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Best Practices in Gift Acceptance Policies

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Agenda

- Policies v. Procedures
- Authority and due diligence
- Policies to protect donors
- Policies to protect charity
- Acceptable gift assets and vehicles
- Miscellaneous policy issues

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Policies v. Procedures

- Policies:
 - A set of rules as to acceptable assets and gift vehicles to minimize risk and maximize gift potential
 - Not a guide to gift planning techniques
- Procedures:
 - Guidelines for the processes and systems for operating a gift planning program
 - Describes the internal practices for accepting and administering gifts

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Gift Acceptance Policies

- Some charities have planned giving specific policies
- Others may be part of more general policies applicable to all kinds of gifts
- Purpose is two fold:
 - Protect donors
 - Protect the charity
- Board should approve gift acceptance policies

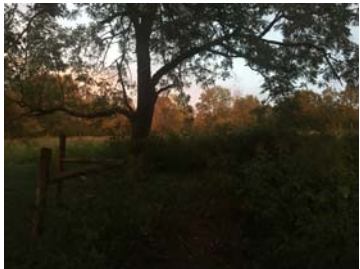
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Drafting Gift Policies

- Define assets and gift vehicles that can be accepted without approval of charity leadership
 - Cash, marketable securities
 - Gift annuities, Charitable remainder trusts
- Who has authority and what due diligence required to accept more complex assets and gift vehicles

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And Now For Something Completely Different...




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Authority and Due Diligence

- Gift Acceptance Committee
 - An ad hoc group
 - Members depend on asset and/or gift vehicle
 - Outside experts as needed
 - Is Board approval also required?
- Manage gifts requiring prior scrutiny before acceptance
 - Real estate
 - Closely held business assets
 - Tangible personal property


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Authority and Due Diligence

- Reputational risk?
- Committee manages potential liability of gifts
- Due diligence weighs risk v. benefit of gifts
- Process should be transparent, fair, and evenly applied
- Some risks acceptable
- Save time and money


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Policies to Protect Donors

- Disclosure required under Philanthropy Protection Act
 - Exempts charitable organizations from registration as an investment company
 - Applies to charities serving as trustee of endowment or other funds, gift annuities, pooled income funds, charitable remainder trusts, charitable lead trusts
 - Requires written disclosure of material terms of the gift


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Policies to Protect Donors

- Privacy policy
 - Offer opportunities to opt out or remain anonymous
 - Reserve right to disclose information to law enforcement or appropriate in order to comply with the law
- HIPAA (Health Insurance Portability and Accountability Act)
 - May target fundraising based services a patient received or identity of physician
 - Must allow patient to opt out of fundraising communication prior to receiving care


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Policies to Protect Donors

- Urge donors to seek independent professional advice
- Provide written disclosure that charity not giving tax or legal advice
- Consider donor acknowledgment that they have been advised to seek professional counsel

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Policies to Protect Donors

- Documenting gifts of non-cash assets
 - Donor files Form 8283, If value over \$5,000 qualified independent appraisal required
 - Charity countersigns appraisal as to receipt and related use, not as to value
 - Donor should pay for appraisal
 - But...
 - Charity files Form 8282 if property sold in less than three years (tattletale form as to value and related use)

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Policies to Protect Charity

- Policy statements are not textbooks on gift vehicles
- Nonetheless, policies educate leadership to critical issues raised by acceptance of certain assets and gift types
- Policy writing before the gift encourages thoughtful policies

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Policies to Protect Charity

- Insure every gift is suitable and cost-effective
- What assets will be accepted and under what terms
- What gift structures are acceptable
- Does the gift promote the charity's mission
- What due diligence required before acceptance

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Policies to Protect Charity

- Board members should sign a conflict of interest statement
- Prohibit board members from selling products and services to donors
- Board member acting as legal counsel discouraged
 - To whom is duty owed?
 - Personal benefit issues

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Goodnight!



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Restricted Giving

- Gifts restricted to charity's mission generally acceptable
- Restrictions beyond mission subject to approval and possible rejection
- Endowments for particular purposes, chairs, and naming opportunities
- Endowment policies may need their own document

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Acceptable Assets

- Cash and marketable securities generally acceptable without oversight
- How to handle gifts of foreign currency
- Level of due diligence proportional to the potential liability
- Some due diligence can be specified, some left to gift acceptance committee

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Publicly Traded Securities

- Valuation
 - Valued as of date of transfer (Avg. of high & low)
 - Proceeds of sale irrelevant
- Immediate sale
- Gift must be before commitment to sell (tender offer)
- Mechanics of transfer

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Closely-Held Business Assets

- Valuation
- Marketability
 - Plan to convert to cash
- Due diligence
 - Are there restrictions on transfer?
 - Is security marketable?
 - What are tax consequences to charity?

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Gifts of Real Estate

- Two primary concerns:
 - Liabilities: environmental, carrying costs, premises liability
 - How to convert property to cash
- Phase I environmental, title search, liens, lawsuits, marketability study
- Charity appraisal
- Engage professionals to assist

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55' Cheoy Lee Trawler, \$400,000+- FMV



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What does it cost to own a boat like that?

- Slip fees \$1,000 per month minimum
- Insurance \$3,000 per year
- Cleaning and shining \$1,000 per quarter
- Exterior washing \$500 per month
- Non-use can cause cables to stiffen, engine problems, bottom blisters develop

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Tangible Personal Property Policies

- Mission related or unrelated?
 - Sell or keep decision
 - Public and donor relations issues
 - Carrying costs (insurance, storage, transport, etc.)
- Form 8283 if over \$5,000
 - Form 8282 if sold within 3 years
- Acceptable if easily monetized
- Acceptable for gift annuities?

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Donor Advised Funds

- May not be used to satisfy legally enforceable pledge
 - Permissible to enter into statement of intention
- No more than an incidental benefit
 - Gala tickets, auction items, etc.
 - Penalty tax of 125% of prohibited benefit if incidental benefit
- No bifurcated gifts
 - DAF for charitable portion, cash for non-charitable

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Acceptable Planned Giving Vehicles

- Bequests, trusts and beneficiary designations
 - Specify title of person who manages administration
 - Gifts that subject to potential liability require oversight
 - Gift Annuities
 - Minimum ages
 - Minimum gift amounts
 - Maximum gift amounts?
 - ACGA rates? Should you cap rates?
- State regulatory compliance

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Acceptable Planned Giving Vehicles

- Charitable Remainder and Lead Trusts
 - Will you act as trustee?
 - If yes, who will manage?
 - Gift and age minimums
- Pooled Income Funds
 - Disfavored in current interest rate environment
- Charitable Lead Trusts
 - More complex than CRTS in addition to same considerations

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Acceptable Gift Vehicles

- Bargain sales?
- Oil, Gas and Mineral Interests?
- Life Insurance?
 - Actions to take upon receipt of ownership of policy
- Pledges?
- Retained life estates?

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Documentation

- Sample pledge forms (Gift intention for DAFs)
- Sample acknowledgements for planned gifts
- Prototype gift annuity and charitable trust agreements
- Recording of revocable intentions
- Recognition and counting of planned gifts

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Regulatory Compliance

- State charitable solicitation laws
- State compliance to issue gift annuities
- State and Federal disclosures relating to gift annuities
- Initial filings
- Annual renewals

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Stewardship

- Stewardship grid for all gift types
 - Equity
 - Transparency
- Written policies
- Written procedures
- Operation of legacy society



Endowment Policies

- Planned giving policies are not the same as endowment policies
- Planned gifts may be unrestricted, designated for a current need, or for endowment
- Most endowments built through planned gifts



Endowment Policies

- Investment policy for the endowment
- Role of board in administration and oversight
- Criteria for selection and evaluation of investment managers
- Distribution policy
- Criteria for establishing funds within the endowment



Questions

