

# **The University of Arizona Foundation**

## **Gift Planning Acceptance Policies**

**Revision Date: June 29, 2023**

### **I. Program Purpose and Policy Objectives**

The purpose of the planned giving program at The University of Arizona Foundation (the “Foundation”) is to secure valuable long-range gifts that further the mission of the institution. By offering and encouraging planned gifts, the Foundation seeks to enable a broader group of supporters to make more significant gifts to the institution, either during their lifetime or as part of an estate plan, than they could otherwise make through outright gifts. While planned gifts often enable donors to accomplish both financial and philanthropic goals, the Foundation seeks to encourage gifts that have significant philanthropic motivation. Donors should be reminded that the Foundation is not a financial institution offering commercial investment vehicles.

This document is part of the comprehensive Gift Policies adopted by the Foundation. Planned gifts are also governed by the Foundation’s Investment Policy Statement for Life Income Gifts.

The objectives of these policies are to:

- Direct development staff efforts towards those gift opportunities that will be most beneficial to The University of Arizona (the “University”);
- Secure valuable gifts that benefit both the University and its donors;
- Ensure that the University's interests are being protected; and
- Ensure that donors are treated in a professional, ethical, and fair manner.

These policies define the criteria and processes by which proposed gifts will be considered for acceptance. The Foundation reserves the right to refuse any gift that does not provide sufficient financial benefit to the institution, is incompatible with the University's mission, puts the assets or reputation of the University or the Foundation at risk, or is prohibited by law.

### **II. Code of Ethics**

Every effort should be made to ensure that gifts accepted by the Foundation are in the best interests of the Foundation, the University, and the donor. The Foundation subscribes to the Model Standards of Practice for the Charitable Gift Planner. Key principles include safeguarding the confidentiality of the donor relationship, full disclosure to the donor, and encouraging the review of any planned gift by the donor's independent advisors.

As a protection to the donor and the Foundation, the development officer working with a donor shall document for the donor's review and approval the donor's intentions, motivations, and objectives for creating the planned gift under discussion.

### **III. Serving as Fiduciary**

The Foundation will consider serving as a fiduciary in limited circumstances as outlined below:

**Guardian/Agent/Power of Attorney.** The Foundation will not act as a donor’s guardian, guardian of the person, agent, financial power of attorney, or health care power of attorney.

**Executor/Personal Representative.** The Foundation will consider serving as executor or personal representative of an estate that benefits the Foundation subject to the approval of the Office of Gift Planning. The minimum expectation is that the Foundation will only serve if the Foundation is a 50 percent or more beneficiary of the estate and provided the Foundation is given the right to name an alternate. If the Foundation agrees to serve as an executor or personal representative, the Foundation may hire a third-party fiduciary, as well as other professionals as needed, to act as its agent(s). Regardless of whether the Foundation serves directly or hires a third-party fiduciary as its agent or to serve in its place, the Foundation may charge the estate a fee for its services, and may pay the fees of any third-party fiduciaries or other professionals, as needed, from the estate.

**Trustee.** The Foundation will consider serving as trustee or successor trustee of a trust. The primary circumstances when the Foundation will act as trustee are (a) for a charitable remainder trust as described in the Internal Revenue Code, or (b) when a donor is deceased and the Foundation acts as successor trustee to fulfill duties similar to that of an executor/personal representative as described above. The minimum expectation is that the Foundation will only serve if the Foundation is a 50 percent or more remainder beneficiary for a trust described in (a) above or a 50 percent or more remainder beneficiary for a trust described in (b) above. The decision to accept the trusteeship or successor trusteeship of a planned gift shall be subject to the approval of the Office of Gift Planning, according to the terms and conditions outlined in this policy document, including the following:

- The Foundation will not serve as co-trustee of a trust.
- The Foundation will not serve as trustee of a revocable trust for a living donor.
- The Foundation will not serve as trustee of a charitable lead trust.
- The Foundation generally will not accept the trusteeship of a trust that could involve generation skipping transfer tax, unless the donor can provide sufficient assurance that any potential tax will be covered by the donor’s one-time exclusion amount or is otherwise adequately provided for. All costs associated with determining any generation-skipping tax or complying with the provisions of the generation-skipping tax rules will be charged to the trust or otherwise to the donor or those holding the “skip” interest, as appropriate.
- If the Foundation accepts a trusteeship or successor trusteeship, the Foundation may hire a third-party fiduciary, as well as other professionals as needed, to act as its agent(s). If the Foundation serves directly or hires a third-party fiduciary as its agent, the acting trustee may charge the trust a fee for its services, and may pay the fees of any third-party fiduciaries or other professionals from the trust as needed.
- If a donor wishes to direct or restrict the investment of a charitable remainder trust's assets, the donor should be encouraged to serve as their own trustee or to secure the services of another trustee or administrator.
- With approval from the Foundation's Investment Committee (the “Investment Committee”), the Foundation may agree to serve as an agent for asset management and trust administration purposes for a charitable remainder trust for which it is not the initial trustee. In certain cases, the Foundation may decide not to act as agent or accept responsibility for the management or disposition of real estate held by trusts yet will agree

to serve as agent with respect to other, non-real estate, trust management and administration purposes.

If any of the criteria outlined above are not met, approval by the Investment Committee is required.

#### **IV. Types of Gifts Accepted**

The following types of planned gifts are acceptable under the terms and conditions set forth below. Those not meeting the parameters specified in subsections 5 and 7 below must have the prior approval of the Investment Committee.

1. Gifts under a will.
2. Beneficiary designations in a retirement plan (such as an IRA or 401(k)), an annuity, a payable at death account, or a life insurance policy.
3. Retained life estate in real property. The Foundation may agree to accept remainder interests in real property, including personal residences and farms. Gifts of interests in real property subject to a retained life estate are subject to the same review process as is set forth below for other gifts of real property.
4. Bargain sales. Bargain sales shall be negotiated individually with the donor and are subject to review and approval by the Investment Committee.
5. Charitable remainder trusts, including annuity trusts and standard, net income, and flip unitrusts. The Foundation will agree to serve as the trustee of a charitable remainder trust so long as it is named a 50 percent or more remainderman of the trust. The minimum amount needed to fund a unitrust or an annuity trust of which the Foundation will serve as trustee is \$100,000. An exception to the minimum funding threshold is to allow charitable remainder annuity trusts to be established for \$25,000 in states where the Foundation is not registered to issue charitable gift annuities. Additions to a unitrust shall be in the amount of at least \$5,000 except that income payments of any amount may be contributed back to a unitrust. Payments from a unitrust or an annuity trust may be made monthly, quarterly, semiannually, or annually on the last day of the payment period.

The expected horizon of a charitable remainder trust at the time it is established should not exceed 35 years. Charitable remainder trusts shall have no more than five (5) total income beneficiaries. Charitable remainder trusts shall have an expected net present value equal to at least 35 percent of the initial funding amount of the trust. Net present value for gift acceptance purposes shall be calculated by the following method. The initial value of the trust will be grown over the trust's expected time horizon using the long-term expected return associated with the investment objective chosen for the trust. Payments to beneficiaries and all other costs incurred by the trust will be deducted each year. The future value of the trust (after expenses) will then be discounted using an inflation rate in order to arrive at the net present value of the Foundation's interest in the trust. The assumptions to be used in determining net present value shall be reviewed and approved annually by the Senior Vice President of Finance. Documentation supporting compliance with these guidelines shall be prepared prior to final documents being executed.

The preferred arrangement to be used when an illiquid or non-income producing asset is contributed to a charitable remainder trust is a net income unitrust with a "flip" provision.

Alternatively, a standard unitrust may be used if the donor agrees to contribute liquid assets on a timely basis in order to meet the beneficiary payout requirements and cover all other costs incurred by the trust (this should be documented in a letter of agreement signed by the donor and the Foundation). Gifts of assets giving rise to unrelated business taxable income (UBTI) will not be accepted into charitable remainder trusts.

6. Gifts to the Pooled Income Fund. No new gifts shall be made to Pooled Income Fund III. This fund is closed, and no new pooled income funds may be established without the advance approval of the Investment Committee.

7. Current and deferred charitable gift annuities. The Foundation shall offer gift annuities to donors in all states other than New York, and except where prohibited.

Current and deferred charitable gift annuities may be established with at least \$20,000. Additional gift annuities may be established with at least \$10,000. Each beneficiary should be at least 65 years old at the time the gift annuity is funded or, in the case of a deferred annuity, at the time annuity payments are to start. Annuity payments are made on the first day of each payment period. A charitable gift annuity shall have an annuity rate no higher than the rate suggested by the American Council on Gift Annuities at the time the gift is funded. If a lower rate is offered to a donor, the amount of the Council rate will be disclosed in a document signed by the donor.

Charitable gift annuities to be funded with assets valued over \$1,000,000 will require approval of the Senior Vice President of Finance after considering an analysis of the risk associated with the proposed contract.

8. Ownership of a life insurance policy. The Foundation will consider accepting transfers of ownership of existing life insurance policies with a death benefit of at least \$100,000 and where the Foundation is named 100 percent beneficiary. If premiums remain to be paid, the donor must agree in writing to gift sufficient funds annually on a timely basis to the Foundation in order for it to pay the premiums, or the donor must agree to pay the premiums directly. The Foundation reserves the right to surrender a policy for its cash value or take other actions available to the owner of a policy at any time. The Foundation will not undertake to secure insurance on the life of a donor or otherwise at the request of a donor, nor will it accept ownership of policies subject to a loan or in connection with a "split dollar" or similar arrangement where the proceeds are to be divided between charitable and noncharitable interests.

9. Miscellaneous Issues

Testamentarily funded gifts. The charitable gift annuity, and various charitable trusts described above, may be funded during the lifetime or at the passing of the donor.

Gifts under a will or trust. Wills and trusts written many years ago may contain language which is unclear as to whether the donor intended to create an endowment fund or a restricted fund. All gift distributions from an estate that benefit a named scholarship, fund, fellowship, professorship, or chair will be deemed to be an endowment due to the inherent nature of the vehicle. All gift distributions from an estate that are greater than \$250,000 will also be deemed to be endowed unless specified to the contrary.

## V. Acceptable Assets

The following assets may be accepted as funding for an outright or planned gift, subject to the terms and conditions outlined below.

1. Cash. Gifts of cash or equivalent (check, wire, etc.) for a charitable remainder trust shall be deposited directly into the appropriate trust account at Charles Schwab. The payee shall be the name of the charitable remainder trust. Gifts of cash in exchange for a charitable gift annuity shall be made payable to "The University of Arizona Foundation." Gift payments for life income vehicles may not be made using a credit card.
2. Marketable securities. Marketable securities (including mutual fund shares) contributed to fund a charitable trust shall be transferred to the appropriate trust account at Charles Schwab and will be sold as soon as practicable. Marketable securities (including mutual fund shares) contributed for a charitable gift annuity will be sold. Donated securities may not be held without the prior approval of the Senior Vice President of Finance. Shares subject to restrictions on sale, whether by contract, SEC rules, an underwriter's "lock-up" or other restriction, or as the result of corporate policy applicable to the donor, will be given special review and accepted only if the Investment Committee determines it is in the best interest of the Foundation to do so. Efforts should be made to have the restrictions removed prior to the gift.
3. Closely held stock. Closely held stock in a "C" corporation will be accepted as funding for a flip unitrust, a standard unitrust (along with cash or marketable securities), or, in more limited circumstances, a gift annuity, upon the approval of the Investment Committee. Subchapter "S" corporation stock shall not be used to fund a charitable remainder trust.
4. Partnership interests. Partnership interests, either publicly traded or non-publicly traded, (this includes LP, LLC, LLP, and similar entities) will be accepted only with the approval of the Investment Committee. If any partnership interest is considered for acceptance, care must be taken to ensure that the gift would not trigger the bargain sale rules or give rise to unrelated business taxable income (either due to debt financed income in the partnership or because the partnership is actively conducting a business activity).

Special care should be given to ensure that interests in non-publicly traded partnerships are in fact limited and not general partnership interests and that no current or future obligation exists under which additional funds may be required to be provided to the partnership. If a general partnership interest is to be considered for acceptance, arrangements should be made to secure adequate indemnification and hold harmless protections from the donor or some third party with the capacity to fulfill such protection obligations.

5. Tangible personal property. Tangible personal property may in certain circumstances be accepted as funding for a charitable gift annuity, a net income unitrust with a "flip" provision, or a standard unitrust (along with cash or marketable securities) with the approval of the Investment Committee.
6. Retirement plan assets. Qualified Charitable Distributions (as defined in IRS Publication 590-B) can be used to make an outright gift to the Foundation or to fund a charitable remainder trust or charitable gift annuity, subject to applicable state and federal laws. Retirement plan assets may also be used to fund a charitable remainder trust or a gift annuity at death.

7. Real property. Real property may be accepted into a charitable remainder trust and in some cases may be contributed as funding for a gift annuity, subject to the prior approval of the Investment Committee. Mortgaged real property will not be accepted. A gift of real property will be subject to the following requirements:
  - Personal inspection by staff (which may be performed by video if in-person inspection is not practicable and advance approval is obtained from the Senior Vice President of Finance);
  - Title search;
  - Minimum of level one environmental audit unless the property is a residence inspected by staff and for which an environmental audit was deemed unneeded;
  - Marketability review;
  - Qualified appraisal obtained by the donor;
  - Written agreement by the donor to provide additional funds to the trust, if necessary, to provide for ongoing expenses and maintenance of the property until sold;
  - Completed real estate checklist, including detailed financial information on the property if it is commercial real property; and
  - Acceptance by the Investment Committee.

Donors should be informed that the Foundation accepts gifts of real property provided that the property is readily marketable. Donors of property with complex issues (e.g., environmental concerns, uncertain marketability, or property subject to long-term leases) who are considering establishing a charitable remainder unitrust should be encouraged to serve initially as their own trustee. In this situation, the Foundation may be named the successor trustee of the trust once the property has been sold. Acceptance of trusteeship at that time will be subject to the review and approval of the Investment Committee.

8. Cryptocurrency. Outright gifts of cryptocurrency can be made through the Foundation's website. Acceptance of a gift of cryptocurrency in exchange for a life income gift will only be made with prior approval from the Investment Committee.

## **VI. Establishment of Gift Date and Value**

It shall be the responsibility of the donor and the donor's advisors to establish the effective date of any gift and the value of the assets on that date. The Foundation will assist the donor by providing the amount of the charitable deduction for a new planned gift or an addition to an existing gift. However, the donor should confirm this amount with his or her own advisors. In the case of a gift annuity, or a bargain sale involving property other than cash or publicly traded and liquid securities, the Foundation has a direct interest in the valuation used and may decide to independently verify the appraisal obtained by the donor.

## **VII. Community Property and Other Title Issues**

Special care should be taken to determine if the gift property is held as community property (or if there is any other party having an interest in or claim to the property). In all cases involving a donor who is married, efforts should be made to determine whether the spouse has consented to any gift arrangement in which the spouse is not also a donor and beneficiary, and to secure consent if deemed advisable by the Foundation's legal counsel.

## **VIII. Private Foundation and Other Tax Rules**

If a proposed gift arrangement contains aspects that differ from the simplest form of structure that is generally used, the arrangement should be reviewed by the Foundation's legal counsel to determine if the private foundation rules will potentially apply. In particular, attention should be given to the possibility of self-dealing. The review should also consider whether other tax rules could potentially apply.

## **IX. Fee Policy**

*Life income gifts received after December 13, 2005:* Each gift, regardless of its type/form, will bear a one (1) percent annual fee assessed on the last day of each calendar quarter in which that gift has a fair value during such quarter. This will allow the Foundation to recover (i) the external cost of investment and administration and (ii) the costs incurred by the Office of Financial Services (oversight, accounting, and audit) and the Office of Gift Planning (gift procurement and ongoing stewardship). In addition, each gift annuity will also bear a five (5) percent fee upon termination, with such fees to be used solely to build a gift annuity reserve fund. Such a reserve fund will help protect the Foundation should any gift annuity agreement result in a loss to the Foundation's Unrestricted Fund. Termination fees do not apply to charitable remainder unitrusts or charitable remainder annuity trusts received after December 13, 2005.

*Charitable Remainder Unitrusts, Charitable Remainder Annuity Trusts, and Pooled Income Funds in existence as of December 13, 2005:* These arrangements will be grandfathered, and no annual fee will be assessed. Unless the agreement or the understanding with the donors prohibit, termination fees will be assessed as follows:

- Agreements administered 15 years to 20 years: 10 percent termination fee.
- Agreements administered 20 years or more: 20 percent termination fee.

In all cases, applicable termination fees will be applied before University Development Fund gift charges are assessed.

*Exhausted Life Income Agreements:* If the Foundation uses any unrestricted funds or charitable gift annuity reserves to make distributions from depleted charitable gift annuities or charitable trusts, the Foundation will be reimbursed at the termination of any other life income agreements or estate gifts the donor may have established.

## **X. Payment of Expenses**

Responsibility for payment of various expenses involved in securing and managing planned gifts is as follows:

- Qualified appraisal to substantiate deduction (if necessary)—donor pays the cost
- Attorney's fee for document drafting and counseling donor—if donor's attorney performs, donor pays the cost; if the Foundation's legal counsel drafts a document for the donor and the donor's attorney reviews it, the Foundation pays the cost of drafting the document
- Title search (real property)—the Foundation pays the cost
- Environmental review (real property)—subject to negotiation
- Appraisal to update the property value once the trust is funded—charged to trust
- Estate planning expenses—donor pays the cost. The Foundation will not pay for any estate planning expenses for a donor.

## **XI. Roles and Responsibilities of Staff**

Drafting and review of documents. The Foundation's Office of Gift Planning shall be responsible for preparing any trust agreements for which it will serve as trustee. If the donor has his or her own attorney prepare the document, the Foundation's Office of Gift Planning shall review the document before the gift is accepted. The Foundation will not draft wills or living trusts for donors, nor will the Foundation review and comment on wills or living trusts except to ensure that the Foundation is properly named in the instrument and that proposed restrictions are acceptable and enforceable. If the gift will ultimately result in the creation of an endowment, a signed endowment agreement using the then-current model form agreement must be an attachment to the original gift instrument.

Forms 8283 and 8282. The Office of Gift Planning shall be responsible for assisting the donor with completion of IRS Form 8283 and shall be responsible for completion and submittal of Form 8282 when the property has been sold.

Donor disclosure. The Office of Gift Planning shall be responsible for providing a donor with appropriate disclosure materials for new gifts to meet the requirements of the Philanthropy Protection Act and other legal requirements. The Office of Gift Planning should explain to the donor the terms and operations of the gift, including how it will be invested and administered. The donor should be informed of both the potential rewards and the risks of the investment strategy to be employed.

New gift documentation. The Office of Gift Planning shall provide the donor with a gift receipt and other necessary documentation about his or her gift. Procedures to be followed for new gift set-up are contained in the endowment agreement, if applicable.

Ongoing stewardship. The Office of Gift Planning shall be responsible for ongoing stewardship of the planned gift arrangement once a gift has been completed.

Oversight of administration and investment of gifts. The Senior Vice President for Finance shall have primary responsibility for oversight of any outside service providers engaged to manage and administer the Foundation's planned gift assets.

## **XII. Administration of These Policies**

Approval and oversight of these policies is the responsibility of the Investment Committee. The Office of Gift Planning is responsible for the administration of these policies. Exceptions to these policies must be approved by the Investment Committee.

The information on this site is not intended as legal, tax, or investment advice. For such advice, please consult an attorney, tax professional, or investment professional.

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