

# GIFT POLICY

## THE ACCEPTANCE AND ADMINISTRATION OF GIFTS

*This document outlines the types of funds established by the Foundation, what they support, how decisions are made, minimum amounts required to create a fund, and the fee structure. It also outlines services provided to donors, the types of gifts the foundation can accept, and the policies governing the use of these funds.*

### Section 1: Overview

#### FOUNDATION RESPONSIBILITIES

Foundation staff should disclose to all prospective donors the benefits and potential costs that could reasonably be expected to influence the donor's decision to make a gift to the Foundation. Donors will be encouraged to consult with legal counsel and financial advisors in making their decision. In particular, donors should be made aware of:

- The irrevocable nature of a gift
- Prohibitions on donor restrictions
- Items that are subject to variability (e.g., market value investment return, income yield and the amount of distributions)
- Donor's responsibility for obtaining necessary appraisals, filing appropriate tax returns and defending any challenges to claimed tax benefits
- Administrative and other costs, if applicable, associated with making the gift and administering the fund
- The Foundation's "variance power" with respect to future use of proceeds from a restricted or designated fund
- The Foundation's responsibility to provide periodic financial reports on donor funds
- The Foundation's responsibility to provide a copy of Donors Bill of Rights to donors

Staff shall maintain a written record of discussions with donors. The role of foundation staff shall be to inform, guide and assist a donor in fulfilling his or her philanthropic wishes, but never to pressure or unduly influence a donor's decision.

Due to the complexity of charitable gift transactions and their tax consequences, staff should encourage every prospective donor to consult with his or her own legal counsel and other professional advisors prior to making a gift to ensure that the donor receives a full, accurate and independent explanation of all aspects of the proposed gift.

#### ROLE OF THE FOUNDATION STAFF

The Executive Director, on behalf of the Board of Directors, shall officially receive all gifts to the Foundation and develop the terms, restrictions, and conditions that apply to each gift in accordance with this policy. Any potential gift that is either not covered by this policy, or includes non-standard terms, restriction or conditions

must be reviewed by the Gift Acceptance Committee ("Committee"), who will make a recommendation to the Executive Committee for final approval/denial. In circumstances where the Committee cannot make clear determination about a particular gift, the matter will be submitted to the Executive Director for consultation with legal counsel or other professionals for an ultimate decision by the Board of Directors. The Executive Director shall be responsible for the maintenance of lists of donors, prospective donors, and friends of the Foundation and work with the Development Committee and Board of Directors to actively solicit gifts from the community. The Executive Director may approve members of a Scholarship selection committee and ensure neither the donor(s) nor related parties control the committee directly or indirectly. All grants are awarded on an objective and nondiscriminatory basis using a procedure that has been approved in advance by the board of directors

## **GIFT ACCEPTANCE COMMITTEE**

One of the most important responsibilities of the Board of Directors is safeguarding of the Foundation assets. Because acceptance of certain types of gifts may subject the Foundation to liability, proper review of all proposed gifts is essential to avoid jeopardizing the Foundation assets. The primary role of the Gift Acceptance Committee ("Committee") is to review the proposed gift transactions as specified below. The Committee shall recommend standard forms for agreements with donors, and shall, from time to time, submit recommendations for changes to the Gift Acceptance Policies to the Board for approval. The Committee shall be made up of one member of the Executive Committee to be appointed annually, the Chair of the Development Committee, the Chair of the Investment Committee, the Executive Director and an attorney or other professional persons as relevant to the nature of the potential gift.(e.g. real estate professional, insurance specialist, CPA, financial advisor, etc.)

## **PROCEDURES FOR GIFTS NOT REQUIRING COMMITTEE APPROVAL**

Some gifts pose little threat to the assets of the Foundation, and authorized staff members may accept those types of gifts (identified below) without the prior review or approval of the Committee, subject only to the gift being consistent with these Policies and the purposes and Bylaws of the Foundation and being made pursuant to the standard Fund Agreements approved by the Foundation's Board of Directors. The Executive Director, or any other officer or staff member designated by the Executive Director from time to time, shall be authorized to accept gifts that do not require prior review and approval of the Committee and to negotiate the terms of and execute any gift agreement related thereto on behalf of the Foundation. Gifts that may be accepted without Committee approval are:

1. Cash and cash equivalents; and
2. Publicly Traded Securities; and
3. Gifts of Tangible Property for Foundation use; and
4. Various charitable trust instruments, including charitable remainder trusts and charitable lead trusts if funded with marketable securities and/or cash and further provided that the Foundation does not serve in a trustee capacity.

## **PROCEDURES FOR GIFTS REQUIRING COMMITTEE APPROVAL**

In conjunction with their tax and financial planning, some donors may be interested in making gifts of specific assets that create more risk for the Foundation. Those types of gifts (identified below) will require a review by staff and approval of the Committee and Executive Committee prior to being accepted. In addition, the Executive Director or the Director of Donor Services may, in his or her discretion, refer any other proposed gift transaction

to the Committee for review and advice if he or she has any concerns about the valuation, disposition or other issue which suggests a review of the proposed gift is warranted.

Gifts that require Committee approval are:

1. Non-Public Securities, including S corporation stock, partnership interests
2. Real Property
3. Tangible Property which is not readily needed for the Foundation's use or related to its purpose
4. Life Insurance Policies whose premiums are not paid up
5. Retained Life Tenancy
6. Any gift which falls outside the ordinary purpose, Bylaws, and procedures of the Foundation
7. Any gift proposed to be made pursuant to an agreement that is substantially or materially different from the standard Fund Agreements approved by the Board of Directors
8. Any gift that includes a restriction or suggestion regarding the Foundation's use of funds that would raise legal, ethical, policy or practical concerns for the Foundation.

## **EXCESS BUSINESS HOLDINGS**

The Pension Protection Act of 2006 ("PPA") precludes DAFs from holding more than a minor interest in a business when the donor, fund advisor or a related party ("disqualified person") also holds an interest in the business. This is known as the "excess business holdings" rule. Generally, the excess business holdings rule states that a DAF and persons who are disqualified persons with respect to the DAF may not together hold more than a twenty percent interest in a business enterprise (generally, a corporation, sole proprietorship, partnership, joint venture, trust or other actively conducted business). DAFs receiving gifts of interests in a business enterprise after the effective date of the PPA (August 17, 2006) will have five years to divest holdings that are above the permitted amount.

The Foundation will identify any potential gift to a DAF that would qualify as an excess business holding and will notify the prospective donor of the PPA requirements prior to the contribution. The Foundation will monitor any such holding and will dispose of any excess business holding prior to the five-year time limit (or within ten years if the Treasury Department grants an additional five-year holding period), as required by law.

## **Section 2: Gift Options**

The Community Foundation of Utah has three basic gift options:

- unrestricted gifts to The Utah Fund, a general endowment to improve the quality of life in our state;
- unrestricted gifts to help establish the Community Foundation of Utah ; and
- a variety of unrestricted gifts and temporarily restricted gifts to establish Donor Advised Funds, Corporate Advised Funds, Field of Interest Funds, and Designated and Agency Funds.

### ***Unrestricted gifts to the Utah Fund***

Purpose:	Endowment to meet the emerging and changing needs of our state.
Supports:	Community grant making.
Grantmaking:	All applications for grants from this general endowment are reviewed by the Grants Committee, which submits its recommendations to the Board of Directors for the Board's review and approval. All grants made by the Utah Fund meet the following requirements: <ul style="list-style-type: none"><li>– Reviewed and approved by the Board of Directors</li><li>– Conduct activities and programs consistent with The Foundation's policies and mission statement</li><li>– Qualified as a 501(c)(3) organization under the Internal Revenue Code or as a public charities qualified under IRC 509 (a)(1), (a)(2), and(a)(3). [For the remainder of this document all eligible organizations are referred to as 'public charities].</li><li>– Organization based in Utah or serving people living or working in Utah.</li></ul>
Gifts:	Unrestricted gifts can be made in the form of check, credit card, approved security, or transfer from a foundation
Amount:	Any size gift is welcomed.
Administrative Fee:	The Foundation charges an annualized rate of 2% of the fund assets.

### ***Unrestricted Gifts to support the operations of the Community Foundation of Utah***

Purpose:	Funds to help establish this new philanthropic and educational resource for Utah.
Supports:	The operations of the Community Foundation of Utah
Grantmaking:	None
Gifts:	Unrestricted gifts can be made in the form of check, credit card, approved security, or transfer from a foundation
Amount:	Any size gift is welcomed.
Administrative Fee:	None

### ***Unrestricted Gifts: Donor Advised and Corporate Advised Funds***

Purpose:	Provides donors the opportunity to make grant recommendations to the Community Foundation.
Supports:	A range of charitable activity based on the interests of the donor.
Grantmaking:	The Community Foundation is responsible for the responsible stewardship of the fund, and directs the fund's charitable giving in a manner consistent with the wishes of the donor and the Foundation's policy. The donor may name two generations of successor advisor(s) to the fund, after which, the asset is fully directed by The Foundation board. Donor's recommendations are welcome and encouraged in the granting process. To comply with federal law, variance power, and to ensure consistent application of policy and guidelines, the Foundation's Grants Committee and Board retains final approval in grant awards made from the fund. Principle and interest of the fund can be distributed. The minimum grant size is \$100. Any contribution, once accepted by the Board of Directors, represents an irrevocable contribution to the Community Foundation of Utah and is not refundable. Grants from fund may not provide substantial benefit to the

donor, advisor or family member. No distribution may be made to a private non-operating foundation.

- Support: Individual donors may initiate a fund with a minimum contribution of \$5,000 to the Community Foundation of Utah. Corporate donors may initiate a fund with a minimum contribution of \$10,000 to the Community Foundation of Utah. The Foundation and donor enter a written agreement describing how the fund will be managed and distributed. The fund is held in a separate account and invested according to The Foundation's policy and objectives. Management of a donor advised fund by an outside professional advisor will be considered on a case by case basis.
- Gifts: Gifts of Cash, public stock, restricted stock, real estate, limited partnerships and more are accepted, either now or through your will, trust or estate plan.
- Administrative Fee: The Foundation charges an annualized rate of 1% of the fund assets and a lower rate for larger funds. Please see the 2015 fee schedule.

***Unrestricted Gifts: Field of Interest Funds***

- Purpose: Field of Interest Funds support organizations focused in a specific area of charitable interest such as social entrepreneurship, youth, or the environment.
- Supports: Community grant making in specific areas identified by donors.
- Grantmaking: Grants are made to organizations doing the most innovative and impactful job in a specific area. The Community Foundation staff works closely with Field of interest Fund donors as a group and recommendations for funding are made to the Board of Directors for the Board's review and approval. All grants made by Field of Interest Funds meet the following requirements:
- Reviewed and approved by the Board of Directors
  - Conduct activities and programs consistent with The Foundation's policies and mission statement
  - Qualified as a 501(c)(3) public charity under the Internal Revenue Code
  - Organization based in Utah or serving people living or working in Utah.
- Support: Donors may initiate a fund with a minimum contribution of \$5,000 to a Field of Interest Fund. Each fund is held in a separate account and invested according to The Foundation guidelines. Other Field of Interest Funds may be established based on the initiative of the donor(s).
- Gifts: Gifts of Cash, public stock, restricted stock, real estate, limited partnerships and more are accepted, either now or through your will, trust or estate plan.
- Administrative Fee: The Foundation charges an annualized rate of 2% of the fund assets. A lower rate for larger funds will be considered on a case by case basis.

***Unrestricted/Restricted Gifts Designated Funds***

- Purpose: Designated Funds are designed for specific projects and organization.
- Supports: Donors can create a fund or donate a gift to benefit a specific nonprofit organization in perpetuity, to be spent down over a specified number of years, or as a one-time pass through.
- Grantmaking: For a permanent endowed fund, five percent (4%) of the fund net asset value is granted each year. All recipient organizations must qualify as a 501(c)(3) public charity under the Internal Revenue Code.

- All grants recommended through a restricted fund to The Foundation will be reviewed and approved by the Board of Directors.
- Recommendations for grants can be made by the fund advisors and must meet a charitable need.
- The Board maintains variance power of all restricted funds and has the final say on grant recommendations.

Gifts: Gifts of Cash, public stock, restricted stock, real estate, limited partnerships and more are accepted, either now or through your will, trust or estate plan.

Administrative Fee: The Foundation charges an annualized rate of 1% of the fund assets and a lower rate for larger funds. Please see the 2015 fee schedule.

***Unrestricted/Restricted Gifts***

***Agency Endowments***

Purpose: Agency Endowments are established by an agency for their organization.

Supports: Agencies can create a fund and other donors may donate to the fund to benefit a specific nonprofit organization in perpetuity, to be spent down over a specified number of years.

Grantmaking: For a permanent endowed fund, the Board of Directors, in consultation with the Investment Committee sets and annual percentage of the fund to be granted each year. The specific agency endowment agreement may allow for a different process. All organizations must qualify as a 501(c) (3) public charity under the Internal Revenue Code. Please see the specific guidance on Agency endowments for more detail.

Gifts: Gifts of Cash, public stock, restricted stock, real estate, limited partnerships and more are accepted, either now or through your will, trust or estate plan.

Administrative Fee: The Foundation charges an annualized rate of 0% of the fund assets until the fund reaches 50,000, and .5% thereafter, with a lower rate for larger funds. Please see the 2015 fee schedule.

***Unrestricted/Restricted Gifts***

***Scholarships***

Purpose: Scholarships may be created by an individual or group of individuals or a company to support the ability of students and others to reach a particular goal, most commonly post secondary education. They may target a group or class of individuals.

Grantmaking: We work closely with donors to identify the intent of the scholarship. To avoid conflict and meet federal requirements, the community foundation appoints a selection committee and manages the selection process. Funds may be used for tuition, fees, or may be made to recognize or encourage specific achievements. However, all grants are awarded on an objective and nondiscriminatory basis using a procedure that has been approved in advance by the board of directors of the sponsoring organization and that has been designed to ensure that all such grants meet the requirements of paragraphs

Gifts: Gifts of Cash, public stock, restricted stock, real estate, limited partnerships and more are accepted, either now or through your will, trust or estate plan.

Administrative Fee: The Foundation charges an annualized rate of 5% of the fund assets. Please see the 2015 fee schedule.

### Section 3: Services to Donors

Donors who establish restricted funds with the Community Foundation of Utah, including Donor Advised Funds and Field of Interest Funds, receive the following services from the Foundation:

- Regular fund statements
- Access to the expertise of The Foundation grant staff and committee
- Professional management and investment of fund monies
- Awareness of the issues facing our state and innovative solutions to address these issues
- Site visits to nonprofits that are making a difference
- Research on innovations in philanthropy, the nonprofits sector and social entrepreneurship
- Annual IRS tax filing
- The Foundation's annual report
- Recognition in The Foundation's publications and web site (if desired)

### Section 4: Assets and Gift Options

Assets considered by the Community Foundation of Utah are:

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| - Cash, made by check or credit card.<br>These do not require Board review and approval. | - Life Insurance                                  |
| - Publicly Traded Stock  | - Closely Held Stock and Other Business Interests |
| - Tangible Personal Property   | - Endowments                                      |
| - Real Estate  | - Planned Giving                                  |
| - Retained Life Estate   | - Bequests  |
| - Bargain Sale   | - Charitable Gift Annuity                         |
| - Retirement Plans   | - Charitable Remainder Trust                      |
| - Publicly Traded Stock  | - Charitable Lead Trust                           |
| - Closely Held Stock and Other Business Interests  | - Tangible Personal Property                      |
|  | - Retained Life Estate                            |

### RIGHT OF REFUSAL

The Foundation reserves the right to refuse gifts for any reason not specifically defined here. Reasons for refusing a gift include, but are not limited to:

1. The cost to manage the asset exceeds the eventual benefit of the gift to the Foundation, or
2. The gift or gift purpose could potentially jeopardize the Foundation's tax exempt status, or
3. The fund purpose is believed to be discriminatory in nature.

The Executive Director has the authority to refuse gifts that clearly do not benefit the Foundation. If the benefit is questionable or difficult to determine, the Board of Directors shall make the final decision whether to accept or refuse. The Foundation reserves the right to refuse any gift it believes is not in the best interest of promoting a healthy, caring community. In addition, the Foundation shall not knowingly accept a charitable gift from a donor who:

1. Has, or appears to have, insufficient income and assets remaining after making a gift to provide for his/her needs such as personal support and health care.
2. Has, or appears to have, insufficient income and assets remaining after the gift to provider for his/her heirs for whom he/she is financially responsible.
3. Has, or appears to have, an insufficient mental capacity to make a rational decision.
4. Has, or appears to have, insufficient input from competent financial, legal and/or personal counsel.

### ***Closely Held Stock and Other Business Interests***

The Community Foundation of Utah can accept gifts of closely held stock, limited partnership interest, and limited liability company interests provided it assumes no liability in receiving them, and the property can be sold within a reasonable period of time. In determining whether to accept these types of gifts, the Board of Directors considers whether such interests have any transfer restrictions (e.g., if the business or other owners have rights of first refusal) and whether the ownership of such interests will give rise to UBIT. Outright gifts of closely held stock, tangible personal property, partnership interests, company interests and other property interests, real and personal, not readily negotiable must be reviewed and approved by the Board of Directors. To be considered for acceptance, limited partnership interests must not subject the Community Foundation to capital calls or other liability and must not have adverse tax consequences for the Foundation. Closely held stock may be accepted if the probability exists of selling it within a reasonable period of time to the corporation, other stockholders, or to others interested in acquiring the stock. Contributions of "S" Corporation stock will be carefully discussed with the donor(s) and their advisors. Royalty interests will be considered but working interests will not be accepted. The following gifts are prohibited: Margin purchases, foreign issues unless traded on the U.S. exchange or markets, commodities and general partnership interests.

### ***Publicly Traded Stock***

There are multiple risks associated with accepting publicly traded stock. To mitigate these risks the Foundation will discuss the gift with the donor to determine if any there are commitments to sell the stock or whether there is an outstanding tender offer for the stock. The Foundation will not hold any donated stock for more than two business days and all publicly traded stock is to be liquidated upon acceptance. The Board of Directors reserves the right to review stock gifts in more detail.

### ***Tangible Personal Property***

Tangible personal property may be donated provided the Foundation assumes no liability in receiving them. The Foundation should make inquiries as to whether the property is marketable, there are any restrictions placed on the property, and determine the carrying costs for the property (insurance, maintenance, etc.). In addition, all property must be appraised before acceptance by The Foundation as a contribution. Once the property is accepted as a donation, the Board will evaluate whether the property will be used by The Foundation or whether it will be sold.

### ***Real Estate***

The Foundation may accept gifts of real estate, including residences, corporate buildings or land. The Community Foundation of Utah will not manage real property and the property must be readily marketable. All property gifts received will be converted to cash at the earliest opportunity in order to

maximize the value of the gift. In general, all associated expenses of a gift of property, including appraisal, are borne by the donor, unless otherwise approved by the director. Both the donor and the Foundation are required to secure a qualified appraisal of the property. The Community Foundation (or trustee in case of a charitable remainder trust) will determine if the donor has clear title to the property. The donor is also required to secure a Phase I environmental audit and give the results to the Board, and no property contaminated by toxic wastes can be accepted prior to the removal or other remedies that assures no liability passes to the Foundation. Ordinary mortgaged property will not be accepted as an outright gift, however, exceptions may be made when the property has sufficient equity to justify assumption of the liability and the property is marketable. Mortgaged property shall not be accepted for a charitable remainder trust unless the trust would not be disqualified and the income from the property is sufficient to cover all liabilities. If a donor wishes to give real estate and retain income, a "net-income", "net-income with make-up provision", or a "Flip" charitable remainder unitrust is the preferred instrument. Usually real estate will not be accepted for a charitable remainder annuity trust or a charitable gift annuity.

### ***Retained Life Estate***

A life estate is created when an individual transfers to the Community Foundation the title to a personal residence or farm, and the donor or another person retains use of the property for a term of years or the life of the donor and/or another person. Under this circumstance, the donor continues to be responsible for real estate taxes, insurance, utilities, and maintenance after transferring title to the property unless the Foundation's Board of Directors, agrees to assume responsibility for any of these items. As with other gifts of real estate the donor is responsible for obtaining a qualified appraisal, and other provisions outlined in gifts of real estate. Each retained life estate gift will be individually negotiated and approved by the Board.

### ***Bargain Sale***

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 bargain sale price may be paid either in a lump sum or in installments. A gift of mortgaged property will constitute a bargain sale. Since the amount of indebtedness is treated as a relief of liability, there could be adverse tax consequences to the donor. The donor will be informed of this in writing and urged to consult with a tax advisor. In most cases, the donor will be responsible for appraisal costs. The Community Foundation of Utah, following approval from the Board of Directors, may purchase real estate, securities, or other property on a bargain sale basis. Ordinarily the price paid for the property should not exceed 60 percent of its appraised value. A gift should not be encouraged from a donor unless it is clear that there is charitable intent. As with other gifts of real estate the donor is responsible for obtaining a qualified appraisal, and other provisions outlined in gifts of real estate.

### ***Retirement Plans***

We welcome donors to name the Community Foundation of Utah as a full or partial beneficiary of their Individual Retirement Plan (IRA), Keogh plan, 401(k), 403(b), or other qualified pension plan.. Please notify the Foundation if we are named as beneficiary.

## *Life Insurance*

There are various methods by which a life insurance policy may be contributed to the Community Foundation of Utah. Each method requires a thorough evaluation of the policy, insurance company, and benefit to the Foundation. A donor may:

- irrevocably assign a paid-up policy to the Foundation
- irrevocably assign a life insurance policy on which premiums remain to be paid as long as the Community Foundation is owner and beneficiary
- name the Community Foundation of Utah as a primary or successor beneficiary of the proceeds
- establish a new life insurance policy with the Community Foundation as the applicant, owner and beneficiary

The Foundation will accept any gift of a life insurance policy if a “guarantee analysis” is available and provided it is under no prearranged obligation to expend its assets to maintain the policy. No portion of the proceeds may be paid to anyone or any organization that is not qualified as a 501(c) (3) tax-exempt entity. The Foundation has the unrestricted right to fully exercise its powers as the owner, including the power to surrender, select payment options, designate beneficiaries and withdraw or borrow cash values. If premiums remain to be paid on the policy they are the responsibility of the donor or he or she must grant permission to surrender the policy for cash value. The Foundation will not participate in split dollar or reverse split dollar plans, or other partial interest programs. Any charitable insurance program, such as those promoted by the life insurance industry or individual insurance agent(s), will only be entered into after the Board of Directors has a thorough understanding of the program and has voted to proceed. The Board of Directors may under extraordinary circumstances choose to provide for a payment of premium or premiums for the policy.

## *Endowments*

A donor interested in gifting endowed funds can either contribute towards The Utah Fund, the general endowment of the Community Foundation of Utah, or can create an endowment fund in the form of a Donor Advised Fund, a Field of Interest Fund or a Designated Fund. The Community Foundation of Utah manages two types of endowments: permanent endowments and quasi-endowments. A permanent endowment is formed so that the corpus or principle of the fund is restricted in perpetuity and cannot be invaded. A permanent endowment can be named after a donor or remain anonymous. The income produced from the fund can be designated for a single purpose or a particular nonprofit organization, and may pass on to one generation as its successor. Instead of creating a separate permanent endowment, a donor may contribute to The Utah Fund endowment. Income produced from this endowment may be used for community grant making, to support the operations of the Community Foundation of Utah, to support specific programs and projects, and for specific non-profit organizations. A quasi-endowment is formed so that the corpus and income is temporarily restricted for a future project or specific need. However, unlike a permanent endowment, the purpose of a quasi-endowment is to be spent down over time. It can be named after a donor, remain anonymous, be designated for a single purpose or field of interest fund, and may pass on to two generations as its successor. The investment strategy for permanent endowments and quasi-endowments is designed to achieve maximum total return, minimize risk through diversification and due diligence, and provide a growing, reliable source of income to support the funding needs of the programs and projects aforementioned. The investment strategy and spending policy is described in the Foundation’s Statement of Investment Objectives and Policies.

## ***Planned Giving***

In addition to the asset types discussed earlier, The Foundation can accept a wide range of planned gifts. Planned gifts offer the donor the ability for an income source as well as tax advantages in estate planning that an outright gift cannot provide. As outlined above, the charitable portion of the planned gifts can be designated as an unrestricted gift or as a restricted gift.

## ***Bequests***

One of the simplest ways to make a gift to the Community Foundation is through a will. The donor can name the Foundation as the direct beneficiary of identified assets, to receive a portion of the donor's estate, or to receive a residual estate after the donor's loved ones have been provided for.

## ***Charitable Gift Annuity***

A charitable gift annuity is a contract between the Community Foundation of Utah and the donor whereby the Foundation agrees to pay the donor (and/or other person named by the donor) a lifetime annuity in return for a gift of cash, securities, or other property. The payment may continue for the life of a second individual, such as a spouse. The annual payment is a fixed sum, the amount of which is based on the size of the gift and the number and ages of the beneficiaries. The Foundation prefers to provide quarterly payments to gift annuity donors. Upon the death of the donor, the remainder of the gift can either be designated directly to The Foundation as unrestricted funds, a donor-advised fund or a field of interest fund. Gift annuities issued in the Donor's state of residence shall comply with that state's law and meet the disclosure requirements under the Philanthropy Protection Act of 1995. The guidelines for acceptance of a charitable gift annuity are:

- The current minimum amount for an annuity agreement is \$50,000.
- Annuity rates will never exceed the suggested rates recommended by the American Council on Gift Annuities.
- Agreements shall be limited to two lives. In most instances, the minimum age to fund and receive income payments for the immediate payment gift annuity will be 60. The minimum age to fund deferred gift annuities shall be 50. The minimum age for income payment shall begin at age 60 or later. Exceptions may be made with prior approval of the Board.
- Gift annuities may be managed by the Community Foundation of Utah staff and /or agents and advisors hired by the Foundation.
- Gift annuities must meet governing individual state laws.

## ***Charitable Remainder Trust***

The charitable remainder trust is a separately administered trust established by the donor. It provides for payments to the donor and/or other named beneficiary(ies) either for life or for a term of years (not exceeding 20), whereupon the remaining trust assets are distributed to one or more charities. A charitable remainder annuity trust pays a fixed amount (at least five percent) of the original fair market value of the assets initially contributed to the trust. This amount does not change, and no additional gifts may be made to the annuity trust after its creation. Payments made in any one year by a charitable remainder annuity trust to individual beneficiaries may not exceed 50 percent of initial fair market value

of the trust. A charitable remainder unitrust pays a fixed percentage (at least five percent) of the fair market value of trust assets, as valued annually. Because the value of assets can be expected to change from year to year, the unitrust payment will vary in amount each year. Additional contributions may be made to the trust after it is established. Payments made in any one year by a charitable remainder unitrust to individual beneficiaries may not exceed 50 percent of the fair market value of the trust on the most recent valuation date. The present value of the Community Foundation's remainder interest in the charitable remainder unitrust must equal 10 percent (or more) of the initial fair market value of the trust. This rule also applies to additions to existing charitable remainder unitrusts. There are three traditional varieties of a unitrust.

- A "straight" unitrust pays the stipulated amount, even if it is necessary to invade principal to do so.
- A "net-income" unitrust pays the lesser of the stipulated amount or the actual net income so that the principle is not invaded. A "net-income with make-up provision" unitrust is similar to the net income unitrust except that excess earnings can be applied to cover accrued deficiencies that result from the net income being less than the stipulated amount.
- A newer variety, the "Flip" unitrust, should be considered for trusts funded with real estate or family corporations.

#### Guidelines

- The portion of the remainder contributed to the Foundation must be irrevocable and at least 50 percent of the amount contributed must be designated to the Foundation's unrestricted fund.
- The Community Foundation of Utah recommends that beneficiaries be age appropriate unless the trust is for a term of years.
- The Foundation recommends limiting the number of beneficiaries to two where payments are to be made for the life of the beneficiaries.
- Ordinarily the Foundation will not accept responsibility as a trustee of a charitable remainder trust instrument that is or will be funded with the following assets: encumbered real estate; margined securities; sole proprietorships; limited partnerships (unless the Board has given specific approval); working interests in oil and gas fields; and general partnership interests.

#### *Charitable Lead Trust*

A charitable lead trust is a trust in which the income, or "lead" interest, is paid to The Community Foundation of Utah, and the "remainder" interest is given to one or more non-charitable beneficiaries, who could be either the donor or family members. The amount paid to the Community Foundation of Utah is either a fixed sum (an "annuity trust" interest) or a percentage of trust assets as valued each year (an "unitrust" interest). Guidelines 1) The Community Foundation of Utah will not serve as sole trustee or cotrustee of a charitable lead trust. The Foundation will work with a Financial Institution to become the trustee. 2) The trust term may be at the discretion of the donor, subject to the approval of The Community Foundation of Utah or other trustee.

The Community Foundation of Utah will not serve as sole trustee or co-trustee of a charitable lead trust. The Foundation will work with a Financial Institution to become the trustee.

## Section 5: Fiscal Sponsorship

The Community Foundation of Utah may on rare occasion choose to provide fiscal and project sponsorship for charitable projects that further the purposes of the Foundation. Sponsorship services include the receipting and managing of contributions, and the authorization and payment of grants and expenses from the fund created for the project. There is a separate set of policies and an application is required. Call the foundation for more information.

### POLICIES

#### *Grant making:*

All grants distributed from funds held by the Community Foundation of Utah are subject to review and approval by the Grants Committee and Board. Grants may not be used to satisfy any pre-existing pledge, dues, membership fees, benefit tickets, or goods bought at charitable auctions; nor may any grants be used for lobbying, political contributions, or to support political campaigns or a private foundation. Donations that the foundation intends to make are to be restricted to 501 (c)(3) organizations and public charities qualified under IRC 509 (a)(1), (a)(2), and(a)(3).

#### *Variance Power*

All grants distributed from restricted funds are subject to review and approval by the Board. If a donor-recommended purpose no longer meets the guidelines established, the Board will make reasonable efforts to notify the donor and obtain a new recommendation for a grant to an alternative qualified organization. If the donor cannot be contacted, the Board will consider the donor's intent and make a grant award consistent with Foundation policy. From time to time the purpose of a fund may become obsolete. To accommodate this situation, federal income tax regulations require community foundations to include a "variance power" in their governing documents. To meet this requirement, the Community Foundation of Utah's Articles of Incorporation state that the Board can modify any restriction or condition on the distribution of funds for any specified charitable purpose or to specified organizations if, in the sole judgment of the Board, such restriction or condition becomes unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the state of Utah.

#### *Legal and Financial Considerations*

The Community Foundation of Utah encourages all prospective donors to be fully advised of the legal and tax implications of any transaction. We strongly encourage prospective donors to review the transaction with trusted legal or financial advisors. Likewise, the Foundation relies on the advice and opinions of its legal and financial counsel, particularly when significant legal or tax considerations are involved.

#### *Investments*

All funds will be managed as described in the Investment Policy Statement.

#### *Confidentiality*

Information concerning donors or prospective donors is held in strict confidence by Foundation staff. This includes names of donors, names of beneficiaries, the amount and kind of gifts, and the size and nature of donors' estates.

### *Gift Acceptance*

Gift acceptance is governed by the Board of Directors, which has the ultimate responsibility for developing and applying gift acceptance and fund administration policy. The Board of Directors is charged with the responsibility to review any gifts not adequately addressed in the foundation policies, to properly screen and to accept or refuse those gifts, and, where appropriate, to make recommendations to the Board on gift acceptance issues.

### *Transparency and integrity*

The Foundation is transparent and accessible to its donors. We strive to communicate our activities, policies and procedures clearly. We work to maintain the highest level of integrity with our donors, always acting in the best interest of philanthropy and scrupulously avoiding actual or apparent conflicts of interest or any conduct that would tend to bring discredit to the donor and/or the Community Foundation of Utah.

### *Conflict of Terms*

In the event of any inconsistency between the terms cited in publications, the terms of the Bylaws and Board approved policies will govern the rights and obligations of The Community Foundation of Utah and donors.

# POLICY AND PROCEDURE SPECIFIC TO POTENTIAL GIFTS OF CLOSELY HELD STOCK

## I. AUTHORITY TO NEGOTIATE

The Executive Director will have the overall authority to handle inquiries, negotiate with donors, assemble documentation, and execute agreements on behalf of Community Foundation of Utah. Assuming such activities follow approved procedures and assuming such agreements are approved by the Foundation's legal counsel, this authority to act will not require review or further approval by the Board of Directors.

## II. GENERAL GUIDELINES

There are excellent tax incentives for contributing stock of a closely held corporation to a fund in the Community Foundation of Utah. If some or all of the stock can be contributed to a component fund of foundation before the terms of a sale of the corporation are completed, considerable financial resources can be made available for charitable purposes at the lowest after-tax cost to the donor.

Sometimes donors will be interested in giving closely held stock to the foundation even if the business is not likely to be sold. Typically, the donor contributes shares of stock to a component fund in the Foundation and the stock is later sold for cash by the Foundation. In such instances, the Foundation will not guarantee or pre-arrange such sale or make any other agreement that might imply or cause a material restriction to be imposed upon the contribution.

The Foundation's policy states that gifts of securities are sold as soon as possible, usually within two days of as the gift. The fund which the donor established is then credited with the proceeds from the sale, after commissions and expenses, if any.

In the case of gifts of nonpublic securities of closely held companies that are not readily marketable at the time of the gift, prior to accepting such a gift, it should reasonably appear that the securities will be sold or converted into income-producing property within a specific time frame, ordinarily not to exceed three to five years. However, in certain instances, the Foundation may accept a gift of such securities and hold them in safekeeping until they can be redeemed or otherwise sold or transferred. Until such time, the donor's fund account will reflect the fair market value of the securities based upon the appraised value of such securities at the time of the gift unless the Foundation becomes aware of an increase or decrease in the value of such securities during such holding period. When the aggregation of assets is held in a donor advised fund, and if the donor, donor advisors and related parties share exceeds approximately 20% of the voting stock or profit interest in a business entity, the fund will divest excess holdings within five years. The Investment Committee will be responsible for overseeing such holdings and the timing of the divestiture.

## III. RESPONSIBILITIES OF THE DONOR

- A. The donor will be responsible for obtaining a qualified appraisal complying with IRS regulations for the purposes of establishing the value of the gift for federal income tax purposes, including the preparation of Form 8283 ("Noncash Charitable Contributions"). See Treas. Reg 1.170A-13(a).
- B. It is the donor's responsibility to prepare the appropriate instruments that are necessary to transfer the stock to the Foundation. The Foundation's legal counsel prior to acceptance must review all proposed transfer instruments by the Foundation.

- C. Funds holding closely held stock will be charged the same administrative fees as all other funds at the Foundation. There should be adequate assurance that the affected fund will have adequate cash to pay administrative fees, either from the investment itself or from further contributions from the donor. Any paid dividends will be first used offset the fee charged to the account. Any fee balance due will accrue to the fund pending availability of cash.
- D. The Foundation's legal counsel shall review any shareholder, buy-sell, or other agreements that impose any restrictions or limitations upon the sale or transfer of the stock. Any legal fees incurred by the foundation to review and approve sales agreement for sale of the closely held stock, or any other agreement that requires lawyers to review will be billed to the foundation and the foundation will take the these funds from the proceeds of stock sales before contributing the stock to the ultimate charity.

#### **IV. PROCEDURE FOR ACCEPTING CLOSELY HELD STOCK**

- A. After the requirements of this Policy and Procedure have been satisfied, the Executive Director will have the authority to accept or refuse a gift of closely held stock.
- B. The Executive Director may refuse any offered gift of closely held stock that is judged not to be in the best interests of the Foundation.
- C. Prior to or upon transfer of the stock to the Foundation, the donor and the Foundation will sign an agreement (approved by legal counsel) stating the terms of the gift, which shall specify that there are no restrictions on the Foundation's right to use or convey the property.
- D. In negotiating the sale of closely held stocks, a fair market value (price per share) will be established at the time of sale. No warranty is given by the Foundation that the valuation will be acceptable to the IRS. In some cases, the Foundation may obtain an independent appraisal of the value of the stock prior to agreeing to a proposed sale of the stock.
- E. In addition, the donor will be advised that if the property listed on IRS Form 8283 is sold, liquidated, or otherwise disposed of within two years of receipt, RACF is required to file a separate report within 125 days with the IRS on IRS Form 8282 ("Donee Information Return") and disclose facts about the disposition. See Treas. Reg. 1.6050L-1.

#### **V. WHAT THE FOUNDATION WILL NOT DO**

- A. Except in extraordinary circumstances, the Foundation will not pay for legal assistance, appraisals or other services on behalf of the donor.
- B. The Foundation will not establish or corroborate the value of any property for the purpose of substantiating the donor's income tax charitable deduction.
- C. In many cases, upon the subsequent sale of closely held stock, there will be a stock purchase agreement setting forth the proposed terms and conditions of sale. The Foundation cannot join in or participate in the issuance of warranties and representations and in indemnification agreements.
- D. Notwithstanding any other provision hereof, the committee shall not accept any gifts of closely held stock or other business interests for addition to a donor advised fund (DAF) that would subject the Foundation to tax under the "excess business holding" rules of section 4943 of the Internal Revenue code. In general, these include any proposed gift that would result in the DAF holding a 20% or greater interest in an entity (generally, a corporation, sole proprietorship, partnership, joint venture, trust or other actively conducted business) when combined with any ownership interests held by the DAF's disqualified persons (e.g. donors, donor advisors and related persons and entities). Any such gifts shall be referred to

the Foundation's counsel for an opinion on the possible application of Code section 4943. Ownership of unincorporated businesses that are not substantially related to the Fund's purposes is also prohibited.

## Closely-Held Securities Acceptance Checklist

### Donor is responsible to complete the following:

- Provide written communication of intent of gift.
- After discussion of the gift with Community Foundation legal counsel, obtain information about the company, including some or all of the following:
  - proof of business entity or business structure,
  - a description of the nature of the company's business and its prospects for profitability,
  - the company's audited financial statements for the three most recent fiscal years,
  - copies of the company's Articles of Incorporation, Bylaws, and corporate minutes and securities books, or appropriate agreement,
  - review of the company's most recent income tax returns,
  - a review of any existing or potential environmental issues involving the company and its assets,
  - an opinion letter from the company's attorney concerning legal existence, authority, subsidiaries, litigation, and other such matters reasonably requested by the Community Foundation,
  - a recent appraisal of the company,
  - whether there has been any market in the company's securities in the last three years,
  - the number of outstanding shares of securities/units and who owns them,
  - information regarding the condition of the business and whether there are factions among shareholders or disputes within the company,
  - whether there are any procedures for valuing the securities on a periodic basis
  - whether the company pays any dividend, and if so, the amount currently being paid, and
  - assurance in writing that in accepting the proposed gift of securities the Community Foundation will not become a majority shareholder in the company, that the donor and the Community Foundation together will not have a controlling interest, and that the Community Foundation assumes no liability in receiving the securities.
- Agree, in writing, on arrangements for paying all expenses associated with the acceptance of the gift, including, but not limited to appraisal fees and attorney fees; and understanding that donor will pay for related expenses even if gift is not accepted.
- Prepare appropriate instruments which are necessary to transfer the securities to the Community
- Foundation. All proposed transfer instruments must be reviewed by the Community Foundation's legal counsel prior to acceptance by the Community Foundation.
- Provide assurance that the fund will have adequate cash to pay administrative fees, either from the investment itself or from further contributions from the donor.
- Provide documentation of any shareholder, buy-sell, or other agreements that impose any restriction or limitations upon the sale or transfer of the securities. Community Foundation legal counsel shall review such documentation.

- Obtain qualified appraisal complying with IRS regulations for the purpose of establishing the value of the gift for federal income tax purposes and for Community Foundation valuation purposes. (IRS regulations require an appraisal to be made between 60 days before the date of the gift and not later than the due date of the tax return on which the deduction is being claimed.) Advise the donor that the Community Foundation will not establish or corroborate the value of any property for the purpose of substantiating the donor's income tax charitable deduction. The IRS has stated that when valuing securities of closely-held corporations or the securities of corporations where market quotations are either lacking or too scarce to be recognized, all available financial data; as well as all relevant factors affecting the fair market value, should be considered. The following factors, although not all-inclusive, are considered fundamental key factors and require careful analysis in each case:
  - the nature of the business and the history of the enterprise from its inception,
  - the economic outlook in general and the condition and outlook of the specific industry in particular,
  - the book value of the securities and the financial condition of the business,
  - the earning capacity of the company,
  - the dividend-paying capacity,
  - whether or not the enterprise has goodwill or other intangible value,
  - sales of the securities and the size of the block of securities to be valued, and
  - the market price of securities of corporations engaged in the same or similar line of business having their securities actively traded in a free and open market, either on an exchange or over-the-counter.
- Prior to transfer of the closely-held securities to the Community Foundation, the donor and the Community Foundation will sign a standard fund agreement, or other form of fund agreement that has been approved by legal counsel to the Community Foundation. The agreement must state the terms of the gift and specify that there are no material restrictions on the Community Foundation's right to use or convey the property. The Community Foundation will not guarantee or pre-arrange a sale or make any other agreement that might imply or cause a material restriction to be imposed upon the contribution.

**Community Foundation is responsible to complete the following:**

- Make determination if gift of closely-held securities is in the best interest of the Community Foundation. The Community Foundation may refuse any offered gift of closely-held securities that is not in the best interest of the Community Foundation.
- Engage corporate attorney to review and prepare papers as necessary.
- Research likelihood of selling the closely-held securities. If the closely-held securities are not readily marketable at the time of the gift but appears to have a reasonable prospect to be sold or converted into income-producing property in the future, the executive director and/or the Investment Committee may determine the length of time to hold the gift.
- Evaluate whether acceptance of the closely-held securities may result in adverse tax consequences, such as UBIT, to the Community Foundation.
- Obtain approval by Community Foundation Governance Committee to accept gift.
- Advise the donor that if the property listed on IRS Form 8283 is sold, liquidated, or otherwise disposed of within three years of receipt, the Community Foundation is required to file a separate report with the IRS on IRS Form 8282 and disclose facts about the disposition.

- Sell closely-held securities. In negotiating the sale of the closely-held securities, a fair market value (price per share) will be established at the time of sale. No warranty is given by the Community Foundation that the valuation will be acceptable to the IRS. In some cases, the Community Foundation may obtain an independent appraisal of the value of the securities prior to agreeing to a proposed sale of the securities. In many cases, upon the subsequent sale of closely-held securities, there will be a securities purchase agreement setting forth the proposed terms and conditions of sale. The Community Foundation cannot join in or participate in the issuance of warranties, representations, or indemnification agreements.
- If the Community Foundation disposes of the closely-held securities within three years of the date of the gift and the gift is valued at more than \$500 as documented on IRS Form 8283 by the donor, IRS Form 8282 must be filed within 125 days of date of disposition (See IRS Form 8282 instructions and IRS Form 8283 instructions).

## Real Estate Acceptance Checklist

### Donor is responsible to complete the following:

- Provide a written communication of intent of gift.
- Provide legal description of property, including description of any building or structures located on the land.
- Obtain completed boundary survey of property with location of all structures and easements appearing on the face of the survey.
- Agree, in writing, on arrangements for paying all expenses associated with the property, including, but not limited to:
  - taxes and assessments,
  - appraisal fees,
  - survey fees,
  - environmental evaluations,
  - insurance coverage (including title insurance),
  - maintenance costs,
  - realtor commissions,
  - legal fees,
  - and understanding that donor will pay for related expenses if gift is not accepted.
- Have qualified appraisal performed according to IRS guidelines for valuation of the gift for donor's tax purposes and for Community Foundation valuation purposes. Appraisal must be completed no more than 60 days before the date of the gift.
- Obtain General Warranty Deed (guarantees clear title).
- Obtain commitment to provide title insurance from an acceptable title insurance company showing status of title to property. Evidence of title showing property is owned free and clear—supply title search. If mortgage exists on property, must supply information (bargain sale rules apply to donor's deduction).
- Provide a qualified recent Phase I Environmental Assessment. Obtain Phase II sampling if any "recognized environmental conditions" were identified in Phase I.

- Provide information regarding existing zoning status.
- Prior to transfer of title, the donor and the Community Foundation will sign a standard fund agreement, or other form of fund agreement that has been approved by legal counsel to the Community Foundation.
- Agreement must state the terms of the gift and specify that there are no material restrictions on the Community Foundation's right to use or convey the property.

**Community Foundation is responsible to complete the following:**

- Physically observe the real estate.
- Engage corporate attorney to review and prepare papers as necessary.
- Obtain copy of leases, if any.
- Obtain assignment of leases, if any.
- Obtain copy of service or management contracts, if any.
- Research likelihood of selling property within one year.
- Evaluate whether acceptance may result in adverse tax consequences (UBIT, transfer tax).
- Obtain approval by Community Foundation Governance Committee to accept gift.
- Record deed with county clerk's office (fee to record deed).
- Obtain title, property, and liability insurance.
- Sign Form 8283 for donor's tax return.
- File Form 8282 within three years of the date of gift.
- If necessary, investigate listing property with a realtor and negotiate final sale. Donor should consult their professional advisor before donating property with a pre-existing sales contract, as it could have an impact on the tax treatment of the gift.
- Cancel Community Foundation insurance coverage after property sells