

GIFT HORSE ALERT:

Red Flags and Pitfalls of Gift Planning,
and how gift acceptance policies can help avoid
disaster

Northern California Planned Giving Council

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Primary Goals and Philosophy

- Generate maximum gift income.
- Act responsibly on behalf of your organization.
- Maintain the best possible donor relations.

- Overall approach: what are the best gifts for the organization and the donor?



How do policies help?

- Require the administration to think through different aspects of accepting gifts without a pending gift to cloud judgment
- Protect the charity from accepting assets that would subject it to liability or risk
- Define which gifts are acceptable –
 - Assets
 - gift forms



Some Core Elements of Policies (not comprehensive)

- Purpose of the Policies and Guidelines
- Statement of adherence to standards and ethical fundraising principles
- Conflict of interest
- Reviews and approvals
- Use of legal counsel
- Other provisions based on type of policy

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Types of Policies
Gift solicitation and acceptance

- ✓ Who may solicit gifts?
- ✓ What gifts can be accepted? (assets, methods, minimums)
- ✓ Which gifts are subject to review?
 - By whom?
 - Gift Acceptance Committees: Function, authority and membership
- ✓ What constitutes acceptance of a gift?



Types of Policies
Gift solicitation and acceptance (con't)

- ✓ Restricted gifts/use of funds
 - Naming protocols
 - Are naming opportunities permanent?



Types of Policies

Valuation and reporting

PPP Policies (www.pppnet.org)

1. Valuation Standards for Charitable Planned Gifts

For determining, in today's dollars, what a planned gift will accomplish when received and used for its intended charitable purpose.

2. Guidelines for Reporting and Counting Charitable Gifts

These Guidelines allow organizations to report all their fundraising results and especially gift planning achievements to external constituencies such as donors, the media and other charities. Both the donor and fundraiser receive the recognition deserved for the acquisition of the gift.

CASE has its own reporting standards (<http://www.case.org>)

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Types of Policies

Counting and donor recognition

- ❖ Donors need to know the **incentives**.
- ❖ Solicitors need to know what to **promise**.
- ❖ Maintain consistency and equity

Campaign credit

- How should deferred gifts be counted?
- How should donors be recognized?

Major/annual gift category credit

Legacy society membership

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Types of Policies

Endowment

What does "endowment" mean?

Not wholly expendable under terms of gift instrument

- "Gift instrument" includes solicitations or documents from the organization

Beware of accidental endowments

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Types of Policies
Endowment

- Amounts required for various purposes
- Future changes in circumstance (provisions for alternate use of funds)
- Naming funds

- Endowment management and investment policies
 - Who should manage the assets?
 - How should they be invested?

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UPMIFA: The Uniform Prudent Management of Institutional Funds Act

Allows charities broader discretion in how they use their endowments

- Guidelines for expenditure of endowments & spending rule
- Provides guidance on investment of endowments

Intent of UPMIFA is flexibility to spend or accumulate prudently, as needed

- 'Prudent Director Rule'

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Types of Policies
Endowment

- Not included: Board-designated endowment (aka "quasi-endowment")
 - What will the board designate as endowment?
 - Under what circumstances can board-designated endowment be spent?
- Policy for the use of undesignated bequests

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Procedures

Procedures are not Policies

Procedures define the function of departments and roles of staff within the charity

Example:

How are gifts handled and by whom?

- Receipt, recording, depositing and acknowledging
- Who manages the gift?

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Model Standards of Practice for the Charitable Gift Planner

(www.pppnet.org/modelstandards)

Purpose: To encourage responsible gift planning by everyone who participates in the charitable gift planning process and by charitable organizations

- Goals:
 - To balance the interests of the donor and the purposes of the charitable institution; and
 - To insure proper disclosures, transparency and avoidance of conflicts of interest

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Helen and the Amazon

You receive a call from Helen, who owns a large block of Amazon stock that she bought when it went public in 1997 – and not much else.

She tells you needs a stable source of income and wants to protect herself from “certain family members.”

She has been advised that if she contributes the stock to a CRT she will avoid capital gains tax and secure reliable lifetime income.

- **What questions do you want to ask?**
- **What are your concerns?**

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Helen and the Amazon

Policies that could help

- ✓ Gift acceptance
 - Is the donor required to have her own advisor?
- ✓ Life income guidelines
 - Age of beneficiary
 - % payout
 - Disclosures
 - Management arrangements
- ✓ Model standards

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Helen and the Amazon

Best practices

You represent your organization -- not the donor.

- Encourage donors to obtain independent advice.
- Beware of drafting documents for donors.

Remember: you cannot act as the donor's attorney, accountant or financial planner.

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Gift Management Arrangements

Managing a life income gift properly is even more important than getting the gift.

Should your organization be the trustee?

- If you trustee/manage gifts
 - How long until the income interest(s) can be expected to terminate?
 - How much will be left at the end?
 - Do you want to trustee **this** gift?

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Gift Management Arrangements

Pro's and con's of a third party administrator

- What will they charge?
- What documents are you entitled to?
- Who will monitor the trust?
- Whoever the trustee is, are they qualified?

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The Case of the Dutiful Daughter

Ali wants to make a gift to the capital campaign and also give Mom some financial assistance.

She is interested in a charitable gift annuity for Mom's benefit, funded with appreciated securities.

Ali likes this strategy because:

- She will be recognized as a campaign donor
- Mom will receive secure, regular income (which will be taxed to Mom, not Ali)
- Ali will avoid capital gains tax on the securities
- Ali will be entitled to a tax deduction

- **What might cause you concern?**

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Gifts of Annuity Payments to Non-Donor

Gift tax consequences

If annuity payments are made to any person other than the donor, the donor has made a gift to the non-donor in an amount equal to the present value of the annuity payable to them.

If the annuity payments commence immediately, the gift is of a present interest and qualifies for the annual gift tax exclusion.

- 2016 Annual exclusion: \$14,000
- 2016 Lifetime exclusion: \$5,450,000

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Payments to Non-Donors

CGA funded with appreciated assets

When appreciated property is used to establish a gift annuity, the donor realizes a gain under the bargain sale rules of Reg. section 1.1011-2.

The donor can spread the realized gain ratably over his or her life expectancy rather than having to report the gain in lump sum right away. If:

- (1) the annuity is payable either to the donor alone or to the donor and a designated survivor annuitant and
- (2) the annuity is non-assignable. (Gift annuity agreements routinely provide that the annuity is non-assignable.)

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State Regulations

Does the charity have to be licensed to issue gift annuities where the donor and/or annuitant live?

- Many states require certain charities to be licensed to solicit, “do business” and/or issue charitable gift annuities in those states.

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Awkward situation #1

A long-time donor wants your organization to be the successor trustee of his revocable living trust. He has no family at all and your organization is the sole remainder beneficiary.

Your organization does serve as trustee of CRTs and CLTs.

- What do you do?

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California Professional Fiduciary Act

Requires managers of three or more trusts to be licensed unless they have specific professional qualifications.

- ✓ Provides an exemption for certain charities to trustee charitable remainder trusts, charitable lead trusts, pooled income funds, and/or certain pre-1969 trusts. AB997

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The Case of the Exiting Entrepreneur

Karen is about to sell the company she started in her garage, Green Machines.

She wants to give your organization an interest in her company before the sale, which she has heard would be more advantageous than contributing part of the sale proceeds.

- **What else do you want to know?**

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Questions to Ask About Business Interests

- What is the form of ownership?
- Would your organization be assuming any liabilities?
 - UBTI potential?
- Has an appraisal been completed?
- How far down the road is the sale?
- What if the sale falls through?
- What is your organization's exit strategy?

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Exiting Entrepreneur Policies that can help

Specific policies about gifts of business interests

- Required review the proposed gift
- Composition of Gift Acceptance Committee
- Required review by legal counsel
- Specific acceptance document required

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Mary's Scholarship

Mary tells University PGO that she has a bequest in her will for endowed scholarships.

The recipients are to be females who:

- ✓ have attended a certain community college;
- ✓ are in specific majors; and
- ✓ are "actively practicing" her religion.

- **What should PGO be concerned about?**

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Mary's Scholarship Policies that could help

- The types of restrictions allowed
- Non-discrimination statement
 - Not all organizations have the same discrimination policies
 - Some requirements are mandated by law
- Amount required for endowments
- Policy for 'Plan B'
- Require a Gift Agreement

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Restricted Gift Considerations

- How much restriction is permitted?
- How much money is required for specific gift purposes?
 - Present value/changing 'cost' of the purpose
 - What if the amount of the gift is insufficient?
- What if the gift comes without prior discussion?

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Mary's Scholarship Best Practices/Strategy

Try to learn about your donor's plans

- ✓ Knowing details of donor's plans can lead to discussion of potentially problematic restriction or other provision
- ✓ Documenting intent can help in case of dementia or undue influence claims by family

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The Campaign Rescue

In 2007 Music Lover pledged \$5 million over five years to the Symphony's campaign to build a new recital hall. She made her 1999 and 2000 pledge payments, but by 2009 her portfolio was "stressed" and she thought she would be unable to pay the remaining \$3 million.

Capital Campaign Director wants to allow ML to complete the pledge by establishing a 7% CRT funded with the \$3 million for ML and her husband's lives: both are 57.

- **What do you think of this plan?**

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Campaign Rescue

Policies that could help

- ✓ Solicitation and acceptance policies
 - Who can formally accept or approve gifts?
 - *PPP Gift Valuation Guidelines*
- ✓ Life income gift policies
 - Age/duration and payout
- ✓ If an outside trustee – documentation?
 - Management fees?
- ✓ Donor credit and recognition

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A Girl's Best Friend?

Lorelei Lee wants to fund a CRT with the 6-carat diamond ring (worth \$2,500,000) she received from an admirer.

She wants a stable, secure income and asks you how much she can count on. Lorelei also mentions that she expects to offset her increased income with the \$2.5 million tax deduction.

- What questions do you want to ask?
- What concerns you?

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Gifts of tangible personal property Related Use Rule

If an item is not related to the organization's mission OR will be disposed of within 3 years:

- Deduction = lower of FMV or cost basis

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Gifts of tangible personal property Appraisal Requirements

- ❖ All property valued at over \$5,000* (except cash and publicly traded securities) must have a qualified appraisal.
 - Who will do the appraisal?
 - When?
 - Who should pay for it?
 - Give your donor a copy of Form 8283.
 - The "tattletale rule."
Be sure your donors are aware of Form 8282.
- * Closely held stock - \$10,000+

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A Girl's Best Friend? Policies that could help

Gift acceptance

- Type of property accepted
- Approvals
- Separate appraisal

Life income gift guidelines

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The Game

On December 20 Nicholas contacts Charity about establishing a CRT funded with stock in the electronic game company he co-founded. Nicholas is 67 and his wife is 65.

He says the stock is worth at least \$900,000 now and he believes that it will rise dramatically in the three months before the restriction will be lifted.

His accountant said he should get a 6.5% CRAT and request that your charity be the trustee because he has heard that it will not charge a trustee fee.

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The Game (con't)

Nicholas is eager to complete the gift this year so he reluctantly agrees to a 5% payout for himself and his wife and says that the gift can be unrestricted (a top institutional priority).

Associate Director gleefully closes the gift on December 24, when the stock value is just under \$750,000.

- Do you have any concerns about this gift?

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Questions About Stock

- Accepting business interests
 - Is the stock publicly traded?
 - If not, is there a buyer?
 - Exit strategy?
- About that restriction...
 - What is the restriction?
 - The stock cannot be sold yet – market risk
 - No cash available to pay the annuity amount due at year-end
 - What if the stock goes down?

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Year End Gifts

Don't get pressured into accepting a gift you are not confident about!

- Keep your Gift Acceptance Policies handy.
- Make sure the gift acceptance committee will be available.
- Consider allowing the donor to make the transfer subject to "Board Approval."

Pay attention to transfer techniques

- The gift must be received by the charity or postmarked by December 31.
- Private carriers do not postmark

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The Case of the Surviving Spouse

Wayne wants to make a gift in memory of Andrea, his late wife.

He suggests giving the life insurance policy he had purchased to provide security for her.

- *What else do you want to know?*

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Questions About Life Insurance

- What kind of insurance is it?
 - Does the donor expect you to cash it in or hold it?
- Is there cash value?
 - If not, what is the plan for payment of premiums?
 - Ask about the economic assumptions
- Beneficiary designations
 - Review the form if possible.

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The “Win-Win”

Cheryl wants to make a gift by purchasing a life insurance policy on her life and sharing the death benefit with the charity. Her insurance agent has told her about this “win-win” strategy.

She will contribute enough money to charity to cover the life insurance premiums and the charity will then pay the premium to the insurance company. However, the charity is under “no obligation” to pay the policy premiums.

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The “Win-Win” (con’t)

When Cheryl dies the charity will receive its gift out of the death benefit: a sum equal to all the premiums it (Cheryl) paid into the policy. Her family will get the remainder of the death benefit.

Cheryl is sure that everyone will benefit because she will be able to deduct the life insurance premiums and protect her family and Charity will receive a gift.

- **Do you have any concerns?**

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More Questions About Life Insurance

- Do you understand the policy?
 - Ask about the economic assumptions
- What happens if the donor does not pay the premiums as planned?
- What does the business office think of the arrangement?

PPP Charitable Life Insurance Evaluation Guidelines
(www.pppnet.org/charitablelifeinsurance)

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The Speculator

Mr. Smart calls you on December 15 about giving your charity “a free and clear piece of land” in another state.

He wants Charity to arrange an appraisal for \$500,000, which he says the waterfront, view property will be worth “in a few years.” He thinks he knows someone who would purchase it for “10% down.” Mr. Prospect tells you he bought the property “for taxes” about ten years ago and wants to avoid the capital gains tax. By the way, he asks, would the charity require a hazardous substance indemnification?

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The Speculator (con't)

Mr. Smart tells you he also has some property in another part of the state that he is considering giving to your charity. He says that if your organization will not accept the land, he'll offer it to another charity, where he used to serve on the Board.

- **What are your concerns?**

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Threshold Questions About Real Estate

- ✓ Why does the donor want to give it to you?
- ✓ Does the property have sufficient value to even consider?
- ✓ Is there a mortgage?
- ✓ Are there any liens or other liabilities?
- ✓ Are there tenants?
- ✓ Is there internal/trustee capacity to handle it?
- ✓ Is the gift vehicle appropriate?

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Questions About Real Estate: Selling the Property

Is the property marketable?

- Has the donor been unable to sell it?
- Is there a buyer waiting in the wings?

Who will handle the sale?

Who will manage the property until the sale?

Is there a source of funds to pay management expenses until sale?

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Basic Real Estate Acceptance Requirements

- Environmental inspection
- Title search
- Appraisal
- Exit strategy

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Real Estate Policies: Some Suggestions

- Minimum value
- Appraisal
 - Does the organization get its own appraisal?
- Environmental review
 - When is it required?
 - What kind?
 - Who pays?
 - Share with donor?
- Real estate acceptance committee

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Retained Life Estates

- Make sure you have a clear contract.
- What if the life tenant is unable to maintain the property?

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When to say no – or remain noncommittal

Compliance with internal policies/gift acceptance policies?

- Too many restrictions?

Institutional resources and capabilities:

- Can the organization handle the gift?
- Too labor intensive or requires special expertise
- Will the gift require expenditures prior to liquidation
- Mortgaged or unmarketable real estate
- Not a good deal for the institution

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...and how to break it to prospects

- Try to explain that the gift would not work for them either.
- Show them your policies and procedures.
- Have a good "just say no" letter.

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QUESTIONS?

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