

Sustainable Philanthropy

Advising and Representing *Exempt Organizations* and *Donors*

Organization Care: Gift Acceptance Policy Statements and Explanations

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Disclaimers

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Notes and Conventions

Our treatise on the care and nurture of Donors and Exempt Organizations expresses Steven Roy Management and Cambyses Financial Advisors' "Sustainable Philanthropy" approach to Donors, Exempt Organizations, and their Stakeholders.

Sustainable Philanthropy emphasizes practices, attitudes, and collaborations that foster equitable, resilient, stable, scalable, and compliant *Donor*, *Organization*, and *Stakeholder* interactions that give birth to perpetual giving, perpetual operations, and perpetual benefits.

The treatise is addressed to:

- *Donors*, to facilitate decisions on their path to *Sustainable Philanthropy*.
- Exempt Organizations, their Boards of Directors, Executives, Employees, and Volunteers who nurture their Donors and provide Public Benefits to their Stakeholders and constituents.
- Non-Profit Advisors – the Accountants, Attorneys, Financial and Insurance Advisors, Fundraisers, Governance Consultants, and other professionals who serve the philanthropic community's needs.

- Public Policy Makers and Gatekeepers – In the hope that we shed light on the consequences of your regulatory and legislative actions.

Our goal is to produce a comprehensive body of authoritative and reliable materials viewed from the perspective of both *Donors* and *Exempt Organizations*. These materials are often divided between a, more-or-less, linear main body narrative, and a supporting cast of <<*Technical and Procedural Notes*>>.

The main body narrative provides an overview and introduction to the installment topic: i.e., What the topic involves, where it fits in the philanthropic firmament, how to interpret it, information sources to facilitate interpretation, further study, and action, and digressions about its origin, purpose, and history. To the extent possible, the main body of the treatise is non-technical and provides general coverage of the most likely scenarios Donors, Organizations (and their personnel), and Advisors encounter.

<<*Technical and Procedural Notes*>> aim at users with a deep-seated need for sophisticated analysis. <<*Technical and Procedural Notes*>> address topics at a foundational level, dissecting rules, vocabulary, precedents, analytics, and exceptions at a level that addresses the needs of representatives who make and effectuate strategic decisions or advise those who make them. <<*Technical and Procedural Notes*>> “read like an operations management, tax, or accounting textbook,” because that is exactly what they are intended to be! Note, however, that they are not a substitute for well-grounded professional input!

Each installment covers a single, narrow, subject. E.g., this installment presents Model Gift Acceptance Policies that conform to the most common legal and ethical responsibilities an Exempt Organization confronts when they are offered large, long term, or unusual asset donations. Reading between the lines, this installment also provides a roadmap that organizations can use to make themselves more Sustainable and *Donor* friendly.

To improve readability, we footnote topic sources rather than including them in the narrative. In the main body, we limit analysis and exposition about the footnoted sources to the extent possible. We reserve that, more detailed, exploration for <<*Technical and Procedural Notes*>>.

We employ orthographic conventions in our main body and <<*Technical and Procedural Notes*>>.

- Technical terms and terms-of-trade are *Italicized and Capitalized* when we invoke their trade meanings. We define many of these terms on our Definitions page. (Which is not linked to the narrative at this time.)
- **Headings, Important Distinctions, Admonitions, and Instructions appear in boldface.**
- Headings and direct quotes from outside sources appear in blocked, sans serif typeface (usually Calibri or Calibri Light)
- Active links to collateral sources appear in [Blue Underlined Text](#)
- *Titles and Titled-linked material is italicized and underscored.*

We sometimes override these conventions in the service of practicality. For example, this installment employs a variation of the conventions that distinguishes the Statement text from our commentary on it.

- Text of the model policy appears in Calibri (This Typeface).
- *Materials that appear in Italic Times New Roman (this typeface)* amplify the provisions' meaning or give additional examples of its application. These are not part of the *Gift Acceptance Policy* (unless you choose to include them). They are ideation and discussion points.
- **Highlighted provisions are derived from UPMIFA (Uniform Prudent Management of Institutional Funds Act).** UPMIFA, now adopted by forty-seven states, is the legal standard by which we measure prudent investment practices.

Finally, references to the “*Exempt Organization*” that appear in the body of the Policy refer to the Organization that adopts the plan. Substitute the name of the organization, or suitable synonyms, if you adopt the provision or a variation of it.

Note to fellow advisors, professionals, and colleagues:

We welcome your feedback, constructive comments, and questions... and we will publish them and credit you for them (with your approval and if appropriate). We sometimes miss the obvious. Your feedback helps remedy that. We view our colleagues as collaborators - not competition. Feel free to use any of our library materials in your own practice - just give us credit (where credit is appropriate) and don't re-publish them without our permission and acknowledgement (that could get nasty).

Apropos that last paragraph: Tell us what you do well - especially if it is a service we don't offer. We generate a "steady trickle" of referrals for other professional services and would be happy to add you to our referral list after we have vetted you and gotten to know you. Contact us by email or phone to start the relationship.

Model Gift Acceptance Policy - Interpretation

[IRS Form 990](#), Part IV, Lines 29 and 30 pose two questions:

- Did the organization receive more than \$25,000 in non-cash contributions?
- Did the organization receive contributions of art, historical treasures, or other similar assets, or qualified conservation contributions?

A yes response to either question requires the *Exempt Organization* to prepare [IRS Form 990, Schedule M](#) and attach it to the return.

In turn, Schedule M (Non-Cash Contributions), Part I, Line 31 asks whether the *Exempt Organization* has a *Gift Acceptance Policy*. Most *Exempt Organizations*, if they answer honestly, would have to say No.

Until recently, *Exempt Organizations* rarely adopted formal *Gift Acceptance Policies* early in their fundraising lifecycles. Early fundraising activities usually focus on cash, occasionally marketable securities, and fundraisers. Early fundraising efforts rarely discuss, much less contemplate, or comprehend, other gifts. If an early stage *Exempt Organization* has a gift acceptance policy at all, the policy gradually drifts to the back of the Organization's policy manual where it lies half-forgotten until the organization receives its first "*Nonstandard Contribution*," mounts a capital or endowment campaign, or is offered a donation it would rather not accept.

At that point, the *Exempt Organization* dusts off its forgotten policy, or finds it needs a fresh one. All too often, relearning or making policy-on-the-fly:

Breeds Inconsistency - Resulting in policy-by-personal opinion rather than coherence.

Clouds Judgement - It is difficult to see potential problems while staring at the prize!

Sends Mixed Signals – Donor confusion, Staff conflict, and Resentment often follows.

A simple example suffices:

The Fundraiser says, "Never Look a Gift Horse in the Mouth."

Prudence answers, "There is no such thing as a free horse."

Unless horses play an integral role in your Organization's *Exempt Purposes* AND you either have, or the *Donor* provides, the resources to support it, a Gift Horse may be more hassle than it is worth.

That, in essence, is why we (Steven Roy Management and Cambyes Financial Advisors) believe every Organization should adopt and regularly refer to a *Gift Acceptance Policy*. Some question that position because their *Exempt Organization* usually receives cash or checks. However, you never know when an unusual (Nonstandard) gift will arrive.

For additional commentary about why Organizations adopt Gift Acceptance Policies, and best practices for their implementation, refer to the [National Council of Nonprofits](#) website and follow the links from there.

Drafting, Adopting, and Maintaining a Gift Acceptance Policy

Drafting or revising a *Gift Acceptance Policy* is, by its nature, a collaborative effort that engages the:

- Fundraising, Planned Giving, and Capital Campaign staff
- Executive Director, President, and/or Board Chair
- Treasurer, Attorney, Accountant, and Consultants
- Gift Committee Representatives, and eventually
- Board of Directors

The drafting group may consider other, similar, organizations' *Gift Acceptance Policies* – but simply appropriating their language without tailoring them to your own organization is risky. Take the time necessary to understand the implications of every provision you adopt. Once drafted, submit the draft to legal review.

Once the *Gift Acceptance Policy* has been drafted and vetted, the *Board of Directors* approves and adopts it by resolution at a regularly scheduled meeting or at a special meeting noticed and scheduled for that purpose. The policy becomes part of the Board minutes and is usually included in the Organization's *Policy Manual* as well. The Organization should carry out a staff education session to familiarize any donor-facing staff with the policy's application.

Gift Acceptance Policies are usually reviewed annually. Review sessions focus on fine-tuning or amending policies to accommodate changed circumstances, allow the organization to accept new gifts, restrict or expand gift procedures, and accommodate or document (rare, non-recurring) exceptions to standard policy.

Administering gifts under a gift, capital, or endowment campaign often requires skills that *Exempt Organization* staff is unlikely to possess. Wise *Exempt Organizations* cultivate and curate relationships with (among others):

- Attorneys and Accountants familiar with Exempt Organization Issues, Estate and Gift Taxation, and Wealth/Family Planning.
- Appraisers who practice in General, Real Estate, Business Interest, and Collectible Appraisal
- Authenticators and Provenance Specialists
- Environmental Consultants
- Financial Consultants (Registered Investment Firms and Banks)
- Inspectors
- Title Transfer and Escrow Agents

Not only will the *Exempt Organization* need consultants when they receive a non-standard gift but cultivating them may enhance your fundraising campaign's profile. Every consultant has clients they may be willing to steer in your direction. Mercenary on your part? Yes, but effective.

Model Gift Acceptance Policy

This model policy presents one example of policy construction. It should not be adopted, in whole or in part, without a full understanding of its implications and a thorough legal review.

This generic model policy includes many of the clauses commonly employed by Exempt Organizations. It is intended as a Guideline to empower the Gift Acceptance Committee's deliberations.

Many Organizations tailor this document to fit their unique operations and Exempt Purposes. For example, an Art Museum typically includes additional provisions related to Attribution and Provenance of donated works, their storage and exhibition, preservation, and restoration.

We (Steven Roy Management and Cambyses Financial Advisors) recommend that this policy be distributed to all the Organization's staff members and placed in a prominent location on your website. Donors may wish to review the policy before approaching the Organization.

Mission and Purposes

Exempt Organization, a not for profit organized under the laws of the State of <State>, encourages and accepts gifts for purposes that will help further its mission.

<<Insert Exempt Organization's Mission Statement>>

The purpose of the policies and guidelines set forth below (the "Policy") is to govern the acceptance of charitable gifts by *Exempt Organization* and its affiliated entities, and to provide guidance to prospective donors and their advisors when they contemplate making gifts. The Policy applies to gifts offered to the *Exempt Organization* to support any of its programs or services. Additional protocols or discussion may apply to some types of gifts (e.g. Real Estate and interests in Real Estate) and to Restricted Gifts or Gifts for Endowments.

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We encourage Exempt Organizations to include their mission statement in every policy the Organization drafts. This focuses the policy on the organization's mission and purpose – something that is critical to maintaining the Organization's Exemption. We recommend the Organization use the "Passionate" version¹ of their Mission Statement except when the more formal Mission and Purpose Statement that forms the basis for their Exemption is more appropriate.

Organizations sometimes supplement the "policy purpose" description used here with additional clauses related to discharging fiduciary responsibility, protecting the board from third party liability and IRS sanctions, and protecting the nonprofit from unanticipated costs and negative publicity.

¹ See page 6 of our <<[IRC §501\(c\)\(3\) Organization Formation and Maintenance Initial Setup Protocol](#)>> for an explanation of the "Passionate" Mission Statement

Gift Acceptance Committee

The *Gift Acceptance Committee* shall consist of one or more designees from the offices of the **General Counsel, External Affairs and the Chief Operating Officer.**

In addition, the *Gift Acceptance Committee* shall include the following:

....
....

The *Gift Acceptance Committee* reviews inter-vivos gifts, pledges, and bequests offered to the *Exempt Organization* where and as appropriate, in accordance with this Policy and with laws, rules and regulations as may be effective from time to time. The *Exempt Organization* reserves the right to refuse or return gifts that propose restrictions inconsistent with the *Exempt Organization's* purpose or that otherwise may be deemed inappropriate by the *Gift Acceptance Committee*.

No less frequently than semi-annually, the *Gift Acceptance Committee* shall report to the Finance Committee of the *Exempt Organization's* Board of Trustees regarding gifts that have been accepted or declined by the *Exempt Organization*.

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The Gift Acceptance Committee's members must be intimately familiar with the Exempt Organization's mission, purpose, and operations and have appropriate expertise and experience. The Committee should be small enough to be agile, but large enough to foster a range of opinions.

For large organizations, the list of additional members may be quite extensive. Keep in mind the adage: The larger the committee, the larger the quorum.

In small organizations, the Board may directly assume responsibility for Gift Acceptance and/or limit the scope of its review to truly unusual grants.

Use of Legal Counsel

The *Gift Acceptance Committee* shall seek legal counsel, where appropriate, in matters that implicate any giving program and shall execute no deferred giving, Restricted Purpose, or Endowment agreements without the advice of the *Exempt Organization's* legal counsel.

All prospective donors shall be urged to seek independent legal, financial, accounting, or tax counsel in matters that affect their gifts, tax, and estate planning.

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Counsel is essential to both the Committee and the Donor when either contemplates restricted or conditional giving, permanent institutional funding, or endowment contributions. The language above is the minimum sufficient to cover these contingencies. Additional language may be advisable including:

- *A statement that Donors are responsible for payment to their Counsel unless agreed to by the*

Exempt Organization (Should be obvious, but...). Any provision under which the Exempt Organization may pay Donor's Counsel should specify the conditions under which the nonprofit will pay those fees, how conflict of interest issues will be avoided, and how the payment of fees will be reported for tax purposes

- *A list of circumstances under which the Committee will seek Counsel,*
- *A Separation of Duties and Conflict of Interest provision that applies to Board Members who act as Counsel for either the Organization or the Donor,*
- *An acknowledgment that counsel is part of the fiduciary role exercised by Board Members.*

Appraisal and Other Independent Advisors

It is the donor's responsibility to determine whether it is necessary to obtain an appraisal of a proposed gift and, if so, to secure such appraisal at the Donor's expense. It is also the donor's responsibility to secure independent legal, tax, financial and estate advice, at the Donor's expense, for all gifts to the *Exempt Organization*. The *Exempt Organization* will not act as advisor to any donor in any of these respects, though the *Exempt Organization* will cooperate with the donor's advisors in furtherance of approved gifts.

It is the Donor's responsibility to determine whether they require other professional assistance to effectuate the gift. Such assistance may include tax, financial, logistic, administrative, or other assistance. The *Exempt Organization* will not act as advisor to any donor in any of these respects, though the *Exempt Organization* will cooperate with the donor's advisors in furtherance of approved gifts. The Donor is responsible for costs of all such assistance.

If the *Exempt Organization* requires independent second opinions or corroboration regarding reports submitted by *Donor's* Advisors, the *Donor* will provide that evidence at their own cost.

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The policy explicitly states who is responsible for appraisals required for the donor's tax return (the donor), and when, if ever, policy exceptions apply. The same generalization holds true for other professional fees that the Donor or the Exempt Organization may incur to close a transaction.

Real estate transfers, among other contributions, incur a plethora of specialized charges. The Real Estate Gifts clause clarifies payment responsibility for those charges.

Policies also list situations in which the charity will obtain an independent appraisal. E.g., when receiving a Conservation Easement. Exempt Organizations often require that the donor pay for the charity's confirming appraisal.

Valuation issues arise in three contexts:

1. *Donor Valuation for income tax purposes,*
2. *Donor Valuation for estate and gift tax purposes, and*
3. *Organizational Valuation for book purposes.*

The first two contexts follow detailed rules recited in the Internal Revenue Code. The last is governed by

Financial Accounting Standards Board (FASB) rules. These rules may create disparate results. The appraisal clause may specify how each of the parties applies these rules.

General Provisions Regarding Expenses

Unless agreed to by the *Gift Acceptance Committee*, the *Donor* will be responsible for all expenses necessary to complete the gift transaction, including, as noted above, legal, financial, accounting, and appraisal services. Additional expenses may include, (by way of example, not limitation):

- Authentication and Provenance
- Customs Fees and Excises
- Insurance
- Integration into the Exempt Organization's Systems
- Restoration
- Storage
- Title and Title Insurance
- Transfer and Sales Taxes
- Transportation of the Gift and Personnel necessary to oversee the Transportation

Transfers of certain property (e.g. Real Estate and Interests in Real Estate) may incur additional costs (e.g. escrow, transfer tax, notary services, ...) that will be the *Donor's* responsibility.

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The list of transaction related expenses can be as extensive as you feel is appropriate.

It is important, however, to leave room for negotiation. Language that permits the Exempt Organization to waive all or part of this provision.

Gifts and Gift Vehicles

General Policies

The *Exempt Organization* may accept inter-vivos gifts, pledges, and bequests, both in cash and in-kind. *Donors* may pledge an amount for a specific purpose or designate a pledge to be satisfied with periodic scheduled payments not to exceed 5 years, as approved by the *Exempt Organization*. *Donors* are encouraged to make bequests to the *Exempt Organization* under their wills and trusts. Such bequests will be recorded as gifts, at their present value, when the gift becomes irrevocable.

The *Exempt Organization* and its *Gift Acceptance Committee* will review proffered gifts based on the following principles:

- **Support of Mission.** All gifts must be in furtherance of The Exempt Organization's mission to <specify mission>
- **Reputation and Core Values.** The *Exempt Organization* will not accept a gift which may damage or compromise its reputation, is not in the best interests of the *Exempt Organization* community or is not consistent with The *Exempt Organization's* core values.
- **Philanthropic Intent.** Gifts to The *Exempt Organization* are given expressly with a philanthropic

intent and should not be granted with any expectation of benefit or influence over The Exempt Organization activities in return for the gift. The gift is wholly owned and controlled by The Exempt Organization once it is received.

- **Undue Burden.** While *The Exempt Organization* appreciates all gifts, we cannot accept a gift that imposes an unreasonable or undue financial, legal, or administrative burden on *The Exempt Organization* its, staff, or other resources.
- **Gift Restrictions.** The *Exempt Organization* seeks gifts that provide support to our greatest needs and priorities. Gifts should be in amounts appropriate to the specified uses. Gifts should not be directed to purposes that are so restricted that effective use or administration will be problematic.
- **Equal Opportunity.** The *Exempt Organization* does not accept gifts restricted to purposes or programs which involve discrimination based upon the Organization's non-discrimination policy or any basis prohibited by federal, state, and local laws and regulations.
- **Donor Advisors.** While *The Exempt Organization* may work with *Donors* to further their charitable, financial, and estate planning goals, *Donors* are ultimately responsible for ensuring that their proposed gift furthers those goals. *Donors* will be encouraged to seek the advice of independent legal, tax, and financial advisors in matters relating to their gifts.
- **Confidentiality.** The *Exempt Organization* is committed to protecting the privacy of people whose personal information is held by the Organization through responsible information management. When required, *Donor* information will be disclosed to regulatory agencies.

The *Gift Acceptance Committee* may decline any proposed or offered gift based on negative public perceptions of the gift or donor that would attend acceptance of the gift. The *Gift Acceptance Committee* may consider any of the following when determining to decline a contribution. The *Exempt Organization* shall not accept any *Gift* that:

- interferes with or influences the *Exempt Organization's* intellectual freedom or its capacity to fully control the management, operations, and direction of its affairs, including programs, and their integrity,
- contains restrictions that unlawfully discriminate based on race, creed, color, citizenship, national origin, religion, sexual orientation, gender identity, gender expression, age, marital or partnership status, military status, or disability,
- presumes or requires a particular result or conclusion of scholarly, research, or programmatic work,
- impedes the free inquiry and activity of staff or constituency,
- is offered for purposes inconsistent with the *Exempt Organization's* missions of <state purpose>
- affords the *Donor* influence over the continued employment of specific personnel; or
- impairs the *Exempt Organization's* ability to define and pursue its mission, requires illegal or unethical acts, hinders governance or administration, or compromises the *Exempt Organization's* reputation.

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This clause defines both what type of gifts the Exempt Organization will accept, and the causes that may be invoked when declining a gift. The former may be quite generic (as it is here), but the latter should

be as explicit as is workable. This avoids “interpretation wars” both between Gift Acceptance Committee members and between the Committee and potential Donors.

At least one of the conditions (the anti-discrimination provision) is implicit in Federal and State statutes. e.g. [Section 1981 of the Civil Rights Act of 1866](#), However, it never hurts to remind your representatives and Donors.

Some Exempt Organizations decline all restricted gifts that may result in “mission creep:” Projects that may distract the Exempt Organization and its staff from the core ideals and Exempt Purposes that define the Organization.

Anonymity Policy

Some *Donors* may wish to remain anonymous. Every effort will be made to respect the wishes of the donor, within the limits established by state and federal provisions.

The identity of anonymous donors will be known to the <specify officers or personnel who will have access>. Gift records are confidential and can only be divulged with the approval of the <specify officers who may approve divulgence> or as otherwise may be required by applicable law. The Exempt Organization’s Data Privacy and Security Policy will be followed.

Disclosure of *Donor’s* Identity will be made to <specify personnel who are responsible for each of the following> for the following purposes:

- 1) IRS requires the *Exempt Organization* to provide a *Contemporaneous Written Acknowledgement* to *Donors* who donate more than \$250 in any transaction. Further, the *Exempt Organization* may be required to execute and provide the *Donor* with specific forms (e.g. Form 8282 or 8283) in connection with transactions. *Donor* identity may be shared with appropriate *Exempt Organization* personnel to facilitate that process.
- 2) IRS requires gifts that exceed \$5,000 or 2% of the total gifts received by an *Exempt Organization* be disclosed on [Form 990 Schedule B](#). This requirement includes the *Donor’s* name. This schedule is not open to public inspection but the required information, including donor’s name, will be provided to the IRS.
- 3) U.S. Patriot Act and Bank Secrecy Act Compliance

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Some Exempt Organizations decline all Anonymous gifts.

For those that accept Anonymous Gifts, the Exempt Organization’s Gift Acceptance Policy sets forth ways to inform anonymous Donors 1) how donations may be kept anonymous, and 2) circumstances under which the nonprofit may not provide full anonymity.

The policy may lay out steps the Exempt Organization takes to ensure the anonymous gift is not being made to thwart the law, public policy and/or principles of the nonprofit.

Gift Vehicles

The Exempt Organization accepts the following forms of gifts (vehicles), when otherwise

consistent with this Policy:

- Cash
- Crypto Currency
- Securities
- Real Estate
- Tangible Personal Property
- Retirement Plan Beneficiary Designations and Bequests
- Life Insurance
- Intellectual Property
- Partial Interests in Property
- Remainder Interests in Real Property
- Charitable Remainder Trusts
- Charitable Lead Trusts

The *Gift Acceptance Committee* may accept Gifts that are Unrestricted, Restricted to use for specific program activities, or for *Endowment*. Acceptance criteria and *Donor/Donee* financial responsibilities for each gift vehicle are set out in more detail, below.

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This list of donation vehicles includes the most common donation vehicles Exempt Organizations are likely to receive or be offered. The Exempt Organization must decide:

*First, whether they will accept donations tendered in a particular type of property.
Second, on what terms they will accept them.*

Ideally, clauses in each subsection are structured as follows:²

- *Identify or define what donation vehicle is included in the policy. If the donation vehicle is subject to specific IRS reporting or valuation rules, mention them too. (c.f. Cryptocurrency, below)*
- *Outline the approval (rejection) process for the donation vehicle.*
- *Cite the valuation process for the donation vehicle. (There may be three or more of these, i.e., for 1) Organization GAAP, 2) Organization Tax, 3) Donor Tax*
- *Specify a liquidation or retention policy that applies to the vehicle. (c.f., Securities, below)*
- *Assign responsibility for expenses incurred or regulatory actions that must be completed. Generally, transactional expenses are the Donor's responsibility unless negotiated before the transaction is completed.*

Clause language should specify the Exempt Organization's default position regarding the donation vehicle but allow the Exempt Organization and its Gift Acceptance Committee latitude to negotiate alternatives when warranted.

² The clauses presented in this model document were drawn from various sources intended to convey the variety of approaches taken by *Exempt Organizations*. Some of them do not adhere to these specifications.

The policy may also require that the Exempt Organization decline certain types of property. (e.g., many current policies forbid acceptance of Crypto-assets)

Cash

Cash and currency are acceptable in any form. Checks should be made payable to *The Exempt Organization*. Credit card payments and funds transfers (including wire and ACH transfers) are also accepted. *Donors* who make a gift by credit card must provide the card type (e.g., Visa, MasterCard, American Express), card number, expiration date, and name of the card holder as it appears on the credit card.

The *Gift Acceptance Committee* shall adhere to all applicable anti-money-laundering statutes including the Bank Secrecy Act and the US Patriot Act when accepting cash or near cash instruments.

A charitable gift of non-U.S. currency is complete only after the currency has been successfully paid to and accepted by the Exempt *Organization's* designated currency exchange, <exchange name>.

Cryptocurrency

The *Exempt Organization* may accept Crypto, digital, and virtual currency provided the donor is identified in either supporting materials or in the transmission of funds.

The Internal Revenue Service considers Cryptocurrency as property. Cryptocurrency gifts of \$5,000 or more require a *Qualified Appraisal* if the donor wants to take a charitable tax deduction. The cost of this appraisal will be borne by the donor.

Cryptocurrency is highly volatile. Cryptocurrency contributed to the *Exempt Organization* will be converted to U.S. Dollars as quickly as administratively possible when the gift is received. A charitable gift of cryptocurrency is complete only after the currency has been successfully paid to and accepted by the Exempt *Organization's* designated currency processor, <processor name>.

Upon payment/acceptance, the *Exempt Organization* will provide the donor with a gift acknowledgement or receipt that substantiates the receipt of the cryptocurrency as a charitable gift. Like non-marketable securities and other non-cash contributions the acknowledgement will not state the value of the gift. The notice will state the name and number of cryptocurrency coins donated, the date of receipt, and the fund or account benefiting from the gift. The *Donor* is solely responsible for determining the value of the currency for their own tax purposes.

Securities

The *Exempt Organization* may accept both publicly traded securities and closely held securities.

Publicly Traded Securities – The *Exempt Organization* may accept gifts of marketable securities. Generally, marketable securities will be sold when received unless otherwise decided by the *Exempt Organization*. Where otherwise marketable securities are restricted by applicable law or contractual conditions, final determination of the acceptability of a gift of such securities shall rest with the *Gift Acceptance Committee*.

Publicly traded stock is considered a capital asset as defined in IRC §1221. Donated stock that meets minimum holding period requirements qualifies as long-term capital gain property and can,

thereby, be deducted for charitable income tax deduction purposes at its fair market value. (Electing this option may trigger other, less desirable, tax consequences.)

The fair market value of publicly traded stock (whether liquidated immediately or held in portfolio) is generally the mean between the highest and lowest quoted selling prices on the valuation date.

Closely Held Securities – Closely held securities, including debt and equity positions in non-publicly traded companies as well as interests in LLPs, LLCs or other ownership forms, can be accepted upon approval of the *Gift Acceptance Committee*. Every effort will be made to sell closely held securities as soon as possible, unless otherwise decided by the *Exempt Organization*. The *Gift Acceptance Committee* will consider the following non-exclusive list of factors when deciding whether to accept such a gift:

- Legal and/or contractual restrictions on resale and company policy on resale (e.g. window periods, lockouts, or buy-sell agreements),
- Expectations for marketability,
- Tax consequences for the *Exempt Organization* that would arise from acceptance of the gift (including Unrelated Business Taxable Income), and
- The nature of the company's business.

Closely held securities will be valued based on a *Qualified Appraisal* of the security using USPAP and PAPCE procedures.

Unless otherwise agreed to by the *Exempt Organization*: The Donor shall pay any legal, transfer, registration, excise fees, or other costs incurred to facilitate the transfer of Securities. The *Donor* shall pay all expenses incident to the transfer, including (but not limited to) appraisal (if required), escrow, and liquidation fees.

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Appreciated, publicly traded, securities enjoy a status shared by few other assets: the ability to easily gain an enhanced tax deduction while avoiding the tax consequences of a sale. This feature makes them, the most frequently donated non-cash asset vehicle.

If retained in the Exempt Organization's portfolio, closely held securities may raise operational, support test, and Unrelated Business Income Tax issues.

Real Estate

The *Exempt Organization* may accept gifts of developed or undeveloped Real Estate.

The *Exempt Organization* will consider whether the property is useful for the exempt purposes of the *Organization*, whether it is marketable, and whether the donor agrees that the property can be sold at the *Exempt Organization's* discretion. In addition, the donor shall do the following, the results of which shall be shared with the *Exempt Organization* and shall also be considered by the *Exempt Organization* in its decision:

- For all real estate, facilitate a visual environmental site inspection by an approved representative of the *Exempt Organization*, that results in at least a satisfactory evaluation.
- For non-residential real estate, perform a Phase 1 Environmental Audit at the *Donor's* expense,
- Conduct a *Qualified Appraisal* at the *Donor's* expense,
- Provide, at the *Donor's* expense, a title search, title insurance, recent tax statements, and a tax map,
- Disclose and satisfy any mortgage or encumbrance on the property, and
- Disclose any carrying costs (including maintenance, insurance, condominium, or co-op fees).
- When approved by the *Gift Acceptance Committee*, the expenses allocated to the donor above may be borne by the *Exempt Organization*.

Unless otherwise agreed to by the *Exempt Organization*: The *Donor* shall pay any legal, transfer, registration, excise fees, or other costs incurred to facilitate the transfer of Real Estate. The *Donor* shall pay all expenses incident to the transfer, including (but not limited to) appraisal (if required), escrow, and liquidation fees.

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Real estate is the largest financial asset class (by value) in the world. However, less than 3 percent of U.S. charitable donations (by value) involve real estate. Exempt Organizations turn down roughly 80 percent of real estate donations offered to them. Reasons for this anomaly include

- *Lack of investor/owner knowledge that real estate donations are possible,*
- *Lack of investor and Exempt Organizations familiarity with donation procedures, evaluation processes, and legal and tax issues,*
- *The complexity of due diligence,*
- *Encumbrances on the properties,*
- *Post donation holding costs, and*
- *Environmental liabilities.*

If an Exempt Organization wishes to pursue real estate donations, we (Steven Roy Management and Cambyes Financial Advisors) recommend (in addition to adopting a Gift Acceptance Policy for Real Estate donations) they first spend some time to develop answers to each of those objections – and a summary document that encourages real estate owners to donate.

Some Exempt Organizations incorporate a list of the types of properties they will accept into their Gift Acceptance Policy: That list usually includes (some or all):

- *Apartment buildings*
- *Commercial buildings*
- *Condominiums*
- *Farmland*
- *Fractional interest*
- *Historic structures*
- *Houses*
- *Industrial buildings*

- *International property*
- *Office buildings*
- *Rentals*
- *Residential property*
- *Timeshare*
- *Vacant land*

Indicators that the Exempt Organization should not accept the donation include:

- *An outstanding mortgage (that will not be liquidated in the transfer).*
- *Environmental issues*
- *Low valuation relative to other properties in the community*
- *Low Buildability*

Transfers subject to creditor interests (mortgages or deeds of trust) may be treated as bargain sales. Further, it is often difficult to persuade lenders to assign the loan to the Exempt Organization, without retaining the investor/original borrower's security or collateral.

Under current U.S. standards, {The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as Superfund)}, the owner or operator of a contaminated property can be held responsible for the property's cleanup, based solely on their current ownership of the property. Thus, the Exempt Organization may be liable for contamination that occurred on the property decades ago – long before it was donated. To mitigate these risks, we (Steven Roy Management and Cambyes Financial Advisors) recommend the Exempt Organization commission at least a Phase I Environmental survey/report on the property. The cost of this survey should be borne by the Donor.

Low Relative Value and Low Buildability (Constructability) often run hand in hand. Even if there are no overt symptoms of Low Buildability (e.g., subsidence, steep terrain, standing sump/swamp water), we recommend that the Exempt Organization commission an engineer (with the requisite skills) to survey the property.

If the Exempt Organization uses donated property to generate rental income, they must assess the impact of the IRC 514 Unrelated Debt Financed Income rules.

Donors are advised to transfer their entire interest in the real estate unless there is compelling reason for them to retain some of the property rights (e.g. retained mineral rights). Gifts of Partial Interests and Gifts that contemplate only the use of the property (e.g. rent free occupancy) to/by the Exempt Organization are generally non-deductible by the Donor (see Partial Interests in Property, below)

Tangible Personal Property

Tangible personal property may be accepted provided the property fulfills the Exempt Organization's mission or can be readily liquidated. Gifts that fulfill the Exempt Organization's mission will be considered according to the Accounting or Collections Management Protocols that most closely reflect the nature of the donated property. The Gift Acceptance Committee considers the following criteria when deciding whether to accept a gift of tangible personal property:

- *Is the property marketable?*

- Are there any undue restrictions on the sale, use or display of the property?
- Are there any carrying costs for the property?

Authenticity and Provenance of Gifts consisting of Art or Collectibles will be examined at the *Donor's* expense. The *Donor* is responsible for all expenses and costs associated with transfer of Tangible Personal Property to the *Exempt Organization*. The *Donor* may be required to provide reserves for maintenance of property in some cases.

The accounting and tax treatments for In-Kind gifts of Tangible Personal Property (for both *Donors* and *Exempt Organizations*) differ based on the purpose for which the property is donated. IRS rules distinguish and apply different valuation and deductibility standards to donated property that is intended for Thrift Store sales, Resale or Distribution in connection with the *Exempt Organization's* activities, Resale or Distribution in connection with the Exempt Organization's taxable activities, or for use by the Organization.

Tax treatment of In-Kind gifts of Tangible Personal Property may also differ based on the nature of the property in the *Donor's* possession (prior to donation). The IRS distinguishes In-Kind gifts of Tangible Personal Property held by the donor for personal, investment, capital, or inventory.

The *Donor* is solely responsible to determine which, if any, of the tax treatments applies. *Exempt Organization* staff or directors may not provide legal, accounting, financial, or estate planning advice in connection with any gift of Tangible Personal Property. All prospective Donors shall be urged to seek their own legal counsel and/or tax counsel in matters relating to their gifts, tax, financial, and estate planning.

Unless otherwise agreed to by the *Exempt Organization*: The *Donor* shall pay any legal, transfer, registration, excise fees, or other costs incurred to facilitate the transfer of Tangible Personal Property. The *Donor* shall pay all expenses incident to the transfer, including (but not limited to) appraisal (if required), escrow, and liquidation fees.

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Some Exempt Organizations define policies for various types of Tangible Personal Property (Personalty): e.g.

*Art and Collectibles
Automobiles
Business Equipment
Supplies and Inventory,
etc.*

Exempt Organizations that enumerate separate policies for these categories should note that IRS valuation and deduction rules may be different for one type of personalty vs. another.

After Cash and Securities, In-Kind contributions of Tangible Personal Property (aka "Stuff") are the third largest type of donation that Exempt Organizations receive. Unfortunately, the rules and conventions that govern the accounting and tax treatment of these donations are among the most (unnecessarily?) convoluted provisions that affect Donors. Thus, Exempt Organization staff should be discouraged from giving "helpful advice" to Donors who give Tangible Property.

Unreimbursed Out of Expenses are generally subject to the rules governing Tangible Personal Property. Fund raising activities (e.g., raffles and silent auctions) that employ donated goods also trigger these provisions.

Retirement Plan Beneficiary Designations

Donors are encouraged to name the Exempt Organization as beneficiary of their retirement plans. This designation may be made inter-vivos (distributions from the Plan during the Donor's lifetime) or under beneficiary or specific bequests in the Donor's estate plan. Such designations will be recorded as gifts, at their present value, when transferred or when the gift becomes irrevocable.

Donors subject to Minimum Distribution Requirements (IRC 401 and 408) may benefit from the income exclusion afforded by the Qualified Charitable Distribution provisions of IRC 408. The Donor and their advisors are solely responsible for determining whether those provisions apply and whether they are advantageous to the Donor.

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From the Exempt Organization's perspective, gifts of interests in Retirement Assets are usually relatively straight-forward. Gifts are usually rendered in cash or cash equivalents, and pledges-bequests are typically valued at their cash equivalent balance.

The Internal Revenue Code permits Donors to exclude from income up to \$100,000 of direct distributions from pension vehicles to the Exempt Organization if the Donor is subject to the Required Minimum Distribution rules. While it behooves the Organization's staff to mention this (extreme) tax advantage – staff should not give “tax advice” regarding what can be a complex decision process.

An FAQ: Brokerages and Custodians will usually issue the Donor a 1099-R that includes the entire amount of the distribution – even when the distribution is made directly to the Exempt Organization. It is the Donor's responsibility to compute and report offsetting exclusions from gross income. Expect one or several calls from Donors who find that confusing.

Life Insurance

The Exempt Organization accepts gifts of new and existing permanent life insurance policies. The Exempt Organization will not accept gifts of term policies.

Donors are encouraged to name the Exempt Organization as beneficiary of their existing life insurance policies (permanent or term). The Exempt Organization also accepts assignments of dividends (current or pooled) in connection with permanent life insurance policies. Such designations will be recorded as gifts, at their then present value, when the gift becomes irrevocable.

If the Exempt Organization is named as both beneficiary and irrevocable owner of a whole life insurance policy, it will be recorded as a gift. If the Donor of a whole life policy contributes future premium payments, the Exempt Organization includes the entire amount of the additional premium payment as a gift in the year that it is made. If the Donor does not continue to make gifts to cover premium payments, the Exempt Organization may, at its discretion, continue to pay the premiums, convert the policy to paid up insurance, or surrender the policy for its current cash surrender value. The

Exempt Organization reserves the right to convert any insurance policy or retain it as an investment, at its option.

The *Donor* is responsible for all costs incurred to transfer policy title.

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Term life policies are usually not ideal giving vehicles. 1) They have no cash value, 2) premiums must be maintained (either by the Donor or the Organization), and 3) they retain their value only while they remain in force – a period of limited duration. The Exempt Organization should encourage Donors to name the Organization as the Beneficiary of term policies, while maintaining policy ownership in the Donor’s name.

For existing policies, subject to Community Property considerations, Donors may designate the Exempt organization as a beneficiary. This designation may be a fractional interest in the proceeds or may encompass the entire base benefit.

For new policies, the Donor may be required (by the policy issuer and regulations) to demonstrate that the organization has an “insurable interest” in the insured.

For all policies that the Donor intends to donate, the Donor must exercise care not to retain any of the “incidents of ownership” in the policy. Those rights can be difficult to shed in some cases. If the Donor retains incidents of ownership, the realization of the gift may be deferred. In extreme cases, the gift may be non-deductible.

Donor Advised Funds and Private Foundations

The Exempt Organization accepts gifts from donor advised funds (“DAF”) and private foundations. Where benefits (including membership) are provided in return for a contribution from a DAF or private foundation and the *Donor* does not waive the benefits, the *Exempt Organization* cannot sign an acknowledgement representing that no goods or services were provided in return for the contribution, even if the individual pays separately for the non-deductible portions. In such circumstances, the *Exempt Organization* will issue a receipt stating that goods and/or services were received and indicating both the tax-deductible and non-deductible portion of the gift. Similarly, the *Exempt Organization* will not accept contributions from a DAF or private foundation to satisfy an individual’s legally binding pledge obligation to the *Exempt Organization*.

Intellectual and Intangible Property

After review by the *Gift Acceptance Committee*, The *Exempt Organization* accepts gifts of new and existing Intellectual or Intangible Property or assignments of Royalty or other Income from such property. The *Exempt Organization* will consider whether the property is useful for the exempt purposes of the *Organization*, whether it is marketable, and whether the donor agrees that the property can be sold at the *Exempt Organization’s* discretion.

For purposes of this policy, Intellectual and intangible property includes, but is not limited to:

- Computer software
- Patents, inventions, formulae, processes, designs, patterns, trade secrets, or know-how

- Copyrights and literary, musical, or artistic compositions
- Trademarks, trade names, or brand names
- Franchises, licenses, or contracts
- Methods, programs, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists, or technical data
- Other similar items

Items are considered similar if they derive value from intellectual content or other intangible properties rather than physical attributes.

The *Exempt Organization* accepts fractional interests in Intellectual and Intangible property. Donors are advised that *Donor Retained Rights* or *Partial Interests* in the property may delay or preclude deductibility.³

Transfers or Gifts of Intellectual and Intangible Property are subject to many, complex, legal and tax considerations. Those considerations may lead to disparate valuation of the Interests by the *Donor* and the *Organization*. The *Donor* is solely responsible for determining the consequences of their gift and are advised to retain qualified appraisal, accounting, and legal advice before effectuating the gift. The cost of that counsel is the *Donor's* responsibility.

The *Donor* is responsible for obtaining a Qualified Appraisal of the Intellectual or Intangible Property at the *Donor's* expense. Unless otherwise agreed to by the *Exempt Organization*: The *Donor* shall pay any legal, transfer, registration, excise fees, or other costs incurred to facilitate the transfer of the property. The *Donor* shall pay all expenses incident to the transfer, including (but not limited to) appraisal (if required), escrow, and liquidation fees.

The *Exempt Organization* may decline gifts of Intellectual or Intangible Property that the Gift Acceptance Committee, in its absolute discretion, determines are patently offensive or inconsistent with the *Organization's* purposes, public perception or policies.

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Intellectual and Intangible Property gifts, though rare, have historically been problematic for Organizations, their Donors, and The Internal Revenue Service.

Organizations must carefully weigh the advantage of additional (possibly long-term) revenues against the possibility that (for example):

- *Some (very vocal) portion of the public may find a copyrighted work patently offensive or "immoral" (this is especially common for visual and performance art, e.g., Robert Mapplethorpe's images)*
- *A patent may enable technology that is antithetical to the Organization's purpose (e.g., A climate change organization is gifted a Fracking Patent),*
- *The patent may be challenged,*
- *A trademark may be, or may become, associated with public opprobrium (Naming rights for the*

³ IRS draws a distinction made between transfers of "Partial Interests" – Transfer of less than all of the Donor's rights in the property – and "Fractional Interest" – Transfer of a share in all of the Donors rights in the property. The latter yields a deduction, the former does not. Classic example: Donor retains mineral rights to transferred-donated land. Result: No deduction.

Bernie Maddof Foundation?)

Wise organizations error on the side of caution – unless they actively seek confrontation.

Donors who create Copyrighted property (copyrights, literary and musical compositions, works of art, and similar property) confront two limitations on deductibility:

- *Copyrights, literary and musical compositions, works of art are ordinary income property. If the Donor created the work or received it by gift from its creator, the Donor's deduction is the lesser of fair market value or the creator's cost of creating the property.*
- *If the Donor retains any ancillary rights to the work, the deduction is entirely obviated. (ex., Author retains "Sequel Rights" to a copyrighted work.*

Donors who create Patents (treated as Capital Assets IRC 1235) face the partial interest rule but may deduct the full Fair Market Value of the Patent – provided they engage a Qualified Appraiser to conduct a Qualified Appraisal, usually at considerable cost.

Until about 2004, the Service fought a running battle with Donors who gifted Intellectual and Intangible Property. That battle centered on valuation issues: The Service's tendency to undervalue intangibles, and the Donors' tendency to (vastly) overvalue them. The battle has been resolved, largely to Donors' detriment, by issuance of guidance [Notice 2004-7, Charitable Contributions of Patents and Other Intellectual Property](#) and Regulations (Particularly Treas. Reg. 1.170A-13).

Until even more recently, The Service maintained an "it ain't necessarily so" attitude toward "royalty" income in relation to Exempt Organization's Unrelated Business Income Tax obligations. The gist of the policy – It's not a royalty just because you say it is. The crux of that disagreement: The term "royalty" is not clearly defined by statute or Treasury regulations. By consensus, to be a royalty (Thus excluded from UBTI), payments must relate to the use of a valuable right to use an intangible asset. Payments for services fall outside that exclusion. A long list of IRS guidance and case law, culminating in [Technical Advice Memorandum \(TAM\) 202039018](#) addressed the recurring issue of whether income is treated as royalty income or as services income. Despite that – the solution still resorts to a rather nebulous facts-and-circumstances argument.

This historical digression underscores a general observation: Both Donors and Organizations should approach Intellectual and Intangible Property gifts with a great deal of skepticism and an even greater reliance on legal, accounting, financial, and social counsel.

It may sound "cowardly," but very often the best policy for Intellectual Property and Intangibles (especially copyrights and similar property) is for the Donor to assign the property's income stream to the Organization and retain the rights to the underlying Property. This approach limits controversy with the Service, and very nearly replicates the charitable outcome gained by rights transfers.

Partial Interests in Property

The Exempt Organization may accept gifts of undivided partial interests in both real and personal property. The Exempt Organization will determine whether the gift should be accepted based on the previously stated factors applicable to the gift vehicle.

The Donor is responsible for determining whether gifts of partial interests constitute a transfer of an undivided entire interest in the property (and thus may be deducted) under the applicable rules for

the type of asset (Generally, Treas. Regs. 1.170A-7).

It is the *Donor's* responsibility to obtain an appraisal of a proposed gift of a partial interest and, if so, to secure such appraisal at the *Donor's* expense. It is also the *Donor's* responsibility to secure independent legal, tax, financial and estate advice, at the *Donor's* expense, for all gifts of partial interests to the *Exempt Organization*. The *Exempt Organization* will not act as advisor to any *Donor* in any of these respects, though the *Exempt Organization* will cooperate with the donor's advisors in furtherance of approved gifts.

Unless otherwise agreed to by the *Exempt Organization*: the *Donor* shall pay any legal, transfer, registration, excise fees, or other costs incurred to facilitate the transfer of partial interests. The *Donor* shall pay all expenses incident to the transfer, including (but not limited to) appraisal (if required), escrow, and liquidation fees.

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The Service and the Code create a distinction between "Fractional Interests" and "Partial Interests." Fractional Interests – e.g. 20% of all the Donor's rights in the property – generally permit the Donor a charitable deduction. Partial Interests – e.g. less than all or only some of the Donor's rights in the property do not create a charitable deduction. Classic Examples: Donor gives the Organization

- *Rent Free Office Space; Donor conveys only the right of occupancy but retains all other rights – No Deduction*
- *Real Estate: Donor conveys all rights except mineral rights, - No Deduction*
- *Copyright: Donor conveys rights to publish, but retains movie and sequel rights, - No deduction.*
- *Real Estate Interests: Donor conveys a fractional interest in real estate, a tenancy in common, REIT, or syndicated real property partnership and retains no rights in the donated shares. – Deduction Sustained.*

As one might expect, since this is a tax issue, there are exceptions: The Donor may deduct direct charitable contributions of three partial interests:

- *Remainder interests in a personal residence or farm,*
- *Undivided portion of the Donor's entire interest in a property, or*
- *Qualified conservation contributions.*

These exceptions do not apply to transfers in Trust.

As one might also expect, both "run of the mill" partial transfers and the exceptions are hedged and firmly entrenched in substantiation and documentation requirements. Few Donors or Exempt Organizations will be able to navigate this morass without legal, accounting, financial, and appraisal counsel.

Remainder Interests in Real Property

The *Exempt Organization* may accept Remainder Interests in Real Property, subject to the

preceding paragraph (Partial Interests). The *Donor* or other occupants may continue to occupy the real property for the duration of the stated life. At the death of the *Donor* or stated life, the *Exempt Organization* may use the real property or reduce it to cash. If the *Exempt Organization* receives a gift of a remainder interest, expenses for maintenance, real estate taxes, and any property indebtedness are to be paid by the *Donor* or beneficiary prior to transfer to the *Exempt Organization*.

Charitable Remainder Trusts

The *Exempt Organization* may accept designation as remainder beneficiary of a Charitable Remainder Trust, subject to the preceding paragraph (Partial Interests). The *Exempt Organization* will not serve as the trustee of a Charitable Remainder Trust.

Charitable Lead Trusts

The *Exempt Organization* may accept designation as income beneficiary of a Charitable Lead Trust subject to the preceding paragraph (Partial Interests) . The *Exempt Organization* will not serve as a trustee of a Charitable Lead Trust.

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Remainder interests, Charitable Lead Trusts, and Charitable Remainder Trusts are discussed at length in our Model Gift Acceptance Policy for Endowments.

Restricted Gifts

This discussion of the *Exempt Organization's Restricted Gift Acceptance Policy* is subject, in its entirety, to the *Exempt Organization's Restricted Gift Acceptance and Administrative Protocol*. Inconsistencies between this summary policy and the Protocol (if any) will be resolved by adhering to the Protocol.

The *Exempt Organization* will accept Restricted Gifts in accordance with this Policy, as reviewed by the *Gift Acceptance Committee* and accepted by the *Exempt Organization's Board of Directors*. All final decisions on the restrictive nature of a gift and its acceptance or refusal shall be made by the Board of Directors⁴ acting on the *Gift Acceptance Committee's* deliberations and recommendations.

While the *Exempt Organization* may accept many types of restrictive Gifts, we will not accept earmarked contributions – donations restricted for the benefit of specific named individuals or non-qualified organizations or entities. Further, we will not accept Gifts over which the *Donor* or an individual or institution nominated by the *Donor* exercises absolute discretion over disbursement of the funds or choosing of beneficiaries of the funds.

All Restricted Gifts, including restricted gifts in the form of *Endowment Funds*, will be governed by a written agreement executed by the donor and the *Exempt Organization*. That agreement shall establish

- The nature of the restriction,
- The duration of the restriction,

⁴ Gift restrictions constrain the board's discretion on the use of the organization's charitable assets; thus, the decision to accept the restrictions is most appropriately a matter for board deliberation.

- The programs or projects to which the restrictions apply,
- Criteria for satisfaction of the restrictions (including the objectives or benchmarks that must be satisfied and matching obligations if applicable),
- Documentation and reporting requirements imposed by the gift

When determining whether to accept or reject a gift restriction, the *Gift Acceptance Committee* and the *Board of Directors* determines whether the Gift

- Purpose is consistent with the Organization's *Exempt Purposes*
- Expands or enhances existing programs or enables the Organization to broaden its core program spectrum (or may result in mission shift)
- Is administratively feasible and compatible given the Organization's staff and resources

For financial reporting purposes, The *Exempt Organization* will recognize revenue and expenses for Restricted Gifts consistent with Generally Accepted Accounting Principles. The *Exempt Organization* will adhere to tax conventions in connection with its annual tax returns. The *Exempt Organization* will provide and disclose a reconciliation of the two accounting methods as needed.

The *Donor* is solely responsible for determining the accounting and reporting treatment appropriate to their financial and tax reporting obligations. It is also the *Donor's* responsibility to secure independent legal, tax, financial and estate advice, at the *Donor's* expense, for all Restricted Gifts to the *Exempt Organization*. The *Exempt Organization* will not act as advisor to any *Donor* in any of these respects, though the *Exempt Organization* will cooperate with the *Donor's* advisors in furtherance of approved gifts.

Endowment Gifts

This summary discussion of the *Exempt Organization's Endowment Gift Acceptance Policy* is subordinate, in its entirety, to the *Exempt Organization's Endowment Gift Acceptance and Administrative Protocol*. Inconsistencies between this summary policy and the Protocol (if any) will be resolved by adhering to the Protocol.

The *Exempt Organization* will accept Endowment Gifts in accordance with this Policy, as reviewed by the *Gift Acceptance Committee* and accepted by the *Exempt Organization's Board of Directors*. All final decisions on the restrictive nature of a gift and its acceptance or refusal shall be made by the Board of Directors⁵ acting on the *Gift Acceptance Committee's* deliberations and recommendations.

All Endowment Gifts will be governed by a written agreement executed by the donor and the *Exempt Organization*. That agreement shall establish

- The nature of the Endowment,
- The duration of the Endowment,
- Definitions of key metrics (e.g., Net Asset Value, Accounting Income, Distributable Net Income) if they differ from statutory default definitions,

⁵ Gift restrictions constrain the board's discretion on the use of the organization's charitable assets; thus, the decision to accept the restrictions is most appropriately a matter for board deliberation.

- The nature and extent of the *Exempt Organization's* right to distribute Income and Corpus of the Endowment,
- Criteria for satisfaction of the Endowment restrictions (including the objectives or benchmarks that must be satisfied and matching obligations if applicable),
- The Endowment Investment Policy (if it differs from the Organization's policy)
- Provisions for distribution of remaining Endowment Funds if the Exempt Organization dissolves or is unable to continue its operations,
- Documentation and reporting requirements imposed by the gift

When determining whether to accept or reject an Endowment Gift, the Gift Acceptance Committee and the Board of Directors determines whether the Gift

- Purpose is consistent with the Organization's *Exempt Purposes*
- Expands or enhances existing programs or enables the Organization to broaden its core program spectrum (or may result in mission shift)
- Is administratively feasible and compatible given the Organization's staff and resources
- Is consistent with the public perception of the Organization and its programs.

For Financial reporting purposes, The *Exempt Organization* will recognize revenue and expenses for Endowment Gifts consistent with Generally Accepted Accounting Principles. The *Exempt Organization* will adhere to tax conventions in connection with its annual tax returns. The *Exempt Organization* will provide and disclose a reconciliation of the two accounting methods as needed.

The *Donor* is solely responsible for determining the accounting and reporting treatment of the Endowment Gift that is appropriate to their financial and tax reporting obligations. It is also the donor's responsibility to secure independent legal, tax, financial and estate advice, at the *Donor's* expense, for all Endowment Gifts to the *Exempt Organization*. The *Exempt Organization* will not act as advisor to any donor in any of these respects, though the *Exempt Organization* will cooperate with the donor's advisors in furtherance of approved gifts.

Subject to the *Exempt Organization's Endowment Gift Acceptance and Administrative Protocol* and Board discretion:

The minimum amount necessary to establish an endowment is \$50,000.

Endowments may be funded with outright contributions, including contributions pledged over a maximum period of 5 years, which term may be extended by agreement between the donor and the Exempt Organization, at the recommendation of the *Gift Acceptance Committee*. Endowments may also be funded with deferred contributions from bequests, life insurance policies, retirement plan designations, charitable remainder trusts and similar instruments and arrangements.

Unless otherwise stated by the donor, endowment contributions will be utilized for their intended purpose only when they are funded with cash (or cash equivalents) equaling 50% of the actual anticipated total gift commitment, or total contributions otherwise reach the required minimum for an endowed fund.

Endowments created by testamentary transfer shall be administered in accordance with the donor's wishes as set forth in the relevant testamentary document, provided that the donor clearly establishes an endowment, and the intended use is not prohibited by law or *Exempt Organization* policy and is otherwise acceptable to the *Exempt Organization*.

Endowment principal will be pooled and invested, and the income expended, in accordance with the prevailing investment and spending policies of the *Exempt Organization* and applicable laws and regulations.

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Endowments are long term financial contracts subject to the uncertainties that implies. Therefore, both the Donor and the Organization must

- *seek qualified and experienced legal, financial, insurance, appraisal, and accounting counsel before establishing the Endowment*
- *Establish detailed policies governing Investment and distribution of Endowment Funds,*
- *Evolve systems that anticipate events and administrative needs, years, or decades in advance of their occurrence.*

Endowments are NOT a one-shot do-it-yourself project. They mandate a team effort and constant vigilance.

Done right, Endowments may sustain the Exempt Organization for centuries. (Harvard's initial Endowment was established in 1636).

Done wrong, or without sufficient foresight, Endowments may become an inflexible legal quagmire. (Antioch College very nearly went bankrupt in 2008 when extremely aggressive investments went sour. They were not alone!)

For more information:

[*Endowments: Inception and Ideation Protocol*](#)
[*Endowments: Investment Policy and Spending Statements*](#)

Bargain Sales

The *Exempt Organization* may enter bargain sales of Real and Personal Properties that are consistent with its mission and purposes. In a bargain sale, the *Exempt Organization* purchases property from a seller/donor at a discounted price and simultaneously accepts as a gift from the seller/donor the amount of the discount. Prior to any bargain sale, the *Exempt Organization* will obtain an independent appraisal substantiating the value of the property.

The *Exempt Organization* may also enter bargain sales of other property, where the bargain sale would further the *Exempt Organization's* mission. Factors considered when determining the appropriateness of a proposed transaction include, among others:

- The results of an independent appraisal obtained by the *Exempt Organization*,
- The utility or salability of the property,
- Carrying costs of the property.

For Bargain Sales of Real or Personal Property, the *Exempt Organization* will apply the same or similar due diligence as that noted in the Real Estate and Tangible Personal Property Gift Acceptance Policies, above.

It is the donor’s responsibility to obtain an appraisal of a proposed gift inherent to any Bargain Sale and, if so, to secure such appraisal at the *Donor’s* expense. It is also the donor’s responsibility to secure independent legal, tax, financial and estate advice, at the *Donor’s* expense, for all gifts of Bargain Sale assets to the *Exempt Organization*. The *Exempt Organization* will not act as advisor to any donor in any of these respects, though the *Exempt Organization* will cooperate with the donor’s advisors in furtherance of approved gifts.

Unless otherwise agreed to by the *Exempt Organization*: the donor shall pay any legal, transfer, registration, excise fees, or other costs incurred to facilitate the Bargain Sale. The *Donor* shall pay all expenses incident to the transfer, including (but not limited to) appraisal (if required), escrow, and liquidation fees.

The *Donor* is solely responsible for determining the accounting and reporting treatment of the Bargain Sale that is appropriate to their financial and tax reporting obligations. It is also the *Donor’s* responsibility to secure independent legal, tax, financial and estate advice, at the *Donor’s* expense, for all Bargain Sales to the *Exempt Organization*. The *Exempt Organization* will not act as advisor to any *Donor* in any of these respects, though the *Exempt Organization* will cooperate with the *Donor’s* advisors in furtherance of approved gifts.

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Transfers subject to creditor interests (mortgages or deeds of trust) are treated as bargain sales. Further, it is often difficult to persuade lenders to assign the loan to the Exempt Organization, without retaining the investor/original borrower’s security or collateral. Donors may be unwilling to assume the liabilities associated with such “Wraparound Financing.”

Under current U.S. standards, {The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as Superfund)}, the owner or operator of a contaminated property can be held responsible for the property’s cleanup, based solely on their current ownership of the property. Thus, the Exempt Organization may be liable for contamination that occurred on the property decades ago – long before it was donated. To mitigate these risks, we (Steven Roy Management and Cambyes Financial Advisors) recommend the Exempt Organization commission at least a Phase I Environmental survey/report on the property. The cost of this survey should be borne by the Donor.

Receipts and Documentation

All charitable gifts to the Exempt Organization are recorded by name of Donor and include gift date, gift purpose, and value. Acknowledgements are sent to Donors by the <department responsible> and Contemporary Written Acknowledgements are issued to Donors for gifts that qualify for income tax charitable deductions as required by the Internal Revenue Service. Contemporary Written Acknowledgements for gifts that provide goods and services include a description of such goods and services and list both the deductible and non-deductible portions of the gift.

The Exempt Organization will issue a Contemporary Written Acknowledgement for In-Kind Gifts or Real and Tangible or Intangible Property Gifts. However, the Contemporary Written Acknowledgements issued for those gifts will not include a value statement. The *Donor* is solely responsible for determining the accounting and reporting treatment of the transaction that is appropriate to their financial and tax reporting obligations. It is also the *Donor's* responsibility to secure independent legal, tax, financial and estate advice, at the *Donor's* expense, for all Gifts to the *Exempt Organization*. The *Exempt Organization* will not act as advisor to any *Donor* in any of these respects, though the *Exempt Organization* will cooperate with the Donor's advisors in furtherance of approved gifts.

The Exempt Organization will not issue Contemporary Written Acknowledgements for gifts that, while greatly appreciated, do not qualify for income tax charitable deductions (e.g., donated legal or other professional services, loans of property to the Exempt Organization, free advertising, or discounts on rents or purchases).

As necessary or required, the *Exempt Organization* will assist the *Donor* to prepare and execute IRS Forms 8282 (Donee Information Return) and 8283 (Non-Cash Charitable Contributions).

Certain Gifts (e.g., automobiles, conservation easements) require both the *Exempt Organization* and the *Donor* to substantiate and document the transactions in greater detail than is customary for other Gifts. The *Donor* is solely responsible for determining the accounting and reporting treatment of the Gift that is appropriate to their financial and tax reporting obligations. The *Exempt Organization* will not act as advisor to any *Donor* in any of these respects, though the *Exempt Organization* will Cooperate with the *Donor's* advisors in furtherance of approved gifts.