

Gift Acceptance Policy

Approved by the ACF Board of Directors on November 13, 2019

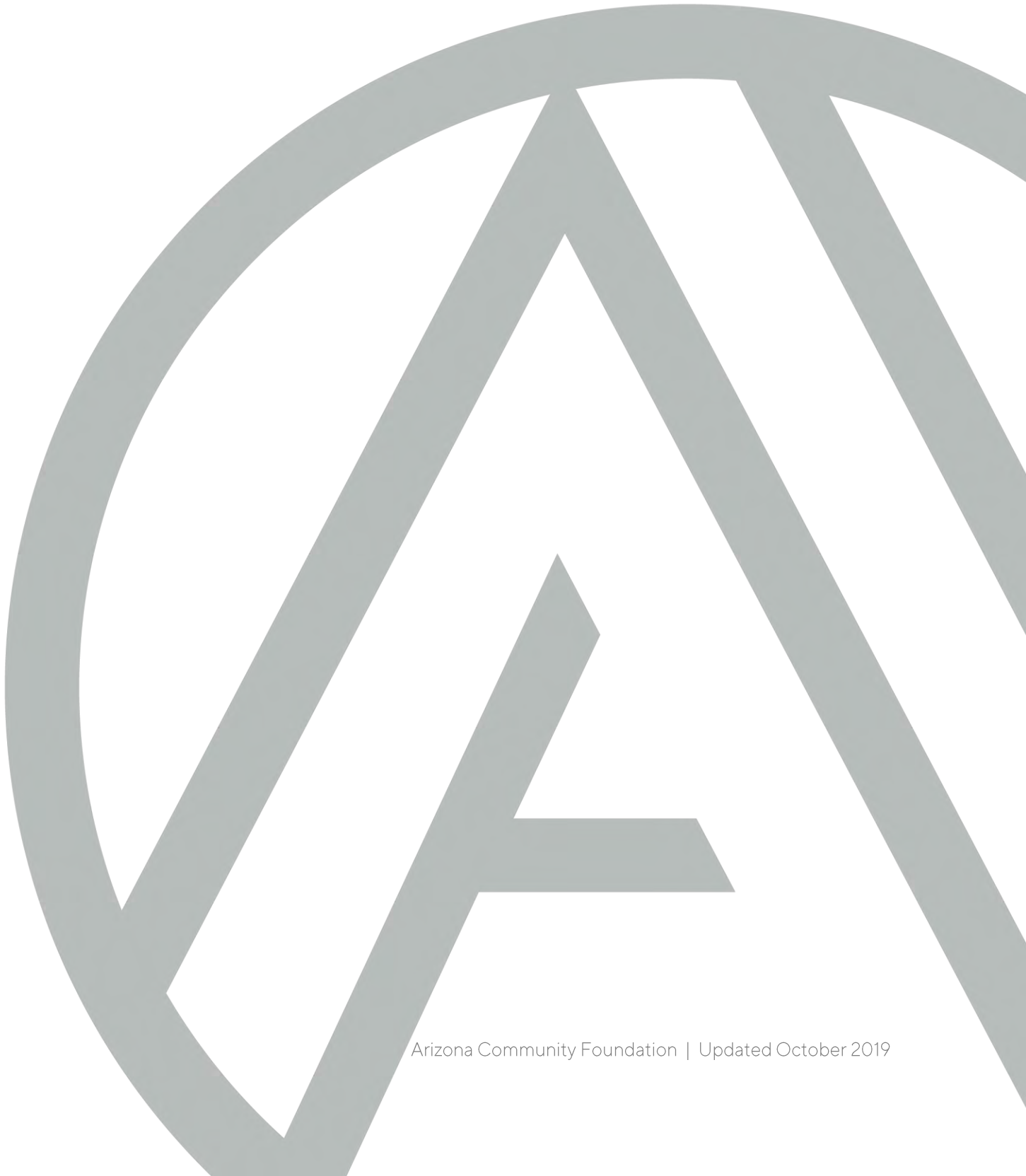


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PART 1: GIFT ACCEPTANCE POLICIES - GENERAL

1. *Purpose of Gift Acceptance Policy*

The Arizona Community Foundation (ACF) Board of Directors (Board) encourages the ACF staff (staff) to actively solicit current and deferred gifts to ACF from individuals, businesses, nonprofits, and other foundations to secure the future growth and mission of ACF (Appendix A). It is the Board's directive that management maintain adequate staff and resources for a fully effective asset development program. All programs, solicitation plans, and activities shall be subject to the oversight of the Board.

The purpose of this Gift Acceptance Policy (this Policy) is to govern the acceptance of gifts by ACF. The provisions of this Policy shall apply to all irrevocable gifts received by ACF for any of its programs, initiatives, educational activities, or philanthropic services. This Policy may be used to assist donors and their advisors in their planning. The provisions of this Policy are implemented in the sole discretion of the persons designated in this Policy and in consultation with the Board as needed.

2. *Purpose of Gift to ACF*

a. Honoring Donor Intent

Honoring donor intent is a fundamental value of ACF. ACF endorses and subscribes to the Donor Bill of Rights (Appendix B) and the Model Standards and Practice for the Charitable Gift Planner (NACGP) (Appendix C). ACF is certified in compliance with the National Standards for U.S. Community Foundations™ (Appendix D) and follows all applicable laws.

Gifts that establish new funds will be accompanied by a fund agreement or gift agreement that is signed by the donor or his or her appointed representative and ACF's chief executive officer (CEO), the chief operating officer (COO), chief financial officer (CFO), or chief philanthropy officer (CPO) (Executive Staff). In the case of a planned gift that is not shared with ACF prior to the gift's maturity, and where the Executive Staff was not in a position to sign an agreement, the donor's intent as expressed in writing signed by the donor will be honored if the gift is accepted in accordance with this Policy and provided the restrictions follow the guidelines set forth in this Policy.

b. Purpose Restrictions on Gifts

The purpose of all gifts must fall within ACF's broad charitable purposes and be consistent with its stated mission, values, and priorities. All gifts are subject to ACF's Variance Power.¹

¹ **Variance Power:** Article VIII, Section 1, Subsection a. of ACF Bylaws – Component Funds and Variance Power. With respect to all component funds of the Community Foundation, whether expressly granted in any fund agreement, document or communication with any donor; [t]he Community Foundation shall have the power to modify any restriction or condition on the distribution of funds for any specified charitable purposes or to specified charitable purposes or to specified organizations if in the sole judgment of the governing body (without the necessity of the approval of any participating trustee, custodian, or agent), such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served.

ACF will not accept gifts with purposes that:

- Fall outside of the charitable purpose and mission of ACF;
- When implemented, violate law or regulations, or that jeopardize ACF's Section 501(c)(3) status;
- Are unduly burdensome or outside the scope of ACF's capacity;
- Disclaim ACF's Variance Power; or
- Would require ACF to violate accepted standards and best practices in philanthropy or would conflict with its Board-adopted grantmaking strategies, policies (including ACF's Anti-Discrimination Policy), or values.

Whether a potential gift's purpose makes it unacceptable in accordance with these standards shall be evaluated at the time a gift is being considered for acceptance.

3. *Restrictions on Funds*

In making a gift to ACF, donors give up all rights, titles, and interests to the assets contributed in accordance with the Internal Revenue Code (IRC) and Treasury Regulations. However, they may make recommendations regarding the ongoing management of the gifted property. Staff is authorized to review the donor-requested restrictions on proposed gifts and determine whether the restrictions are consistent with ACF's mission and whether the gift would be overly burdensome to administer. Any agreements regarding donor requested restrictions will be in writing and may be subject to legal review.

a. Donors may Recommend (but not Require)

- The retention of gifted assets;
- That gifted property be liquidated over an extended period of time to maximize value and ultimate community benefit;
- The engagement of a specific management company, realtor, or other service provider for property gifts; or
- The engagement of a specific investment manager to manage the assets in the funds they establish (Externally Managed Funds). If the size of a fund warrants consideration, ACF will give due consideration to such recommendations, but in any event all investment decisions will ultimately be made by ACF in accordance with its investment policies and oversight of the Investment Committee.

See ACF's Externally Managed Funds Standards and Guidelines for more information.

b. Prohibited Material Restrictions

In conformance with Treasury Regulations² applicable to community foundations, gifts to ACF may not be subject to any material restriction or condition that prevents ACF from freely and effectively employing the transferred assets or the income derived therefrom, in furtherance of its exempt purposes.

² Treas. Reg. Section 170A-9(e)(11)

ACF will not accept a gift if the donor:

- Requires as a condition of the gift that ACF retain donated investment assets;
- Requires as a condition of the gift that ACF engage particular brokers, managers or investment advisors to manage the gift or its proceeds;
- Requires as a condition of the gift that the income or principal of the gift be distributed to a particular individual or organization (unless the gift is to a designated fund for an existing, qualified Section 501(c)(3) public charity identified by the donor in the gift instrument); or
- Reserves the right to control any aspect of the management, disposition, or distribution of the gift or the fund created with the gift (though non-binding advice and recommendations may be provided in connection with gifts to advised funds and scholarship funds).

4. Responsibilities to Prospective Donors

a. Discussing Gift Consequences

Staff should discuss with prospective donors the advantages of making a gift to ACF. Donors will be encouraged to consult with legal counsel and financial/tax advisors of their choice in matters relating to their gifts, at the donor's expense. This is to ensure that the donor receives a full, accurate, and independent explanation of all aspects of the proposed charitable gift and remind donors that ACF cannot give them legal or tax advice.

The role of staff shall be to inform, guide, and assist a donor in fulfilling his or her philanthropic goals, but never to unduly influence a donor's decision. In particular, donors should be made aware of:

- The irrevocability of a gift;
- ACF's discretion and control over all gifts received (and the fact that material restrictions or retained donor control over gifts are prohibited under IRC and Treasury Regulations);
- ACF's Variance Power;
- Anticipated administrative fees, and the fact that such fees may change from time to time;
- Any legal, accounting, or appraisal costs related to their contributions are assumed by the donor. It is the donor's responsibility to obtain any necessary appraisals, file appropriate personal tax returns, and defend against any challenges to claims for tax benefits. For tax reasons, and to avoid conflicts of interest, ACF will not agree to assume these donor expenses and will not pay for the services of professionals that donors engage to advise them;
- Potential impact of market forces and variability (market value, investment return, and income yield);
- Depending on the complexity of the issues pertaining to a proposed gift, ACF may seek legal review by ACF's counsel, which may delay the gift acceptance process.

b. Confidentiality

Confidentiality regarding all gifts, discussions with donors about potential gifts, and the gift review process will be strictly maintained, subject to legally authorized and enforceable requests for information by government agencies and courts. Any confidential or non-public information

shared by donors in connection with their discussions with staff about potential gifts shall remain confidential and shared only if permission is obtained from the donor prior to the release of such information.

In some cases, donors may require/request staff to sign a non-disclosure agreement (NDA). In those cases, the NDA shall be approved by a member of the Executive Staff prior to signing and a signed copy should remain on file at ACF.

c. Conflict of Interest

Proposed gifts that involve transactions with persons or related parties who have a direct or indirect financial interest and where personal benefit may occur, or be perceived to occur, will be evaluated by staff and the GAC to ensure compliance with IRC, Treasury Regulations, and industry standards. Any person making a gift to ACF must disclose the existence of a potential conflict of interest along with sufficient facts for the transaction or arrangement to be properly evaluated. A conflict of interest, real or perceived, does not necessarily rule out a successful gift transaction but mitigating steps may then be proposed to bring the transaction within acceptable legal and industry standards.

ACF's Conflict of Interest and Confidentiality Policies guide staff, Board, and the GAC, and are available upon request.

d. Filings on Sale of Gifted Assets

Staff is responsible for informing the donor of the requirement of, and of filing, IRS Form 8282 upon ACF's sale or disposition of any asset within three years of receipt by ACF when the charitable deduction value of the gift is more than \$5,000. ACF must file IRS Form 8282 within 125 days of the date of sale or disposition of the asset.

5. *Gift Acceptance Authority*

a. Gift Acceptance Committee (GAC)

A Gift Acceptance Committee (GAC) shall be appointed by the Board and must include the CEO and at least two members of the Board, including one who is a member of the Special Assets Committee. The GAC is guided by its Committee Charter (Appendix F), which is reviewed annually by the GAC. The primary responsibilities of the GAC shall be to review proposed gift transactions specified in this Policy.

The GAC may accept any gift on behalf of ACF, provided the gift complies with this Policy. It may also make exceptions to this Policy and approve acceptance of gifts that ACF would not normally accept. Certain categories of gifts, described in Part 1: Section 7 below, may only be accepted following review and approval by the GAC.

The GAC shall have the authority to propose additional gift acceptance policies and/or modifications to this Policy, subject to approval by the Board or its designee.

The GAC also has the authority to review and approve, in consultation with staff, ACF's Gift Acceptance Committee Procedures (Procedures). The Procedures may be updated from time to time by staff with GAC approval outside of the Gift Acceptance Policy review process.

b. Acceptance by Staff

Any gift that does not require GAC review under Part 1: Section 7 below may be accepted by staff, provided the gift complies with this Policy.

Gift agreements that involve a complex planned gift may be negotiated by any Executive Staff, Senior Vice President, Planned Giving and Advancement (SVPPGA), senior director, senior philanthropic advisor, regional director, and consultant retained by ACF for this purpose, following program guidelines approved by the Board. Any negotiated agreements must be approved by a member of the Executive Staff.

Gifts requiring immediate action, e.g., gifts on December 31, or pending sale of property, may be exempted from full GAC review if, in the judgment of the CEO, in consultation with the GAC Chair (or her/his designee), the gift may be accepted without reservations and in no way jeopardizes ACF's tax-exempt status.

c. Criteria Used To Assess a Proposed Gift

In reviewing proposed gifts to ACF, the GAC and/or staff will consider the following criteria:

- The charitable purpose, donor intent and ultimate community benefit of the proposed gift;
- Expected holding period for the gifted asset and other liquidity considerations;
- Liability exposure;
- The nature of any restrictions;
- Whether the gift is to an endowed or spendable fund and, in the case of a spendable fund, the amount of time the fund will remain with ACF;
- Projected costs of managing the gifted asset; and
- Fee revenues to ACF for administering the gift.

ACF reserves the right to refuse any gift that it deems is not in its best interest.

The CEO, or any employee to whom the CEO has delegated this authority, or the GAC is authorized to decline or disclaim any gift that is inconsistent with this Policy, including any gift that:

- Would impose a disproportionate administrative burden on ACF;
- In the CEO's or GAC's judgment poses undue risk of liability to ACF; or
- Would be detrimental to ACF's standing in the community or effectiveness in carrying out its mission.

6. *Gifts That Can Be Accepted without GAC Review***a. Direct Gifts**

Gifts received in the following forms and that adhere to this Policy may be accepted by staff:

- Cash or cash equivalents, including gift by check, credit card, and electronic transfer;
- Marketable securities;
- Qualified Charitable Distributions from IRAs (See Part 2: Section 3c);
- Pledges;

- Precious metals, where the value is easily established and the asset is able to be readily liquidated;
- Gifts of life insurance policies that meet this Policy's specified criteria (see Part 2: Section 1d);
- Gifts of tangible personal property for use in ACF's offices or programs;
- Restricted stock in public companies (Rule 144 and 145), provided the COO/CFO determines it can be sold promptly without a blockage discount; and
- Repeat gifts of assets previously accepted by the GAC where there are no material changes to the gift or gift circumstances.

b. Planned Gifts

Staff may enter into the following planned gifts without review by the GAC (unless the nature of the asset to be distributed or the restrictions on the gift require approval by the GAC under this Policy):

- Accepting trusteeship of a newly created charitable remainder trust (CRT) that complies with this Policy, or accepting additional contributions to a Charitable Remainder Unitrust (CRUT) (See Part 2: Section 3c);
- Entering into a charitable gift annuity (CGA) agreement that complies with this Policy (See Part 2: Section 3c);
- Agreeing to be named successor trustee to a donor's revocable trust where ACF is the sole beneficiary of the trust estate;
- Accepting a gift of an income interest in a CRT (See Part 2: Section 3c);
- Accepting a gift of income distribution from a Charitable Lead Trust (CLT) (See Part 2: Section 3c); and
- Accepting distributions from matured planned gifts, including bequests, distributions from revocable trusts, distributions from retirement plans, proceeds from life insurance policies, savings bonds given through a will or trust, commercial annuities, remainder distributions from CRTs with external trustees.

7. *Gifts Requiring GAC Review*

Unless otherwise specified, gifts described within this section must be reviewed and approved by the GAC prior to acceptance by ACF. GAC review is required, not only for direct gifts but also for any planned gift where ACF will take title (e.g., non-cash gifts to CRTs, for which ACF serves as a trustee, or received as a bequest from an estate).

a. Direct Gifts

Certain gifts require GAC review because of the nature of the donated asset. For these non-cash assets, the GAC will consider any actual or potential costs or liabilities involved with owning or disposing of the asset. These assets (many of which are elaborated on in Part 2: Section 1 below) include:

- Accounts receivable (gifts of loans, promissory notes, mortgages, etc.);
- Closely held business interests or securities (including S corporation stock, pre-IPO stock in any non-public company, partnership interests, LLC interests);

- Forms of cryptocurrency;
- Restricted stock in public companies with any lock-up periods or unusually large blocks of shares if the chief operating/financial officer (COO/CFO) determines that ACF might need to sell shares over time;
- Interests in private investment funds (including hedge funds, private equity or debt funds, and real estate or real assets funds);
- Gifts of life insurance policies;
- Oil, gas, and mineral interests;
- Real property;
- Tangible personal property (fine art, jewelry, collectibles, etc.) that is not for use in ACF's offices or its programs;
- Intellectual property; and
- Any other asset that is not listed in this policy as being within the CEO's and/or staff's authority to accept without GAC review.

b. Planned Gifts

The following planned gifts and transactions must be reviewed by the GAC:

- Any bargain sale in which ACF agrees to provide some payment in return for the gift (other than a charitable gift annuity transaction in compliance with this Policy) (See Part 2: Section 3c);
- Accepting trusteeship of any trust that is not either a Charitable Remainder Trust (CRT) per the criteria in the Part 2: Section 3c or a donor's revocable trust where 100% of the assets are to be distributed to ACF;
- Any agreement under which ACF agrees to accelerate or terminate an existing CRT or other trust agreement of which it is a beneficiary (other than acceptance of a gift of the remaining income interest in a CRT); and
- Entering into any planned gift arrangement that requires an exception to the approved planned giving policies.

8. *Gifts ACF Will Not Accept*

a. Direct Gifts

ACF will not accept the following gifts:

- Time shares;
- Animals;
- Automobiles, motorcycles, airplanes, boats, or other vehicles;
- Cemetery plots;
- Conservation and historic preservation easements; or
- Any asset that would be illegal per applicable law.

The GAC may make exceptions on a case-by-case basis.

b. Planned Gifts

ACF will not enter into the following planned gift arrangements:

- Charitable Reverse Split Dollar Agreement (per IRC and Treasury Regulations);
- Life Settlements and Viaticals³;
- Serving as trustee of a Charitable Lead Trust or any trust which would create an inherent conflict of interest for ACF; or
- Gifts to pooled income funds.

The GAC may make exceptions on a case-by-case basis.

9. *Use of Legal Counsel*

ACF may seek the advice of legal counsel in matters relating to the acceptance of gifts when appropriate. Approval to use legal counsel will be given by Executive Staff or the SVPPGA. ACF's legal counsel will likely be called upon to:

- Review closely-held business transfers that are subject to restrictions or buy-sell agreements;
- Review documents naming ACF as trustee;
- Review ACF naming commitments as part of a gift agreement;
- Review gifts involving contracts, such as bargain transactions requiring ACF to assume an obligation (except for charitable gift annuity agreements and fiscal sponsorship agreements that adhere to the counsel-approved form without alteration);
- Review any transactions with potential conflict of interest that may invoke penalties under IRC or Treasury Regulations; and
- Review any other gift or transaction when requested by staff or the GAC.

Contracts that use a pre-vetted template will not require additional review by counsel unless material changes are made to the terms.

10. *Pass-Through Gifts*

ACF will consider a pass-through gift to an eligible charity that is described in IRC Sections 170(b)(1)(A) and 170(c) – in other words, a charity that may itself receive tax-deductible charitable contributions under the contribution limits that apply to gifts to ACF. Grants of pass-through gifts will be subject to the same standards of review and due diligence to which all grants made from ACF are subject.

³ A viatical settlement is a lump sum of cash given to terminally ill persons (viators) in exchange for the death benefits of their life insurance. ACF will not accept gifts of life insurance involving arrangements where a third party, other than the donor or someone related to the donor, owns a policy on another's life, such as life settlements or viaticals, or any arrangement that may appear to circumvent established rules against this practice. A life settlement involves the sale of a life insurance policy to institutional investors for an amount greater than the cash surrender value.

If ACF agrees to accept such gift and make such a grant, an administrative service fee, in accordance with the ACF administrative fee schedule then in effect, will be applied to and deducted from the total value of the assets received by ACF and the balance will be granted immediately.

11. Acknowledgement

Accepted gifts will be acknowledged by staff in accordance with applicable law and National Standards for U.S. Community Foundations™ (Appendix D).

12. Establishing Fund by Converting a Private Foundation

Section 507 of the Internal Revenue Code permits the termination of a private foundation and the distribution of its assets to a public charity, such as ACF. Converting a private foundation into a donor advised fund, supporting organization, or other ACF fund type can relieve donors or their children from the administrative burden of managing a private foundation, while allowing them to continue as participants in philanthropy. When terminating a private foundation, the private foundation's legal counsel should guide the private foundation through the termination process.

If the private foundation holds any restricted funds that were donated for particular charitable purposes or if its governing instruments establish a restricted charitable purpose, ACF will use the assets for similar purposes, consistent with donor intent; if ACF determines it cannot honor the purpose, ACF will decline the assets. ACF will not accept assets subject to material restrictions, and ACF must have full control over all assets contributed to its funds in accordance with IRC and Treasury Regulations.

PART 2: CRITERIA FOR SPECIFIC ASSET AND PLANNED GIFT TYPES

1. *Direct Gifts*

ACF seeks to liquidate gifts of complex assets as soon as possible so that the gift can benefit the community in accordance with the donor's charitable goals. However, ACF recognizes that some contributions of illiquid assets will be held because they cannot be immediately liquidated. This may apply to the asset types described below and the following conditions apply to acceptance of such assets:

- The minimum gift of illiquid assets is \$100,000; however, gifts less than that minimum will be evaluated on an individual basis for growth potential, risk, and cost of administration.
- A special administrative fee may be applied to these assets and the donor may be required to make a gift of liquid assets to cover the administrative fees. To the extent that an ACF fund does not have sufficient liquidity, gift and administrative fees will accrue to the cash balance of the fund and will be repaid at liquidation or when cash generated from the asset is contributed to the fund (e.g., lease payments). ACF's goal is to liquidate all illiquid assets within five years of receipt. If the assets are not liquidated within a five-year period, ACF reserves the right to collect cash contributions from the donor to cover newly accrued annual fees beginning in year six, until such time as the asset is liquidated. "Back fees" for years one through five will generally remain as a liability of the fund, and will be settled upon liquidation of the asset.
- Regardless of asset type, any out-of-pocket expenses directly associated with receiving and liquidating gifts (such as brokerage fees, taxes, credit card discounts, etc.) may be recovered by ACF directly from the gift proceeds, before those net proceeds are credited to the fund designated by the donor. Any administrative fees that have accrued will also be recovered from the liquidated proceeds.
- If trailing costs associated with holding and liquidating a gift are received or discovered after the transfer of sale proceeds to a fund, ACF will have authority to deduct the associated expenses from the fund.

a. Closely-Held Business Interests

ACF will accept gifts of business interests described below subject to the separately documented Procedures for Review of Business Interests Gifts. In accepting gifts of business interests, ACF will consider whether an opportunity to convert the business interests into liquid assets via sale, redemption, or other method of liquidation can be anticipated within a reasonable period of time.

In addition, rules regarding income tax deductions for charitable gifts of these business interests require a qualified appraisal by an independent appraiser as determined under the IRC and Treasury Regulations, and such an appraisal provided by the donor will be required by ACF. The appraiser and the donor will both have to complete and sign IRS Form 8283.

- **Closely-Held Stock**

ACF accepts gifts of closely-held stock. ACF also accepts S Corporation stock on a case-by-case basis.

- **LLC and LP Interests**

ACF accepts gifts of membership interests in limited liability companies (LLC) and gifts of limited partnership interests in limited partnerships (LP). ACF normally does not accept gifts of general partnership interests.

Gifts of an LLC or other closely-held business structure containing one primary asset type (e.g., real estate) will require ACF to apply both this section and the section in this Policy that covers the underlying asset type.

Closely-held securities, including debt and equity positions in non-publicly traded companies, as well as interests in limited liability partnerships (LLPs), limited liability companies (LLCs), and similar ownership structures are subject to approval of the GAC. Such gifts will be reviewed for any restrictions on the transfer of the securities to third parties.

Donors considering a gift of closely-held stock should not enter into a prior written sales agreement with either the closely-held corporation or a potential third-party purchaser. The IRS may assert the Step Transaction Doctrine⁴ and deny the donor reduction in capital gains tax. ACF's acceptance of these gifts will depend in part on the possibility of financial liability and an assessment of the effort involved in managing the gifted asset prior to their sale.

Acceptance of general partnership interests or other positions whereby ACF could become contingently liable financially or otherwise (e.g., capital calls, operating expenses, environmental remediation) will normally not be allowed.

- **Excess Business Holdings**

A Donor Advised Fund's holdings in a business enterprise will be aggregated with those of its donors, Fund Advisors, their family members, and 35% controlled entities to determine whether the regulatory allowed threshold (a 20% ownership interest) has been exceeded. If the threshold for holdings in business enterprises has been exceeded and the excess business holdings are not divested within the required time period, significant excise taxes will be imposed on the Donor Advised Fund by the IRS. Refer to Appendix E for a more comprehensive explanation of the Excess Business Holdings Rule as set forth in Sections 1233 and 1243 of the Pension Protection Act of 2006 (PPA).

- b. **Real Property**

ACF accepts gifts of real property, including developed property, undeveloped property, residential and commercial property, partial interests, or gifts subject to a life estate interest.

- Gifts of real property should be transferred in the form of membership interests in an LLC that holds title to the real property. Therefore, policies above pertaining to gifts of closely-held business interests will apply as well.
- In evaluating a proposed gift of real property, ACF will consider whether an opportunity to liquidate the asset can be anticipated within a reasonable period of time.

⁴ **Step Transaction Doctrine:** A doctrine in tax law treating a series of separate but related transactions as a single transaction and the tax liability may be based on that transaction rather than the individual transactions in the series.

- Gifts of real property in Arizona should result in a contribution to ACF of at least \$100,000. Gifts of real property outside Arizona should result in a contribution of at least \$500,000.
- Unencumbered real property owned by a single donor, spouses, or entity will be evaluated at fair market value as established by at least one qualified appraisal provided by the donor. Properties with multiple owners will require agreement in writing to make the gift by all owner parties. Evidence of clear title to the property must be provided by the donor to the GAC.
- Real property that is encumbered in any way (e.g., mortgages, liens, encumbrances) will be accepted only in exceptional circumstances. The GAC will take into consideration any benefits the donor may receive from gifting encumbered real property (such as release of personal guarantees on loans secured by the real property).
- Prior to acceptance of a gift of real property, ACF and the donor must agree, in writing, on arrangements for paying expenses associated with the property, including taxes and assessments, easements, insurance coverage, and maintenance costs. Agreements for gifts subject to a life interest should also identify the rights and obligations of each party with respect to the property during the term of the life interest.
- In order to avoid potential liability for environmental cleanup and toxic and hazardous materials issues related to real estate, ACF typically requires inspection, provided by the donor, through an environmental assessment of all proposed gifts of real property and assets related to real property.
- In addition to the considerations listed above, commercial properties will be examined in relationship to the potential for exposure of ACF to developer or landlord liability and unrelated business taxable income.

Further details related to the required documentation for gifts of real property will be provided upon request.

c. Oil, Gas and Mineral Interests

Prior to acceptance of an oil and gas interest, the gift shall be approved by the GAC. The GAC will not consider working interests. Other factors to be considered include:

- Any extended liabilities;
- Whether property is subject to any existing leases;
- Value of surface rights;
- Minimum per year royalty; or
- Any current or potential exposure to environmental liability or cleanup or restoration obligations under relevant law.

Unless the surface interests (i.e., real property) and the subsurface interests (i.e., oil, gas and mineral interests) have been bifurcated, gifts of oil, gas and mineral interests will also be deemed to be real property gifts. As such, the policies above pertaining to gifts of real property will also apply.

d. Life Insurance Policies

Given the variety of life insurance policy types, each insurance policy is reviewed based on its particular circumstances. Because of the complexity in completing a gift of life insurance, ACF recommends that donors and their insurance advisors consult with ACF representatives early in the gift planning process. ACF does not provide insurance advice.

Understanding that there are many types of life insurance products available, this Policy addresses only the most basic types. As part of the GAC review, other types may be considered.

- Types of Life Insurance for Direct Gifts
 - Whole Life Insurance products;
 - Universal Life Insurance products; and
 - Term Life Insurance products (in some instances where the donor may be locking in insurability for future conversion to a permanent insurance product).
- General criteria the GAC will consider for a new policy being established and gifted to ACF as sole owner and sole beneficiary:
 - Age of the insured;
 - Face value of the policy;
 - A new policy sales illustration that carries the policy to at least age 105;
 - For Whole Life policies, if the carrier allows, the dividend-crediting rate should be shown at the current level AND at 0.75% below the current crediting rate.
 - For Universal Life policies, the illustration should show the current crediting rate AND the guaranteed rate with current charges.
 - For other types of insurance, the illustration should show a net rate of 5%.
 - If not a single premium policy, the frequency and duration of the premium payments; and
 - Company rating with A.M. Best, Weiss, Standard & Poor, Moody, Alirt, Comdex, etc.
- Additional general criteria the GAC may consider for a currently in-force policy being gifted and re-issued to ACF as owner and beneficiary:
 - Is the policy is in force?
 - Is the policy paid up or are premium payments due?
 - It is unlikely that ACF would accept a policy that has a loan encumbrance that finances premiums through collateralization.
- In order to gift an existing policy valued at \$5,000 or more, the donor will need to have qualified appraisal completed on the policy that complies with IRC and Treasury Regulations. Additionally, the donor will be asked to provide an “in force” statement illustrating interpolated terminal reserve (ITR) value or letter from the carrier reflecting the ITR value, which may be different than the policy’s cash surrender value.

- Types of Life Insurance for Legacy Gift Commitments (because these gifts are revocable, the GAC will not necessarily review):
 - Whole Life Insurance products;
 - Universal Life Insurance products; and
 - Term Life Insurance.
- The donor is responsible for the unpaid policy premiums and there is an annual administrative fee to service the policy. Refer to ACF's current fee schedule.
- Should donor contributions not cover the premiums and the administrative fee, ACF may, at its sole discretion, use the cash surrender value of the policy to make the premium payment and cover the administrative fee. ACF may in its sole discretion surrender the policy or allow a policy to lapse if a donor fails to make sufficient or timely contributions.
- To achieve the donor's philanthropic goals, upon death or surrender of the policy (for any reason), the proceeds from the policy may establish a new fund or contribute to an existing fund at ACF established by donor. Such funds are governed by a signed fund agreement and its corresponding terms and conditions. If no such fund is established, the proceeds from the policy will be added to the Richard A. Whitney Fund for the Common Good in the donor's name.

e. Tangible Personal Property that is not for Use in ACF's Offices or its Programs

Tangible personal property not for ACF's use may be accepted by staff after prior approval of the GAC. Gifts will be sold at the highest possible price as soon as possible after ACF's receipt. No commitment will be made to keep gifts of personal property. ACF discourages gifts of personal property which cannot readily be sold or which require unusual expenses prior to sale. If a lengthy selling period is anticipated, ACF may ask the donor to cover such expenses with a cash gift.

f. Intellectual Property

ACF may accept gifts of intellectual property (IP) including, but not limited to, patents, royalties or distribution rights on published works (such as books, films or music) where there is clear evidence of marketability or assurance of an income stream. GAC will consider donor's IP holding vehicles, terms of IP, treatment as additional contribution, reduction in additional deductions, qualified donee income, allocation of qualified donee income to taxable years of donor, and the 10-year limitation on IP rights.

g. Promissory Notes

Donors may make gifts to ACF of promissory notes under which they are due money as the "holder" of the promissory note.

When assessing whether to accept a promissory note, the GAC will consider the following factors:

- Any security;
- The nature and amount of the security;
- Any guarantees;
- Collectability and projected cash flows;
- Presence of a qualified appraisal; and
- Potential conflicts of interest.

ACF will not accept a promissory note whose payments are in arrears or subject to collection activities.

When a promissory note's present value is \$100,000 or more, the promissory note may be credited to a new, named component fund at ACF. The fund may be treated as an advised, designated, scholarship, field of interest, or unrestricted fund as requested by the donor. Grants may be made only from income generated by the payments of principal and interest of the promissory note (and the donor may gift additional assets to the fund) provided the fund's documented present value remains at least \$100,000.

In cases where the promissory note's present value is less than \$100,000, the donor may direct the contribution to an existing, named component fund at ACF or combine the promissory note with other assets sufficient to bring the total present value of the contribution to at least \$100,000.

h. Cryptocurrency

ACF may accept gifts of cryptocurrency after due diligence is performed on the type and source of the cryptocurrency and to determine that the gifted cryptocurrency is able to be transferred and liquidated. Given the nature of cryptocurrency and the constantly changing accounting rules related to it, staff, under the GAC's guidance and approval, will develop additional procedures and requirements related to ACF's acceptance of this asset type.

i. Other Assets not Specifically Listed

Other property not otherwise described in this Policy, whether real or personal, of any description must be reviewed and approved by the GAC.

2. Appraisal Requirements

The IRC and Treasury Regulations on appraisal requirements are detailed and critical to a donor's gift. While obtaining a statutorily qualified appraisal is most assuredly the donor's obligation, it will serve no positive purpose for ACF to sign off on an IRS Form 8283 and have the donor fail an audit because of an improper appraisal. ACF is best served by assisting donors by pointing them in the direction of current statutory requirements. If staff can redirect them toward correct appraisal standards, staff should do so. See IRS Publication 561 and IRS guidance in the Federal Register on 7/30/2018 at <https://federalregister.gov/d/2018-15734>.

Types of Gifts Requiring Appraisals:

- In-kind Gifts valued at \$5,000 or more (except for publicly traded stock);
- Real property;
- Tangible personal property;
- Collections (which may be valued as a unit);
- Intellectual property;
- Artwork (which has special appraisal requirements);
- Vehicles (special rules apply);
- Insurance policies;

- Restricted securities;
- Business interests;
- Promissory notes; and
- Cryptocurrency.

ACF will not pay for the cost of the donor's appraisal, although ACF may elect, at its own expense, to conduct its own appraisal. ACF may assist donors by referring them to qualified appraisers.

Gifts requiring appraisals generally take longer to complete, not only because of the appraisal process but also because of the GAC's review of the appraisal. ACF may elect to decline a gift if the GAC determines, in its sole discretion, that the appraisal would not meet appropriate IRS scrutiny.

3. *Planned Gifts*

ACF's planned giving program encompasses all gifts in which benefits do not fully accrue to ACF until some future time (such as the death of the donor or other income beneficiaries or the expiration of a predetermined period of time).

a. Charitable Purpose of Planned Gifts

A planned gift may be an unrestricted gift to ACF's Richard H. Whitney Fund for the Common Good, or used to create or add to any type of fund at ACF. A donor's will, trust, or other relevant documents should specify ACF as the charitable recipient and, if applicable, name the testamentary fund agreement (TFA) on file with ACF in which the donor indicates the fund(s) and/or purpose for which the gift should be used. The most recent TFA on file will replace all previous versions. ACF encourages donors who make planned gifts to execute a TFA during their lifetime to ensure the donors' wishes are clearly conveyed to ACF. If the donor does not execute a TFA with ACF, the donor should simply indicate the purpose for which the gift should be used in their will, trust, or other relevant legal instrument of conveyance, or identify an existing fund at ACF into which the gift should be placed.

All planned giving agreements requiring execution by ACF, including the TFA, shall first be reviewed by ACF's legal counsel. However, each agreement need not be reviewed provided it is based on a prototype agreement that has been reviewed and approved.

Any planned gift to establish a new fund at ACF must meet the applicable fund minimum at the time the gift matures. Because the amount ultimately realized by ACF from planned gifts may vary, all gift instruments that direct ACF to create a new fund should include contingent instructions in the event the applicable minimum is not met.

Donors making testamentary gifts should consult staff to make sure the terms of the gift will be acceptable. Staff may advise a donor regarding a potential planned gift, but any such advice will be accompanied by an oral and/or written recommendation that the donor consult his or her professional advisors.

b. Planned Gift Recognition

ACF Legacy Donors are individuals or couples who 1) designate a gift to ACF through a will, trust, or other planned gift or 2) make a direct gift, with a one time or cumulative value of \$10,000 or more to an endowed fund held at ACF. With the donor's permission, Legacy Donors may be listed as such in ACF's Annual Report.

c. Types of Planned Gifts

- **Bequests from Wills and Trusts**

ACF will not act as trustee in the administration of a trust or executor of an estate upon the death of a donor. Exceptions will be considered in select circumstances when, in the judgment of the GAC, the interests of ACF will be best served.

Through their TFA or other written instruction, a donor may request that ACF make a grant to another nonprofit organization immediately upon receipt of a matured planned gift to ACF. This will be addressed in accordance with the Pass-through Gift policies set forth above in Part 1: Section 10.

- **Charitable Remainder Trusts (CRTs)**

ACF will accept gifts of the remainder interest in a variety of CRTs, including standard unitrusts (CRUTs), net income CRUTs, net income with a makeup provision CRUTs, Flip CRUTs, and charitable remainder annuity trusts (CRATs). Staff may provide information on vendors providing administrative and tax reporting services upon request from donors or professional advisors.

CRTs for which ACF may serve as trustee

ACF may serve as a trustee of a CRT when:

- a. (i) If the term is based on the life of an income beneficiary, the income beneficiary is age 55 or older; or
(ii) If the term is fixed, the term is no more than 20 years; and
- b. The assets initiating the trust are valued at a minimum of \$300,000; and
- c. ACF is named as irrevocable remainder beneficiary, for endowment purposes, for a minimum of 50% of the remaining assets; and
- d. If ACF is named as a co-trustee with an individual or trust institution, there is an approved agreement by the parties involved as to the respective roles of each trustee; and
- e. In any other circumstance and, in the judgment of the GAC, the interests of ACF will be best served.

Trustee fees will be assessed annually in accordance with ACF's fee schedule then in effect.

CRTs for which ACF is not serving as trustee

Upon notification that a donor is establishing or has established a CRT where ACF is named an irrevocable beneficiary, but not trustee, the donor will be asked to provide a copy of the trust agreement and submit annual statements for valuation purposes.

CRT acceleration

An income beneficiary of a CRT may wish to accelerate or terminate the CRT in a variety of ways. If ACF is an irrevocable beneficiary and trustee of the CRT, the following guidelines apply:

- a. ACF may accept a gift from the income beneficiary of a CRT of his or her remaining income interest. This will cause the CRT to terminate through the Doctrine of Merger since ACF will then own all of the interests in the CRT⁵.
- b. ACF may enter into an agreement to accelerate both the income interest of the income beneficiary as well as ACF's remainder interest by dividing the assets according to the actuarial interests of the beneficiaries.

- **Charitable Lead Trusts (CLTs)**

ACF may accept an irrevocable designation as income beneficiary of a CLT. When a donor sets up a CLT where ACF is named irrevocable beneficiary, the donor will be asked to provide a copy of the trust agreement and submit annual statements for valuation purposes.

ACF does not serve as trustee for CLTs and will not accept an appointment as trustee of a CLT.

- **Retirement Assets**

Naming ACF as a successor beneficiary

ACF may accept gifts naming it as successor beneficiary of a donor's retirement plan. When possible, Staff will provide the donor with language to provide in their beneficiary designation forms that includes the following information: Arizona Community Foundation, Federal EIN 86-0348306, located at 2201 E Camelback Road, Ste 405, Phoenix, AZ 85016, and the purpose of the bequest.

Qualified Charitable Distribution (formerly Individual Retirement Account (IRA) Charitable Rollover)

The Protecting Americans from Tax Hikes (PATH) Act of 2015 permanently allowed individuals age 70½ and older to direct up to \$100,000 per year from an IRA directly to a qualifying charity.

A direct charitable IRA rollover may fulfill all or part of the donor's required minimum distribution without requiring the distribution to be reported as taxable income, so long as the transfer is made directly from the IRA administrator to ACF. Under current law, distributions to DAFs, supporting organizations, and split interest gifts, such as CRTs and

⁵ **Doctrine of Merger:** In trust law, this doctrine is used to mix both equitable and legal titles if a person becomes the sole beneficiary and sole trustee of a trust. Pursuant to such doctrine, a trust is deemed to be terminated. Consequently, the beneficiary owns the trust property outright. USLegal.com

CGAs, do not qualify for this favorable treatment. However, distributions to ACF Funds for the Common Good as well as Designated, Scholarship, Collaborative, Field of Interest, or special project funds do qualify for this favorable treatment.

- **Charitable Gift Annuities (CGAs)**

ACF will issue charitable gift annuities but only under conditions described below.

The annuity contract is a general obligation of ACF. ACF may employ agents and advisors to facilitate the investment/administration of annuity assets.

- a. The gift annuity residuum/remainder must be placed into an endowment fund at ACF.
- b. ACF abides by the Uniform Annuity Rates as published by the American Council on Gift Annuities; although donors may elect a lower rate, these rates will not be exceeded.
- c. Disclosure to the donor must follow state and federal regulations. ACF is not registered to enter into charitable gift annuity contracts in all states.
- d. The minimum gift for an annuity agreement is \$25,000.
- e. Agreements may provide for income payments to no more than two successive life beneficiaries.
- f. With the exception of a Deferred Payment Gift Annuity, the minimum age of income beneficiaries shall be 55 years. Deferred Payment Gift Annuities should begin annuity payments after age 55. In times when the AFR is extremely low, the minimum age may need to be older than 55.

- **Bargain Sale**

ACF will consider a Bargain Sale when the asset being proffered is deemed to be readily liquidable and/or when the asset being offered has a related use for ACF. The type of asset – e.g., real estate, tangible personal property, etc. – will follow the guidelines for acceptance of that type of asset as set forth in this Policy.

CERTIFICATE OF ADOPTION

The foregoing Gift Acceptance Policy was approved and adopted by the Board of Directors of the Arizona Community Foundation on November 13, 2019.

By:



Leezie Kim, Secretary

APPENDIX A



ACF Mission & Core Values

Mission

To lead, serve, and collaborate to mobilize enduring philanthropy for a better Arizona.

Core Values

Exceptional Service. We Serve and amaze our clients, nurturing lifelong relationships that span the generations.

Stewardship. We safeguard donor intent in perpetuity, ensuring the resources entrusted to us are protected and invested in positive, sustainable outcomes for our communities.

Integrity. We earn the trust of those we serve by operating ethically and transparently, honoring our commitments, and showing courtesy and respect in all aspects of our work.

Innovation. We demonstrate and welcome creativity, resourcefulness, and ingenuity. We invite and encourage new ideas, pioneering practices, and inventive methods for achieving community good.

Nimbleness. We are flexible, responsive, open to creative strategies and unusual requests, and able to take prompt action.

Inclusion. Our strength is found in our differences. We believe diverse voices, engagement, and participation are essential to building and sustaining thriving communities.

Collaboration. We believe in the transformative power of partnerships around shared passions and objectives. We encourage and celebrate teamwork, pooling of resources, open communication, and trust.

APPENDIX B

The Donor Bill of Rights was created by the Association of Fundraising Professionals (AFP), the Association for Healthcare Philanthropy (AHP), the Council for Advancement and Support of Education (CASE), and the Giving Institute: Leading Consultants to Non-Profits. It has been endorsed by numerous organizations.

Donor Bill of Rights

PHILANTHROPY is based on voluntary action for the common good. It is a tradition of giving and sharing that is primary to the quality of life. To assure that philanthropy merits the respect and trust of the general public, and that donors and prospective donors can have full confidence in the nonprofit organizations and causes that they are asked to support, we declare that all donors have these rights:

- I. To be informed of the organization's mission, of the way the organization intends to use donated resources, and of its capacity to use donations effectively for their intended purposes.
- II. To be informed of the identity of those serving on the organization's governing board, and to expect the board to exercise prudent judgment in its stewardship responsibilities.
- III. To have access to the organization's most recent financial statements.
- IV. To be assured their gifts will be used for the purposes for which they were given.
- V. To receive appropriate acknowledgement and recognition.
- VI. To be assured that information about their donation is handled with respect and with confidentiality to the extent provided by law.
- VII. To expect that all relationships with individuals representing organizations of interest to the donor will be professional in nature.
- VIII. To be informed whether those seeking donations are volunteers, employees of the organization or hired solicitors.
- IX. To have the opportunity for their names to be deleted from mailing lists that an organization may intend to share.
- X. To feel free to ask questions when making a donation and to receive prompt, truthful and forthright answers.

APPENDIX C



Model Standards of Practice for the Charitable Gift Planner

A code of ethical practice for all professionals who work together to structure gifts that balance the interests of the donor and the purposes of the charitable institution.

Preamble

The purpose of this statement is to encourage responsible gift planning by urging the adoption of the following Standards of Practice by all individuals who work in the charitable gift planning process, gift planning officers, fund raising consultants, attorneys, accountants, financial planners, life insurance agents and other financial services professionals (collectively referred to hereafter as "Gift Planners"), and by the institutions that these persons represent. This statement recognizes that the solicitation, planning and administration of a charitable gift is a complex process involving philanthropic, personal, financial, and tax considerations, and as such often involves professionals from various disciplines whose goals should include working together to structure a gift that achieves a fair and proper balance between the interests of the donor and the purposes of the charitable institution.

I. Primacy of Philanthropic Motivation

The principal basis for making a charitable gift should be a desire on the part of the donor to support the work of charitable institutions.

II. Explanation of Tax Implications

Congress has provided tax incentives for charitable giving, and the emphasis in this statement on philanthropic motivation in no way minimizes the necessity and appropriateness of a full and accurate explanation by the Gift Planner of those incentives and their implications.

III. Full Disclosure

It is essential to the gift planning process that the role and relationships of all parties involved, including how and by whom each is compensated, be fully disclosed to the donor. A Gift Planner shall not act or purport to act as a representative of any charity without the express knowledge and approval of the charity, and shall not, while employed by the charity, act or purport to act as a representative of the donor, without the express consent of both the charity and the donor.

IV. Compensation

Compensation paid to Gift Planners shall be reasonable and proportionate to the services provided. Payment of finders fees, commissions or other fees by a donee organization to an independent Gift Planner as a condition for the delivery of a gift are never appropriate. Such payments lead to abusive practices and may violate certain state and federal regulations. Likewise, commission-based compensation for Gift Planners who are employed by a charitable institution is never appropriate.

V. Competence and Professionalism

The Gift Planner should strive to achieve and maintain a high degree of competence in his or her chosen area, and shall advise donors only in areas in which he or she is professionally qualified. It is a hallmark of professionalism for Gift Planners that they realize when they have reached the limits of their knowledge and expertise, and as a result, should include other professionals in the process. Such relationships should be characterized by courtesy, tact and mutual respect.

VI. Consultation with Independent Advisors

A Gift Planner acting on behalf of a charity shall in all cases strongly encourage the donor to discuss the proposed gift with competent independent legal and tax advisors of the donor's choice.

VII. Consultation with Charities

Although Gift Planners frequently and properly counsel donors concerning specific charitable gifts without the prior knowledge or approval of the donee organization, the Gift Planners, in order to insure that the gift will accomplish the donor's objectives, should encourage the donor, early in the gift planning process, to discuss the proposed gift with the charity to whom the gift is to be made. In cases where the donor desires anonymity, the Gift Planners shall endeavor, on behalf of the undisclosed donor, to obtain the charity's input in the gift planning process.

VIII. Description and Representation of Gift

The Gift Planner shall make every effort to assure that the donor receives a full description and an accurate representation of all aspects of any proposed charitable gift plan. The consequences for the charity, the donor and, where applicable, the donor's family, should be apparent, and the assumptions underlying any financial illustrations should be realistic.

IX. Full Compliance

A Gift Planner shall fully comply with and shall encourage other parties in the gift planning process to fully comply with both the letter and spirit of all applicable federal and state laws and regulations.

X. Public Trust

Gift Planners shall, in all dealings with donors, institutions and other professionals, act with fairness, honesty, integrity and openness. Except for compensation received for services, the terms of which have been disclosed to the donor, they shall have no vested interest that could result in personal gain.

Adopted and subscribed to by the National Committee on Planned Giving and the American Council on Gift Annuities, May 7, 1991. Revised April 1999.

APPENDIX D



National Standards for Community Foundations

Revised July 29, 2014

1. Meeting the Definition of a Community Foundation

A community foundation is a tax-exempt, nonprofit, autonomous, nonsectarian philanthropic institution supported by the public with the long-term goals of:

- Building permanent, component funds established by many separate donors to carry out their charitable interests;
- Supporting the broad-based charitable interests and benefitting the residents of a defined geographic area, typically no larger than a state; and
- Serving in leadership roles on important community issues.

2. An Independent Board that Reflects the Community

A community foundation has an independent governing body that ensures that the community foundation reflects and serves the breadth and diversity of the community.

3. Foundation Control over Component Funds

A community foundation's governing body retains variance power by which it may modify any restriction or condition on the distribution of assets, if circumstances warrant. Further, with respect to assets held in trust, the governing body must have the power to replace any participating trustee for breach of fiduciary duty.

4. Advance the Foundation's Mission, Strategy, and Policies

A community foundation's governing body is responsible for the mission, strategic direction, and policies of a foundation.

5. A Board and Staff that is Responsible for Operational Health

A community foundation's governing body ensures the financial health and sustainability of the foundation by:

- a. Ensuring adequate human and financial resources that are used solely in furtherance of the foundation's mission,
- b. Approving the foundation's budget and monitoring performance related to the budget,
- c. Ensuring sound oversight and transparency of investment and spending policies and practices, and
- d. Holding the foundation's chief executive officer (or equivalent in the case of all-volunteer foundations) accountable for the operations of the foundation.

6. A Board that Approves and Monitors Policies and Grants

A community foundation's governing body approves and monitors policies regulating the ethical operations of the community foundation, ensures that the community foundation meets all legal requirements, and approves all grants.

7. A Board that is Independent

A community foundation's governing body is not controlled by any other nonprofit foundation; by any single family, business, or governmental entity; or by any narrow group within the community it serves.

8. Board and CEO Compensation

A community foundation's governing body oversees a clearly articulated process for board governance and serves without compensation (exclusive of the chief executive officer).

9. A Board with Oversight and Control of Geographic Affiliates

A community foundation's governing body maintains oversight and control over geographic affiliates. A geographic affiliate is a component fund (or collection of component funds), established within or by the community foundation, serving a defined geographic region and under a common advisory group.

10. A Board and Staff Actively Developing Broad Support

A community foundation has, or is actively working to develop, broad support in the form of contributions from many separate, unrelated donors with diverse charitable interests and accepts and administers diverse gift and fund types to meet the varied philanthropic objectives of donors and the needs of the community it serves.

11. The Board Secures Discretionary Resources

A community foundation has a long-term goal of securing discretionary resources to address the changing needs of the community it serves.

12. The Board Demonstrates Legal and Fiduciary Control

A community foundation's governing body has legal and fiduciary control over all contributions received, adopts appropriate gift and fund acceptance policies, and makes these policies available upon request.

13. A Board Oversees Fund Management and Financial Records

A community foundation is a steward of charitable funds, which invests and prudently manages funds and maintains accurate financial records.

14. The Board is Accountable and Transparent about Programs and Finances

A community foundation is accountable to the community it serves and demonstrates this accountability by regularly disseminating information on its programs, finances, investment, and spending policies.

15. The Foundation Maintains Fund Records

A community foundation maintains a written record of the terms and conditions of each component fund and all applicable records must reference the variance power.

16. Board and Staff Honors Donor Intent and the Law

A community foundation honors the charitable intentions of its donors, consistent with community needs, and maintains a balance between donor involvement and governing board control, in accordance with all applicable laws and regulations.

17. The Board Has and Makes Public the Annual Audit

A community foundation has an annual audit (or financial review, when assets total less than \$5 million) that is performed by an independent public accountant, reviewed and accepted by the governing body, and made available to the public upon request.

18. The Board Oversees Diverse Grantmaking

A community foundation operates a broad grants program to multiple grantees that is not limited by mission to a single focus or cause or exclusively to the interests of a particular constituency, and widely disseminates grant guidelines to ensure the fullest possible participation from the community it serves.

19. The Board's Discretionary Grants Respond to Community Needs

A community foundation awards some grants from its discretionary resources through open, competitive processes that address the changing needs of the community.

20. The Community Foundation Oversees Grantmaking Due Diligence

A community foundation performs due diligence to ensure that grants will be used for charitable purposes and assesses the impact of its grantmaking.

21. The Board Oversees Donor Education and Engagement

A community foundation educates and engages donors in identifying and addressing community issues and grantmaking opportunities.

22. Foundation Provides Gift Acknowledgement and Fund Statement for Donors

A community foundation promptly and accurately acknowledges gifts and provides fund statements, at least annually, to those donors who wish to receive them.

23. Privacy and Confidentiality

A community foundation keeps all private information obtained with respect to donors and prospects confidential to the fullest extent possible. If a community foundation uses an online giving portal, it must ensure that it protects donor data, honors donor intent, and discloses any transaction fees.

24. The Board Displays Community Leadership

A community foundation identifies and addresses community issues and opportunities. It strives to serve in leadership roles, including convening, and to assess the impact of its community leadership.

25. The Board Oversees Social Media and Communications

A community foundation communicates openly and transparently on a regular basis. If social media is used by employees or in foundation communications, the community foundation develops a social media policy.

26. The Board Oversees Advocacy and Lobbying Activities

When involved in advocacy or lobbying activities, a community foundation ensures it is in compliance with applicable federal and state regulations.

APPENDIX E



Excess Business Holdings Rule for Donor Advised Funds and Supporting Organizations

Summary: Sections 1233 and 1243 of the Pension Protection Act of 2006 make the private foundation excess business holdings rule (IRC §4943) applicable to donor-advised funds and supporting organizations.

Effective date: Tax years beginning after date of enactment (August 17, 2006). This will be January 1, 2007 for calendar-year taxpayers. However, the transition rules for existing holdings will apply only to assets held on the date of enactment.

Applicability to donor-advised funds: The excess business holdings rule is applicable to donor-advised funds. The statute is clear that it is only the donor-advised fund, not the sponsoring charity that is to be treated as a private foundation. Accordingly, the Council does not believe that this provision affects assets held by the sponsoring charity's investment pools, or assets held by funds that are not donor-advised.

Applicability to supporting organizations: The excess business holdings rule will apply to Type III supporting organizations unless they are "functionally integrated." It will also apply to Type II supporting organizations if the supported organization is controlled by the supporting organization's donors. It does not apply to Type I supporting organizations.

The Hershey Trust, and any other Type III supporting organization that held assets as of November 18, 2005 on the direction of a state attorney general or other official with jurisdiction over the organization, is exempt. Other Type IIIs may seek an exemption based on a determination by the Secretary of the Treasury that the organization's holdings are consistent with the purpose or function that constitutes the basis for its exemption.

Application of the excess business holdings rule. The excess business holdings rule requires that the holdings of a donor-advised fund (or supporting organization), together with the holdings of persons who are disqualified persons with respect to that fund (or supporting organization), in a business enterprise may not exceed:

- Twenty percent⁶ of the voting stock⁷ of an incorporated business; or
- Twenty percent of the profits interest of a partnership or joint venture or the beneficial interest of a trust or similar entity.

⁶ Thirty-five percent if it can be shown that persons who are not disqualified persons have effective control of the business.

⁷ Additionally, the donor-advised fund (or supporting organization) will be barred from holding non-voting stock of an incorporated business unless the disqualified persons collectively own less than 20 percent of the voting stock.

- Ownership of unincorporated businesses that are not substantially related to the fund's (or supporting organization's) purposes is prohibited.

Donor-advised funds (or supporting organizations) receiving gifts of interests in a business enterprise after the date of enactment will have five years to divest holdings that are above the permitted amount, with the possibility of an additional five years if approved by the Secretary of the Treasury. Funds (or supporting organizations) that currently hold such assets will have a much longer period to divest under the same complicated transition relief given to private foundations in 1969.⁸

Definition of "business enterprise." A "business enterprise" is the active conduct of a trade or business, including any activity which is regularly carried on for the production of income from the sale of goods or the performance of services. Specifically excluded from the definition are:

- Holdings that take the form of bonds or other debt instruments unless they are a disguised form of equity
- Income from dividends, interest, royalties and from the sale of capital assets
- Income from leases unless the income would be taxed as unrelated business income
- "Functionally-related" businesses and program-related investments
- Businesses that derive at least 95 percent of their income from passive sources (dividends, interest, rent, royalties, capital gains). Thus, many family limited partnerships and other types of holding company arrangements are not "business enterprises" and so are not subject to the excess business holdings rule.

Definition of a disqualified person for donor-advised funds. Donors and persons appointed or designated by donors are disqualified persons if they have or reasonably expect to have advisory privileges with respect to the donor-advised fund by virtue of their status as donors. Members of donors and advisors families are also disqualified, but the section does not define "family" and does not cross reference either section 4958 or 4946 for the definition. Finally, the term includes 35 percent controlled entities as defined in section 4958(f)(3).

Definition of a disqualified person for supporting organizations. Disqualified person is defined using the more expansive section 4958 definitions in place of the section 4946 definitions that apply to private foundations and includes organizations controlled by the same person or persons who control the supporting organization and organizations which received substantially all of their contributions from the supporting organization's substantial contributor or related parties.

Impact. The new rule will mainly affect contributions of closely-held businesses and in most cases will require the donor-advised fund (or supporting organization) to dispose of the contributed interest within five years of the date of gift because the disqualified persons will generally own more than 20 percent of the business.⁹ For donor-advised funds, the rule will not apply to assets held by the sponsoring charity, as

⁸ Excess holdings acquired by purchase must be disposed of immediately. If purchases by disqualified persons cause the donor-advised fund (or supporting organization) to have excess holdings, the donor-advised fund (or supporting organization) will have 90 days to dispose of the excess.

⁹ Under the *de minimis* rule, the donor-advised fund (or supporting organization) could continue to hold an interest that did not exceed two percent of the voting stock and two percent of the value.

long as they are not held by the donor-advised fund, apparently permitting a sponsoring charity to keep a contributed asset as part of its overall investment portfolio. It will also not apply to gifts to funds, such as field of interest or designated funds that are not donor-advised.

Because they are not “business enterprises,” the rule will not apply to most gifts of real property. The most important exception will be undeveloped land, which may become a business enterprise if the charity that owns it takes extensive steps to subdivide it and prepare it for sale. Interests in investment partnerships and LLCs, including family partnerships, hedge funds, REITs, and so forth are excluded from the definition of business enterprise as long as 95 percent or more of the entity’s income is from passive sources. Examples of other property gifts that are excluded because they are not business enterprises include oil and gas interests (non-working), life insurance, tangible personal property (as long as it is not inventory), and remainder interests in personal residences and farms.

Existing holdings. The rules that will apply to donor-advised funds (or supporting organizations) holding business interests on August 17, 2006 (date of enactment of HR 4) are quite complex. In Phase 1, donor-advised funds (or supporting organizations) that together with their disqualified persons hold more than a combined 50 percent interest in a business will be required to reduce their combined holdings down to 50 percent, and, in most cases the foundation’s share of the holdings, to 25 percent, in accordance with the following schedule:

- Twenty years if the donor-advised fund (or supporting organization) and disqualified persons collectively own 95 percent or more of the voting or profits interests of a business enterprise
- Fifteen years if the combined total is 75 percent or more, but less than 95 percent
- Ten years if the combined total is more than 50 percent, but less than 75 percent.

Phase II is the fifteen-year period that begins at the end of Phase I. During this period, the combined holdings are limited to 50 percent, but if the disqualified persons’ share is two percent or more, the foundation may own no more than 25 percent of the total. At the end of Phase II, the combined holdings may not exceed 35 percent and the foundation’s share may not be more than 25 percent if the disqualified persons’ share is two percent or more.¹⁰

The information provided here is based on our continuing analysis of the bill. Every effort has been made to ensure accuracy of these documents. However, due to the complexity of the bill and the fact that many of these provisions introduce issues that are new to the Internal Revenue Code, please understand that this information is subject to change. The information is not a substitute for expert legal, tax or other professional advice and we strongly encourage grantmakers and donors to work with their counsel to determine the impact of this legislation on their particular situations. This information may not be relied upon for the purposes of avoiding any penalties that may be imposed under the Internal Revenue Code.

¹⁰ Additional rules apply to cover situations such as mergers, redemptions, and acquisitions.

APPENDIX F



ACF Gift Acceptance Committee Charter

Amended and Restated March 13, 2019

Committee Charge

The Committee's purpose is to review unusual and complex charitable gifts that are being offered to the Corporation and recommend acceptance or rejection of the gift. In making its recommendation, the Committee will consider first and foremost the legal issues involved. The Committee may also consider the social and moral issues, appropriateness, perception, community benefit, permanency, management costs and fee structure.

Authority

The Arizona Community Foundation ("Corporation") Board of Directors authorizes the President/CEO, with approval of the Chair, to form a Gift Acceptance Committee ("the Committee") as an Advisory Committee as described in the Bylaws (Article V Section 9).

Reporting

The Committee is accountable to the Corporation's President/CEO or his/her designee.

Responsibilities

The Committee shall review the following proposed gift transactions:

- Real estate, including retained life tenancies
- Interests in business entities
- Split interest gifts, if funded with assets other than cash or publicly traded securities
- Life insurance policies
- Promissory notes
- Arrangements where the donor receives fees for services to the Corporation
- Tangible personal property or other unusual property
- Gifts to establish funds for a purpose that may fall outside the mission, Bylaws and/or procedures of the Corporation

In reviewing gifts to the Corporation, the Committee and/or staff will consider the following criteria:

- The legal and tax-related issues involved in the transaction and underlying assets
- The social and moral issues as well as community perception
- The charitable intent and ultimate community benefit

- The nature of any restrictions, including the Corporation's path to liquidity, timing and donor intentions regarding liquidation
- The permanency of the gift, or in the case of a non-permanent fund, the amount of time the fund will remain with the Corporation
- Projected costs of managing the gift asset
- Fee revenues to the Corporation for administering the gift

The Committee shall adhere to the Corporation's Gift Acceptance Policy, as adopted by the Board of Directors. The Committee shall have periodically review the Gift Acceptance Policy and may, from time to time, propose modifications thereto.

The Committee shall review and reassess the adequacy of this Charter and the performance of this Committee annually and recommend to the Board of Directors any changes deemed appropriate by the Committee.

Composition

The Committee shall have no fewer than three (3) members who must have expertise in the area of estate law, tax law and public accounting. At least one (1) member must be a Director Member.

Meetings

Meetings are held as needed to review pending gifts to the Corporation and may take place electronically, via conference call or in person as determined by the Committee. The Corporation's staff will provide descriptive materials for the prospective gift(s) as needed for Committee members to exercise their duties under this Charter.

Approved by the Arizona Community Foundation Board of Directors on March 13, 2019.