

**ROCHESTER AREA COMMUNITY FOUNDATION  
GIFT ACCEPTANCE  
POLICIES AND GUIDELINES**

**I. PURPOSE**

Rochester Area Community Foundation (the "Foundation") has established a development program to further the charitable purposes and mission of the Foundation. Specifically, the development program seeks to help donors meet their charitable goals while benefiting the communities and organizations served by the Foundation. This requires an active effort on the part of the Foundation's governing board and staff to promote the programs and opportunities offered by the Foundation and to respond promptly and appropriately to the needs and circumstances of donors and prospective donors to the Foundation. These gift acceptance policies describe proper procedures for supporting the gifting process, including the receipt of a wide variety of donated assets.

**II. IMPLEMENTATION**

- A. **Policies and Guidelines.** It is the role of the Board to consider and adopt general gift acceptance and development policies for the Foundation. Such policies may include both this statement of policy, as well as other policies and guidelines applicable to specific types of gifts and development efforts that may be adopted by the Board from time to time. The Foundation has formulated a strategic workplan that is updated and revised annually to provide ongoing direction and goals for the Foundation's advancement efforts.
- B. **Role of Committees.** While the Board has overall responsibility for establishing policies and direction for the Foundation's development programs, two committees appointed by the Board shall have particular roles and responsibilities with respect to gift acceptance:
1. ***Development Committee.*** The Development Committee will assist in development of advancement plans and fundraising goals for the Foundation and will actively participate in carrying out the Foundation's advancement efforts and goals. In addition, the responsibilities of the Development Committee include periodic review and recommendation for approval by the Board of development policies and guidelines for gifts consistent with established policies and guidelines.
  2. ***Professional Advisors Liaison Committee.*** The primary objective of the Professional Advisors Liaison Committee is to foster the development mission of RACF among other professional advisors and their clients, and to give guidance to the Foundation in matters relating to charitable giving tools and techniques.
- C. **Authority to Negotiate.** The President, the Vice President/Marketing and Development and the Director of Development will have the overall authority to handle inquiries, negotiate with donors, assemble documentation, retain expert and technical consultants, and execute agreements on behalf of the Foundation. Assuming such activities follow approved procedures and assuming the Foundation's legal counsel approves such agreements, this authority to act will not require review or further approval by the Board.

- D. **Donor Recognition.** The Foundation recognizes the paramount role of donors and their gifts to the Foundation in achieving its charitable purposes. In carrying out the Foundation's development program, staff will recognize and acknowledge donors in appropriate ways both publicly and privately, subject to the confidentiality provisions of Section F below.
- E. **Donor Education.** The Foundation staff will establish appropriate ongoing programs and systems for educating and informing donors and prospective donors to the Foundation about the Foundation, its activities, and the charitable needs of the communities served by the Foundation.
- F. **Confidentiality.** All agreements with donors and all information concerning donors and prospective donors shall be held in strict confidence by the Foundation, subject to legally authorized and enforceable requests for information by governing agencies and courts. All other requests for or releases of information concerning a donor will be honored or allowed only if permission is obtained from the donor prior to the release of such information.
- G. **Disclosure.** Donors shall be provided with appropriate disclosure statements and other background information concerning any gift. During the gift planning process, the role and relationships of all parties involved are fully disclosed to the donor.
- H. **Foundation's Legal Counsel.** The Foundation shall seek the advice of legal counsel when appropriate in matters pertaining to its development program. All agreements, contracts, and other legal documents relating to the development program shall be reviewed by legal counsel prior to execution or use, with the exception of standard form documents described in Section I below.
- I. **Standard Form Documents.** For administrative ease and convenience, the Foundation has developed standard forms of fund agreements and other documents relating to the Foundation's development program as deemed appropriate. Legal counsel shall review all such standard forms. The Foundation will provide standard forms to a prospective donor and the donor's advisors upon request and encourage their use whenever practicable.
- J. **Donor's Counsel.** The Foundation's staff will encourage prospective donors to have the terms of all proposed agreements reviewed by the donor's own legal or financial advisors. The donor should also be advised that it is the donor's responsibility to obtain any necessary appraisals, file appropriate tax returns, and defend against any challenges to claims for tax benefits.
- K. **Promotion and Public Education.** The Foundation's mission and activities and the needs of the community will be well served by active promotion and community education concerning such activities and needs. Accordingly, Foundation staff shall develop and implement, on an ongoing basis and with appropriate Board supervision and involvement, events and materials for public promotion and education. The policy of the Foundation is to inform, serve, guide, or otherwise assist donors who wish to support the Foundation's activities, but never under any circumstances to pressure or unduly persuade.
- L. **Material Restrictions.** The Foundation reserves the right to refuse any gift that it believes is not in the best interests of the Foundation. In conformity with Treasury Department regulations governing community foundations, gifts to the Foundation may not be directly or indirectly subjected by a donor to any material restriction or condition that prevents the Foundation from freely and effectively employing the transferred assets, or the income derived therefrom, in furtherance of its exempt purposes.
- M. **Fees.** Standard fee schedules are set to recover administrative costs. They are periodically adjusted based on changing markets, expenses, and revenue needs. Fees are subject to negotiation in cases of larger gifts or other special circumstances, as provided in Section C above. A schedule of fees is attached as Appendix A.

### III. GIFTS TO THE FOUNDATION

- A. **Forms of Gifts.** Gifts to the Foundation may take a variety of forms. Many are outright gifts by living donors either on a one-time or a periodic basis. Others are bequests and testamentary gifts that take effect upon the donor's death. Some are other forms of deferred or split-interest gifts.
- B. **Acceptance Policies for Outright Gifts.** The Foundation may accept the following types of outright contributions:
1. **Cash.** The Foundation will accept an outright gift of cash of any amount, although gifts to establish a separate fund at the Foundation must meet the minimum funding requirements set by the Board from time to time (see Appendix A).
  2. **Publicly Traded Securities.** The Foundation will accept gifts of publicly traded stocks and bonds at fair market values as determined under Internal Revenue Service rules. As a general rule, gifts of publicly traded securities will be sold as soon as possible, and the fund the donor established will be credited with the proceeds from the sale, after commissions and expenses, if any.
  3. **Tangible Personal Property.** Tangible personal property may be accepted as a gift. The property must be saleable and the donor must agree that the property can be sold unless the Foundation agrees to use the property for a purpose related to its exempt purposes. The donor will be responsible for obtaining a qualified appraisal complying with IRS regulations for the property.
  4. **Life Insurance Policies.** The Foundation may accept gifts of existing or new insurance. Prior to accepting a policy, the Foundation and donor must agree that the plan as presented fits the needs of both parties.
  5. **Mortgages and Notes.** Gifts of mortgages, promissory notes, and similar installment obligations will be accepted only in exceptional circumstances.
  6. **Real Property.** Proposed gifts of real estate must be reviewed by the President and approved by the Board of Directors of Rochester Area Foundation and must satisfy the requirements of the Foundation's separate Policy and Guidelines Relating to Gifts of Real Estate (*attached*).
  7. **Closely Held Stock, Limited Liability Companies, and Partnership Interests.** Proposed gifts of closely held stock, limited liability companies and partnership interests must be reviewed and approved by the President and must satisfy the requirements of the Foundation's separate Policies and Guidelines Relating to Gifts of Partnership Interests and Gifts of Closely Held Stock (*attached*).
  8. **Bargain Sales.** A "bargain sale" is a sale of property to the Foundation for an amount less than the property's current fair market value. The excess of the value over the sales price represents a contribution. The Foundation, upon approval of the President and legal counsel, may purchase property on a bargain sale basis. The amount of the allowable deduction for a bargain sale will be subject to the rules of the Internal Revenue Service relating to bargain sales.

### IV. PLANNED GIVING ARRANGEMENTS

- A. **Forms of Planned Gifts.** The Foundation's planned giving program encompasses gifts whose benefits do not fully accrue to the Foundation until some future time (such as the death of the

donor or other income beneficiaries or the expiration of a predetermined period of time), or whose benefits to the Foundation are then followed by the interests of noncharitable beneficiaries. Planned giving opportunities offered by the Foundation include the following:

1. **Charitable Remainder Unitrust.** Under a charitable remainder unitrust, the donor irrevocably transfers money, securities, or other property to a trustee selected by the donor. The trustee pays the donor (or one or more income beneficiaries designated by the donor) a fixed percentage of the net fair market value of the trust's assets, as determined each year. The payments are made for the life or lives of the income beneficiaries or for a fixed period of years not to exceed 20 years. Upon termination of the income beneficiary's interest, the assets of the unitrust are transferred to the Foundation. As indicated in B.2. below, the Foundation will not serve as trustee of a charitable remainder unitrust.
2. **Charitable Remainder Annuity Trust.** A charitable remainder annuity trust is identical to a unitrust, except that the income beneficiary receives a fixed dollar amount annually from the trust. As indicated in B.2. below, the Foundation will not serve as trustee of a charitable remainder annuity trust.
3. **Pooled Income Fund.** The Foundation has established a pooled income fund. A donor irrevocably transfers property to the pooled income fund and retains an income interest for the life or lives of up to two income beneficiaries designated by the donor. Each income beneficiary receives a proportionate share of the net income earned by the fund. Upon termination of the income beneficiary's interest, the remainder interest in the property is transferred to the Foundation for uses specified by the donor at the time the gift is made.
4. **Charitable Gift Annuities.** The Foundation offers charitable gift annuities. The Foundation and the donor enter into a contract providing a fixed dollar return for life to the donor and/or other beneficiaries, in exchange for a gift of cash or marketable securities to the Foundation. The amount of payment is dependent upon the age of the donor and the size of the gift. The date that income payments to the beneficiary begin may be deferred. The annuity contract is a general obligation of the Foundation. Payment rates reflect the recommendations of the American Council on Gift Annuities and are approved by the New York State Department of Insurance.
5. **Life Estate Agreement.** A donor may contribute a personal residence or farm to the Foundation and retain the right to occupy the property until death. Upon the donor's death, the Foundation will own the entire interest in the property. These types of gifts will be evaluated in accordance with the Foundation's Policy and Guidelines Relating to Gifts of Real Estate (attached).
6. **Charitable Lead Trust.** Under a charitable lead trust, the Donor irrevocably transfers money, securities, or other property to a trustee selected by the donor. The Foundation is given an income interest in the trust assets for a period of years or the lives of one or more individuals, at the end of which time the assets of the trust are distributed to noncharitable beneficiaries designated by the donor. The trustee pays the Foundation each year: 1) a fixed amount from the trust; or 2) a fixed percentage of the net fair market value of the trust's assets, as determined each year. As indicated in B.2. below, the Foundation will not serve as trustee of a charitable lead trust.
7. **Gifts by Will or Trust.** The Foundation may be designated as the beneficiary of a bequest or gift by the terms of the donor's will or by a revocable or irrevocable trust. Sample bequest language for restricted and unrestricted gifts will be made available to donors and their attorneys to insure that the bequest is properly designated.

8. **Retirement Plan Assets.** Retirement plans owned by the donor may be gifted to the Foundation at death. These include Individual Retirement Accounts (IRA), 401(k), 403(b), and defined contribution plans. (Annuity plans, such as defined benefit plans, in which retirement benefits are paid out as income and principal does not accumulate, generally cannot be used for charitable gifts.) Methods for gifting retirement assets include:
  - Naming the Foundation as primary, successor or contingent beneficiary for all or part of the assets upon death of either the retirement asset owner or spouse;
  - Creating a testamentary charitable remainder trust with the assets upon the death of the asset owner, naming the Foundation as remainder beneficiary and noncharitable heirs as income beneficiaries.

## **B. Acceptance Policies and Guidelines for Planned and Deferred Gifts**

1. **Disclosures to Donor.** The Foundation's staff should disclose to a prospective donor the benefits and liabilities that could reasonably be expected to influence the donor's decision to make a gift to the Foundation. In particular, the donor should be advised that all gifts other than planned bequests are irrevocable, and items subject to variability (such as market value, investment return, and amount of income payments) should be discussed fully.
2. **Trustee.** The Foundation will not serve as trustee of charitable remainder trusts, charitable lead trusts, or other trust arrangements, and will recommend that the donor seek the services of a personal or professional trustee. To avoid personal conflicts of interest, no member of the staff of the Foundation may knowingly serve as trustee or executor for a donor or prospective donor without the prior written permission of the President of the Foundation.
3. **Distribution of Proceeds.** Testamentary bequests and other planned gifts are governed by the language of the wills, trusts, or agreements that created them, by relevant law and regulation, and by the articles and bylaws of Rochester Area Community Foundation. In addition, the Community Foundation provides written fund agreements that may be prepared in advance by the donor(s) with supplementary details regarding the preferred purpose(s) and management of testamentary and other planned gifts, and these may be updated from time to time during the donor(s)'s lifetime(s). Donors may also submit letters and other signed documents to indicate their wishes.

Given the mission of the Foundation, the Foundation encourages donors to designate a permanent unrestricted fund or fund(s) as the ultimate recipient of the future proceeds of their deferred gift arrangements. However, the donor may designate one or more donor-advised, field of interest, or designated funds to receive the proceeds of deferred gift arrangements at the time of maturity.

Professional advisors, friends, and family members of a testamentary donor may provide valuable biographical information regarding the donor and the donor's charitable wishes. However, the Foundation must adhere to the written language provided by the donor in the will, fund agreement or accompanying language. This particularly prohibits the addition of binding restrictions on the fund that did not previously exist. This could include but would not be limited to the addition of donor advisors, restricted causes, or specific charitable beneficiaries; matters regarding permanence of a fund or timing of grant distributions; and requests for variance in standard policies of the Foundation, e.g., those regarding investments, fees, and spending policy for distributions.

4. **Removal of Principal.** From time to time, a donor may want the Foundation to distribute the proceeds of deferred gift arrangements at the time of receipt to charities other than the Foundation. These distributions require approval of the Board of Directors and may only be made to charitable organizations qualified under Section 501(c)(3) and described under Section 170(b)(1)(A) of the Internal Revenue Code. In addition, the following policies govern distributions of principal from specific types of deferred gifts:
- *Charitable gift annuities* must benefit a fund at the Foundation; the principal may not be removed.
  - *Life insurance gifts and charitable remainder trusts* may distribute principal provided at least 10% of the deferred gift remains in the Foundation.
  - *Pooled life income fund gifts.* By law, the Foundation must be the sole charitable beneficiary of pooled life income fund gifts. However, a nonprofit organization may establish an agreement with the Foundation in which a donor's wishes may be considered in an organization's request to remove donated funds to its own endowment. Alternatively, and this shall be disclosed to any donor, the remainder interest may be used to establish or add to a designated fund for that organization.

It should be understood by the donor that recommendations for removal of principal are advisory, and that the Foundation retains the ultimate authority to direct distributions of maturing gift proceeds, taking into account the charitable needs of the community and purposes of the Foundation at the time such distributions are to be made.

5. **Disputes Over Charitable Purpose(s).** Once a planned gift matures, only the written statements of the donor may serve as irrefutable evidence of the donor's selected fund name(s) and charitable purpose(s). While the testimony of professional advisors, family and friends of the decedent may be considered in the creation of a fund, only the Community Foundation Board of Directors has the right to authorize a variation from the stated fund name(s) and purpose(s).
6. **Undesignated gifts.** In the absence of written guidance from the donor, these policies shall prevail:
- Testamentary gifts shall be placed in permanent unrestricted endowment unless otherwise specified by the donor.
  - Testamentary gifts of a size sufficient for a separate fund shall be placed in new unrestricted funds named to honor the donor(s).
  - Similarly, lifetime or other gifts that have no restrictions, and that are not donated in response to a specific appeal for funds, shall be placed in permanent unrestricted endowment.

The Board may amend or supplement these Policies and Guidelines at any time.

*JL Shared:Development:Gift Acceptance Policies as amended 10/1/03*