

Put Your Money in Trust

BY PAUL LAGASSE

Imagine you are soliciting major gifts for the silent phase of your capital campaign for a new building. One of your prospects, a longtime major gift donor, offers to donate a large plot of real estate in exchange for naming rights to the building. You take the offer back to the board, which consults the institution's gift-acceptance policy. The policy does not cover gifts of real estate, but after a brief discussion the board concludes that the land is in a prime location and would likely sell quickly and at a good price. The agreement is signed and all seems well until your organization tries to sell the property—only to learn that it has been heavily contaminated. The cleanup, you learn, will take years and cost far more than your institution could ever hope to realize from selling the land. Furthermore, invalidating the agreement would require a long, costly—and public—legal battle. Your organization could very well end up owning a toxic waste dump along with a brand-new building named after the person who sold it to you.

Sound farfetched? “I’ve seen people do things just that foolish,” says Kathryn Waller Miree, president of Kathryn W. Miree & Associates (www.kathrynmireeandassociates.com), a nonprofit fundraising and management consulting firm in Birmingham, Ala. “No charity should try taking on a complicated gift it doesn’t understand.” Miree explains that a formal, written gift-acceptance policy is a fiduciary duty that can help reduce the risk of disasters such as the scenario above. At a minimum, a gift-acceptance policy identifies the types of gifts that your organization accepts, provides guidance to staff and donors on the procedures for accepting them and clearly explains how the institution will administer the gifts once received. >>



How a **gift-acceptance policy** can guide your fundraising, reduce your risk and help steward your donors



Gift-acceptance policies have other practical uses as well. Staff and fundraisers can point to them when declining a gift to avoid inadvertently insulting the donor. They can serve as a handy reference when soliciting gifts in the field. They are evidence of the institution's accountability and transparency. Furthermore, they provide staff members with a resource to turn to when they have questions about gifts. "Every charity is at a different level of maturity," Miree says. "Regardless, you still need a policy that helps you think about gifts before you accept them."

When it comes to charitable gifts, there certainly is a lot to think about lately. At a time when nonprofits are increasingly reorienting their discussions toward donor-centered philanthropy, many gift-planning policies have continued to emphasize the benefits to the charity without considering the needs of the donor, says Brian M. Sagrestano, J.D., CFRE, president of Gift Planning Development LLC in New Hartford, N.Y. (www.giftplanningdevelopment.com). "As a profession we've started to talk about how to lead with our philanthropy," he explains. "That's a big shift, but it has been slow to develop. Many charities slide back into conversations about charitable-giving vehicles or tools instead of discussing the impact and outcomes that gifts will have on their missions because that's what they're comfortable with."

Sagrestano notes that, as a result of the demise of noncharitable tax shelters following the Tax Reform Act of 1986, a growing number of high-net-worth donors are soliciting giving advice from their financial advisers rather than from their favorite charities. "That's a huge change in the industry," says Sagrestano, a past board member of the Indianapolis-based Partnership for Philanthropic Planning (www.pppnet.org), which works to establish partnerships and collaborations between charities and financial advisers. "When you look at that in the context of gift acceptance, it is certainly going to affect what gifts are being given and how they're constructed."

Another big change has to do with tax reporting. In 2008 the IRS introduced a revamped Form 990, which tax-exempt and nonprofit organizations use to report their taxes, requiring filing organizations to disclose whether they have certain governance policies. In particular, the new Schedule M ("Non-Cash Contributions") asks whether the filing organization has a gift-acceptance policy. While indicating that an organization doesn't have certain policies in place does not incur a penalty, some experts worry that the answers could come back to haunt an organization during an audit or other controversy in which governance comes under scrutiny.

Gene Takagi, principal at the Nonprofit and Exempt Organizations (NEO) Law Group in San Francisco (www.attorneyfornonprofits.com), says nonprofits that are exempt from filing Form 990 Schedule M should still consider adopting a gift-acceptance policy—and not just to avoid an audit or to impress donors. "It's great evidence that a board is fulfilling its fiduciary role, and it helps protect the organization from taking in a terrible gift that could cripple it," he says. "We often say that organizations should look to their mission before making policy decisions, and that's true for gifts as well. You should only accept a gift that ultimately furthers your mission and is within the capacity of the organization to accept, all things considered. Staff members need to know that they can go to the board, a committee or to counsel for help when they need it, and the policy gives them the assurance that they will be able to get that help."

To Get the Right Policy, Ask the Right Questions

Developing a truly helpful gift-acceptance policy involves more than simply downloading a template from the Web and filling in the name of your organization at the top, although an organization doesn't have to begin from scratch, either. A tailored policy reflects a consensus among not only the executive leadership and board members with financial and tax expertise, but also the development staff and volunteers who will have to implement the policy, says Katherine Swank, J.D., a senior consultant for Blackbaud Analytics in Charleston, S.C. (www.blackbaud.com). Because of the importance of achieving that consensus, it's not uncommon for the policy-development process to take 18 months or longer.

Swank says the policy-development team should focus on answering some key questions up front:

- How much time does the organization have to devote to accepting complicated gift vehicles? Will that process divert people from other important tasks?
- Does the organization have the human and financial resources and expertise to accept complicated gifts? Should it focus instead on simple gifts?
- What types of gift vehicles will benefit the revenue stream?
- Will accepting certain types of gifts put the organization in financial peril?

"The gift-acceptance policy should speak to the most common gift types and allow immediate acceptance or rejection," Swank says. "The process for final acceptance of an unusual gift should be stated in the policies and should never lay with the development officer. Final acceptance should be the

responsibility of the chief paid staff person and/or a small board committee that meets ad hoc, and quickly, to decide.”

Swank recommends re-examining a gift-acceptance policy yearly to assess its effectiveness and to decide whether to broaden the policy’s scope to accept other types of gifts. Special events are also a good time to review the policy. Pledged gifts, for example, can be addressed and incorporated during preparations for a campaign. Gifts in kind, which are common for special events, and services offered to a nonprofit also can be considered in a gift-acceptance policy, although they are more likely to be covered in an organization’s financial accounting rules.

Swank often reminds clients that nonprofits cannot be everything to everyone, and they should not use their gift-acceptance policies as an excuse to try. “If you don’t understand a gift or must spend an extraordinary amount of time on gift acceptance or feel pressured to accept a gift, stop” she advises. “Look to your gift-acceptance policy and rely on the wisdom you put into place when you weren’t under pressure. Don’t let the fear of accepting or rejecting a gift get in the way. You’re in the business of fulfilling your mission, and that position should govern your decisions.”

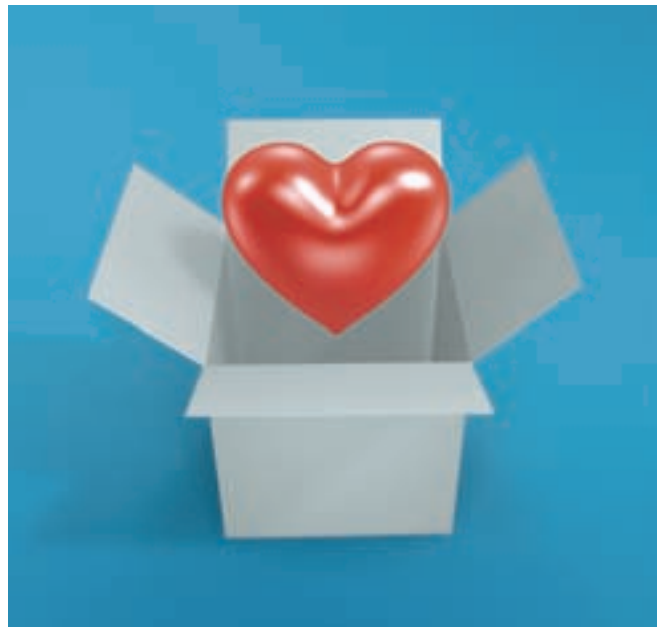
The Power of Saying No

A nonprofit’s mission is a useful yardstick for measuring the appropriateness of an unusual or complex gift, says Andrew M. Grumet, Esq., a partner at Edwards Angell Palmer & Dodge LLP (www.eapdlaw.com) in New York City. “As a practical matter, it’s the first thing an organization should be doing,” he says. “It sounds like a common-sense thing, but it’s incredible how often common sense goes by the wayside.”

Grumet says that charities frequently accept noncash gifts unrelated to their mission because a sale of the asset(s) appears easy while the return promises to be high. However, surprises frequently lurk in the shadows of many seemingly straightforward transactions. For example, selling a donated boat might seem to be a simple matter, but what if the boat turns out to be old and in need of significant repairs? What if the storage fees end up costing more than the sale price of the boat? In such cases, nonprofits end up actually losing rather than making money.

“Each gift has its own unique issues and questions,” Grumet explains. “Do you possess the requisite knowledge and resources to handle it?” If not, he says, then your organization could take a very embarrassing and, likely, very public, financial hit—one that would cause your donors to wonder whether you are exercising fiduciary due diligence. “Reputational liability counts even more than legal liability in the nonprofit world,” Grumet warns. “A good gift-acceptance policy is very much in your best interest because it provides you with the ultimate cover and protection when it comes to your donors.”

If the appropriate expertise is not available on your board, Grumet says, establish relationships with local experts who can help with the acceptance and liquidation of noncash gifts,



Helping Nonprofits Accept Donations of Noncash Assets

Many nonprofits turn down gifts of real estate, charitable gift annuities and charitable remainder trusts because they do not have the expertise, capacity or sometimes simply the desire to go through the dauntingly complex and time-consuming process of liquidating them. While deciding to decline a noncash gift can spare your organization a headache, it also may cost you a donor relationship that can lead to more gifts down the road. Fortunately, there are experts you can call on to turn illiquid assets into proceeds for your charity.

Bryan Clontz, CFP®, CLU, ChFC, AEP, CAP, president and co-founder of Charitable Solutions LLC (www.charitable-solutionsllc.com), a planned-giving risk management consultancy in Jacksonville, Fla., assists nonprofits in liquidating a wide range of noncash assets, including:

- real estate
- limited partnerships and limited liability companies
- S-Corp stock
- notes, deeds and mortgages
- mineral rights
- royalties
- art and collectibles

Typically, a charity will refer the potential donor to Clontz, who discusses the potential transaction with the donor. When all parties are in agreement, the donor signs a donor-advised fund (DAF) agreement to transfer the asset to the Atlanta-based Dechomai Foundation Inc. (www.dechomai.org), which manages the liquidation process. (Charitable Solutions provides administrative management for the foundation.) When the asset has been sold, and upon due diligence and the approval of Dechomai’s board, the foundation then grants the net proceeds to the charity and closes the DAF.

Depending on the value of the asset when balanced against costs, this third-party approach may be a solution to the challenge of accepting a noncash gift.

Starting from Scratch

When Myra Grant joined the Hendersonville, N.C.-based Pardee Hospital Foundation (www.pardeehospital.org/foundation) in 1996 as its first executive director, she and her small staff immediately began developing a basic set of policies and procedures for the fledgling organization. In particular, Grant needed to draft a gift-acceptance policy and get it approved before the foundation launched its first capital campaign the following year. Although the foundation was new, the hospital it served was already well-established, with its own way of doing things. Grant set out to prepare a gift policy that would reflect both the hospital's traditions and the state of the fundraiser's art.

Established in 1953, Pardee Hospital is an IRS Section 115 governmental hospital. Pardee is one of only a handful of such structured hospitals in North Carolina and was the last in western North Carolina to have its own 501(c)(3) foundation. Prior to that, it had relied on annual gifts donated by members of a giving society and the outreach efforts of hospital administrators. Although Grant did not need to worry about changing decades of tradition in order to implement a set of policies, she did have to face a lot of unknowns. Should they accept planned gifts? What about pledges spread across multiple years during the life of the campaign? How should they handle event sponsorships?

Between the need to have the legal wording correct, to work around the availability of board members and to incorporate the latest changes in tax law, Grant and the volunteer committee took about 18 months to expand their initial one-page outline into a basic gift-acceptance policy that met with the board's approval. The new gift-acceptance policy also had to accommodate and gradually phase out any prior hospital fundraising practices. For example, the policy's new giving levels for the naming rights to buildings, wings and rooms could be scheduled to take effect only after a previous giving society's 10-year campaign came to a close.

Over time, the foundation's gift-acceptance policy has evolved and expanded in response to circumstances. To illus-

trate, several years ago the foundation had to clarify its policy on gifts of real estate when a potential donor proposed to donate a piece of land that, as it turned out, would require an environmental impact statement before it could be developed. Would the foundation accept the responsibility—and the cost—for the study, or would the donor? Another time, an inquiry from an estate planning attorney prompted a review of the foundation's charitable trust policy. Would the foundation be willing to be a trustee for a trust with multiple beneficiaries? Another catalyst for review was the question of accepting gifts unrelated to the foundation's mission. "What is a hospital foundation going to do with a boat?" Grant asks rhetorically.

In addition to the formal policy, Grant has overseen the preparation of a manual for staff and volunteers that includes not only a summary of the gift-acceptance policy, but also the foundation's articles of incorporation, bylaws, financial policies and fundraising and development plans. Several years ago, the board established a standing gift review committee to review unusual gifts and make policy recommendations.

Starting next year, Pardee Hospital Foundation will thoroughly review all of its policies as it prepares to develop a new strategic plan. "My recommendation is to tie a policy review to a process like that," Grant suggests. "Also, you should look at it when there are changes to the tax code. Questions that would trigger a review include: Do the policies meet the tests of all regulatory bodies? Do they also meet the ethics policies of AFP and the Association for Healthcare Philanthropy [AHP, www.ahp.org]?"

By necessity, Grant has become familiar with gift-acceptance policies, but she says that anyone can, too. "I get a lot of calls from consultants and development officers seeking information," she says. "But I don't think there's any magic to it. There are a lot of resources out there. If you don't have any local volunteers and consultants that you can call on, contact AFP and AHP."

There is one piece of wisdom that Grant is always happy to impart to callers, though, that she gained from her own experience at Pardee: You have to persevere and be ethical. "It takes a lot of time," Grant admits. "Patience can be a virtue."



such as real estate, securities, insurance policies, personal property, cars and charitable remainder trusts. Another option is to contract with a gift processor who arranges to transfer the gift to a third-party foundation that, in turn, liquidates the asset and grants the proceeds back to the nonprofit (see sidebar).

Ultimately, Grumet counsels nonprofits not to be afraid to slow down and even say “no” to gifts that are not covered in a gift-acceptance policy and for which a nonprofit does not have (or cannot bring in) appropriate expertise. “With competition for donations at some of the highest levels ever, it’s getting tougher to turn gifts down. But it’s better to say, ‘Thanks, and I’ll get back to you tomorrow,’” he says.

Use Your Gift Policies for Stewardship

A well-designed, gift-acceptance policy can do more than provide guidance for your fundraisers and protect your organization from liability. As tectonic shifts in donor demographics realign giving preferences and nudge nonprofits toward greater transparency and accountability, savvy nonprofit leaders are recognizing that their gift-acceptance policies can serve a valuable donor stewardship function as well. “We have more sophisticated donors today, and a gift-acceptance policy helps to encourage donor trust,” says Barbara L. Ciconte, CFRE, senior vice president of Donor Strategies Inc. (www.donorstrategies.com), a nonprofit consulting services firm in Chevy Chase, Md. “They want the organization to be expert and accountable to donors. For that reason, gift policies need to be among the items on the checklist of what a nonprofit organization needs for a successful development program, along with questions like, ‘Does your board fundraise?’ and ‘Do you have a donor database?’”

Ciconte, who wrote *Developing Fundraising Policies and Procedures: Best Practices for Accountability and Transparency* (2007), part of the AFP Ready Reference Series, encourages her clients to treat their policies and procedures as part of their overall stewardship program. As she explains in the book, by properly stewarding donors and charitable contributions, you will help ensure continued support for your organization. Policies and procedures for acknowledging gifts, thanking and recognizing donors, and guarding privacy and confidentiality of donor information form the foundation of a successful stewardship program for your organization.

Sometimes fundraisers get so focused on raising funds and being donor-centric, Ciconte says, that they overlook how the proper policies can help them do both. “Consider your procedure for acknowledging annual gifts,” she says. “What’s the procedure for getting a thank-you letter out in a timely way? How many hands have to touch the check? A good policy helps prevent important things like thank-you letters from falling through the cracks.”

Ciconte says that many board members, executives and staff members tend to treat their gift-acceptance policy as boring “administrivia,” rather than as a valuable resource

for effective donor stewardship. However, more often than not, she says, it is because they have not figured out a way to integrate the policy into the process. Once they recognize the policy is actually a tangible demonstration of their commitment to donor-focused fundraising, they begin to use it in creative ways to shape their overall strategy.

Ciconte explains the change in perspective this way: “We should be looking at these policies and procedures not as obstacles but as the parameters within which we are able to build relationships with donors over the long haul.”

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Resources

AFP Resource Center Hot Topics: Fundraising Policies
www.afpnet.org (login required)

Developing Fundraising Policies and Procedures: Best Practices for Accountability and Transparency by Barbara L. Ciconte, CFRE (AFP Ready Reference Series, 2007)
www.afpnet.org (login required)

“Effective Gift-Acceptance Policies and Procedures,” *Journal of Gift Planning*, Vol. 13, No. 2, 2009
www.msk.com/images/ps_attachment/attachment1048.pdf

The Nonprofit Policy Sampler, Second Edition, by Barbara Lawrence and Outi Flynn (BoardSource, 2006)

Sample Gift Acceptance Policy by Brian M. Sagrestano, J.D., CFRE
www.plannedgiving.com/brian

Understanding and Drafting Nonprofit Gift-Acceptance Policies by Kathryn Waller Miree
www.kathrynmireeandassociates.com

Why You Need Gift-Acceptance Policies by Katherine Swank, J.D.
www.blackbaud.com/files/resources/downloads/WhitePaper_WhyYouNeedGiftAcceptancePolicies.pdf

In addition, there are many other sample policies available online:

- www.nonprofitrisk.org/tools/hallmarks/tools/1gift-acceptance-policies.doc
- <https://www.ideaencore.com/item/gift-acceptance-policies-and-procedures-template>
- www.pppnet.org/resource/model_docs.html

If you need more, search for “gift-acceptance policy samples” and you will find several organizations’ policies online.