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Is Your Board "On Board" with Planned Giving?

How to Constructively Involve Your Board in the Success of Your Planned Giving Program

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I. Understanding the Role of the Board

A. Legal Duties of the Nonprofit Board

1. Role of State and Federal Law

a) State Law

(1) **Nonprofit Corporations** – Director's duties often defined in applicable state statute and other law. For example, see California Nonprofit Integrity Act.

(2) **Charitable Trusts** - Trustee's duties often defined in applicable state statutory trust code or other law. A trustee's standard of prudent care may be greater than with a nonprofit corporation director.

(3) **Unincorporated Association** – The governance of an unincorporated association is subject to applicable state law. Many new or "grassroots" organizations begin as unincorporated associations that later formalize and incorporate.

(4) **Note**: In this outline, reference to "board" may be considered a board of nonprofit corporation board of directors or trustees of a charitable trust where indicated.

(5) Oversight offered by various state offices depending on statutory or other definition:

a) **State Attorney General**. May oversee:
- nonprofit governance matters with various enforcement and oversight responsibilities depending on applicable state law,
- charitable trusts annual filings or other reports,
- nonprofit corporation annual filings or other reports,
- charitable solicitation registration and regulation,
- "no call" telemarketing lists, and
- registration and regulation of professional fundraising consultants and professional solicitors.

b) **State Secretary of State**. May oversee:
- nonprofit incorporation or association,
- cumulative list of nonprofit corporations or associations by name, and
- annual filing and/or other reporting requirements.

c) **State Department of Revenue or Local Government Finances.** May oversee:
- state income and inheritance tax,
- sales tax exemption,
- property tax exemption, and
- charity gaming (also possibly overseen by State Gaming Commission).

b) Federal Law

(1) Proposed revised annual Form 990 includes questions about governance such as the existence of a conflict of interest policy. See at www.irs.gov.

(2) IRS Form 1023, Application for Tax Exemption, includes a model conflict of interest policy for board adoption. See at www.irs.gov.

(3) IRS Publication 78, Cumulative List of Tax Exempt organizations by name, see at www.irs.gov.

(4) See websites of IRS, U.S. Senate Finance Committee and House Ways and Means Committee for hearings, testimony and proposed legislation on the governance, fundraising practices and tax issues related to the nonprofit sector.

2. **Duty of Care.** Defined by applicable state law. Consider differences between duties of a nonprofit corporation director and charitable trustee. Under a particular state law, the prudence required of trustees may impose a higher standard of care. Generally, directors must exercise their responsibilities in good faith and with a certain degree of due diligence, attention, care and skill. A director must act with sufficient care in making a decision and in a deliberate manner so as not to impose personal liability. The business judgment rule provides that directors shall not be liable for harm so long as they exercised care, absent fraud, illegality or a disabling conflict of interest. Many states have statutes protecting nonprofit directors and/or volunteers from certain liabilities in the exercise of their duties. See Revised Model Nonprofit Corporation Act Sec. 2.02. Also see the federal Volunteer Protection Act, 42 USC 14501-14505.

Investment and Management of Gifts: The prudent duty of care imposed on directors and trustees relative to management and investment oversight of charitable endowments, trusteeship of charitable trusts, charitable gift annuity administration and disposition of sophisticated gifts such as real estate may outdistance the legal doctrines. For example, consider the definition and guidance relative to prudence as included in the Uniform Prudent Management of Institutional Funds Act, Uniform Trust Code and Uniform Principal and Income Act enacted in many states. See the model acts and list of newly enacted states at the website of the Uniform Law Commissioners, at http://www.nccusl.org. Also see the various state law requirements for charitable gift annuities referenced by the American Council on Gift Annuities at www.acga-web.org.

3. **Duty of Obedience.** Defined by applicable state law. Generally, the board must carry out purposes as expressed in the articles or certificate of association or incorporation. Similar to a trustee's duty to administer the trust in a manner faithful to the wishes of the trustor. Directors must refrain from acts that are *ultra vires,* beyond the corporation's powers as expressed in its articles, certificate and governing documents (e.g., bylaws). In addition, this duty may extend to the charitable purposes as defined in the IRS 1023 application and resulting letter granting tax exempt status pursuant to the applicable federal tax code section.

4. **Duty of Loyalty.** Defined by applicable state law. Generally, directors are required to exercise their duties in such a manner that does not harm the corporation. This duty requires directors to avoid using their position to obtain improperly a personal benefit or advantages which more properly belong to the corporation. The fact that a director has an interest in a transaction is less significant than whether it was fair to the corporation at the time of the decision and whether the decision was made in an impartial board environment. The interests of the corporation come ahead of personal interests and decisions must be made objectively. A director must refrain from participation if there is a conflict of interest. See Revised Model Nonprofit Corporation Act Sec. 8.31-8.33.

B. Board Governance Best Practices

1. Types of Boards

a) **Governing.** Legal authority as vested by applicable state corporate or trust law.

b) **Advisory.** Provides counsel as needed and requested but without legal authority or requirements.

c) **Emeriti.** Typically includes former governing board members but without legal authority.

d) **Other.** Many organizations include volunteer associations or "boards" to assist with projects, activities, etc. These boards can be very helpful but typically do not include any legal authority.

2. **Sarbanes-Oxley (SOX) Implications.** Passed as a result of the for-profit scandals involving Enron and others, this law while primarily governing for-profit corporations, has had an influence on nonprofit corporations, such as the conduct of an annual audit overseen by the board of directors through a permanent audit committee. **Resources:** For an excellent discussion and resources describing the application of SOX principles, see the website of the Independent Sector at www.independentsector.org.

3. **Board/Staff Relationship.** Best practices in board management suggest that the work of the board of directors be directed toward the hiring and supervision of the chief executive as well as policy-level discussion and decisions, involving the determination of organizational values, vision, mission statements and organizational goals. Oversight of legal matters, financial affairs, endowment and other investment management, gift acceptance policies and procedures, budget approval and an annual audit review are typical board duties. Staff work, as ultimately overseen by the chief executive, is aimed at the implementation of organizational goals through work plans, objectives, budgets, time plans, etc. **Note:** Emerging new and/or "grassroots" charitable organizations often require "working boards" that are more intimately involved with day-to-day operations, especially if the charity does not have any paid staff! **Resource:** *Grassroots Fundraising Journal* at www.grassrootsfundraising.org/.

4. **Board Committees.** The work of boards may be effectively managed through committees as delegation is allowed by applicable state law. Committees typically cannot act on behalf of the board with legal authority except when permitted by specific delegation in the law and corporate bylaws such as in the case of time emergencies or the use of an executive committee, often requiring subsequent notification and ratification by the full board. Committees may offer recommendations for policy and financial decisions. Ad Hoc committees may be appointed to deal with issues or work that may be of a limited scope and time duration. Common *standing* (permanent) committees include:

   - ***Executive***, perhaps including officers and others, that may oversee the hiring and supervision of the chief executive, as well as act on behalf of the board when deemed necessary;
   - ***Governance***, overseeing the strategic plan and nominations of new directors;
   - ***Operating***, overseeing budgeting and operational goals;
   - ***Audit***, overseeing the annual audit process;
   - ***Development***, overseeing the fundraising plan, including planned giving (or perhaps consider a separate planned/endowment giving sub-committee!);
   - ***Investment***, overseeing investments, including endowment policies (fees, spending and investment);
   - ***Human Resources***, overseeing the application of the human resource plan;
   - ***Marketing***, overseeing promotions and public image;
   - ***Program***, overseeing programmatic considerations which may include one or more sub-committees for specific programs; and

5. **Strategic Planning.** The strategic planning process is often regarded as the annual effort by board and staff to fulfill its values, vision and mission by evaluating and implementing short and long term goals and to implement plans or objectives to achieve these goals, coordinating all financial, human and other resources.

6. **Case for Support.** The fundraising case for support is a written statement that may include supporting documents, reports and other information that when presented to prospective donors and/or other constituencies, assists their understanding of the correlation ("connect the dots") between: (1) the documented needs of the local community or broader scope, (2) the service to those needs provided by the mission and programs of the organization AND (3) the donors' gifts to fund the organization's mission and programs.

7. **Resources:** Excellent resources on board governance are available from Board Source at www.boardsource.org, Greenleaf Center for Servant-Leadership at www.greenleaf.org , Trustee Leadership Development at www.tld.org, and the Josephson Institute of Ethics at http://www.josephsoninstitute.org**.**

II. Role of the Board: Planned Giving Program Oversight

A. The Case for Planned Giving

1. **Connecting the Dots.** As with creating the case for any fundraising program, the case for planned giving must be effectively made – and accepted – by the board of directors. Hopefully, acceptance of this case will lay the groundwork for support for the planned giving program by the board such as in the budget, with fundraising assistance by board members, etc. Your governing board – and ultimately your donors – must "connect the dots" between: (1) the documented needs of the local community or broader scope, (2) the service to those needs provided by the mission and programs of your organization AND (3) the donors' planned gifts required to fund your organization's mission, services and programs.

2. **Strategies for Building Your Case for Planned Giving to the Board:**

   a) **Duty of Care.** Assuring prudent management of a charitable organization is logical extension of the board's legal duty of care. Maximizing fundraising revenue, including planned gifts, through all reasonable and appropriate means may be regarded as fulfillment of the board's duty of care owed on behalf of the organization.

   b) **Past History.** Has your organization received planned gifts in the past? How many? What dollar amount? For what purposes? Did any planned gifts create endowments that are now in use? If so, what dollar value and for what uses? Your board should be informed of the past impact of planned gifts. Also, what, if any, effort was expended to achieve those past planned gifts? How would the quality and quantity of planned gifts increase if your planned giving program was fully supported by the board, adequately funded, integrated in the total development program and implemented by trained staff?

   c) **Intergenerational Wealth Transfer.** Extensive studies by the Boston College Center on Wealth and Philanthropy indicate that trillions of dollars will pass through estates in the coming years. Some states have created similar wealth data on a county-by-county basis. Is your board aware of this wealth transfer? Is the board supporting a planned giving program that may maximize planned gifts during this intergenerational wealth transfer? Studies indicate that a significant percentage of wealth is held in those estates currently subject to the estate tax**.** See Edward Wolff, "Recent Trends in Wealth Ownership". For those seeking to minimize estate tax and maximize philanthropy during the wealth transfer, planned giving represents a significant opportunity. **Resource:** Information about the intergenerational wealth transfer is available from the Boston College Center on Wealth and Philanthropy at http://www.bc.edu/research/cwp/.

   d) **Peer Group and Other Programs: *The Rising Tide Lifts All Boats.*** If your organization is receiving planned gifts without significant board or budgetary support, perhaps your organization is benefiting from the marketing of planned gifts by other charities. Ask your planned gift donors what prompted their gifts – and whether the marketing efforts of other charities assisted their decision-making. Also, consider surveying peer or like-kind charitable organizations that do similar work as your organization and/or that are located near you. What is the level of their support for planned giving by the board, in the budget, with staff resources, etc.? What are the results of this planned gift support? Compare the likelihood of similar success if your organization implemented such planned giving programs and staffing.

e) **Consultants.** Consultants who understand planned giving may provide your board and executive staff leadership insights from their work with other organizations. Consultants can help you compare your organization's unique donor base, fundraising history, resources, etc. with other similar organizations. Helpful recommendations can be made to move your organization incrementally to the next level of planned giving, realizing that evolution and success will take time as your relationships with prospects deepen, new marketing techniques are used, and the planned giving program expands.

f) **Training.** While consultants may provide the most personalized training for a board on its role in fundraising and planned giving, additional training opportunities exist by professional organizations. Fundraising and executive staff may attend such training with board members in order to facilitate teamwork. **Resource:** Indiana University Center on Philanthropy's Fundraising School at http://www.philanthropy.iupui.edu/TheFundRaisingSchool/

g) **Feasibility Studies.** Feasibility interviews with current and prospective donors are a common component of campaign planning. If your organization is using a consultant and/or staff to conduct feasibility interviews, encourage the inclusion of strategic questions to solicit evaluative feedback on the viability of planned giving. In addition, a segmented and specialized planned giving feasibility study could be conducted, confidentiality inquiring of board members, major outright gift donors, current planned gift donors, prospects and others as to their receptivity for planned gift consideration. Such specialized feasibility interviews could a lead to suggestions for types of marketing strategies (e.g., web use, direct mail, personal visits, etc.), interest in specific types of planned gifts (e.g., bequests, gift annuities, real estate gifts, charitable endowments, etc.) and other planned giving program ramifications.

h) **Integration of the Planned Giving Program within the Total Development Program** - ***Promoting Integrated Philanthropy***. The integration of the development program should indicate support for the fundraising strategy of encouraging support for the integrated philanthropy of our donors. That is, we may promote the importance of the theme that all donors should consider supporting our charitable missions with annual gifts as their personal budgets may permit, major gifts whenever possible (especially during special campaigns, endowment creation, etc.) as well as planned gifts as part of an effective estate plan. **Note:** Integrated philanthropy may also be promoted as an extension of the ***integrated estate planning*** that donors should consider, effectively incorporating wise financial, tax and legal plans so that assets and financial means are best directed towards personal goals (e.g., health care, education or maintenance of loved ones as well as philanthropic priorities).

Implication for Boards: As boards of directors evaluate their duty of care relative to assuring adequate revenues, an exclusive focus on fundraising strategies based on annual giving, current major outright gifts, grant-writing and special events to the exclusion of planned giving may be regarded as imprudent. Integrating planned giving in the structure, staffing, budget and other aspects of a total development program is a means to maximize donors' philanthropy on behalf of the organization.

i) **Board Committee(s).** Many boards of directors utilize a standing committee to oversee the fundraising or resource development program. The agenda for these committees should proactively include planned giving related topics such as review and approval of policies and procedures, goal setting for planned giving, budget review for development (including planned giving), specific legal or ethical issues, and so forth. Some Boards even have separate planned giving committees, or as sub-committees of the overall development committee. Board members who serve on these committees can become knowledgeable advocates for the planned giving program. See Appendix for a sample description for a development or planned giving committee.

j) **Board Evaluation.** Through a self-evaluation, or an evaluation facilitated by a consultant, your board of directors may be able to discern ways in which it may improve its contributions to the development program in general or the planned giving program in particular. Facilitated evaluations may be especially for relatively new boards, or boards that have experienced true difficulty with understanding its role relative to development and/or planned giving. See Appendix for sample board evaluation instrument.

k) **Campaign Planning.** The integration of planned giving can be most visible and necessary during the planning for a capital, comprehensive, endowment or other campaign. Boards of directors are often intimately involved in the oversight, approval and activities of campaigns. Possible campaign planning strategies to promote planned giving with board approval include:

(1) Separate campaign goal for planned giving,
(2) Blended proposals for outright and planned gifts, especially to top prospects that may directly involve board members.
(3) Feasibility interviews specifically incorporate planned gift questions.
(4) Campaign personal recognition policies incorporate planned gifts.

B. Planned Giving Program Budget

1. **Duty of Care.** Given its oversight over budget approval, a charity board must exercise its duty of care to assure that all development programs (annual fund, telemarketing, grant support, special events, outright major gift support, prospect research, etc.) are sufficiently funded, including the planned giving program. The adage that one must "spend money to raise money" is trite, but necessary for success, so long as funds are expended wisely!

2. **Staffing.** Success with planned gifts may be considered directly related to the staff time devoted to identifying, marketing, cultivating, educating, soliciting, closing and stewarding planned gift donors. Staff cost is typically the most significant budget cost for planned giving. In many development programs, the planned gift development role is merged with major gifts, directors of development and/or other positions to save staff expense. The primary concern is whether the planned gift program goals be delayed, ignored or not well organized in order to promote current gift strategies.

   Reminder: While all effective fundraising is based on relationships with donors, this may be especially so with planned giving. Long-term relationship building is the key ingredient for success. While many fundraisers attempt to maximize the number of visits in a day to effectively deliver proposals, a planned gift fundraiser may be most effective if the entire day is spent with one donor! In this way, trust is developed so that sometimes complicated planned giving ideas may be shared.

Warning: Frequent staff turnover among fundraising staff, especially planned giving staff, should be a warning sign to boards of directors that effective relationships with donors may be under developed, or not developed at all. Rather, board should work with the chief executive to aim for a culture of hiring, training and supporting staff for long-term commitments when possible.

3. Important Budget Ingredients. In addition to staff time, other important items in the planned giving budget that a board should be looking for include:

a) **Support staff** so that professional staff can maximize personal relationship building and direct donor contact while important office work is completed.
b) **Marketing** materials such as brochures and other publications, website, newsletter, target mailings, advertisements, special events, seminars, etc.
c) **Cultivation** is essential and should include the cost of professional staff travel, meals with donors, etc.
d) **Recognition** for planned gift donors including plaques, personal items, special events, etc.
e) **Stewardship** costs associated with complex gifts such as administration of charitable gift annuities, trusteeship of charitable remainder trusts, lead trusts and pooled income fund, processing non-cash gifts of stock, real estate and so forth.

C. Approval of Planned Giving Program Policies and Procedures.

1. Duty of Care. Another manner in which the board of directors may exercise its duty of care is to review and approve policies and procedures, ideally through the use of a committee of the board. A gift planning policies and procedures manual must be a dynamic document, allowing for change over time. Many factors can cause a policies or procedures manual to be amended over time, such as:

- New laws.
- New gift planning techniques deemed appropriate for a particular charity.
- Enhanced ability of a charity to consider new or different gift planning techniques.
- Changing donor demographics.

2. What are Policies and Procedures?

a) *Policies* may be defined as:

- Broad statements.
- Guides general course of action.
- Approved by governing Board.

b) *Procedures* may be defined as:

- Implements policies.
- Specific statements detailing action.
- Defines course of action or conduct.
- May be Board approved.

3. The policies/procedures manual should *not* be a legal treatise, though it may cite and reference specific laws.

4. The policies/procedures manual should *not* 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.

5. **Why are Policies and Procedures Important?**

a) Document philosophy or mission of program.
b) Informed approval of gift planning program.
c) Education of staff, board, donors and other key internal and external constituents.
d) Clarify staff duties.
e) Legal compliance: Federal laws, state laws and other applicable rules and regulations.
f) Risk management. Limitation of liability.
g) Privacy pursuant to state public records acts for governmental units (public universities, libraries, etc.).
h) Compliance with applicable privacy laws (HIPPA, FERPA, etc.)
i) Coordination of all forms of giving: annual, major, planned.
j) Equitable treatment of donors with regard to recognition.
k) Uniform treatment of exceptions.
l) Use of National Committee on Planned Giving (NCPG) Valuation Standards. See at www.ncpg.org.
m) Use of NCPG, CASE or other campaign reporting standards. See at www.ncpg.org or www.case.org.
n) Implementation of FASB accounting standards.
o) 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.
p) Prevent conflicts of interest.
q) Disclosure of laws, endowment policies and other essential matters to donors, board and others.
r) Consistent explanation of tax benefits.
s) Endowment management: investment, spending and fee policies.
t) Efficient and effective gift management.
u) Enhances teamwork.
v) Documentation for historic record.
w) Dealing with restrictions.
x) Spectacular stewardship!
y) Allows for the graceful "no" to gifts that may be inappropriate.

6. **Drafting Effective Gift Planning Policies and Procedures.**

a) When Should Policies and Procedures be Prepared?

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

b) How Should Policies and Procedures be Prepared? Consider a *personal* process, unique to your organization . . .

c) Who is Involved?

- Development staff.
- Business / Finance office.
- Legal counsel.
- Investment advisors.
- Consultants.

- Planned gift administrators.
- Accountants.
- Auditor.
- Chief Executive Officer, Chief Financial Officer, Chief Development Officer.
- Board Committee(s) and full board of directors/
- Trustees.
- Donors.

d) What is a Successful Process?

(1) 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.

(2) 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!

(3) 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 ultimately by board to reflect best practices, new laws, new programs, changing donor demographics and other significant factors.

7. What to Include?

a) Policies to Consider. See Appendix

- Mission statement.
- Encourage independent counsel for donors.
- Authorization of staff who may negotiate on behalf of organization.
- Procedure for final approval by authorized staff or Board.
- Legal counsel approval of policies and procedures.
- Ethical standards to be followed.
- Campaign reporting standards to implement.

- Donor recognition of planned gifts and integration with comprehensive recognition system.
- Protection of donor confidentiality.
- Honor all requests for anonymity
- Avoid inappropriate conflicts of interest.
- Financial accounting standards to be followed.
- Authorization for gift annuities.
- Local, state and federal law compliance in all respects.
- Authorization for charity to serve as trustee, executor and/or other fiduciary capacities.
- Requesting copies of legal documents from donors.
- Allowance of exceptions pursuant to approved protocol.

b) Procedures to Consider: Types of Planned Gifts. See Appendix.

- Bequests
- Retirement Plan Designations
- IRA Charitable Rollovers
- Charitable Gift Annuities
- Charitable Remainder Trusts
- Charitable Lead Trusts
- Pooled Income Funds
- Life Insurance
- Gift of Remainder Interest with Retained Life Estate
- Bargain Sale.
- Conservation Easement
- Endowment and Fund Gifts

c) Procedures to Consider: Assets for Gifts.

- Real Estate. For example, some charities require board approval for any gift of real estate.
- Intangible Personal Property (Stock, Bonds, etc.)
- Tangible Personal Property (Collections, Artwork, etc.)

d) Other Procedures to Consider:

- Documentation (receipts, fund agreements, pledges, donor preference, etc.)
- Valuation
- Campaign Counting
- Donor Recognition
- Accounting
- Privacy and Confidentiality
- Stewardship
- Evaluation
- Goal Setting

III. Role of the Board: Planned Giving Program Evaluation

A. Impact of Program Sophistication. Clearly, the level of sophistication of the overall fundraising and planned giving program will determine the nature and scope of evaluation.

1. "Grassroots" organizations may have active board involvement in the day-to-day planned gift activities. Evaluation may be done directly by the board.
2. Medium to large budget and endowment organizations may have evaluations conducted by staff with reporting for review by the board.
3. Accountability of staff performance is essential to demonstrate to the board using means such as regular reporting, annual goals, etc. as this creates a mechanism for the directors to exercise due diligence at a policy review level.

B. **Planned Giving Program Audits.** Staff may lead various types of audits to assess effectiveness of the planned giving program with review by the board.

1. *Budget Audits.* Review of adherence and use of budget. Zero-based budgeting can encourage an annual re-evaluation of budget so that it is in alignment with current goals and objectives.
2. *Fundraising Results*. Planned gift results can be reported to the board in various measures:
   a) New planned gift expectancies with dollar amounts (present value and/or face value), types of planned gifts and designated purposes (endowment, scholarships, program support, unrestricted, etc.).
   b) Matured planned gifts received, in probate, etc.
   c) Number of contacts made during reporting time period.
   d) Number of new planned gift recognition society members.
   e) Number and dollar value of new endowments.
   f) Number and dollar value of non-cash and other gifts by type (stock, real estate, IRA rollover, etc.).
   g) Cost to raise a planned gift dollar (new expectancy value divided by program costs).
3. *Stewardship Audits.*
   a) Life Income Gifts. Questionnaires or surveys to donors and income beneficiaries to determine satisfaction by donors with investment, tax reporting, payments, fees, etc.
   b) Endowment Gifts. Questionnaires or surveys to donors to determine satisfaction with fund reports, investment/spending/fee policies, etc.

C. **Planned Gift Investment and Management**

1. Consider NCPG planned gift valuation recommendations for long-range planning considerations. Visit www.ncpg.org.
2. Charity as trustee of charitable remainder trusts, charitable lead trusts and pooled income funds. Board has fiduciary duty of care pursuant to applicable state trust code and federal regulations to evaluate investment and management of trusts.
3. Charitable gift annuities. Board has fiduciary duty of care pursuant to applicable state and federal laws. See state laws and discussion of federal Philanthropy Protection Act at www.acga-web.org.
4. Charitable endowments. Board has prudent standard of care pursuant to applicable state law (Uniform Prudent Management of Institutional Funds Act or Uniform Management of Institutional Funds Act).
5. Non-cash gifts. Board has duty of care to assure proper disposition of gifts of real estate, stock, life insurance contracts, etc. to protect against liability and properly steward donors.

D. **Planned Giving Goal Setting and Accomplishment**

1. Annual planned gift dollar goal setting should be created by staff in most cases for board review. For small "grassroots" organizations, or for new planned giving programs, goals may be based on performance of prioritized activities such as hiring staff, establishing work plans, number of prospect visits, etc. rather than dollar goals. See Appendix for sample worksheets.
2. Campaign Reporting Best Practices. The board may approve campaign goals, including goals for outright and planned gifts. Available models include:
   a) CASE Standards at www.case.org
   b) NCPG Standards at www.ncpg.org
3. Financial Audit. Pursuant to Sarbanes-Oxley implications, most boards now have an audit committee to review the annual audit of the budget and assurance that the planned giving program complies with FASB or other applicable accounting standards

IV. Role of the Board: Planned Gift Fundraising

A. Personal Planned Giving from the Board. It is often suggested (or even required!) that board members make an annual outright gift to the organization. Why not consider 100% of the board with planned gifts too?! See Appendix for sample board of directors description form. The dollar amount, type of gift, etc. may always be confidential, relative to means, etc. But such participation would offer a helpful and strategic marketing opportunity for the planned giving staff to promote! Other ways board members can use planned gifts:

1. ***Challenge planned gifts*** in order to encourage planned gifts from others.
2. ***Matching planned gifts*** again to encourage planned gifts from others.
3. ***Unrestricted and/or endowment planned gifts*** to encourage these important types of planned gifts
4. Planned gifts for specific programs or where the need is greatest in the long term.

B. Donor Identification and Qualification Involvement. In confidential settings, board members can assist staff with the identification and qualification of potential planned gift donors.

1. Board committee meetings.
2. Campaign committee meetings.
3. Personal calls to staff.

C. Donor Cultivation. Board members can play an influential role with donor cultivation in a variety of ways:

1. Opening doors for introduction of staff to prospects.
2. Testimonials by board members who are planned gift donors to be used in newsletters, brochures, website, target letters, public presentations, advertisements, etc.

D. Donor Education, Negotiation and "Solicitation" Techniques. In certain cases, board members may present a planned gift proposal or a "blended" (planned and outright gift) proposal to carefully selected donors. Coordination with staff is essential. Such solicitations should be rehearsed with significant preparation and education of the board members to assure that appropriate answers and follow-up is provided with staff support.

E. Donor Recognition. Board members can play a very helpful role in assisting with the personal recognition of planned gift donors in many ways:

1. Personal calls, visits, letter or notes with words of appreciation in appropriate cases.
2. Presentation of planned gift recognition plaques or other gifts in private or public venues such as an annual planned gift donor appreciation event.
3. Attendance and participation at campaign or major donor events where donors are recognized.

F. Donor Stewardship Involvement. Board members can play an important role in being "eyes and ears" to assist with evaluation of donor stewardship and making suggestions for improvement, especially if they are donors themselves and/or communicate with donors. They can provide good ideas – and approve a budget that provides for spectacular stewardship such as:

1. Inviting select donors to special board dinners or other special events
2. Delivering reports or other donors as coordinated by staff.

All "On Board" With Planned Giving!

APPENDIX

6/23/07 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

Table of Contents

Appendix A: Board-Approved Operational Materials

- Fee and Spending Rate Policies
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- Glossary of Fund Terms
- Historical Fee Policy
- Historical Spending Policies
- Investment Policy Statement

Appendix B: Staff-Approved Operational Materials

- Beneficence Society Acceptance Form
- Cardinal Properties, Inc. Articles of Incorporation, Bylaws and IRS Determination Letter
- Charitable Remainder Trust Investment Policy Statement
- Checklists/Routing Sheets:
    1. Charitable Gift Annuity Checklist/Routing Sheet
    2. Charitable Gift Annuity Operations Checklist
    3. Conservation Easement Process
    4. Estate Administration Checklist
    5. Expectancy Data Sheet
    6. Gift of Real Estate Checklist/Routing Sheet
    7. Gift of Stock Routing Sheet
    8. Gift Received from an Estate Checklist/Routing Sheet
    9. Instructions for Closing Estates
    10. Non-Cash Gift Processing Form
    11. Non-Cash Gift Routing Sheet
- Code of Ethical Principles and Standards of Professional Practice of the Association of Fundraising Professionals
- Conservation Easement Deed
- Designated Gifts
- Donor Advised Fund Agreement Template
- Donor Advised Fund Policies
- Donor Advised Grant Suggestion Form
- Endowment Agreement Protocol
    1. Fund Administration Policies and Procedures
    2. Fund Agreement Amendment Form
    3. Fund Agreement First Draft Information Form
    4. Fund Agreement Procedures
    5. Fund Change/Correction Form
    6. Fund Data Sheet
    7. Scholarship Policies and Procedures
- Gift Annuity Agreements (for one life and two lives)
- Gift Annuity Disclosure Letter
- Irrevocable Stock/Bond Power Form
- Model Standards of Practice for the Charitable Gift Planner
- Scholarship Authorization Form
- Scholarship Authorization Form Checklist
- Scholarship Fund Agreement Templates (Non-scholarship Agreement Templates are also available):
    1. Deferred Endowed Scholarship Template
    2. Endowed Scholarship Template
    3. Expendable/Annually Funded Template
    4. Internal Endowed Scholarship Template
    5. Internal Expendable Scholarship Template
    6. Internal University Scholars Template
    7. University Scholars Template
- Transfer of Title and Intellectual Property Rights
- University Naming Policy

BALL STATE UNIVERSITY
FOUNDATION

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.

Dollar Goal Worksheet

Cost of Program

Staff salaries	________________
Travel	________________
Promotion	________________
Training	________________
Administrative	________________
Consulting	________________
Other	________________
Total Costs:	________________

Dollar Goals

Fundraising Percentage (cost to raise $1.00)	__________%
Dollar Goal in Present Value (total costs divided by fundraising percentage)	$_________

Gifts to Be Closed	Number of Gifts	Average Amount	Gross Value	Present Value %	Total at Present Value
Bequests	_________	_________	_________	_________ (25%?)	$_________
Outright Gifts (stocks, cash, etc.)	_________	_________	_________	_________ (100%)	$_________
Gift Annuities	_________	_________	_________	_________ (50%?)	$_________
Charitable Remainder Trusts	_________	_________	_________	_________ (50%?)	$_________
Pooled Income Funds	_________	_________	_________	_________ (50%?)	$_________
Other Deferred Gifts (remainder interests in homes/farms, lead trusts, etc.)	_________	_________	_________	_________ (50%?)	$_________
Total to Be Raised:	_________		_________		$_________

This worksheet is courtesy of Marc Carmichael, J.D., R & R Newkirk Company.

Action Plan Worksheet

Number of Gifts to Be Raised	1. ______________________	
Number of Personal Visits Needed		
Percent visited that make gift:	2. ______________________	(25%?)
Total appointments needed:	3. ______________________	(line 1 divided by line 2)
Number of Identified Prospects Needed to Secure Number of Appointments on Line 3	4. ______________________	(two or three times number of appointments needed)
Number of Persons Needed to Find Number of Identified Prospects (Line 4)	5. ______________________	(For example, if direct mail is your main prospecting tool, use a 2% or 3% response rate and divide line 4 by that percent)

This worksheet is courtesy of Marc Carmichael, J.D., R & R Newkirk Company.

Sample Board of Directors
Fundraising and Planned Giving Evaluation Form

Please rate the board on scale of 1-5 with 5 indicating that the board is well prepared and a 1 meaning that the board needs to implement means to involve more directors in fundraising for planned and outright gifts.

Area of Responsibility	Score
Knowledge	
1. The board understands the organization's mission.	_____
2. The board is committed to the mission.	_____
3. The board realizes the importance of fundraising in supporting the mission.	_____
4. The board understands what planned giving is and recognizes its key role in fundraising.	_____
5. The board receives adequate reports on fundraising in general, including planned giving.	_____
Interest	
1. The board asks questions about fundraising in general, and planned giving in particular.	_____
2. The board seeks more information about fundraising including planned giving	_____
3. Board members serve as spokespersons on behalf of the organization and mission	_____
4. The board understands that fundraising in general, and planned giving in particular is 90% preparation and 10% asking.	_____
5. The board realizes that many roles are valuable in fundraising, not just asking.	_____
6. The board participates in many aspects of the fundraising process by helping to identify and qualify prospects, sign appeal letter, offer testimonials in various publications and represent the organization.	_____
Evaluation	
1. The board interacts positively with peers and staff in fundraising activities.	_____
2. The board is willing to take specific assignments.	_____
3. The board regularly receives and reads fundraising (including planned giving) reports.	_____
4. The board receives recognition for its efforts in fundraising.	_____
5. The board participates in planning for fundraising including planned giving.	_____
Action	
1. The board is willing to make personal calls on fundraising and planned gift prospects if appropriately paired with another volunteer or staff.	_____
2. The board discusses fundraising, planned giving and related matters with peers.	_____
3. The board recruits other volunteers to assist with fundraising.	_____
4. The board shares enthusiasm and success stories relative to fundraising and planned giving.	_____
5. The board serves as ambassadors to constituent groups.	_____
Fulfillment	
1. The board believes in fundraising, including planned giving, and not only says so but participates actively.	_____
2. The board has an active planned giving committee or a development committee that regularly discusses planned giving as a component of its agenda.	_____
3. The board assumes responsibility for specific fundraising and planned giving tasks.	_____
4. The board ensures the financial stability for the organization.	_____

Sample Description for
Development or Planned Giving Committee
of Board of Directors

General Commission:

The development (or planned giving) committee is charged with planning and implementing the organization's total development program including planned giving (or just planned giving) in concert with the organization's professional fundraising staff. This committee is a standing committee of the board and is staffed by the organization's professional fundraising (or planned giving) staff. The committee serves as the means by which board members and other volunteers are engaged with the fundraising (planned giving) process.

The development (planned giving) committee is charged with focusing the organization and its board of directors on important elements in the fundraising process including planning giving, such as:

- constant attention to the relevancy of the organization's mission statement and case for support,
- the ways the organization fulfills its accountability to its constituencies,
- the involvement of constituents with the organization,
- understanding the resources required to carry out the organization's mission,
- assisting with the raising of funds (or planned gifts), and
- demonstrating good stewardship on behalf of all gifts.

Composition:

1. The chair of the development (planned giving) committee is appointed by the president of the board of directors.
2. The development (planned giving) committee is composed of the chair and three others board members appointed by the president of the board of directors.
3. The development (planned giving) committee shall include other qualified volunteers not on the board. These members may be recruited by the committee chair with advice and consent by the other board members.
4. All subcommittee (e.g., planned giving) chairs shall serve on the development committee.

Duties:

1. Development of policies and procedures to be approved by the board relative to gift solicitation and recognition, and planned gift guidelines.
2. Ensuring that the case for support is relevant and inspirational by reviewing the organization's mission and goals in coordination with staff and other board committees.
3. Development of plans to involve the entire board in fundraising (planned giving).
4. Development of strategies for the cultivation, education, solicitation, close and stewardship of gifts (all gifts, annual, major and planned gifts).
5. Serve as a resource of information on the environmental factors affecting fundraising among the organization's constituencies.
6. Evaluate potential prospects for new or increase level of gifts.
7. Develop an expectation for gifts including planned gifts from all board members and providing leadership by making their own gift.
8. Involve other board members and volunteers in the cultivation and solicitation processes.

Term:

1. Members will be appointed on an annual basis.
2. Members may serve two consecutive three year terms.

Sample Commission for Board of Directors

General Commission:

All directors of the board are charged with fulfilling the essential legal duties including:

- Duty of care to exercise all responsibilities in good faith and with due diligence, prudence, attention, care and skill.
- Exercise prudent duty of care imposed by applicable state or federal law on directors and trustees relative to management and investment oversight of charitable endowments, trusteeship of charitable trusts, charitable gift annuity administration and disposition of sophisticated gifts such as real estate.
- Duty of obedience to refrain from acts that are *ultra vires,* beyond the corporation's powers as expressed in its articles, certificate and governing documents.
- Duty of loyalty to exercise all responsibilities in such a manner that does not harm the corporation. This duty requires directors to avoid using their position to obtain improperly a personal benefit or advantages. The interests of the corporation come ahead of personal interests and decisions must be made objectively, avoiding inappropriate conflicts of interest.

Specific Duties:

1. Regularly attends board meetings and important related meetings.

2. Agrees to serve on at least one board committee.

3. Makes serious commitment to participate actively in board and committee work.

4. Volunteers for and willingly accepts assignments and completes them thoroughly and on time.

5. Stays informed about board and committee matters, prepares well for meetings, and reviews and comments on minutes and reports.

6. Gets to know other board and committee members and builds a collegial working relationship that contributes to consensus.

7. Is an active participant in the board's and committee's annual evaluation and planning efforts.

8. Participates in fund raising for the organization by assisting with the identification, qualification, cultivation, education, solicitation, close and stewardship for all types of gifts, including: annual gifts, grants, major and planned gifts.

9. Support the organization with an annual gift, major gift(s) as budget and timing permits, plus an appropriate planned gift. All gifts are relative to means and held in complete confidentiality unless public release of the information is approved.

Signed ____ Date__________________

Board President____ Date__________________