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Amplifying Your Charitable Impact in Planning Significant Gifts

Moving beyond routine giving may require careful planning, negotiation and a clear written agreement.

As a regular donor to specific charities, you may occasionally receive requests for more significant contributions. These appeals may arise from capital campaigns, urgent funding needs or special initiatives. While such requests often represent exciting opportunities, they can also entail a much larger investment of philanthropic capital relative to your regular annual donations. As such, they may warrant more consideration, and a carefully drafted gift agreement, to avoid any misunderstandings.

Indeed, for substantial donations with a specific purpose, restricted gift agreements remain crucial for memorializing a donor's intent, especially for gifts meant to last in perpetuity. Written agreements can reflect a mutual understanding of the terms and conditions of a structured donation, and provide a framework of accountability for the receiving charity.

In this article, we outline nine practical considerations in making large gifts and in creating the written agreements that help structure them. As with any legal document, it is important to engage with counsel in the drafting process.

1. Clarify the 'Why' of Your Gift

Motivations for substantial donations can be highly personal, and should serve as a guide in implementing the gift. Examples include honoring the legacy of a family member, expanding educational opportunities, funding research to help treat or cure a disease, providing public access to an art collection, or other sources of inspiration.

Explaining the purpose of the gift, both informally and in your written agreement, can help guide the charity in stewarding the assets received and clarify your intent for family members.

2. Understand the Charity's Priorities

Ideally, your significant donation aligns with the organization's priorities and focus areas. For capital campaigns that raise substantial funds for multiple projects, review the entire menu of giving opportunities to survey the charity's strategic priorities, such as building renovations, scholarships or endowment growth. If no campaign exists, ask for the organization's strategic plan to understand its long-term goals and assess whether your donation aligns with that vision.

If your passion lies in initiatives outside the organization's core priorities, having open and transparent initial conversations with its leadership in advance can help to align your goals with the institution's long-term plan.

3. Confirm Donation Mechanics

***What* will you donate?** Charitable gifts may take the form of various assets, including cash, long-term appreciated marketable securities, or specific real or personal property. Donating appreciated publicly traded securities[1] held for over a year may serve as a more tax-efficient means of giving by reducing a highly concentrated position within a portfolio, while benefiting the charity without capital gain recognition. For this reason, you may wish to confirm in writing your ability to make the committed donation in cash or securities.

***When* will you make the gift?** Donations may occur through a single payment or over a number of years. Multiyear gifts can provide stability for the charity's general operating costs or help fund various stages of a project. In either case, the agreement also should clearly include a schedule of payments and, where applicable, any milestones required before certain payments are made. If you make a restricted charitable gift in installments, whether directly or via an intermediate entity like a Donor-Advised Fund, you can review the charity's use of each installment and touch base with the charity on its progress at each phase of funding. In addition, aligning the timetable of gift payments with your financial and tax planning helps to ensure coordination of your philanthropy with your cash flow and tax/deduction needs.

4. Identify the Use of Funds

Standard agreements regarding large gifts typically set forth the specific use of the donated funds or assets to ensure a meeting of the minds on this crucial matter. Common uses for restricted gifts include:

- **Endowments.** Establishing a fund with principal maintained in perpetuity, with annual income to support specific purposes (e.g., scholarships, research or faculty support).
- **Capital Projects.** Funding the construction or renovation of a physical facility.
- **Donations of Specific Assets.** Donating property, such as an array of art pieces, for a designated purpose (e.g., to support scholarship or complement an existing collection).

5. Agree on a 'Plan B'

Circumstances may change over time, especially for gifts intended to last in perpetuity. So, it is critical to specify a process for determining a contingency plan if the charity cannot (or will not) implement in accordance with the gift's original purpose. Otherwise, state law or a charity's template agreement may determine the fate of the donated asset or funds with a result that may disappoint or aggrieve you and/or your family.

For example, if a research fund established to cure a particular disease is no longer needed (because—good news—a cure has been found), the agreement may provide that the charity confer with you, certain family members or other designated representatives in planning an alternate use. In the absence of such an alternate plan or the feasibility to use the assets as intended, you may consider including a "gift over" provision that redirects the remaining funds or assets to another charity.

Mapping out this process in writing ensures the adaptability of the restricted gift while maintaining accountability.

6. Preplan Public Acknowledgement

Some donors are very private, and wish to remain anonymous; others are grateful when charities offer to acknowledge their gifts publicly. If a gift involves naming rights (e.g., for a building or scholarship), the agreement should clarify the duration of those rights (e.g., for the useful life of the building or longer), the exclusivity, design, placement, size and style of any signage, and the circumstances of name removal under certain circumstances (by either party).

[1] Other than publicly traded partnership units.

In Case of Emergency...

While philanthropists often seek to achieve long-term impacts, natural disasters and other funding emergencies may deserve your dollars as well. Reserving a portion of your philanthropic portfolio for unrestricted emergency response can help you respond nimbly, while remaining proactive and strategic in the rest of your philanthropic budget.

Response (or disaster) relief focuses on immediate needs and often draws the greatest amount of public response and attention. Subsequent phases that may need longer-term support include the following:

- **Mitigation** helps reduce loss of life and property by lessening the impact of disasters.
- **Preparedness** includes early warning systems, contingency planning, stock-piling of equipment and supplies, and creating coordination mechanisms.
- **Recovery** involves restoring structures, systems and services, and can extend to supporting individuals and families in regaining their overall well-being.[2]

Emergencies may arise from sudden losses of funding as well as natural disasters. You may wish to consider opportunities across the full spectrum of assistance to advance the recovery of the communities affected.

[2] Source: The Center for Disaster Philanthropy.

Whether anonymously or publicly acknowledged, you may wish to require in the agreement your advance review and approval of any public announcement of the gift to make sure it aligns with your desires.

7. Pin Down Reporting

Effective stewardship by the charity includes regular donor updates on the use and impact of the gift. To set expectations, the agreement should specify the frequency and format of such updates, not only for you, but potentially for your descendants. To avoid disappointment or unsustainable expectations, you and the charity should agree on reporting requirements that are both realistic and appropriate for the size of the gift.

8. Specify the Fees

For sake of transparency, the agreement should clarify the policy governing any annual fees for administering the gift or investing any endowed funds, as these fees may affect the amount of annual distributions deployed for the specified purpose and the long-term sustainability of the donated funds.

9. Address Enforcement

In the event of a potential failure to implement the gift as agreed to, the written agreement should clarify who has the ability (i.e., standing) to enforce the gift's terms. The state attorney general with jurisdiction may already have standing to enforce a restricted gift agreement. Depending on state law and the agreement, the ability to bring action to enforce the agreement may potentially extend to your family and/or designated representatives.

Conclusion: Words Matter

Gift agreements should accurately reflect your intent so that charities can effectively honor your wishes. By addressing with counsel key elements such as the purpose of the gift, timing, naming rights, reporting and contingencies, an agreement can create a framework to maximize impact so that you and the charity can achieve your common goals.

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