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December 3, 2018

Legal Alert: Gift Acceptance Policies for Nonprofits

Charitable contributions are the lifeblood of the nonprofit sector, providing vital support for programs and services offered for the good of the public. As charitable giving can give rise to many unique legal issues for organizations and their donors, having an institutional approach to gift acceptance is important, and a well-drafted gift acceptance policy can provide valuable guidance. This legal alert provides an overview of the gift acceptance policy, including why having a policy can be beneficial and key components to consider in a policy to further organizational goals.

What is a gift acceptance policy?

A gift acceptance policy is a set of written guidelines that concern the acceptance of charitable gifts by a nonprofit organization. While not legally required, many nonprofits find that a well-drafted gift acceptance policy can be a valuable tool to assist with meeting multiple goals related to development and fundraising. Internally, a gift acceptance policy can help maintain discipline and educate the board and development staff on legal issues that may arise when accepting gifts. Externally, a gift acceptance policy can help cultivate better relationships with existing and potential donors and manage their expectations appropriately. Like any policy, the gift acceptance policy should be tailored to the organization and be applied in a consistent manner.

Why should my organization adopt a gift acceptance policy?

Education and Discipline

A written gift acceptance policy can help maintain discipline within the organization and educate staff and directors regarding the implications of accepting gifts. Some non-standard gifts may lead to legal obligations that the organization is not otherwise ready to handle. For example, gifts of real property may create property tax or insurance obligations that the nonprofit may not be equipped to deal with on an ongoing basis. Similarly, from a practical perspective the organization may simply not want to hold certain kinds of tangible personal property or other unique gifts, such as older computers, machinery, or artwork. Finally, accepting the gift should be consistent with the organization's mission and purposes, which has implications from a reputational risk management perspective. A clearly written gift acceptance policy can go a long way in helping the organization understand the potential issues underlying gift acceptance and maintain consistency regarding the types and forms of gifts accepted.

Cultivating and Preserving Donor Relationships

Most nonprofits would prefer not to risk offending or alienating a donor by refusing a gift; however, there are many instances in which it may be in the organization's best interest to

decline certain types of gifts. A written gift acceptance policy can help inform donor expectations by educating them regarding the types of gifts that may be acceptable. Donors are likely to be more understanding of a decision if it stems from a previously considered and determined policy, rather than a decision made on an ad hoc basis. In Form 990, Schedule M, the IRS asks nonprofits receiving substantial non-cash gifts to disclose whether a gift acceptance policy has been adopted to review nonstandard contributions. Finally, a written gift acceptance policy is widely considered to be a best practice for nonprofit organizations.

What should the gift acceptance policy address?

The ideal gift acceptance policy should balance flexibility in evaluating potential gifts and the ability to amend the policy for necessary changes as the organization grows over time, while also providing guidelines for maintaining discipline, educating staff, and being clear enough to aid in preserving donor relationships. Below are some key components that an organization may consider including in a gift acceptance policy:

- What is the organization's mission and purpose?
- What is the gift acceptance policy's purpose?
- Legal counsel – in what circumstances should an attorney be retained by the organization and, separately, by the donor (*e.g.*, to review contracts or legal documents or advise on potential conflicts of interest)? Note that the donor should always retain his or her independent counsel or tax advisor with respect to the tax consequences of the charitable contribution.
- Restrictions on gifts – what types of restrictions may the donor impose on a gift?
- Types and forms of gifts – what are the acceptable types of gifts (*e.g.*, cash, securities, tangible personal property, real property) and forms of gifts (*e.g.*, current gifts, bequests, deferred or split interest gifts)? Consider including a statement that gifts that are contrary to or beyond the scope of the nonprofit organization's purpose and mission may not be acceptable.
- Gift Acceptance Committee – who are the individuals within the organization with authority to evaluate and make decisions regarding gifts?
- Appraisals – for contributions requiring any appraisals, who is responsible for obtaining them?
- Tax reporting requirements – describing when the nonprofit organization will self-report or provide information to donors for any required tax reporting.
- Review of the policy – describing the process for periodically reviewing and making any necessary revisions to the policy in light of the organization's mission and purpose.

This alert is meant to provide general information only, not legal advice. Please contact Staff Attorney Bee-Seon Keum at 212-219-1800 ext. 240, bkeum@lawyersalliance.org, or visit www.lawyersalliance.org for further information.

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