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Best Practices of Mega Gifts

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Charitable Giving Statistics

- America's biggest donors (top 50) gave \$14.7 billion to nonprofits in 2017
- 885 individuals publicly gave \$1 million or more
- 88% of total dollars donated come from 12% of donors
- Nearly 80% of contributions to college capital campaigns came from the top 1% of donors in 2016
- Observations from CPMC's \$300 million capital campaign

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Overview

Today we will:

- Review key considerations to discuss with a donor who is contemplating a major gift
- Discuss gift agreements – why you need them, what they should contain, tips and pitfalls to avoid
- Review some personal and historical examples (anecdotes from the audience are welcome)
- Offer advice for how to cultivate donor relationships and attract sizeable gifts in the first place!

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Essential Provisions of Gift Agreements

- Purpose of the gift
- Use of the gift
- Legality of purpose
- Identification of the parties
- Standing
- Payment schedule
- Source of payment
- Modification and termination of the agreement
- Acknowledgment and confidentiality
- Reporting requirements
- Investment instructions on endowed funds and application of UPMIFA
- Insurance and indemnification



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Key Considerations of a Mega Gift

- Clarify the donor's reasons for making a major gift
- Determine the size of gift and type of asset
- Assess and select a suitable charitable donee
- Determine purpose
- Determine timing
- Determine the recognition or acknowledgement



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Desirability of Gift Agreements

Why commit the terms of the gift to writing?

- Promotes mutual understanding
- Sets forth donor's intent and expectations
- Sets forth obligations of both parties
- Establishes accountability and transparency
- Provides a mechanism for dealing with a change in circumstances
- Helps to avoid conflict later, with donor or heirs



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Purpose and Use of the Gift

- Define the specific project or purpose
- Define any restrictions as to use or timing of use
- Define how funds may be used if circumstances change in the future
- Legality of purpose

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Identify the Parties

- Proper identification of charity can be an issue with charitable bequests (include EIN)
- Identify type of donor in determining appropriate provisions – individual, corporation, DAF or private foundation?

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Source of Payment

- Build in flexibility as to source
- Sample: "Any contribution to the Charity by (i) the Donor, (ii) any revocable trust of which the Donor is the grantor, (iii) if in the future permitted by law, any fund making a contribution on the advice of the Donor, or (iv) the estate of the Donor shall be credited toward the Donor's obligation under this Agreement if such contribution is specifically designated by such donor as a contribution in fulfillment (or partial fulfillment) of such obligations hereunder."
- Use of private donations or DAFs to fulfill pledges?

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Modification and Termination

- Provision to modify if the purposes of the project or gift are not being met; need to be careful in drafting with individual donors
- Provision to terminate under specific circumstances
- And then what happens to the gift funds with a modification or at termination

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Sample Early Termination Provisions

- "The Naming Term may terminate early, in the sole and absolute discretion of the School, if, during the useful life of the Library, the Library is closed, deconstructed, destroyed or severely damaged; significantly renovated, upgraded or modified; relocated or replaced; or transferred or conveyed by the School to a third party."
- "In the event the Plaza is destroyed or substantially damaged (including by force of nature, fire, act of vandalism or terrorism) before the end of the Naming Term, the Museum in its discretion may elect to repair or rebuild the affected parts of the Plaza" [and if chooses not to do so, makes payment to a public charity of a prorated portion of the gift].
- "In the event that during the Donor's lifetime, the Donor is convicted of a felony involving moral turpitude that adversely and significantly affects the reputation of the Hospital, the Hospital shall have the right to remove the signage and terminate the recognition arrangements contemplated under this agreement."

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Acknowledgment and Confidentiality

- Charity's right to use donor's name and likeness for the agreed upon purposes and with prior approval
- Provisions for the legal use by the charity of the donor's name and logo
- Anonymous donors/confidentiality

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Reporting Requirements

- Use of funds
- Project Progress
- Investment performance
- Key developments

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Investment Instructions and Application of UPMIFA

- PLR 200445023 and 200445024: Donor's retention of the right to manage the portfolio of publicly traded stock would not preclude donor's income tax deduction
- Determine how the donor wants or does not want UPMIFA applied, and address in the agreement

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Donor Relations and How to Attract a Large Gift

- Web of considerations: right gift, for the right donor, for the right purpose, at the right time
- Determine the prospective donor's compelling interests
- Align with the organization's core interests to offer opportunities that will appeal
- Leaps of faith

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