has established a supporting organization ("Cardinal Funds, Inc.") that will be used to accept and manage donor advised funds. A minimum gift of $50,000 is required to establish a donor advised fund. No more than 45% of the annual spendable amount of a donor advised fund may be spent on behalf of qualified charities or purposes other than the University. At least 55% of the annual spendable amount of a donor advised fund must be spent on the qualified programs of the University. All (100%) of the residual of a donor advised fund at the death or resignation of the advisor(s) shall be spent on qualified University programs as a permanent endowment.

ASSETS FOR GIFTS: PROCEDURES

1. **Gifts of Non-Cash Assets: Real Estate.** The Foundation has established a supporting organization ("Cardinal Properties, Inc.") that may be used to accept real estate gifts of all types.

2. **Gifts of Non-Cash Assets: Tangible Personal Property.** Donors may make gifts of tangible personal property such as automobiles, art, books, manuscripts, scientific or computer equipment, computer software, antiques, rugs, collections of all types, boats, jewelry, cut crops/timber, animals, clothing and other property. Non-cash assets can be accepted by the Foundation so long as the Foundation or University assumes no unwanted liability, management or fiduciary duties, or unrelated business taxable income unless otherwise approved.

3. **Gifts of Non-Cash Assets: Intangible Personal Property.** Donors may make gifts of intangible personal property such as cash, publicly traded stock, closely held stock, corporate or municipal bonds, U.S. Savings Bonds, mutual fund shares, Federal Reserve items, partnership interests, mineral rights, and intellectual property.

4. **Transfer of Assets for Planned Gifts.** Mellon Bank serves as fiduciary agent for the Foundation's pooled income funds, charitable gift annuities, charitable remainder trusts and charitable lead trusts.

DOCUMENTATION: PROCEDURES

1. **Receipts for Gifts.** The Foundation shall comply with all state and federal laws, regulations, rules and rulings with regard to providing donors a receipt for gifts.

2. **Documentation of Gifts.** The Foundation shall request appropriate documentation for all gifts.

3. **Documentation of Gift Restrictions.** With regard to the acceptance and documentation of gifts with restrictions requested by the donor, the Foundation shall comply with all applicable federal and state laws, rulings, rules and regulations.

RECOGNITION AND CREDITING: PROCEDURES

1. **Crediting of Gifts.** The University seeks to give credit to all donors for purposes of donor recognition and for achievement of development goals in an equitable manner for the appropriate amount of planned and outright gifts.

2. **Recognition of Gifts.** The *Beneficence Society* recognition will be awarded to all donors who confirm a revocable or irrevocable planned gift in any amount. Planned gift amounts shall be provided to the University for the purpose of its cumulative lifetime giving recognition of donors.