

# Practical Tips for Gift Acceptance Policies and Gifts of Unusual Assets

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Charitable Gift Planners

Katy David

[kdavid@clarkhill.com](mailto:kdavid@clarkhill.com)

210-250-6122

Brad Fletcher

[bfletcher@clarkhill.com](mailto:bfletcher@clarkhill.com)

214-651-4418

CLARK HILL | Strasburger

ClarkHill.com

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# The Case for a Gift Acceptance Policy

ac•cept•ance  
/ak'septəns/

Noun

1. the action of consenting to receive or undertake something offered.<sup>i</sup>

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# The Case for a Gift Acceptance Policy

All gifts are *not* created equal.

- Different gift vehicles have different financial value to an organization.
- An in-kind gift's impact varies from one organization to another.

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# The Case for a Gift Acceptance Policy

The decision about what gifts to accept rests with an organization's Board of Directors, not with the development team. A Gift Acceptance Policy relieves the development team of decision-making responsibility and allows them to focus on cultivation and stewardship.<sup>ii</sup>

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## A Good Gift Acceptance Policy:

- Supports the organization's core mission.
- Ensures that only authorized solicitations are made in an organization's name.
- Compliments Gift Agreements entered into for in-kind gifts, restricted gifts, and gifts with naming rights.
- Is developed deliberately.

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## A Good Gift Acceptance Policy Supports the Core Mission.

It permits the organization to effectively and efficiently accept gifts that further its core mission and permits the organization to decline gifts that are not in accordance with its core mission.

- What is the organization's mission?
- Does the proposed gift support it?

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## A Good Gift Acceptance Policy Supports the Core Mission.

- Do the benefits of the gift exceed the cost of accepting the gift?
- What is the cost to maintain or sell the gift?
- Does holding or selling the gifted asset create liability?

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## A Good Gift Acceptance Policy Supports the Core Mission.

If, on balance, a gift does not support the core mission:

- Development staff is able to defer to an established policy (and a higher power).
- If the potential donor understands the organization's evaluation process and concerns, he will be more receptive to the organization's need to decline the gift.<sup>iii</sup>

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## A Good Gift Acceptance Policy Ensures that Only Authorized Solicitations are Made.

Caveat: a policy does not need to prohibit all but an enumerated list of gifts. While it should indicate whether certain gifts should be declined outright, it may provide that certain gifts are permitted with leadership approval, including approval at various levels.

A stated approval requirement cues development staff to begin the approval process in a timely manner, permits the terms of the gift to be shaped throughout the cultivation process, and helps development staff manage its resources.

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## A Good Gift Acceptance Policy Ensures that Only Authorized Solicitations are Made.

An organization that regularly uses in-kind gifts in direct performance of its mission should have a policy that describes permitted in-kind gifts in detail.

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## A Good Gift Acceptance Policy Ensures that Only Authorized Solicitations are Made.

If a particular type of gift requires evaluation, the Gift Acceptance Policy should indicate how the evaluation will be made.

- Issues to consider.
- Checklists of documents to review in making a decision.
- Whether outside advice is needed.<sup>iv</sup>

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## A Good Gift Acceptance Policy Ensures that Only Authorized Solicitations are Made.

The policy should set a minimum gift to establish a restricted fund and provide that if the fund endowment falls below a certain threshold, the restriction will be lifted.

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## A Good Gift Acceptance Policy Compliments Gift Agreements

A Gift Acceptance Policy speeds the process of closing gifts. By thinking through potential issues in connection with the Gift Acceptance Policy, making decisions about how to handle those issues, and identifying who is authorized to make decisions, an organization can close unusual (and last-minute) gifts more quickly.<sup>v</sup>

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## A Good Gift Acceptance Policy Compliments Gift Agreements

The Gift Acceptance Policy provides standards and promotes consistency. Individual Gift Agreements can be more specifically tailored.

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## A Good Gift Acceptance Policy Compliments Gift Agreements

Naming rights (including term, and renaming) can be separately negotiated as part of a gift agreement.

Un-naming rights should be set out in Gift Acceptance Policy.

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## A Good Gift Acceptance Policy is Developed Deliberately

The policy should be approved by the Board of Directors, and the Board should bring its fiduciary attention to all parts of the policy.

The focus of a Gift Acceptance Policy is to protect the organization from bad gifts and to facilitate the solicitation and evaluation process.

All other functions (stewardship, accounting, fundraising ethics, etc.) should be included mindfully and with caution and, ideally, will be addressed elsewhere.<sup>vii</sup>

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## A Good Gift Acceptance Policy is Developed Deliberately

To facilitate Board attention, keep the gift acceptance policy lean.

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# A Good Gift Acceptance Policy is Developed Deliberately

## **Example of Extraneous Language:**

“The Planned Giving Committee shall consist of a Chair and up to twelve (12) additional members, to be determined by the Chair and Director of Planned Giving. The Chair of the Development Committee will be an ex officio member of the Planned Giving Committee. The Planned Giving Committee shall advise on decisions regarding Organization’s planned giving program. These decisions include the language of various gift documents and trusts, minimum sizes of gifts, minimum ages for life income beneficiaries, and gifts to be accepted. Committee members shall serve for terms of three years and may be reappointed for up to two additional terms.”

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## A Good Gift Acceptance Policy is Developed Deliberately

### **More Examples of Extraneous Language:**

“Organization is required to file IRS Form 8282 if property is sold within three years after the date of gift. All IRS forms requiring execution by Organization will be signed by the CFO.”

“For campaign and other reporting purposes, Organization shall use the National Committee on Planned Giving Guidelines for Counting Gifts. To evaluate Organization’s planned giving program and to compare the relative value of various planned gift approaches, Organization shall use the National Committee on Planned Giving Valuation Standards for Charitable Planned Gifts.”

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## A Good Gift Acceptance Policy is Developed Deliberately

Additions to or deletions from the policy should be done with an eye towards the entire document.

### **Example 1:**

"Section 1. DISCLAIMER. Each prospective donor shall be informed that Organization does not provide legal, tax, or financial advice. Organization's representatives will not discuss specific tax information with donors.

....

Section 20. Gifts in Kind. ...Donors shall complete Internal Revenue Service Form 8283 for any gift valued at \$5,000 or more."

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## A Good Gift Acceptance Policy is Developed Deliberately

Additions to or deletions from the policy should be done with an eye towards the entire document.

### **Example 2:**

“Organization recognizes its primary responsibility is to the Organization community and will always remain cognizant of the donor’s needs and desires.”

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# A Good Gift Acceptance Policy is Developed Deliberately

A Gift Acceptance Policy is not a simply wish list.

## **Example**

“Organization offers charitable gift annuities for a minimum amount of \$20,000 and a minimum age of 60 years. Organization also offers deferred gift annuities.”

What about:

- 1) Minimum funding requirements?
- 2) Notice to Texas Department of Insurance?
- 3) Written notice to donor required by state law?
- 4) Compliance with applicable law of other states?
- 5) Written information required by federal law?
- 6) Administration of the annuity?

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## A Good Gift Acceptance Policy is Developed Deliberately

- Thoroughly address who can decide to accept and how the gift will be evaluated, not simply what gifts are acceptable.<sup>viii</sup>
- The policy should be reviewed periodically to ensure that it is expansive and restrictive enough to meet the organization's current needs.
- The policy should reflect hard-earned wisdom for prior experience with complex or difficult gifts.

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# Gifts of Unusual Assets

## Closely Held Business Interests

### Issues to Consider:

- Will the organization be subject to liability?
- Will the organization be subject to capital calls?
- Will the organization be subject to put/call rights?
- Do transfer restrictions make the interest illiquid?
- Will the organization be subject to UBIT?
- How does the investment fit into the organization's overall portfolio?
- Does the interest create reputational risk?

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# Gifts of Unusual Assets

## Real Estate

### Issues to Consider:

- Has the property been insured?
- Have all ad valorem taxes been paid?
- Does the property have environmental or other liability?
- Is title "clean"?
- Can the organization use or sell the property within a reasonable period of time?
- Is the property debt-financed?

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# Gifts of Unusual Assets

## Intellectual Property

### Issues to Consider:

- What to do with donated intellectual property?
  - License? Direct use? Sale?
- Deduction rules unique; donee should be aware of them *because*:
  - Ongoing compliance by donee – Form 8899 reporting “Qualified Donee Income”
  - Lack of understanding causing possible donor relations issues
    - **Timing** of donation can be crucial
- Issues with donation agreements:
  - Non-deductible partial interests
  - Expectation or receipt of a benefit in exchange for the transfer

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## Gifts of Unusual Assets

### Cryptocurrency

Many organizations are hesitant to accept crypto-currency:

- They do not understand it.
- They do not know what to do upon receipt.
- They are concerned over legality.
- They are concerned about tax compliance obligations upon receipt and over time.

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# Gifts of Unusual Assets

## Cryptocurrency

The tide may be turning:

- More and more organizations *are* accepting it.
- Younger donors want to use it for charitable giving.
- Payment processors have made it easy and inexpensive to accept—including charging lower fees (or no fees) for cryptocurrency donations.
- Blockchain promotes transparency by allowing donor to track use of donations in real time.

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# Gifts of Unusual Assets

## Cryptocurrency

### Deduction Rules:

- Cryptocurrency is property for federal tax purposes.
- Deductions for property in excess of \$500 requires IRS Form 8283, which must be signed by donee.
- Deduction for property in excess of \$5,000 requires a “qualified appraisal” unless the property is “readily valued property.”

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# Gifts of Unusual Assets

## Cryptocurrency

Unclear whether cryptocurrency is “readily valued property:”

- It’s not a “publicly traded security.”
- AICPA recommends that it be classified as readily valued property as prices are readily available on established exchanges.
- SEC Chairman declared that SEC does not treat it as a security.

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## Gifts of Unusual Assets

### Cryptocurrency

An organization that accepts donated cryptocurrency and signed Form 8283 must file Form 8282 if it disposes of the cryptocurrency within 3 years unless either:

- (1) Cryptocurrency is valued at \$500 or less; or
- (2) Cryptocurrency is used for exempt purposes.

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## Gifts of Unusual Assets Cryptocurrency

Do an organization's cryptocurrency sales give rise to UBTI?

- UBTI does not include gains from sale, exchange, or disposition other than inventory and stock in trade.
- BUT debt-financed cryptocurrency remains an issue.

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# Gifts of Unusual Assets

## Cryptocurrency

Non-tax considerations include risk of loss:

- Loss of value
- Loss due to internal mistakes making cryptocurrency unrecoverable
- Loss from cyberthreats

Are these losses insurable?

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# Gifts of Unusual Assets

## Cryptocurrency

Non-tax considerations include legal and reputational risk:

- Regulation by New York Department of Financial Services
- Risk of receiving donations from ill-gotten gains

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# Gifts of Unusual Assets

## Cryptocurrency

Suggested policies and procedures:

- Gift acceptance policy should address cryptocurrency.
- If accepting, determine whether it will be held or immediately liquidated.
- If held, best practice for security is offline “cold storage.”

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# Footnotes

- i. Google.com, “def: acceptance” (2021).
- ii. Katherine Swank, “Why You Need Gift Acceptance Policies: How Thoughtful Planning about Non-Cash Gifts Can Improve Your Donor Relationships,” *available at* [https://www.blackbaud.com/files/resources/downloads/WhitePaper\\_WhyYouNeedGiftAcceptancePolicies.pdf](https://www.blackbaud.com/files/resources/downloads/WhitePaper_WhyYouNeedGiftAcceptancePolicies.pdf).
- iii. Barbara Rhomberg, “Gift Acceptance Policies—Why, When, What, How, and Who,” Charitable Gift Planning News, Vol. 25, No. 3 (March 2007), *available at* [http://www.adlercolvin.com/pdf/planned\\_and\\_charitable\\_giving/Gift\\_Acceptance\\_Policies\\_\(00072793\).pdf](http://www.adlercolvin.com/pdf/planned_and_charitable_giving/Gift_Acceptance_Policies_(00072793).pdf).
- iv. Rhomberg, *supra* note iii.
- v. *Id.*
- vi. *See* Swank, *supra* note ii.
- vii. Rhomberg, *supra* note III.
- viii. *Id.*