

# CONSIDERATIONS IN GIFT AGREEMENTS

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April 8, 2025

# GOALS

- Clarity in mission. Clarity in imperatives. Clarify in goals.
- Clarity in the relationship of the organization with donors.
- Thoughtful, comprehensive dialogue between technocrats of the organization, the development leaders with financial and legal.
- Assist donors in creating gifts that support the organization and its mission and allow donors to feel that they are supporting their charitable goals for the long-term
- Consider the types of gifts, restrictions, risk management, administration authority, return benefits and long-term management.
- Forward thinking: covering issues that may arise in the future.
- Review your Gift Agreements and update your gift acceptance policies and procedures.

# GIFTED PROPERTY

# GIFT ACCEPTANCE POLICIES & GIFT AGREEMENT TERMS RELATED TO CONTRIBUTED PROPERTY

- Asset Types: Administration, Risk, Due Diligence, Delegation
- Charitable Deduction
- Substantiation
- Trustee

# GIFT RESTRICTIONS

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- Endowment
- Purpose
- Investment
- Naming

# PURPOSE

- Authority to approve. Questions go to BOD/ Executive Committee.
- Consistent with mission: Checks and balances articulated in GAP.
- Earmarking: Expressing interest v. earmarking
- Control: Appointment to committee or board
- Influence: Ongoing consulting
- Bankruptcy and Creditor Claims: A benefit of restrictions?

# ANTICIPATE CHANGE

- Perpetuity is a longtime.
- Terms of Modification
- Relationship manager changes
- Commitment to Donor: Developing donor boundaries and flexibility.



# ENDOWMENT

- General, Programmatic or Specific
- Programmatic subject to general policy subject to Board modifications.
- Specific: Expenditures one year after fully funded, no expenditure, setting minimum distributions and termination.
- Any changes to the general UPMIFA rules related to investment and expenditures.

# INVESTMENT

Retaining the right to direct the investment of the contributed funds.

Investment restrictions imposed by donor may create “fiduciary duty – prudent investment” issues for the charity’s board of directors. This will require directed trustee type language in the gift agreement.

Term of investment restriction is always limited.

# NAMING

- Fun Historical Facts
- Naming and Recognition policy.
- Term:
  - Number of years
  - Lives of donor and children and grandchildren
  - Perpetual with continued maintenance payments
  - Right of refusal
- Signage and expenses

# NAMING

- Clarity around other naming opportunities
- Destruction of facility
- Change of corporate name
- Removal of name

# REMOVAL OF NAME

- Donor – Should you take the money? But avoid influence.
- Breach of Contract
- Policy distributed to past donors
- What types of acts would trigger a release from naming recognition.
  - Criminal
  - Immoral
  - Unsavory: sexism, racism, lying, questionable ethics/ civil suit.
- Board Discretion
- How will the donor be notified and what opportunity will they have to communicate with the board or relevant committee. If donor is deceased is there a designee who will be notified under the donor agreement.
- Distribution of remaining funds.

# MODIFICATION AND STANDING

- Giving the donor or designee standing to enforce.
- Giving the charity wide discretion in determining what is included in the purpose.

# UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT

- Donor Consent: If the donor consents to the modification in writing of charitable purpose.
- The appropriate court, based on the request of the nonprofit organization, modifies a donor restriction that
  - has become impracticable or wasteful,
  - impairs the management or investment of the fund; or
  - because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund.
- This modification required AG notice.

# UPMIFA CONTINUED

- The appropriate court, based on the request of the nonprofit organization, may modify either the charitable purpose of an institutional fund or a donor restriction if either becomes unlawful, impracticable, impossible to achieve, or wasteful and if the modification is consistent with the charitable purposes expressed in the gift agreement.
- For funds less than \$25,000 that were donated more than 20 years ago, the nonprofit organization may, after 60-days' notice to the state's attorney general, modify a donor restriction that it determines is unlawful, impracticable, impossible to achieve, or wasteful, provided that the modification is consistent with the charitable purposes expressed in the gift agreement.



# GIFT AGREEMENT MODIFICATION TERMS

- Donor Designee: Donor designee can consent.
- Board of Director Modification; Terms allow BOD to modify in the event that has become impracticable or wasteful, impairs the management or investment of the fund; or because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund so long as the modification is consistent with the overall purpose expressed in the gift agreement.
- If funding falls below required level for 3 years it will be folded into general or programmatic endowment.

# GIFT ACCEPTANCE POLICY

The GAP intended to reflect the established mission and goals and programming organizational leadership, development leadership, financial risk analysis and legal input will meet the needs of the organization.

Who will lead the process? Likely two people: a fundraiser and someone in legal or who has a risk management mind-set.

Be forward looking: identify potential problems and state how the organization will respond to them.

# GAP

Discipline in gift acceptance based on rational considerations of risk, expertise, and staffing.

Define what gifts will be accepted.

Establish clear roles and responsibilities regarding who has authority to negotiate and approve gifts.

State the detail the mechanisms and due diligence for accepting each asset type of asset.

# GAP CONTINUED

Set forth responsibilities for due diligence expenses.

State who the organization will use as its charitable fiduciary

State how gifts will be recognized for donor recognition purposes and financial accounting purposes.

Outline donor's responsibility to obtain appraisal and have their own counsel. Clarify that the donor's best interest will always be followed, and the organization will not exert undue influence in a donor's decision-making.

# GAP CONTINUED

Set forth the template for gift agreements and requires all gifts over a certain dollar amount or type of gift be subject to such agreement.

Set forth the template for a pledge agreement.

Establish endowment minimums

# GIFT AGREEMENTS

- Donor
- Asset Type
- FMV of Asset
- Pledge timeline

# GIFT AGREEMENTS CONTINUED

- Substantiation Restrictions
- Endowment Minimum funding, timing, title
- Communication to Donor
- Any return benefits to donor.

# GIFT AGREEMENTS CONTINUED

- Terms of modification and donor designee. Charitable distribution if purpose cannot be fulfilled.
- Default and Name Removal
- Publicity.
- Basic contract clauses.



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# THANK YOU!



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