

## **Gift Acceptance Policies and Guidelines**

The Community Foundation (Foundation), a not for profit public benefit corporation organized under the laws of the State of California, encourages the solicitation and acceptance of gifts for purposes that will assist the Foundation further and fulfill its mission. The following policies and guidelines govern acceptance of gifts made to the Foundation or for the benefit of any of its charitable funds.

**The Mission of The Community Foundation is** *to enhance the quality of life in the communities we serve.*

### **I. Purpose of Policies and Guidelines**

The board of directors of The Community Foundation and its staff solicit current and deferred gifts from individuals, corporations, and foundations to ensure the future growth and accomplishment of the mission of the Foundation. These policies and guidelines govern the acceptance of gifts by the Foundation and provide guidance to prospective donors and their advisors when making gifts to the Foundation. The provisions of these policies shall apply to all gifts received by the Foundation for any of its Funds and programs.

### **II. Use of Legal Counsel**

The Foundation shall seek the advice of legal counsel in matters relating to acceptance of gifts when appropriate. Review by counsel is recommended for:

1. Closely held stock transfers that are subject to restrictions or buy-sell agreements.
2. Gifts involving contracts, such as bargain sales or other documents requiring the Foundation to assume an obligation.
3. Transactions with any potential conflict of interest that may invoke IRS review or sanctions.
4. Other instances in which use of counsel is deemed appropriate and necessary.

### **III. Conflict of Interest**

The Foundation will urge all prospective donors to seek the assistance of personal legal and financial advisors in matters relating to their gifts and to determine any tax and estate planning consequences. The Foundation staff will comply with the *Model Standards of Practice for the Charitable Gift Planner* promulgated by the National Committee on Planned Giving(NCPG), on file in the Foundation offices.

### **IV. Restrictions on Gifts**

The Foundation will accept unrestricted gifts, and gifts for specific funds, programs and purposes, provided that such gifts are not inconsistent with its stated mission. The Foundation will not accept gifts that are too restrictive in purpose. Gifts that are too restrictive are those that violate the Foundation's bylaws and Articles of Incorporation, gifts that are too difficult to administer, or gifts that are for purposes outside the mission of the Foundation. All final decisions on the restrictive nature of a gift, and its acceptance or refusal, shall be made by the Board of Directors of the Foundation.

The CEO and Development staff of the Foundation are charged with the responsibility of reviewing all gifts being made to the Foundation, properly screening those gifts, and making recommendations to the Board on gift acceptance issues when appropriate.

## **V. Types of Gifts**

The following gifts are acceptable or will be considered on an individual basis:

- Cash
- Tangible Personal Property
- Securities
- Real Estate
- Remainder Interests in Property
- Oil, Gas, and Mineral Interests
- Bargain Sales
- Life Insurance
- Charitable Gift Annuities
- Charitable Remainder Trusts
- Charitable Lead Trusts
- Retirement Plan Beneficiary Designations
- Bequests
- Life Insurance Beneficiary Designations

The following criteria govern the acceptance of each type of gift:

1. **Cash.** Cash is acceptable in any form. Checks shall be made payable to The Community Foundation and shall be delivered to the Foundation's office.
2. **Tangible Personal Property.** All other gifts of tangible personal property shall be examined in light of the following criteria:
  - Does the property fulfill the mission of the Foundation?
  - Is the property marketable?
  - Are there any undue restrictions on the use, display, or sale of the property?
  - Are there any carrying costs for the property?

The staff, in consultation with the CFO of the board of directors of the Foundation shall make the final determination on the acceptance of other tangible property gifts.

3. **Securities.** The Foundation can accept both publicly traded securities and closely held securities.
  - **Publicly Traded Securities.** Marketable securities may be transferred to an account maintained at one or more brokerage firms or delivered physically with the transferor's signature or stock power attached. (A medallion signature guarantee is commonly necessary to exercise a stock power.) As a general rule, all marketable securities shall be sold upon receipt unless otherwise directed by the investment policy. In some cases marketable securities may be restricted by applicable securities laws; in such instance the final determination on the acceptance of the restricted securities shall be made in consultation with the CEO,

Chief Financial Officer of the Board of Directors and, if necessary, legal counsel to The Foundation.

- **Closely Held Securities.** Closely held securities, which include not only debt and equity positions in non-publicly traded companies, but also interests in limited partnerships and limited liability companies or other ownership forms, can be accepted if after consultation with the CEO, Chief Financial Officer of the Board of Directors and, if necessary, legal counsel to The Foundation the securities are deemed to be a viable gift.

Factors to consider prior to accepting Closely Held Securities include:

- There are no restrictions on the security that would prevent the Foundation from ultimately converting those assets to cash;
- The security is marketable; and
- The security will not generate any undesirable tax consequences for the Foundation, i.e. Unrelated Business Income Taxes.

If potential problems arise on initial review of the security, further review and recommendation by an outside professional may be sought before making a final decision on acceptance of the gift. The CEO, Chief Financial officer of the Board of Directors and legal counsel (if necessary) shall make the final recommendation on whether to accept the gift of closely held securities. Every effort will be made to sell non-marketable securities as quickly as possible.

4. **Real Estate.** Gifts of real estate may include developed property, undeveloped property, or gifts subject to a prior life interest. Prior to acceptance of real estate, the Foundation shall require:
  - A current independent appraisal of the property at the donor's expense
  - A title insurance policy with all endorsements or title opinion from the donor's attorney stating that the donor is conveying clear title to the Foundation.
  - Copies of the deed or other instrument which vested title to the property to the donor, as well as any deeds executed by the donor when they held title to the property
  - A current survey and/or legal description of the property
  - A Phase One environmental review of the property to ensure that the property has no environmental damage and based on the results of the Phase One review, a Phase Two or Three review may be necessary.
  - Environmental checklists to be used when evaluating gifts of real estate are on file in the Foundation offices.
  - The cost of the environmental audit shall generally be at the expense of the donor.

When appropriate, a title binder shall be obtained by the Foundation prior to the acceptance of the real property gift. The cost of this title binder shall generally be at the expense of the donor.

Prior to acceptance of the real property, the gift shall be evaluated by the CEO and the Chief Financial Officer of the Board of Directors and by the Foundation's legal

counsel. Questions that must be considered prior to acceptance of the property shall include:

- Is the property useful for the purposes of the Charity?
- Is the property marketable?
- If the property generates income, will the Foundation be required to assume debt, contracts or leases, or to retain the contributed property? (acceptance of this type of gift would be unlikely)
- Are there related administrative costs if this property is accepted? (i.e., real estate taxes, liability insurance, maintenance, other types of notes, etc) and will these costs be paid for by the donor or the donor's estate?
- Are there any restrictions, reservations, easements, or other limitations (i.e. endangered species habitats) associated with the property?
- If so, who will be responsible for paying for/ taking care of these?
- Does the environmental audit reflect that the property is clean?

5. **Remainder Interests in Property.** The Foundation will accept a remainder interest in a personal residence, farm, or vacation property subject to the provisions of paragraph 4 above. The donor or other occupants may continue to occupy the property for the duration of their life. At the death of the donor(s), the Foundation may use the property, if appropriate, or sell it for cash. Where the Foundation receives a gift of remainder interest, all expenses for maintenance, real estate taxes, and any property indebtedness or other fees or costs must be paid by the donor(s) or their primary beneficiary.
6. **Oil, Gas, and Mineral Interests.** The Foundation may accept oil and gas property interests, when appropriate. Prior to acceptance of these the gift shall be carefully evaluated by Development staff, the CEO and Chief Financial Officer of the Board, and in consultation with the Foundation's legal counsel. Criteria for acceptance of this type of property shall include:
  - The property should not have extended liabilities or other considerations that make receipt of the gift inappropriate
  - A working interest should be carefully evaluated in consultation with legal counsel or someone who specializes in this area. A working interest may be accepted where there is a plan to minimize potential liability and tax consequences
  - The property should undergo an environmental review to ensure that the Foundation has no current or potential future debilitating exposure to environmental liability.
7. **Bargain Sales.** The Community Foundation will enter into a bargain sale arrangement in instances in which the bargain sale furthers the mission and purposes of the Foundation. All bargain sales must be reviewed and recommended by the CEO, CFO of the Board of Directors, and in consultation with legal counsel and approved by the Board of Directors. Factors used in determining the appropriateness of the transaction include:

- The Foundation must obtain an independent appraisal substantiating the value of the property.
  - If the Foundation assumes debt with the property, the debt ratio must be less than 50% of the appraised market value
  - The Foundation must determine that it will use the property, or that there is a market for the property to be sold, which will enable the sale within 12 months of receipt.
  - The Foundation must calculate the costs to safeguard, insure, and maintain the property (including income tax, if applicable) during the holding period
  - All of the due diligence required in paragraph 4 above will need to be completed prior to acceptance.
8. **Life Insurance.** The Community Foundation must be named as both beneficiary and irrevocable owner of an insurance policy before a life insurance policy can be recorded as a gift. The gift is valued at its interpolated terminal reserve value, or cash surrender value, upon receipt. If the donor contributes future premium payments, the Foundation will include the entire amount of the additional premium payment as a gift in the year that it is made. If the donor does not elect to continue to make gifts to cover premiums payments on the life insurance policy, the Foundation may:
- Continue to make the premium payments;
  - Convert the policy to paid up insurance; or
  - Surrender the policy for its current cash value.
9. **Charitable Gift Annuities.** The Community Foundation has a license issued by the State of California to offer charitable gift annuities to qualified donors. The fee for establishment of a Gift Annuity will be \$250. In addition, the annuitant must pay the cost of filing the annuity with the state department of insurance (approximately \$60.) The minimum gift for establishing an annuity is \$10,000. The minimum age for life income beneficiaries of a gift annuity shall be 60. The minimum age for a deferred gift annuity life beneficiary shall be 45. No more than two life income beneficiaries will be permitted for any gift annuity. The Community Foundation must be one of the beneficiaries of the gift annuity and receive a minimum of 25% of the expected remainder.

Annuity payments may be made on a quarterly, semi-annual, or annual schedule to the life income beneficiaries.

The Community Foundation will not accept real estate, tangible personal property, or any other illiquid asset in exchange for charitable gift annuities.

The funds contributed in exchange for a gift annuity shall be set aside and invested during the term of the annuity payments. Once those payments have terminated, the funds representing the remaining principal contributed in exchange for the gift annuity shall be transferred as directed by the agreement of the gift annuity.

10. **Charitable Remainder Trusts.** The Foundation will accept designation as a trustee or remainder beneficiary of a charitable remainder trust. Some donors may establish this type of trust for the ultimate benefit of The Community Foundation while retaining certain income interests or by also designating loved ones or other charitable organizations as beneficiaries of the trust. TCF must be named irrevocably as the charitable beneficiary of at least 50% of the remainder interest in these cases. It is highly unlikely that The Foundation will accept appointment as trustee of a charitable remainder trust. However, each trust will be evaluated individually by legal counsel to determine appropriateness and a recommendation will be made prior to accepting the gift.
11. **Charitable Lead Trust.** The Foundation may accept a designation as income beneficiary of a charitable lead trust. In most cases The Community Foundation will not accept an appointment as Trustee of a charitable lead trust. However, each situation will be reviewed by legal counsel to determine appropriateness and a recommendation will be made to the Board of Directors prior to accepting the gift.
12. **Retirement Plan Beneficiary Designation.** Persons will be encouraged to name the Foundation as a beneficiary of their retirement plans. Such designations will not be recorded as gifts to the Foundation until such time as the gift is irrevocable and the Foundation receives notification of the gift. When the gift is irrevocable, but is not due until a future date, the present value of that gift may be recorded at the time the Foundation is notified of the gift.
13. **Bequests.** Donors and supporters of The Community Foundation will be encouraged to make bequests to the Foundation as part of their estate plan through their wills and/or trusts. Such bequests will not be recorded as gifts to the Foundation until such time as the gift is irrevocable and a notice of the intended gift is received from the family or counsel/executor of the donor's estate. When the gift is irrevocable, but is not due until a future date, the present value of that gift may be recorded at the time the Foundation is notified of the gift.
14. **Life Insurance Beneficiary Designations.** Persons will be encouraged to name the Foundation as beneficiary or contingent beneficiary of their life insurance policies. Such designations shall not be recorded as gifts to the Foundation until such time as the gift is irrevocable and notice of the gift is received by the Foundation. Where the gift is irrevocable, but is not due until a future date, the present value of that gift may be recorded at the time the Foundation is notified of the gift.

## **VI. Miscellaneous Provisions**

### **Securing appraisals and legal fees for gifts to the Foundation.**

It will be the responsibility of the donor to secure an appraisal (where required) and independent legal counsel for all gifts made to the Foundation.

### **Valuation of gifts for development purposes.**

A gift will be recorded by the Foundation at its fair market value or present value for gift purposes on the date the Foundation receives notification of the gift

**Responsibility for IRS Filings upon sale of gift items.**

The accounting staff and CEO are responsible for filing IRS Form 8282 upon the sale or disposition of any asset sold within two years of receipt by the Foundation when the charitable deduction value of the item is more than \$5,000. The Foundation must file this form within 125 days of the date of sale or disposition of the asset.

Acknowledgement of all gifts made to the Foundation and compliance with the current IRS requirements in acknowledgement of such gifts shall be the responsibility of the Foundation. All required documentation will be maintained and all forms filed in accordance with IRS requirements.

**VII. Changes to Gift Acceptance Policies**

These policies and guidelines have been reviewed and accepted by the Finance and Investment Committees and presented to the Board of Directors of The Community Foundation for approval.

Approved on the 11th day of December, 2008.

Gloria M. Harrison

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Chair of the Board

The Community Foundation *Serving Riverside and San Bernardino Counties*

## ADDENDUM

### Gift Acceptance Policies and Guidelines

*Treatment of Excess Business Holdings*

Under the Pension Protection Act of 2006 (PPA), the private foundation excess business holdings rules now apply to donor advised funds as if they were private foundations.<sup>1</sup> That is, the holdings of a donor advised fund in a business enterprise, **together with the holdings of persons who are disqualified persons with respect to that fund**, may not exceed any of the following:

- Twenty percent<sup>2</sup> of the voting stock<sup>3</sup> of an incorporated business
- Twenty percent of the profits interest of a partnership or joint venture or the beneficial interest of a trust or similar entity

Ownership of unincorporated businesses that are not substantially related to the fund's purposes is also prohibited.

Donor advised funds receiving gifts of interest in a business enterprise after the date of the PPA's enactment (August 17, 2006) 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 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<sup>4</sup>

#### **What is a 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

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<sup>1</sup> The language is clear that it is only the donor advised fund – not the sponsoring charity – that is to be treated as a private foundation. Accordingly, it appears that this section does not apply to assets held by the sponsoring charity's investment pools, or assets held by funds that are not donor advised.

<sup>2</sup> Thirty-five percent if it can be shown that persons who are not disqualified persons have effective control of the business.

<sup>3</sup> Additionally, the donor advised fund 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. Under the *de minimis* rule, the donor advised fund could continue to hold an interest that did not exceed two percent of the voting stock and two percent of the value. Additional rules apply to cover situations such as mergers, redemptions, and acquisitions.

<sup>4</sup> Excess holdings acquired by purchase must be disposed of immediately. If purchases by disqualified persons cause the donor advised fund to have excess holdings, the donor advised fund will have 90 days to dispose of the excess.

- Businesses that derive at least 95 percent of their income from passive sources (dividends, interest, rent, royalties, capital gains). This will have the effect of excluding gifts of interest in most family limited partnerships, and other types of holding company arrangements.

**What is a disqualified person?**

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).

**TCF Policy with regard to assets categorized under the PPA as “excess business holding”**

TCF will identify and monitor any new gift to a donor advised fund of any interest qualifying as an “excess business holding” under the PPA. TCF will exercise its best effort to dispose of the contributed interest at the best possible price within five years of the date of the gift, as required under the PPA. In any event, TCF will dispose of any excess business holding prior to the five year time limit, except in the event that the Treasury Department grants an additional five year holding period. TCF will notify potential donors of such interests of the requirement prior to the contribution of such interest.

**Changes to Gift Acceptance Policies**

These policies and guidelines have been reviewed and accepted by the Executive Committee on September 27, 2010 and will be presented to the Board of Directors of The Community Foundation for ratification at their meeting on October 11, 2010.

Approved on the 27th day of September, 2010.

Ratified on the 11<sup>th</sup> day of October, 2010.



Gloria M. Harrison

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Chair of the Board

The Community Foundation *Serving Riverside and San Bernardino Counties*