

## **COMMUNITY FOUNDATION FOR NORTHERN VIRGINIA GIFT AND FUND ACCEPTANCE POLICY**

**1. Gift and Fund Acceptance Policy Purpose:** The purpose of this policy is to serve the best interests of the Community Foundation for Northern Virginia and its donors by providing guidelines for negotiating and accepting various types of gifts for various types of funds. Given the increasing complexity of IRS regulations and state and federal laws, the Community Foundation recognizes the value in carefully screening proposed gifts. All gifts to the Community Foundation must fall within the broad charitable purpose of the Community Foundation. The Community Foundation's Board and staff must be able to insure that:

- Accepted gifts do not place other assets of the Community Foundation at risk;
- Accepted gifts can be easily converted into assets that fall within the guidelines of the Community Foundation's Investment Policy Statement;
- The Community Foundation can manage and administer all gifts in accordance with the donor's wishes; and
- Accepted gifts do not violate the provisions of any federal, state or local laws.

**2. Responsibilities of the Community Foundation Board of Directors:** The Board of Directors of the Community Foundation is responsible for policy-making and oversight of the Community Foundation's operations. This Gift Acceptance Policy has been adopted by a majority vote of the Board of Directors.

**3. Community Foundation Staff Responsibilities:** Community Foundation staff should make donors award of:

- The irrevocability of a gift;
- Prohibitions on donor restrictions;
- Items subject to variability (market value, investment return, and income yield); and
- The Community Foundation's responsibility to provide periodic financial statements on donor funds.

Community Foundation staff should also inform, guide and assist a donor in fulfilling his or her philanthropic wishes, but never pressure or unduly influence a donor's decision. To the extent possible, Community Foundation staff should encourage donors to make gifts to the Community Foundation without material restrictions.

**4. Investment Committee Responsibilities:** The Board of Directors of the Community Foundation hereby delegates to the Investment Committee of the Community Foundation responsibility for gift acceptance decisions in accordance with this Policy. Approval by a quorum of the Investment Committee members is therefore required for the acceptance of gifts requiring Investment Committee review. The Investment Committee may seek Board or legal advice if it deems it necessary. Gifts that may be accepted by Community Foundation staff and not requiring Investment Committee review include:

- Cash or cash equivalents and checks
- Publicly-Traded Securities and Bonds, which will be immediately liquidated upon receipt and the proceeds reinvested in a manner consistent with the Community Foundation's Investment Policy Statement
- Gifts of personal property for use in Foundation offices or programs

- Life insurance policies not requiring future premium payments by the Community Foundation
- Bequests, assuming such bequests do not contain gifts of the sort requiring Investment Committee review listed below. The Community Foundation should obtain a copy of the document naming the Community Foundation as a beneficiary of the bequest.

Gifts requiring Investment Committee review prior to acceptance include:

- Closely-held corporation stock and partnership interests
- Life insurance policies requiring future premium payments by the Community Foundation
- Real estate
- Tangible personal property that is not readily marketable
- Intangible property and accounts receivable (gifts of loans, notes, mortgages, etc.)
- Other planned gifts, including retirement assets, life insurance, charitable remainder trusts, pooled income funds, charitable lead trusts, a gift of property with a retained life estate, and bargain sales

If a gift does not fall within one of the categories listed in this paragraph 3, then Investment Committee review will also be required for such gifts. The policy for accepting gifts of illiquid assets is set forth in Appendix A.

**4. Excess Business Holding Rules for Donor Advised Funds:** Notwithstanding any other provision hereof, the Foundation shall not accept any gift of an interest in a business enterprise for a donor advised fund that would subject the Foundation to tax under Section 4943 of the Internal Revenue Code concerning “excess business holdings.” Therefore, any proposed gift that would result in the donor advised fund, together with the holdings of persons who are “Disqualified Persons” with respect to that fund, holding:

- a 20% or greater interest in a business or in an entity, or
- any interest in any entity in which any interest is owned by a donor or advisor to the donor advised fund, by a family member of any such person, or by an entity in which any of the foregoing persons has an interest,

shall be referred to the Foundation’s General Counsel for an opinion on the possible application of Section 4943 of the Internal Revenue Code. Ownership of unincorporated businesses that are not substantially related to the fund’s purposes is also prohibited.

**5. Declining Gifts:** The Community Foundation reserves the right to refuse any gift it believes is not in the best interests of the Community Foundation to accept in its sole and absolute discretion.

**6. Types of Funds:** The Community Foundation offers the following funds designed to be responsive to donor needs.

Donor Advised Fund:	\$10,000 minimum initial gift
Field-of-Interest Fund:	\$10,000 minimum initial gift
Designated Fund:	\$10,000 minimum initial gift
Nonprofit Partner Agency Fund:	\$10,000 minimum initial gift
Scholarship Fund:	\$25,000 minimum initial gift
Affiliate Fund Agreement:	\$10,000 minimum initial gift

The Community Foundation may consider special requests for accepting funds below the fund minimums stated above, subject to the Investment Committee's approval.

Community Foundation staff will obtain a signed fund agreement from donors establishing new funds and also obtain approval from the Board of Directors of the Community Foundation to establish any new fund.

**7. Policy Regarding Donors Who Wish to Remain Anonymous:** In the event a donor wishes to make an anonymous gift to the Community Foundation, then Community Foundation staff shall make known the provisions of this paragraph 7 to such donor. Assuming the donor still wishes to make the gift, Community Foundation staff shall make known the identity of the donor to the Chairman of the Board and to the Chairman of the Investment Committee and obtain their approval of the gift prior to its acceptance.

Adopted by the Board of Directors on January 27, 2011

Modified by the Board of Directors on July 28, 2011 to amend Excess Business Holdings Rule language

Modified by the Board of Directors on February 11, 2016 to amend policy title and addition of certain fund types

## **APPENDIX A POLICY FOR ACCEPTING GIFTS OF ILLIQUID ASSETS**

### **1. General**

Gifts of any illiquid asset will be reviewed on a case by case basis by the Investment Committee of the Community Foundation. As a general rule, the Community Foundation prefers to accept gifts of illiquid assets that can be converted to cash or cash equivalents within six months of the gift date to ensure that such gifts have a charitable benefit to the Community Foundation and the Northern Virginia region we serve.

### **2. Closely-held corporation stock, partnership interests, and other illiquid business interests**

Gifts of any illiquid business interest, including stock in closely-held C corporations, S corporations, interests in limited partnerships, and the like, for either current or deferred gifts, must be valued by an appropriate appraiser. The appraiser cannot be the donor, taxpayer, donee, or an agent of any of these. The cost of an appraisal shall be paid by the donor.

The Community Foundation will accept an illiquid business interest only in the absence of any liability by the Community Foundation, including cash calls on limited partnerships or other liabilities that would have adverse consequences for the Community Foundation. In the case of a business interest that is to be sold, the Community Foundation generally will not join in or participate in the issuance of warranties, representations, indemnification agreements, or covenants not to compete.

The Community Foundation will charge the resulting fund all costs and taxes associated with accepting and owning the business interest (e.g. unrelated business income taxes, attorney fees, accounting fees), upon assurance from the donor that there will be enough in the fund to pay these costs. Otherwise the donor must agree to contribute additional cash to the fund to pay such costs.

When considering the acceptance of gifts of illiquid business interests, staff may request the following information from the donor or professional advisor:

- Description of the asset
- Appraisal of the asset's fair market value
- Any special arrangements regarding sale (e.g., price considerations, investment management, potential interested purchasers)
- Articles of incorporation, bylaws or shareholder agreements
- A written explanation of the line of business and prospects for profitability
- Information about the potential market for the business interest
- Estimated period for disposition of the interest
- Prior-year tax returns to identify historical accounting income and cash flows
- Projected timing of distributions from the business entity
- Donor's adjusted tax basis for the gift property
- Estimated cash flow to the Community Foundation

Criteria for review of gifts of illiquid business interests include:

- Value of the gift and ease of administration

- Market value and marketability, including a review of the appraisal, the asset's potential income stream, capital gain, and any other relevant financial information.
- Management of the business interest and the duties, background, experience, stability and other attributes of the entity's managers
- Debt, including a consideration of whether such debt has an impact on the Community Foundation's obligation to pay any unrelated business income tax
- All related taxes and costs, including any UBIT and the costs related to legal services, accounting services, and the like to help the Community Foundation determine the amount of any UBIT and to report such tax to the IRS. The donor will be responsible for payment of all such UBIT and costs
- Existing and contingent liabilities and contracts
- The rights and obligations of shareholders or partners
- Material restrictions as defined by IRS rules, which restrictions guard against selling contributed assets, granting rights of first refusal, etc.

### **3. Life insurance policies requiring future premium payments**

The Community Foundation will accept gifts of permanent life insurance policies if the Community Foundation is named as owner of or is assigned ownership in such policies. Policies continuing on a premium-paying basis will be maintained as such by the Foundation so long as gifts are made to the Community Foundation in the amount of the premiums due. Premiums can be of a reducing amount if dividends are directed toward future premiums. Should such premium gifts not be forthcoming, the Community Foundation may, on the recommendation of the Investment Committee, elect:

- To have the Community Foundation continue the premium payments
- To surrender the policy in exchange for its cash surrender value
- To invoke procedures under which the existing policy values can sustain the policy without further outlay of Community Foundation funds for premium. This can take on any of the following forms:
  - Change the dividends to Net (Have the dividends pay future premiums)
  - Use the Automatic Premium Loan feature (Borrow against the cash value to pay future premiums)
  - Use a combination of the two previous options (Have the dividends pay as much of the premium as possible and borrow against the cash value for the remainder amount)
  - Change the policy to Paid-Up, in which case no more premiums will be due

The Community Foundation discourages the contributions of life insurance policies subject to policy loans and reserves the right to accept or reject such policies as well as those carrying assignments to other entities. The Community Foundation will consider its own interest and the best interest of the donor in the light of tax ramifications in determining on a case-by-case basis the acceptability of encumbered life insurance policies. Particular care will be given to problems of self-dealing, jeopardy investments, and unrelated business income in this regard.

### **4. Real Estate**

Gifts of real estate must have significant value in relation to the costs of holding and selling the real estate and any liability or exposure in connection with owning it. It must be marketable within a six-month or other reasonable time period. The Community Foundation will evaluate the cost of holding

and/or improving the real estate against the cost of liquidating it immediately. In general, the Community Foundation will not accept debt encumbered real estate, unless special circumstances so warrant.

The use or image of the real estate must be consistent with Community Foundation's mission. The Community Foundation will not accept real estate located outside the U.S., unless special circumstances so warrant.

Gifts of real estate may be made on a testamentary basis, subject to a retained life estate or to fund a charitable remainder trust, provided that such gifts comply with this policy.

All costs related to acceptance of the gift, ownership of the real estate, and liquidation of the real estate, including attorney's fees, will be charged by the Community Foundation against the fund to which it was donated.

As a general rule, Community Foundation staff requires a minimum period of 90 days to evaluate a potential gift of real estate.

When considering the acceptance of real estate, staff may request the following information from the donor or professional advisor:

- Description of the real estate, including surveys and plots
- Deed
- Evidence of all debt encumbrances such as mortgages, notes, liens, etc.
- Recent appraisals, phase one environmental reports, inspection reports, storage tank affidavits, sewage treatment system disclosure agreements
- Location and use
- Zoning and ADA compliance
- Type of ownership of the real estate
- Special assessments
- Conditions, covenants and restrictions
- Threatened or pending litigation against the property
- Regulatory designations (wetlands, flood zone, etc.)
- Property tax bills
- Lease or rental agreements
- Title opinion or copy of existing title insurance
- Other insurance policies relating to the real estate
- Current operating statements on income producing property

Criteria for review of gifts of real estate interests include:

- Net value of the real estate
- Costs of holding the real estate until liquidation
- Donor's willingness to cover all costs of investigation, evaluation and appraisal of the real estate
- If the donor is not an individual, whether the proposed gift received the requisite approval of the donor's governing body
- Whether the real estate has been listed for sale previously, and if so, for how long, with whom, at what price, etc.

If the Investment Committee recommends acceptance of the gift of real estate, then the donor will execute a letter of intent to make the gift, subject to approval by the Investment Committee.

## **5. Tangible personal property that is not readily marketable**

The Investment Committee will evaluate proposed gifts of personal property on a case by case basis with specific consideration of tax implications such as related use, etc. The donor is responsible for obtaining and paying for a qualified appraisal.

## **6. Intangible Property and Accounts Receivable**

The Community Foundation may accept gifts of royalties or distribution rights on published works (such as books or films) where there is clear evidence of marketability or assurance of an income stream. A qualified appraisal is required. The Community Foundation may also consider gifts of accounts receivable, loans, notes, and mortgages, subject to review by the Investment Committee

## **7. Other Planned Gifts**

### **Retirement Plan Assets**

The Community Foundation may accept account type retirement plans, in which a balance accumulates as principal, such as IRAs, 401(k), 403(b), and defined contribution plans. However, the Community Foundation cannot accept annuity plans, such as defined benefit plans, in which retirement benefits are paid out as income and principal does not accumulate. Methods for gifting retirement plan assets include:

- Naming the Community Foundation as primary, successor or contingent beneficiary for all or part of the assets upon death of either the retirement asset owner or spouse; and
- Creating a testamentary charitable remainder trust upon the death of the asset owner, naming the Community Foundation as remainder beneficiary and non-charitable heirs as income beneficiaries. The Community Foundation should obtain a copy of document naming the Community Foundation as a beneficiary.

### **Life Insurance**

The Community Foundation can be designated as a primary or successor beneficiary of a life insurance policy owned by the donor.

### **Charitable Remainder Trusts**

A Charitable Remainder Unitrust is a gift vehicle that irrevocably transfers the remainder interest on assets to the Foundation upon the death of the donor or the named beneficiaries, or at the end of a specified term or years. The donor has the option to name him or herself and /or others as income recipients. Payments can be made concurrently or consecutively. This form of trust may be created for the lifetime of the beneficiaries or for a maximum term of 20 years.

A straight unitrust must pay a fixed percentage of the net fair market value of its assets, valued annually to the designated beneficiaries. An income only unitrust will distribute the actual amount of income earned or the established percentage payout rate, whichever is less. An income only unitrust with

makeup provision uses excess income from the trust to pay the beneficiaries income lost during the years when earnings are insufficient.

The donor receives a tax deduction for the charitable remainder interest in the year the trust is established. There is no capital gains tax due on appreciated securities contributed to the unitrust.

Similar to the Charitable Remainder Unitrust, a Charitable Remainder Annuity Trust is an income vehicle which irrevocably transfers remainder interest to the Foundation upon the death of the income beneficiaries. The annuity trust pays a fixed dollar amount annually to the income beneficiaries. The amount is specified in the trust document as either a dollar amount or a percentage of the initial fair market value of the assets used to fund the trust. This amount must be at least 5% of the initial value. Once the annual amount is set it may not vary over the life of the trust. The amount payable to the beneficiaries has no relation to the income earned in the trust.

The donor's charitable deduction is based on the value of the remainder interest at the time the trust is created. There are limitations to the deduction if the annuity trust is funded with long-term securities. The remainder interest is calculated according to Treasury tables.

No additions to Charitable Annuity Trusts may be made after the initial contributions to establish the trust.

- Gifts of real estate will be considered only in relation to funding a net income unitrust or a net income with makeup unitrust or a FLIP unitrust, unless special circumstances warrant consideration for purposes of another type of charitable remainder trust.
- Gifts of partnership interests, limited liability company interests, or S corporation stock will generally not be acceptable assets to fund a charitable remainder trust, because of the likelihood that the trust would be subject to unrelated business income.
- The Community Foundation must be named as irrevocable beneficiary.
- The remainder interest establishes a charitable fund which will be an endowed fund.

Generally, the Community Foundation does not serve as trustee. As a non-trustee, the Community Foundation prefers to receive a copy of the trust agreement if it or a component fund is named as a beneficiary of the trust. If the beneficiary designation is irrevocable, the Community Foundation will also want to receive periodic accounting statements, as well as the initial determination of the donor's advisor of the charitable deduction value of the gift. This should include birthdates of all permissible income recipients.

Upon a donor's request, the Investment Committee will review a request to serve as trustee of charitable remainder trust on a case-by case basis provided that the conditions described above have been met.

### **Pooled Income Funds**

A pooled income fund is a specific kind of trust that allows irrevocable gifts from separate donors to be co-mingled for investment purposes. In return each named income beneficiary receives a proportionate share of the net income earned by the fund for the year. Upon termination of the income interest at the death of the beneficiary, a portion of the fund representing the value of the units assigned to that beneficiary will be distributed to an endowed component fund of the Community Foundation.



Donors to the pooled income fund receive a deduction for the present value of the charitable remainder as determined according to Treasury tables. In general, donors will avoid all capital gain taxes on transfers of appreciated assets. Pooled income funds accept cash or securities, but are expressly prohibited from accepting or investing in tax-exempt securities. Distributions to the beneficiary are taxed as ordinary income. A minimum gift of \$5,000 is required. The Community Foundation will evaluate these gifts on a case-by-case basis.

### **Charitable Lead Trusts**

A charitable lead trust is an arrangement that provides the income generated on assets contributed to the trust to be paid to the Community Foundation for a designated period of years. After the time period has elapsed, the assets pass to a non-charitable beneficiary designated by the donor in the original trust. The donor does not receive a deduction for the value of assets used to create the lead trust since the assets will eventually pass to the non-charitable beneficiaries. The donor does remove these assets from their taxable estate by transferring to the charitable lead trust.

The donor's deduction is calculated based on the value of the "lead" or charitable interest according to Treasury tables. The Community Foundation will evaluate these gifts on a case-by-case basis. A component fund at the Community Foundation may be the recipient of the lead annuity interest paid out by a charitable lead trust.

### **Gifts of Property with Retained Life Estate**

A retained life estate is an irrevocable donation of real estate that allows the donor to retain the right to use the property for life, or a specified term of years. The donor can designate himself or herself and/or the lifetime of another resident beneficiary. The donor receives an immediate deduction based on the appraised fair market value of the real estate less the calculated value of the retained life use. The Community Foundation will evaluate these gifts on a case-by-case basis. A memorandum of understanding will be required outlining the respective responsibilities of the donor and the Community Foundation relating to expenses, real estate taxes, maintenance, repairs, and other items. All real estate gifts are subject to due diligence and subject to approval of the Investment Committee in accordance with the guidelines outlined above.

### **Bargain Sales**

The Community Foundation will evaluate these gifts on a case-by-case basis, making certain that the donor and his or her advisor(s) are fully aware of the tax treatment of bargain sales.