

UNDERSTANDING AND DRAFTING NONPROFIT GIFT ACCEPTANCE POLICIES

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Gift acceptance policies are rarely adopted at the inception of a nonprofit organization's fundraising program. Early development activities usually focus on cash, and occasionally marketable securities. There is little discussion of, or involvement with, other gift forms. Gift acceptance policies are a product of capital campaigns or planned giving campaigns in which planned giving concepts, such as gifts made from assets, split interest gifts, and deferred gifts, are introduced. Once gift acceptance policies are in place, however, they tend to drift to the back of the policy manual where they age unnoticed and no longer provide the intended safeguard. This analysis is designed to help you gain a greater understanding of the details, draft a set of policies, and make or advise your clients to make better decisions about gift acceptance.

I. Developing A Perspective

The purpose and role of gift acceptance policies

Gift acceptance policies provide discipline for the nonprofit development program in several ways. First, the policies define the types of assets that are acceptable. Second, policies establish the gift forms that are acceptable. And finally, gift policies define the organization's role in gift administration.

The primary benefit of gift acceptance policies is to maintain discipline in gift acceptance and administration. Discipline prevents the acceptance of gifts that will cost the nonprofit organization time, money, and possibly its reputation, by reminding the organization when to say, "No."

Policies also serve to educate the nonprofit organization's staff and board about critical issues triggered by certain gifts. It is difficult to absorb and appreciate the practical issues associated with acceptance of certain gift forms without working through them and making choices about how to handle them.

The process of adopting the gift administration policy allows the staff and the board to work through the practical issues, such as costs associated with certain gifts, and is a far more valuable educational tool than a seminar or article on the subject. New board members, or those who have never evaluated potential gifts, may at first see the offer of a large boat as an exciting possibility. After a discussion of carrying costs, such as insurance, transport, storage, maintenance and expenses related to its sale, they will better understand the gift evaluation process.

The process of creating gift policies helps focus and strengthen the gift administration program. Regular review ensures that the development staff and the board bring up and answer questions critical to the planned gift program's integrity. It ensures that legal counsel is sought prior to the emergence of legal issues and that professional assistance is identified as a resource prior to the attempted resolution of problems.

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

And finally, the process gives the board a chance to make decisions about policy without the distraction of a pending gift to blind its collective judgement. Experience shows that it is hard for a planned giving officer or board to form the word "no" once the gift – however unattractive – is sitting on the table.

To be effective, policies must be in place before the organization begins to consider acceptance of specific gifts. Some organizations prefer to the "make-policy-as-needed" approach because the decision-makers

believe that it preserves flexibility and discretion in policy making. More often this approach leads to poor decisions for several reasons.

First, decisions based on case-by-case scenarios breed inconsistency. The results reflect the personal opinions of board members, not consistent policy. Nonprofit boards change annually. While some board members remain from year to year, the full group always changes over a three- to five-year period. Since each of us brings different personal experience and attitudes to the table when making decisions, judgments change as the committee changes.

Second, the glittering appeal of the potential gift obfuscates good judgement. It is difficult to make a list of potential problems and issues while you stare at the gift. The tendency of the planned giving or development officer is to do everything possible to accept the asset.

Third, without established policy a nonprofit may send mixed signals to potential donors. Suppose the planned giving officer receives what can only be described as a wretched gift, and thanks the donor profusely. Later, after sorting through the issues, he finds that the gift must be rejected. The donor is left to wonder why the initial excitement changed to a disapproving “no.” A better way to handle gift acceptance is to tell a donor the organization appreciates the gift, but its policies require a review of certain assets to ensure proper handling. A timely review, even with a resulting “no” is easier to understand.

It is important to note that a good set of policies and checklists will also prevent donors from making mistakes. Too often a donor’s accountant or attorney is not familiar with details such as the related use rules, the valuation requirements, or pre-arranged sale issues. Raising questions in the gift acceptance process may save a donor from disappointment when the time comes to file his or her income tax return.

Drafting and adopting gift policies

Developing gift acceptance policies should be a collaborative process involving the planned giving staff, the organization’s director or president, the board’s committee responsible for oversight, and the professional advisory committee or advisor. The combined insight of this group provides the broadest perspective and guidance on the issues. Simply adopting another institution’s gift policies, without understanding the issues and without tailoring them to fit your organization, will not provide protection. Once again, the greatest value of the process is the education board and staff members receive in gift evaluation.

Gift acceptance policies, once developed, should be approved and adopted by the board of directors. The date of this approval should be attached to the policies.

After adoption, the gift acceptance policies should be reviewed annually. This review is an important process in which the policies are dusted off and reread, and forgotten items reinstated in memory. Review also allows fine-tuning or amendment to the policies in the event that changed circumstances allow the organization to accept new gifts, or to restrict or expand the manner in which current gift forms are handled.

All of that said, policies should provide for a way to make exceptions to the rules, although such exceptions should be rare. Design a review process for deviation that requires the approval of the planned giving director, the Executive Committee and the agency Executive Director. Make sure that any action that runs counter to the gift policy is well supported and well reasoned.

In addition to drafting policy, the nonprofit must ensure that it has the expertise available to follow through in critical areas. Real estate appraisers, environmental analysts, property brokers, and legal advisors must be identified before the need arises. Only then can the nonprofit engage professional advice quickly to make a timely analysis without leaving the donor waiting for an answer.

II. The Critical Elements of the Policies

Take a look at the sample policy in Appendix A as we work through each section. Some policy elements are straightforward and simply provide the context for making decisions. Other areas, such as acceptance of non-marketable gifts, create more liability and will be discussed in greater detail. Throughout the discussion reference is made to the gift acceptance committee. This term is used generically to denote the board committee responsible for acceptance of gifts. In some organizations this responsibility lies with the executive committee, while in others it may be the finance committee, development committee, or planned giving committee.

The segments of the policies are discussed below.

- **Mission and Purpose** – The organization’s mission and purpose should be a part of every document generated by and for the nonprofit. It is important to keep the organization’s goals in mind when drafting and using the policy. Place the mission statement prominently at the top of the document to remind everyone of the vital role the organization serves.
- **Purpose of Policies and Guidelines** – The purpose of the gift acceptance policies should be clearly stated. In most instances, the purpose is to govern acceptance of gifts and to provide guidance to donors and their professional advisors in completing gifts. Purposes may include more elaborate language related to discharging fiduciary responsibility, protecting the board from third party liability and IRS sanctions, and protecting the nonprofit from unanticipated costs and negative publicity.
- **Use of Legal Counsel** – The policy should clearly state that the nonprofit will seek the advice of legal counsel when appropriate. The purpose of legal counsel is to provide protection. Legal counsel generally represents an unbudgeted expense, and both the planned giving officer and the gift acceptance committee are generally reluctant to suggest adding expense to the transaction. By stating that counsel will be engaged when appropriate, the policy provides a platform for the use of counsel, while leaving discretion on the final decision to the gift acceptance committee.

Consider these ways to add depth to this section:

1. **List the circumstances under which counsel will be engaged.** This could include:
 - The review of certain gifts, such as closely held stock, or closely held stock subject to buy-sell agreements or other restrictions.
 - The review of all transactions governed by contracts or legal documents. This would include bargain sales, trusts naming the nonprofit as trustee, or any document obligating the trustee to take action.
 - The review of all transactions with potential conflicts of interest. This may include use of board members as sales agents in transactions, leases of gift property to staff or board, etc.
 - Other circumstances in which the committee or board members believe that use of counsel is appropriate.

The detail is not meant to restrict or force the board to use counsel, but rather to provide some guidance when the advice of an attorney might be prudent. Most committee members making decisions about acceptance of closely held stock, for example, are not likely to be familiar with the *Ferguson*¹ case, liquidity issues, or other dangers of restrictive or prearranged transfers.

¹ *Ferguson v. Commissioner*, 108 T.C. 244 (1997).

2. **Separate the duties of board members and legal counsel.** It is difficult to use a board member as counsel either in a paid or unpaid capacity. When a board member serves as a paid legal advisor, it is difficult to separate the person's role as a board member from his or her role as counsel. Counsel should serve as an independent observer and advisor. Even when the counsel/board member achieves objectivity, it is difficult for the board to take legal advice from an equal on the board. Finally, there are the troublesome personal benefit issues that always arise. While these issues can generally be addressed and overcome, it is a better practice to hire outside counsel to ensure complete objectivity.

3. **Acknowledge that use of counsel, when appropriate, is part of the fiduciary role exercised by the board members.** The board has a duty to protect the nonprofit organization's assets and to provide proper guidance to its management. Placing use of counsel in the context of the board's fiduciary role, rather than as an unbudgeted expense, may also make it easier to engage help when needed. Every planned giving program budget should contain provision for this critical function.

- ***Donor Conflict of Interest*** – The policies should make it clear that the nonprofit will strongly urge and advise the donor to seek independent professional counsel prior to giving a gift. It is appropriate here to incorporate the National Committee on Planned Giving (NCPG)'s Model Standards of Practice for the Charitable Gift Planner. Also include as references the National Society of Fund Raising Executives (NSFRE)'s Donor Bill of Rights, and any other document recognizing the importance of independent advice for the donor, and “truth in advertising” in communicating with the donor. Conflicts with donors most often arise when the donor and charity have a long-term, strong relationship rather than when the relationship is new.

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

Board and staff conflict of interest issues should also be addressed. Board members may be eager to get involved in fundraising ideas that involve sales of products or services to the organization's donors. Appendix C provides a sample conflict of interest statement that is recommended as a model or template for a statement signed when beginning board or staff service.

- ***Restrictions on Gifts*** – Gift policies are an excellent place to explain the organization's attitude towards restricted gifts. All organizations prefer unrestricted gifts. However, planned giving donors who have a long-term relationship with and an understanding of the role the organization fills generally have a specific purpose in mind for the gift.

The nonprofit should determine the types of restrictions that can be placed on gifts. These options will range from a rigid policy prohibiting restrictions, to endowment pools for specific purposes, to a broad policy stating that all gifts that fit the organization's mission and purpose will be accepted. All policies, however, should state that gifts which are counter to or beyond the scope of the nonprofit's mission and purpose will be turned down.

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

It is best to designate a committee to decide whether the restricted gift meets the criteria set forth in the organization's gift policy. A committee can act faster than the full board to either accept, reject, or negotiate the purposes of a gift. Ideally this group will be the designated gift acceptance committee – a group with knowledge of both the organization and its gift acceptance policies.

- ***The Gift Acceptance Committee*** – The committee set up to review gifts or in some cases to make recommendations on acceptance to the Board, must be made up of individuals who know the nonprofit's mission and operation well and have the expertise and experience to make decisions. This committee should be small enough to respond quickly to unusual gift offers and to make timely decisions. The structure suggested in the example policy (Section V, Appendix A) is most appropriate for large institutions. Smaller charities may prefer to delegate this job to the development committee, the finance committee, or even the executive committee.
- ***Types of Gifts*** – A list of the types of planned gifts appears in Section VI of Appendix A and requires careful attention. Most nonprofits, especially those just embarking on a planned gift program, will not be able to accept all types of gifts because they lack the expertise or the resources to manage the gift or gift form. Look at each gift form as part of the evaluation process, and when you write your nonprofit's gift policy, state clearly the types of gifts that are appropriate for your organization and the types of gifts that are not appropriate.

The most common gift forms include:

- ***Cash*** – It is difficult to find a downside with cash. And since the NCPG's 1993 Survey of Donors indicated that the majority of bequests were funded with cash, the category should be on the list.
- ***Tangible Personal Property*** - Tangible personal property includes art, furniture, coin and stamp collections, livestock, jewelry, equipment, cars, boats, clothes, and any other personal property item owned by a donor. The nonprofit must be extremely careful about the receipt of personal property, especially when such property is received in exchange for a gift annuity. The charity will have an obligation to pay an income stream based upon the gift's value on the date of gift. The charity must be able to determine the gift's value and marketability before accepting it or run the risk of creating a negative cash flow transaction (instead of a gift).

The nonprofit's gift acceptance policy must address issues related to the types of property that will be accepted. The review function is best performed by a committee (the less visible the committee, the better) that asks and answers the following questions:

- Does the property fulfill the mission of the nonprofit (related use)?
- Is the property marketable?
- Are there any undue restrictions on the use, display, or sale of the property?
- Are there any carrying costs for the property (insurance, lease space, maintenance to preserve value, appraisal for sale purposes)?

Be sensitive to the special tax issues affecting the donor. A tax deduction for the market value of the gift is allowed when the organization will use the gift (related use). Determine whether the gift will be used by the nonprofit, or sold. Gifts donated for auction are considered to be unrelated use items since the gifts are sold and are not used by the nonprofit. The deduction for personal property contributed to a charitable remainder trust or a pooled income fund is limited to cost basis. Personal property that is contributed to a charitable remainder trust or a pooled

income fund will not be deductible as long as the donor or a donor's family members receive income from the trust.

- **Marketable Securities** - There are only a few dangers in acceptance of marketable securities, all of which relate to timing. To the extent possible, the following issues should be addressed in the gift policy or on a checklist attached to it.
 1. **Timing of the gift** – The donor runs the risk of assignment of income (capital gains) if the gift is made after a commitment to sell, or in the case of an outstanding tender, if the gift is made after the time at which the tender is fixed. The *Ferguson*² case produced a negative result for the taxpayer who began the gifting process early in the tender, but completed it after the tender trigger was reached. While the case provided a look at what didn't work, it provided little guidance on how to avoid the assignment of income problem.
 2. **Timing of the transfer** – Donors may face difficulties on timely transfer of securities. Planned giving officers should take the time to identify where and when the transfer will occur. Donors and PGO's can improve the timeliness of the transfer with active involvement by securities firms. Nonprofits can also make transfer easier by maintaining "house" accounts with the major securities firms so that donors can make an intra-firm account transfer without having to transfer the gift from firm to firm.
 3. **Timing of the sale** – Gift acceptance policies should state that marketable securities are sold upon acceptance. Too often policies say that the investment committee will make a decision on sale, or the board will consider that issue. Neither the board nor the investment committee are professional managers. The board's role is to manage the investment process by providing direction and oversight. If money management is assigned to a professional manager, gifts should be reduced to cash and transferred to the manager for investment as quickly as possible. The transaction cost of the sale is small compared to the loss that can be experienced with delay in sale.
- **Closely held securities** – Closely held securities are generally defined as securities that are not broadly or publicly traded and include not only debt and equity issues of C and S corporations, but also LLCs and LLPs. The definition of "publicly" traded relates to the ability to establish a proven market in which a "willing buyer and a willing seller" set a price or value for the security. The lack of a market to determine what a willing buyer would pay affects valuation and liquidity upon receipt. Policies should address how value and marketability are determined prior to acceptance, how restrictions are examined and resolved, and when legal counsel is required prior to acceptance of the gift.

The nonprofit should conduct an adequate review (either internal or external) to determine that:

- **The security is not restricted.** There may be restrictions noted on the face of the certificate indicating that the security is subject to a buy-back agreement at a set price, or that it must first be offered to a specific group at a set price before being offered on the open market.

² *Ibid.*

- **The security is marketable.** This means there is evidence of interest and some trading in the security. Often this trading occurs at the company as stock is purchased by the board or company employees.
 - **The security will not generate undesirable tax consequences for the nonprofit.** Certain interests, such as Sub-S stock and certain partnerships or LLC's, generate unrelated taxable business income. While most organizations will be willing to pay the tax in order to take the gift, the consequences of the gift should be understood in advance.
- **Real estate** – Real estate gifts are some of the most dangerous gifts for charity. Not only are there a series of liability issues associated with acceptance, but real estate is also one of the most commonly owned assets. It is a likely gift.

There are two big issues related to the nonprofit acceptance of real estate: environmental liability and practical issues related to disposition of the property.

Environmental Liability: One of the greatest risks facing owners of real property is environmental liability. The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), enacted in December 1980, created a merciless liability structure for “responsible parties” in the chain of title to an environmentally damaged property. The liability for clean up exists without regard to the actual knowledge of the owner or the material participation of the owner. Costs for removal of the hazardous materials and restoration of the property, including clean up of soil and ground water, can easily run into millions of dollars and far exceed the value of the property involved.

Charities are not immune from the environmental protection laws. The nonprofit organization should have detailed policies that require the environmental review of all anticipated gifts of real property. Sample environmental review forms are attached to this chapter as Appendix B. Use this or a similar environmental review process to protect your organization.

The nonprofit must also be cautious when serving as trustee of a charitable remainder trust or charitable lead trust, because exposure may extend beyond the assets of the trust. The few decisions that have been rendered relating to fiduciary responsibility in instances in which the nonprofit might serve as trustee have dictated tough results. The second decision in *City of Phoenix v. Garbage Services*³ provided some insight into the liability for a fiduciary. In that decision, the court held that:

1. Fiduciary liability is limited to the value of the contaminated asset when the contamination occurred prior to the time of the trustee's ownership, or when the trustee owned the property during the time of contamination but had no control and did not knowingly allow the contamination to happen.
2. Fiduciary liability extends to the fiduciary's own assets when the trustee not only owned the property at the time of contamination, but also controlled the use of the property and knowingly allowed the contamination.

Recent legislation addressed this liability issue. H.R 3610 contained the “Asset Conservation, Lender Liability and Deposit Insurance Protection Act of 1996” which amended CERCLA to provide that:

“The liability of a fiduciary under any provisions and this Act (CERCLA) for the release or threatened release of a hazardous substance at, from or in

³ *City of Phoenix v. Garbage Services*, 827 F. Supp. 600(D. Ariz. 1993)

connection with a vessel or facility held in a fiduciary capacity shall not exceed the assets held in the fiduciary capacity.⁴

However, this protection is not available where the fiduciary's conduct was negligent or created responsibility for the contamination.⁵ In essence, the decision in *Phoenix* was codified.

Practical issues related to receipt of real property. Experience has shown that most development officers or executive directors will want to find a way to accept a gift of real property. However, sometimes the gift is not appropriate because it will create a problem or will divert the focus of the nonprofit. And sometimes the gift is not appropriate for the purpose for which it is given. Additionally, as detailed above, sometimes the gift is costly.

A practical review of the property begins with an analysis by a real estate committee or gift acceptance committee that considers the following issues:

- a) Is the property useful for the purposes of the nonprofit?
- b) Is the property marketable?
- c) Are there any restrictions, reservations, easements, or other limitations associated with the property?
- d) Are there carrying costs, such as insurance, property taxes, mortgages, or notes, etc., associated with the property?
- e) Does the environmental audit show that the property is not damaged?

If the responses to these questions are positive, the nonprofit must then examine the form of the charitable gift and ask additional questions detailed below.

Gift of real estate to charitable remainder trusts (CRT). Many issues should be considered by both the donor and charity before funding a CRT with real property. Questions to raise are:

1. ***Is this an annuity trust or a unitrust?*** If the trust is an annuity trust, the trust will have difficulty in meeting the income obligation. If the property is not sold before the first payment is due, an "in kind" distribution must be made that is equal in value to the income distribution required, which further complicates the ultimate sale of the property. The annuity trust also faces a valuation dilemma. When a property is gifted with a value of \$1,000,000, but sold for \$800,000, the trust must still distribute an annuity amount based upon the original value.
2. ***If the trust is a unitrust, does it have a flip provision?*** The ability to begin the trust as a net income unitrust, and then "flip" to a standard unitrust, provides flexibility for the sale of real estate. A unitrust provides protection for the valuation issue because if the property is sold for less than the contributed value, or property related expenses reduce its value, the annual distribution is reduced as well.
3. ***Is the property mortgaged?*** Mortgaged property must not be contributed to a CRT. (More on this in the CRT section.)
4. ***Is the property the donor's home?*** Be careful in the event that the donor places his or her residence in the CRT. While there is no

⁴ CERCLA, Sec. 107(n)(1)

⁵ CERCLA, Sec. 107(n)(3)

prohibition on the contribution of a residence, the donor may not continue to enjoy the use of the property after the date of contribution.

Pooled income funds: Real estate is generally a poor choice for funding a pooled income fund. The pooled income fund distributes net income to the donors who hold units. Real estate is generally non-income producing and may incur expenses (charged to income) prior to sale. Therefore, a gift of real estate is likely to reduce the income stream for all participants. Many organizations have policies that prevent the contribution of a gift of real estate to a pooled income fund.

Charitable gift annuities: If real property is contributed in exchange for a gift annuity, and the property does not produce income or produces insufficient income, the receiving organization must have the resources to pay the income stream in the period before the property is sold. And it must be certain that the value on which the annuity is based is fair and reasonable. If a nonprofit accepts a gift of real property for a gift annuity, it must be certain it can sell the property quickly for the established value. Many organizations will not accept real property in exchange for charitable gift annuities because of these uncertainties.

Deferred charitable gift annuities: The analysis is somewhat different when real property is contributed in exchange for a deferred gift annuity. A deferred gift annuity generates payments at some point in the future, meaning that the nonprofit will have some time to sell the property in order to make those payments. However, the nonprofit should still make sure the property can be sold without much delay, and that the value used to establish the annuity is fair and reasonable.

- ***Remainder interests in property*** – The issues related to remainder interests in property relate to economic responsibilities during the term of the life interest, as well as review of conduct and control of the property during the term of the life interest. In some instances the charity may not know of the remainder interest gift. In others, the charity will be actively involved in the solicitation. When involved, the charity should ensure maximum protection from environmental liability by remaining continuously in touch with the donor and the condition of the property throughout the life term.
- ***Oil, Gas, and Mineral Interests*** -- Organizations located in active mineral interest states such as Texas may encounter opportunities for gifts of oil, gas, or mineral interests. Severed interests can be represented by surface rights, or the interest in the minerals alone. These interests are generally owned as working interests or as fractional partnerships. They are difficult to sell and unpredictable in income generation.

If your organization is unfamiliar with these interests you may not choose to get involved in accepting this gift form. If you do have the expertise to manage or sell these gifts, consider setting minimum gift sizes so that your administrative office is not burdened with a paper chase that generates minimum income.

Have the form of the interest reviewed to insure that you are not accepting unrelated business taxable income property, which is generated by some forms of oil, gas, and mineral ownership. In addition there are special issues with oil and gas that relate to valuation and whether such interests are a form of non-qualified partial interest property. The IRS published a private letter ruling in 1984 that approved a charitable deduction of an oil and gas interest. (Private letter rulings can not be relied upon, but indicate attitude of the IRS.)

- **Bargain Sales** – A bargain sale can be an effective gift tool in some circumstances. The bargain sale most often involves gifts of real property, meaning that the policies should reflect that bargain sales of real estate undergo the same evaluation required for outright gifts. In most instances, the final decision on a bargain sale should be made by the gift acceptance committee since acceptance should depend on whether the bargain sale is in the best interest of the organization. Factors for consideration include:
 - Will the nonprofit use the property or sell it?
 - The results of the environmental review
 - The condition of the property
 - The ratio of debt to equity, if a mortgage is assumed
 - The ability to cash flow the debt, if a mortgage is assumed
 - The ability to cash flow the carrying costs of the property including taxes, insurance, and maintenance of the property
 - Are there unrelated business tax issues associated with the sale of the property/mortgage?

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

- **Life Insurance** - Life insurance can be a valuable part of a planned giving program because of the special donor niches it can reach. There are two ways that outright gifts of life insurance are used in planned giving: the transfer to charity of an older policy which the donor no longer needs, or the transfer of funds to charity to purchase a policy on the life of the donor. In the first instance the policy represents a non-income producing item that makes an excellent gift because it does not impact the donor's lifestyle. In the second instance, the life insurance policy represents a way to leverage the value of the gift to charity. A series of small premium payments can create a large endowment gift at death. This section of the policy deals solely with the irrevocable transfer of an existing insurance policy.

The nonprofit must have guidelines that spell out action to take on the receipt of an insurance policy. If the policy is a term policy and premium payments must be made to keep the policy in place, the nonprofit must have the cash flow to make those payments. There are few circumstances in which nonprofits should accept term policies.

If the policy is a whole life policy, premium payments may also be due. Is it in the best interest of the nonprofit to make those payments? Experience shows that there is not a standard answer to those questions. Rather, the nonprofit should have a committee or group that reviews the policy and makes a decision on a case-by-case basis. Alternatives include:

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

- **Charitable Gift Annuities** – Charitable gift annuities require the most thought of all. The organization must clearly understand the liability created in issuing the annuity. The nonprofit must register in states where gift annuities are offered and disclose the appropriate financial information. And the organization must invest the assets in accordance with the laws, to cash flow the annuity payments and to protect the nonprofit from negative cash flow over the life of the annuitant.

The gift acceptance policy will include:

- Minimum and maximum size of the charitable gift annuity issued by the nonprofit
 - Minimum and maximum ages of charitable gift annuitants
 - The types of property accepted in exchange for charitable gift annuities, making distinctions, if appropriate, between current annuities and deferred annuities
 - The states in which donors may execute charitable gift annuities
 - The manner in which the charitable gift annuities will be managed for investment and administration purposes
- **Trustee Appointments** - While organizations may choose to accept charitable remainder trusts, they may choose not to serve as trustee. Where charities do serve as trustee, they should ensure that:
 - State law allows the charity to serve as a fiduciary
 - The charity understands the fiduciary obligations of serving as fiduciary
 - The charity is careful to avoid unnecessary exposure to liability by serving as trustee for other organizations. Some nonprofits serve only where the charity is the sole, irrevocable beneficiary of a charitable remainder trust. Others are willing to serve so long as the nonprofit is the irrevocable beneficiary of 50% or more of the remainder.
 - The charity sets minimum non-charitable beneficiary ages, maximum number of lives, and maximum distribution amounts in the document.

As a general rule, the charity should not accept appointment as the trustee of a charitable lead trust. In every instance, there is a non-charitable beneficiary at the end of term who may or may not be appreciative of the investment management role and investment decisions made during the trust term.

- **Pooled income funds** are not specifically included on this list. Organizations that maintain pooled income funds should specify initial minimum gift sizes, minimum gift sizes for additions, and restrictions on the type of property that may be contributed. Tax exempt bonds are prohibited by statute. It is generally appropriate to restrict gifts to cash and taxable securities.
- **Retirement Plan Beneficiary Designations, Bequests, and Life Insurance Beneficiary Designations** – Donors should be encouraged to name your nonprofit as beneficiary of retirement plan designations, life insurance designations, and estate bequests. Educate your donors about how to properly name your organization and encourage them to work with you to plan gifts for special purposes. There is little that your gift acceptance policies can regulate on these forms of gifts since these gifts do not require the approval of or acceptance of the charity.
- **Weird Charitable Gifts** - As an afterthought, consider the following types of property and how they might be processed by your organization.
 - **Cows:** Cows (and other livestock, thoroughbreds and breeding stocks) are generally considered to be gifts of tangible personal property. If the livestock is personal property, the donor is limited to basis since the cow will probably not fit the related use rules. However, if the livestock is a gift from a farmer, it may not be considered

personal property but may be a long-term capital gain asset. If so, the donor must think about how to measure gain on the gift. Is the holding period measured by the herd, or by the individual cow? (Think of calves...) And finally, consider the fact that when cows are long-term capital gain property, they can be depreciated.

- **Farm equipment:** Gifts of farm equipment and grain can be made to charity or to a charitable remainder trust. These assets, almost always heavily depreciated and having a low tax basis, may have the greatest impact when contributed to a charitable remainder trust. This is because the recognition of income and tax on the sale of the asset may be avoided by using the charitable remainder trust. Think of retiring farmers. The downside to this gift is that it is difficult to value and these assets may be difficult to sell within the trust.
- **Frequent flyer miles:** Frequent flyer miles are often solicited by charity. However, the miles may generate no deduction at all since they appear to be ordinary income property and the deduction is limited to basis. However, the miles have no basis since they are free rather than purchased. Consult a qualified accountant before soliciting these miles as a gift so that donors fully understand the value of the contribution.
- **Gold coins:** Some coins are personal property, while others are not. See PLR 9225036 which cites Rev. Ruling 69-63 in support of the conclusion that Krugerrands (also Maple Leafs) are not considered personal property but are considered currency. Gold bullion, on the other hand, likely requires an appraisal from a commodities broker or other such dealer since the units are not standardized. Note it is also unlikely that gold bullion would have a use related to the charity's business so that the deduction would be limited to non-use deduction limits.
- **Leased property:** The character of the gift of a leased building depends on the lease. If the lease is a straight lease, it is probably passive income and will not trigger the unrelated business income tax (UBIT) rules. If the lease is keyed to the success of the business (the higher the business income, the higher the lease payment) then the payments may be business income and therefore UBIT. Have the lease reviewed by legal counsel before acceptance.
- **Partnership interests, limited:** Be leery of real estate limited partnerships. Many report large income amounts, but disburse only enough cash for taxes. In other words, there are terrible cash flow problems. Is this good for charity? Likely not. Also watch out for unrelated business income problems.
- **Partnership interests, general:** General partnership interests represent a real danger to nonprofits, since the general partner can be held fully liable for the acts of the partnership. Avoid general partnership interests unless there is some assurance that the nonprofit can avoid this liability. Have all partnership interests reviewed by counsel before acceptance.
- **Patents:** Patents produce royalty income that is excluded from unrelated business taxable income under section 512(b)(2).
- **Savings Bonds:** Donors can not transfer ownership of savings bonds during life without triggering the income tax due on those bonds because savings bonds have restricted transfer requirements. A donor who wishes to transfer savings bonds should transfer them by specific bequest of the bonds to charity under will. A specific bequest of the bonds will shift the built-in income to charity (with no

adverse tax result). Be careful, however. Bonds that are registered jointly will pass to the survivor and will not be subject to the terms of the will.⁶

- **Time Share Interests:** Time sharing ownership interests abound and are often not worth what the purchaser anticipated. When the reality of the time share arrangement sets in, and the glow of the arrangement dims, many individuals look for ways to escape the annual fees and to get their money back. Also be aware that time shares may be fractional interests in real estate. Valuation, sale, and environmental liability are concerns.
- **Appraisals:** The policy should state clearly who is responsible for appraisals required for the donor's tax return (the donor), and when, if ever, exceptions to this policy can be made. Policies should also list situations in which the charity will obtain an independent appraisal. Some charities also require that the donor pay for the charity's confirming appraisal.
- **Legal Fees and Professional Fees:** Legal fees for completion of the gift are the responsibility of the donor; it is helpful to have this statement incorporated in the gift acceptance policy. In the event that the nonprofit provides for an exception, the exception rules should address the conditions under which the nonprofit will pay those fees, how the conflict of interest issues will be avoided and how the payment of fees will be reported for tax purposes.
- **Valuation of Gifts on the Nonprofit Books:** There are three points at which gift valuation is important. The first is the valuation of the gift for tax purposes. These rules are clearly established in the Internal Revenue Code. The second is the valuation of the gift for gift credit purposes. Some gifts are recorded at the donor's date of gift value, while others are recorded net of sales costs. The third is the value of the gift on the organization's books, governed in most instances by the Financial Accounting Standards Board (FASB) rules. The most important point is that the valuation on the nonprofit development records and books should be consistently calculated. Discuss these issues at the outset so that records reflect "apples to apples" results over time.
- **Filing of IRS Forms on Sale:** Few organizations focus on the filing requirements for Forms 8282 and 8283. It is helpful to include a statement delegating this duty to a particular office or individual by title and to include copies of the forms and instructions as an attachment to the policy.
- **Acknowledgement of gifts:** Provide the names of the individuals responsible for acknowledgement, and set a standard for the time in which acknowledgement is to be completed.
- **Changes to policies:** Changes to the policy should be adopted by the governing body of the nonprofit. However, the policy should anticipate change and provide a process for amendment.
- **Attachments** – Attachments providing detail and guidance to the development office are extremely helpful and serve as a guide to procedure. Attachments that are most valuable include:
 - **The Real Estate Environmental Management Policies** – These policies, described in the section above, should be attached if adopted for the acceptance of real estate.⁷

⁶ See PLR 8010082 (December 13, 1979) for further info on EE/H bonds.

⁷ Attached as Appendix B.

- ***IRS Form 8283 and Instructions*** – This form must be filed by the donor and signed by the receiving charity when non-marketable gifts of greater than \$5,000 are involved.
- ***IRS Form 8282 and Instructions*** – This form must be filed by the charity upon the sale or disposition (within two years of receipt) of non-marketable gifts greater than \$5,000 upon receipt.
- ***IRS Publication 526 Charitable Contributions*** – This IRS publication is simply a good reference. It is sometimes attached to policies for shops that are new and need to insure quick access to the rules.
- ***IRS Publication 561 Determining The Value of Donated Property*** – This is an easy to use guide on valuation issues, valuation requirements, and filing requirements.

III. Cautionary Tales: Stories of Disaster

The Importance of Learning Through Other Organizations' Disasters (Rather Than Your Own)

Review of gift acceptance policies is always a tedious process. Invariably, the committee working to draft the policies loses its focus by the second or third reading and begins to wonder of the need for such painstaking detail.

At this point, a cautionary tale or two generally provides the incentive to keep moving. Sometimes experience is the best teacher, and learning from the mistakes of others is always less expensive and less painful. There are many cautionary tales to learn from, but the following stories address the need for policies.

Very Bad Personal Property Gifts

Examples of bad personal property gifts are easy to find. Consider the following gifts.

- A long-term donor to a college, and a personal friend of the President of the college, contributed a large, orange, clay vessel gift purchased on a trip to South America. The gift was presented with the restriction that it be displayed in the organization's lobby (perhaps to address the related use rules?) Although the gift was accepted, the school eventually was forced to go back to the donor to rescind the display agreement. There was no market for the pot, which now sits in a storage closet. The donor has discontinued support of the school.
- A high profile alumnus of a Southeastern preparatory school made a gift of a 53-foot Hatteras, delivered via deed of gift and docked in Fort Lauderdale at Pier 77. The prep-school began to receive the harbor master's bills the next month, which included dockage (by the foot), connection fees, and maintenance. In addition, the school was forced to insure the boat (replacement and liability). The sale took two and a half years and netted roughly half of the anticipated value (which was then reduced by the out of pocket costs for the two and a half years).
- A long-term donor funded an arts organization campaign pledge (for a named room in the new building) with the gift of a 40-carat emerald ring. Although the appraised cost of the gem was \$43,000, the charity received only \$19,000 after the out of pocket costs to insure, transport, and market the jewel in the wholesale market in New York. Should the room still be named for the donor? Should the donor be asked to contribute the balance?

Potentially Worse Gifts Of Real Estate

There are more true tales of woe resulting from gifts of real estate than any single asset. Consider these gifts.

- A well-known Midwestern charity received a gift of not one, but two, paint factories in the early 1980's. These gifts soon matured into Environmental Protection Agency Superfund sites. It cost the charity roughly \$1 million over the value of the property to settle the joint and several liability imposed by CERCLA to extricate itself from the first gift, and somewhat more than that to settle the second gift.
- A school foundation received a \$50,000 gift of real estate (house and lot) from a new donor to the institution. The property remained on the market for two years, but failed to sell, even after a reduction in price to \$25,000, because of a squatter on the property. The property was eventually transferred to the church next door as a gift.
- A hospital foundation accepted a \$40,000 gift of real estate, non-income producing, in exchange for a gift annuity. At the donor's request, the nonprofit agreed that it would not sell the property for two years. In reviewing this transaction, the first phrase that comes to mind is "tax fraud." The second phrase that comes to mind is "cash flow." The third phrase might be "Directors and Officers Insurance."

The Ungrateful (Shall We Say Angry?) Donors

Donors can become angry about gift transactions when the tax result is different than anticipated. Consider these examples.

- A donor contributed a painting, valued at \$35,000 with a basis of \$2,500, to a performing arts organization. The charity intended to sell the painting upon receipt, but did not discuss this with the donor. The painting was sold within three months. Although the donor's accountant was aware of the gift, the accountant was not familiar with the related use rules and did not ask whether the painting would be used as a part of the organization's nonprofit operations. The donor's \$35,000 deduction withered to \$2,500.
- A donor, who made significant annual mutual funds gifts to a charity each December, called on December 1 to inform the charity of the current year gift. Shortly thereafter, the mutual fund company sent the planned giving officer some forms needed to open the nonprofit's account. The PGO placed the forms in her "to do" box, and finally completed them on December 30, making personal delivery to the broker representing the fund. The PGO made an entry for the gift on the December gift log, and did not think about the gift again until February, when she received a mutual fund statement showing a transfer of the mutual fund on January 15. Imagine the discussion with the donor.

IV. The Importance of Regular Review

Once you have policies in place, review them regularly. Associate the review with the first meeting of the gift acceptance committee, professional advisory committee, or development committee each year.

Use the review as an opportunity to educate, to preach, and to probe for potential gift opportunities. Involve the committee and the board through cautionary tales, or solicitation of experiences with other organizations that could have been avoided. Treat them as your most valuable insurance policy.

Do not be afraid to make changes where current policy did not provide protection, produced a bad result, or fell short of providing guidance. Every organization is different. Draft your policies to meet your needs, your problems and to reflect your values.

V. Appendices

APPENDIX A

GIFT ACCEPTANCE POLICIES AND GUIDELINES

XYZ Charity, a not for profit organization organized under the laws of the State of _____, encourages the solicitation and acceptance of gifts to XYZ Charity (hereinafter referred to as the Charity) for purposes that will help the Charity to further and fulfill its mission. The following policies and guidelines govern acceptance of gifts made to the Charity or for the benefit of any of its programs.

The mission of the XYZ Charity is to:

(here insert the mission)

I. Purpose of Policies and Guidelines

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

II. Use of Legal Counsel

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

- a. Closely held stock transfers that are subject to restrictions or buy-sell agreements
- b. Documents naming XYZ Charity as Trustee
- c. Gifts involving contracts, such as bargain sales or other documents requiring the XYZ charity to assume an obligation
- d. Transactions with potential conflict of interest that may invoke IRS sanctions
- e. Other instances in which use of counsel is deemed appropriate by the Gift Acceptance Committee

III. Conflict of Interest

XYZ Charity will urge all prospective donors to seek the assistance of personal legal and financial advisors in matters relating to their gifts and the resulting tax and estate planning consequences. The Charity will comply with the Model Standards of Practice for the Charitable Gift Planner promulgated by the National Committee on Planned Giving, shown as an appendix to this document.

IV. Restrictions on Gifts

The Charity will accept unrestricted gifts, and gifts for specific programs and purposes, provided that such gifts are not inconsistent with its stated mission, purposes, and priorities. The Charity will not accept gifts that are too restrictive in purpose. Gifts that are too restrictive are those that violate the terms of the corporate charter (or trust document if Charity is established under trust), gifts that are too difficult to administer, or gifts that are for purposes outside the mission of the Charity. All final decisions on the restrictive nature of a gift, and its acceptance or refusal, shall be made by the Gift Acceptance Committee of the Charity.

V. *The Gift Acceptance Committee*

The gift acceptance committee shall consist of:

- The President of XYZ Charity
- The Treasurer of XYZ Charity
- Two members of the Executive Committee, appointed by the President
- Two members of the Development Committee, appointed by the Development Vice President
- Such other members as appointed by the President of the Charity
- Ex-Officio members shall include the Executive Director and the Development Director of XYZ Charity

The gift acceptance committee is charged with the responsibility of reviewing all gifts made to XYZ Charity, properly screening and accepting those gifts, and making recommendations to the Board on gift acceptance issues when appropriate.

VI. *Types of Gifts*

A. The following gifts are acceptable:

1. Cash
2. Tangible Personal Property
3. Securities
4. Real Estate
5. Remainder Interests in Property
6. Oil, Gas, and Mineral Interests
7. Bargain Sales
8. Life Insurance
9. Charitable Gift Annuities
10. Charitable Remainder Trusts
11. Charitable Lead Trusts
12. Retirement Plan Beneficiary Designations
13. Bequests
14. Life Insurance Beneficiary Designations

B. The following criteria govern the acceptance of each gift form:

1. **Cash:** Cash is acceptable in any form. Checks shall be made payable to The XYZ Charity and shall be delivered to (place title of Charity employee to which gift should be delivered) in the Charity's administrative offices.
2. **Tangible Personal Property:** All other gifts of tangible personal property shall be examined in light of the following criteria:
 - Does the property fulfill the mission of the Charity?
 - Is the property marketable?
 - Are there any undue restrictions on the use, display, or sale of the property?
 - Are there any carrying costs for the property?

The final determination on the acceptance of other tangible property gifts shall be made by the Gift Acceptance Committee of the XYZ Charity.

3. **Securities:** The Charity can accept both publicly traded securities and closely held securities.

Publicly Traded Securities: Marketable securities may be transferred to an account maintained at one or more brokerage firms or delivered physically with the transferor's signature or stock power attached. As a general rule, all marketable securities shall be sold upon receipt unless otherwise directed by the Investment Committee. In some cases marketable securities may be restricted by applicable securities laws; in such instance the final determination on the acceptance of the restricted securities shall be made by the Gift Acceptance Committee of the XYZ Charity.

Closely Held Securities: Closely held securities, which include not only debt and equity positions in non-publicly traded companies but also interests in LLPs and LLCs or other ownership forms, can be accepted subject to the approval of the Gift Acceptance Committee of the Charity. However, gifts must be reviewed prior to acceptance to determine that:

- there are no restrictions on the security that would prevent XYZ Charity from ultimately converting those assets to cash,
- the security is marketable, and
- the security will not generate any undesirable tax consequences for the Charity.

If potential problems arise on initial review of the security, further review and recommendation by an outside professional may be sought before making a final decision on acceptance of the gift. The final determination on the acceptance of closely held securities shall be made by the Gift Acceptance Committee of the XYZ Charity and legal counsel when necessary. Every effort will be made to sell non-marketable securities as quickly as possible.

4. **Real Estate:** Gifts of real estate may include developed property, undeveloped property, or gifts subject to a prior life interest. Prior to acceptance of real estate, the Charity shall require an initial environmental review of the property to ensure that the property has no environmental damage. Environmental inspection forms are attached as an appendix to this document. In the event that the initial inspection reveals a potential problem, the Charity shall retain a qualified inspection firm to conduct an environmental audit. The cost of the environmental audit shall generally be an expense of the donor.

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

Prior to acceptance of the real property, the gift shall be approved by the Gift Acceptance Committee of the Charity and by the Charity's legal counsel. Criteria for acceptance of the property shall include:

- Is the property useful for the purposes of the Charity?
- Is the property marketable?
- Are there any restrictions, reservations, easements, or other limitations associated with the property?
- Are there carrying costs, which may include insurance, property taxes, mortgages, or notes, etc., associated with the property?
- Does the environmental audit reflect that the property is not damaged?

5. **Remainder Interests In Property:** The Charity will accept a remainder interest in a personal residence, farm, or vacation property subject to the provisions of paragraph 4. above. The donor or other occupants may continue to occupy the real property for the duration of the stated life. At the death of the donor, the Charity may use

the property or reduce it to cash. Where the Charity receives a gift of a remainder interest, expenses for maintenance, real estate taxes, and any property indebtedness are to be paid by the donor or primary beneficiary.

6. **Oil, Gas, and Mineral Interests:** The Charity may accept oil and gas property interests, when appropriate. Prior to acceptance of an oil and gas interest the gift shall be approved by the Gift Acceptance Committee, and if necessary, by the Foundation's legal counsel. Criteria for acceptance of the property shall include:

- Gifts of surface rights should have a value of \$20,000 or greater.
- Gifts of oil, gas and mineral interests should generate at least \$3,000 per year in royalties or other income (as determined by the average of the three years prior to the gift).
- The property should not have extended liabilities or other considerations that make receipt of the gift inappropriate
- A working interest is rarely accepted. A working interest may only be accepted where when there is a plan to minimize potential liability and tax consequences.
- The property should undergo an environmental review to ensure that the Charity has no current or potential exposure to environmental liability.

7. **Bargain Sales:** XYZ will enter into a bargain sale arrangement in instances in which the bargain sale furthers the mission and purposes of the Charity. All bargain sales must be reviewed and recommended by the Gift Acceptance Committee and approved by the Board of Directors. Factors used in determining the appropriateness of the transaction include:

- The Charity must obtain an independent appraisal substantiating the value of the property.
- If the Charity assumes debt with the property, the debt ratio must be less than 50% of the appraised market value
- The charity must determine that it will use the property, or that there is a market for sale of the property allowing sale within 12 months of receipt
- The Charity must calculate the costs to safeguard, insure, and expense the property (including property tax, if applicable) during the holding period.

8. **Life Insurance:** XYZ Charity must be named as both beneficiary and irrevocable owner of an insurance policy before a life insurance policy can be recorded as a gift. The gift is valued at its interpolated terminal reserve value, or cash surrender value, upon receipt. If the donor contributes future premium payments, the Charity will include the entire amount of the additional premium payment as a gift in the year that it is made.

If the donor does not elect to continue to make gifts to cover premium payments on the life insurance policy, the Charity may:

- continue to pay the premiums,
- convert the policy to paid up insurance, or
- surrender the policy for its current cash value.

9. **Charitable Gift Annuities:** XYZ Charity may offer charitable gift annuities. The minimum gift for funding is \$5,000. XYZ Charity President may make exceptions to this minimum. The minimum age for life income beneficiaries of a gift annuity shall be 55. Where a deferred gift annuity is offered, the minimum age for life income beneficiaries shall be 45. No more than two life income beneficiaries will be permitted for any gift annuity.

Annuity payments may be made on a quarterly, semi-annual, or annual schedule. XYZ Charity President may approve exceptions to this payment schedule.

XYZ Charity will not accept real estate, tangible personal property, or any other illiquid asset in exchange for current charitable gift annuities. XYZ Charity may accept real estate, tangible personal property, or other illiquid assets in exchange for deferred gift annuities so long as there is at least a 5 year period before the commencement of the annuity payment date, the value of the property is reasonably certain, and the President of XYZ Charity approves the arrangement.

Funds contributed in exchange for a gift annuity shall be set aside and invested during the term of the annuity payments. Once those payments have terminated, the funds representing the remaining principal contributed in exchange for the gift annuity shall be transferred to XYZ Charity's general endowment funds, or to such specific fund as designated by the donor.

10. **Charitable Remainder Trusts:** The Charity may accept designation as remainder beneficiary of a charitable remainder trust with the approval of the Gift Acceptance Committee of the Charity. The Charity will not accept appointment as Trustee of a charitable remainder trust.

11. **Charitable Lead Trusts:** The Charity may accept a designation as income beneficiary of a charitable lead trust. The Board of XYZ Charity will not accept an appointment as Trustee of a charitable lead trust.

12. **Retirement Plan Beneficiary Designations:** Donors and supporters of XYZ Charity will be encouraged to name the Charity as beneficiary of their retirement plans. Such designations will not be recorded as gifts to the Charity until such time as the gift is irrevocable. When the gift is irrevocable, but is not due until a future date, the present value of that gift may be recorded at the time the gift becomes irrevocable.

13. **Bequests:** Donors and supporters of XYZ Charity will be encouraged to make bequests to the Charity under their wills and trusts. Such bequests will not be recorded as gifts to the Charity until such time as the gift is irrevocable. When the gift is irrevocable, but is not due until a future date, the present value of that gift may be recorded at the time the gift becomes irrevocable.

14. **Life Insurance Beneficiary Designations:** Donors and supporters of XYZ Charity will be encouraged to name the Charity as beneficiary or contingent beneficiary of their life insurance policies. Such designations shall not be recorded as gifts to the Charity until such time as the gift is irrevocable. Where the gift is irrevocable, but is not due until a future date, the present value of that gift may be recorded at the time the gift becomes irrevocable.

VII. Miscellaneous Provisions

- A. **Securing appraisals and legal fees for gifts to the Charity:** It will be the responsibility of the donor to secure an appraisal (where required) and independent legal counsel for all gifts made to the Charity.
- B. **Valuation of gifts for development purposes:** The Charity will record a gift received by the Charity at its valuation for gift purposes on the date of gift.
- C. **Responsibility for IRS Filings upon sale of gift items:** The Gift Acceptance Committee of the Charity are responsible for filing IRS Form 8282 upon the sale or

disposition of any asset sold within two years of receipt by the Charity when the charitable deduction value of the item is more than \$5,000. The Charity must file this form within 125 days of the date of sale or disposition of the asset. Form 8282 with Filing Instructions is attached as an appendix to these policies.

- D. Acknowledgement of all gifts made to the Charity and compliance with the current IRS requirements in acknowledgement of such gifts shall be the responsibility of the Board of the Charity. IRS Publication 561 *Determining the Value of Donated Property* and IRS Publication 526 *Charitable Contributions* are attached to these policies as an Appendix.

VIII. Changes to Gift Acceptance Policies

These policies and guidelines have been reviewed and accepted by the Gift Acceptance Committee of the XYZ Charity. The Gift Acceptance Committee of the XYZ Charity must approve any changes to or deviations from these policies.

Approved on the _____ day of _____, 2000.

Chairman, Board of Directors, The XYZ Charity

ATTACHMENTS

- I. Model Standards of Practice of the Charitable Gift Planner**
- II. Environmental Review Forms**
- II. IRS Form 8282 and Instructions**
- III. IRS Publication 561 Determining the Value of Donated Property**
- IV. IRS Publication 526 Charitable Contributions**

APPENDIX B

ENVIRONMENTAL INTERVIEW

This interview is designed for use with current and/or prior owners or managers of the property.

Date of Interview _____	Interviewer _____
Person Interviewed _____	Relation to Property _____
Property Description _____	

Type of Property	Agricultural _____	Timber _____	
	Commercial _____	Manufacturing _____	
	Age of Buildings _____	Undeveloped Land _____	
	Residential _____	Other _____	

1. Indicate prior uses of property. _____
2. Are you aware of any environmentally sensitive situations on the property?
Describe: _____
3. For uses identified in question 1, has an environmental license or permit ever been issued? ____
No ____ Yes
4. Are there any oil, fuel or chemical storage tanks on the property located above or below ground?
____ No ____ Yes
5. Has an environmental assessment been previously conducted? ____ No
____ Yes. If yes, provide a copy of the report.
6. If available, attach maps or surveys that describe the property to this questionnaire. ____ attached
____ none available
7. If you are unable to furnish the information requested above, please advise us if there is a reliable source that may be able to furnish this information.

PROPERTY INSPECTION CHECKLIST FOR CURRENT ENVIRONMENTAL CONDITIONS

Name of Inspector _____	Date of Inspection _____
Owner of Property _____	Estimated Size _____
Location of Property _____	Current Use _____
Number of years the current use has been in effect _____	
Brief history of property use (list past use and former tenants, and source of information)	

ENVIRONMENTAL SITE INSPECTION CHECKLIST

- | | | |
|--|------------|-----------|
| I. An on-site inspection revealed the following: | Yes | No |
| A. Stressed or denuded vegetation or unusual barren areas | _____ | _____ |
| B. Discoloration, oil sheens or foul/unusual odors in water | _____ | _____ |
| C. Dump site | _____ | _____ |
| D. Tire/battery/chemical storage or disposal | _____ | _____ |
| E. Storage drums | _____ | _____ |
| F. Above or below ground storage tanks, vent or filler pipes | _____ | _____ |
| G. Evidence of petroleum or oil products | _____ | _____ |
| H. Evidence of PCBs (electrical transformers, capacitors) | _____ | _____ |

- I. Subject or adjoining property used for industrial purposes _____
- J. Existing structures: If yes, indicate if there is: _____
 - 1. Evidence of chemical spills/leaks _____
 - 2. Evidence of asbestos _____
 - 3. Any source of air emission _____
- K. Does property appear on National/State Hazardous Site list? _____
- L. If "yes" to any of the above, describe: _____

II. () Based on the evaluation of known, discovered or observed environmental factors, there is no evidence of environmental contamination on this or neighboring properties, and no further action is recommended.

() Based on the evaluation of known, discovered or observed environmental factors, there is evidence of possible environmental contamination on this or neighboring properties and further investigation is recommended. ***(Complete "Evaluation of Known Environmental Factors Form" if this block is checked.)***

 Person Completing Form Title Date

 Acceptance of Form Approved By Title Date

EVALUATION OF KNOWN ENVIRONMENTAL FACTORS

Check the appropriate response to each statement based on all sources of information, including the Environmental Site Inspection Checklist.

- | | Yes | No |
|--|------------|-----------|
| A. This property (or adjacent property) appears on federal, state or other environmental agency list of sites identified for environmental investigation or cleanup. | _____ | _____ |
| B. This property is developed and used for an industrial or manufacturing purpose. | _____ | _____ |
| C. This property is undeveloped land used for landfill or waste dump purpose. | _____ | _____ |
| D. The prior, current or proposed use of this property involves the generation, storage, treatment or disposal of any potentially hazardous materials, oil/petroleum products or other substances regulated by environmental laws and agencies. Specify: _____ | _____ | _____ |
| E. Activities on adjacent properties may have contributed to the environmental contamination of the subject property. | _____ | _____ |
| F. This property is near a flood plain, wetland or ecologically sensitive area. | _____ | _____ |
| G. The Environmental Site Inspection revealed evidence of | | |

possible environmental contamination. _____

H. The donor has revealed potential sources or causes of environmental contamination. _____

I. This property is used for agricultural purposes. _____

() Based on the evaluation of known environmental factors, there is no evidence of possible environmental contamination on this or neighboring properties and no further action is recommended.

() Based on the evaluation of known environmental factors, there is evidence of possible environmental contamination on this or neighboring properties and further investigation is recommended.

Recommendations: _____

Person Completing Form Title _____ Date _____

Acceptance of Form Approved By Title _____ Date _____

APPENDIX C

Sample Conflict of Interest Statement

Note: Conflict of interest policies should be drafted to address the particular needs of the nonprofit institution. The officers, staff and board members of the organization should adopt those policies. The following sample may be used for Boards of Directors or Professional Advisory Boards. It is perhaps most appropriate for Board members who have a fiduciary duty to the organization. Professional Advisory Boards may not be in a position of fiduciary responsibility.

As a member of the Board of Directors of *XYZ Charity*, I, _____, am committed to *XYZ Charity's* goal to establish and maintain the highest level of public confidence in its accountability. I have personally committed to follow the standards set out below, which are a part of *XYZ Charity's* conflict of interest policies:

- I will conduct my activities with the Board of Directors of *XYZ Charity* so that I do not advance or protect my own interests, or the private interests of others with whom I have a relationship, in a way that is detrimental to the interests of or to the fundamental mission of *XYZ Charity*.
- In every instance in which I represent the *XYZ Charity*, I will conduct my activities in a manner to best promote the interests of *XYZ Charity*.
- In all matters that come before the Board of Directors for a vote that may favorably impact my own financial interests, or the private interests of others with whom I have a financial relationship, I will reveal that relationship and abstain from a vote in the matter.
- When a conflict of interest arises, or when a potential conflict of interest emerges, I will disclose that conflict or potential conflict to the Director of *XYZ Charity* or to the Chairman of its Board of Directors and seek a resolution of that issue.

Entered into on this the _____ day of _____, 2000.

Member, Board of Directors