



DEKALB COUNTY
COMMUNITY
FOUNDATION

Policy: GIFT ACCEPTANCE POLICY	Adopted: <i>April 26, 2007</i>
	<i>Amended: April 25, 2013; January 23, 2014</i>
	<i>Last Approved by the DCCF Board: January 23, 2014</i>

I. PURPOSE

The purpose of this policy is to serve the best interest of the DeKalb County Community Foundation (Foundation) and its donors by providing guidelines for negotiating and accepting various types of gifts. Most assets of value can be given to the Foundation. This policy outlines some of the basic facts about charitable giving and the types of gifts that donors may wish to consider. Given the increasing complexity of IRS regulations, the volume of real estate and other property gifts, and state and federal environmental laws, the Foundation recognizes the value in carefully screening proposed gifts. The Foundation must provide expeditious yet thorough consideration of each gift. The Foundation Board and staff must be able to assure that gifts accepted by the Foundation do not place other assets of the Foundation at risk, and that they can be easily converted into assets that fall within the Foundation's investment guidelines.

II. POLICIES AND GUIDELINES

A. Disclosures to Donor and Donor's Interests

The Foundation's staff should disclose to a prospective donor the benefits and liabilities that could reasonably be expected to influence the donor's decision to make a gift to the Foundation. In particular, the donor should be advised that all gifts are irrevocable, and items subject to variability (such as market value, investment return and amount of income payments) should be discussed fully. It is the responsibility of the Foundation's staff to keep detailed written notes to supplement written correspondence relating to each gift transaction. The role of the Foundation's staff is to inform, serve, guide or otherwise assist the donor in fulfilling his or her philanthropic wishes but never to pressure or unduly persuade.

B. Legal Counsel

For any but the simplest type of gift, the Foundation recommends that donors consult their attorneys, tax advisors, or estate planners. The Foundation shall consult with its legal counsel in all matters pertaining to its asset development and shall consult legal counsel if contract language varies from the standard.

C. Confidentiality

All information concerning prospective donors shall be kept strictly confidential and within the constraints of the Foundation's confidentiality policy.

D. Authorization for Negotiation

The Executive Director is authorized to negotiate on behalf of the Foundation with any donor with respect to standard planned gift instruments that follow the format described in these policies. All such types of gifts may be reviewed by legal counsel. Any real estate or interests in real property or hard-to-value assets of any kind must be approved by the Finance Committee. Any agreements which involve a legal obligation on the part of the Foundation which do not follow the forms described in these policies or are special agreements of any kind also require the approval of the Finance Committee.

E. Standard Form Documents

For administrative ease and convenience, the Foundation will maintain standard forms of fund agreements and other documents relating to the Foundation's development program as deemed appropriate. All such standard forms shall be reviewed by legal counsel and approved by the Finance Committee. The Foundation will provide standard forms to a prospective donor and the donor's advisors upon request and encourage their use whenever practical.

F. Reports

The Foundation will provide donors with periodic reports regarding gifts, investment earnings and all information necessary for preparing federal and state tax returns.

G. Administrative Fees

The Board approved administrative fee schedule will apply to all funds except in those instances where the Finance Committee approves a different fee. The current fee schedule is recorded in the DCCF Operating Manual, and may change periodically upon approval of the Foundation Board of Directors.

H. Investment of Gifts

1. In General

It is the preference of the Foundation that, to the extent feasible, assets from current and future gifts will be commingled with other assets of the Foundation for investment purposes. All investments will be selected in conformance with investment policies established by the Foundation.

2. Sale of Assets

All assets accepted as gifts may be retained by the Foundation as long as such decisions to do so serve the interests of the Foundation. The Foundation will give consideration to a donor's needs and preferences in determining whether particular assets will be retained. In purchasing new investments, the Foundation will be guided by its investment policies.

3. Separate Investment of Fund Assets

Donors who establish component funds of the Foundation give up all right, title and interest to the assets and such gifts may contain no material restriction that would prevent the fund from

being considered as a component fund of the Foundation under IRS rules. In particular, donors give up the right to choose investments and investment brokers and to veto investment choices for their gifts. The Foundation may accommodate requests from donors for separate investment of fund assets, or for use of a particular investment broker or agent, and will consult with donors on investment recommendations for such funds, only when the size of the fund warrants separate investment consideration. The Foundation may apply additional administrative fees to separately-invested fund assets to cover the additional expenses associated with such investment.

I. UNRESTRICTED GIFTS

Contributions received in which the donor provides no direction (nor communicates a specific purpose or Fund for the gift to be deposited to) may be directed by the Foundation at its discretion. Contributions under \$5,000 may be designated at the discretion of the Executive Director. The Executive Committee will direct the purpose of contributions of \$5,000 or above.

III. TYPES OF FUNDS

A minimum of \$10,000 is required to create an endowed (non-pass through) fund. This minimum guideline may be waived by the Executive Director in circumstances where it is deemed appropriate, such as anticipation that subsequent gifts will be made to the fund by donors or others in amounts sufficient to warrant the creation of the fund. Funds can either be permanent or non-permanent. The Foundation offers the following types of funds to meet the needs of donors:

A. Unrestricted Funds

Unrestricted Funds give the Foundation the flexibility to respond to new programs, emergency needs and innovative activities that otherwise might not be funded. Donors do not place restrictions on how these funds are to be used, leaving the decision to the Board of Directors.

B. Field of Interest Funds

With a Field of Interest Fund the donor specifies an area of interest which can be either broadly or narrowly defined. The Foundation has the discretion to make grants to the most appropriate programs within the donor's interest area.

C. Donor-Advised Funds (Permanent and Non-Permanent)

With a Donor-Advised Fund the donor reserves the right to make periodic grant recommendations to the Foundation's Board. Advisor grant recommendations are not binding on the Foundation, which retains final authority to determine distributions from the fund. Donors may name successor advisors. Once all successor advisors, if any, are deceased or discontinue their active advisement, the fund may become an Unrestricted Fund or a Field of Interest Fund depending upon donor intent or other recommendations made at the time the fund was established.

As of 1/23/2014, the DeKalb County Community Foundation holds no Donor-Advised Funds within which excess business holdings, as defined in the Pension Protection Act of 2006 (PPA) are evident.

Under the Pension Protection Act of 2006 (PPA), the private foundation excess business holdings rule apply to donor-advised funds as if they were private foundations.¹ 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 percent² of the voting stock³ 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
- Any interest in a sole proprietorship⁴

Donor-advised funds receiving gifts of interests in a business enterprise have five years from the receipt of the interest 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. Community foundations that held such assets in donor advised funds on the date of enactment will have a much longer period to divest under the same complicated transition relief given to private foundations in 1969.⁵

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
- 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 interests 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 law does not define “family” and does not cross-reference either section 4958 or 4946 of the Internal Revenue Code for the definition. Finally, the term includes 35-percent-controlled entities as defined in section 4958(f)(3).

What contributions will be affected?

The new rule will mainly affect contributions of closely-held businesses and in most cases will require the donor-advised fund to dispose of the contributed interest within five years of the date of gift because the disqualified persons will generally own more than 20 percent of the business.⁶ The rule will not apply to assets held by the sponsoring charity—as long as they are not held by the donor-advised fund—apparently permitting a sponsoring charity to keep a contributed asset

as part of its overall investment portfolio. It will also not apply to gifts to funds—such as field-of-interest or designated funds—that are not donor-advised.

Because they are not “business enterprises,” the rule will not apply to most gifts of real property. The most important exception will be undeveloped land, which may become a business enterprise if the charity that owns it takes extensive steps to subdivide it and prepare it for sale. This is a particularly dangerous situation because this could require immediate divestiture. Interests in investment partnerships and LLCs—including family partnerships, hedge funds, REITs, and so forth—are excluded from the definition of business enterprise as long as 95 percent or more of the entity’s income is from passive sources. Examples of other property gifts that are excluded because they are not business enterprises include:

- Oil and gas interests (non-working)
- Life insurance
- Tangible personal property (as long as it is not inventory)
- Remainder interests in personal residences and farms

It is the intent of the Foundation to not pursue or accept gifts earmarked as Donor-Advised Fund(s) wherein any evidence of excess business holdings is present.

D. Agency Endowments and Designated Funds

With a Designated Fund the donor specifies a particular charitable agency or organization to receive the proceeds from their fund. Nonprofit organizations may create their own agency endowment funds as well.

E. Scholarship Funds

Donors may create scholarship funds to support student education at qualified educational institutions. Scholarship recipients are usually chosen by utilizing scholarship committees at area high schools, colleges, or universities. In certain cases, an independent committee chosen in consultation with the Foundation, and working with the Foundation, identifies and chooses scholarship recipients.

F. Pass-Through Funds (Non-Endowed)

These Funds are managed by the Community Foundation to accept gifts in support of community projects that fall within an accepted charitable class definition – usually within a specific timetable – wherein the fund’s principal is eventually expended for the purpose intended. Such Funds can be short-term ‘project based’ (preferred) or long-term ‘fiscal sponsorship’ in nature.

G. Supporting Organizations

Supporting organizations of the Foundation are established by donors as separately incorporated nonprofit corporations with separate governance and tax-exempt status. A supporting organization of the Foundation is a grant making organization that avoids the burdens of private foundation tax status by being operated, supervised, controlled by, or in connection with, the Foundation. This requirement can be met in part if at least a majority of the Board of Directors of the supporting organization is appointed by the Board of Directors of the Foundation.

IV. GIFTS TO THE FOUNDATION

A. Cash

This is a simple, convenient way to donate money to the Foundation and receive maximum tax advantages. Checks can be made payable to the DeKalb County Community Foundation. Gifts may also be given through a credit card via the Foundation's on-line contribution portal through its website and/or mobile applications.

B. Securities

Gifts of securities include not only publicly-traded stocks but also mutual funds, treasury bills, bonds and closely-held stock. Gifts of securities allow the donor a charitable deduction for the fair market value of the gift, as determined under Internal Revenue Service rules. It is the donor's responsibility to obtain any necessary appraisals of securities. Donors should understand that securities donated to the Foundation will, in all likelihood, be sold.

1. Publicly-Traded Securities

- A. If held by the donor's stockbroker or banker:
 - 1. The broker needs to know the Foundation's tax identification number.
 - 2. Securities are to be **transferred** directly to the Foundation's account.
 - 3. The donor's broker must be particularly careful **not** to sell the securities **until** they are in the Foundation's account or the donor will incur capital gains.
- B. If held by the donor:

A stock power for each certificate being contributed must be completed.
- C. Valuation of Gift:

Value is calculated by using the average of the high and low on the date of the gift.
- D. Date of Gift:
 - 1. The day the Foundation receives the hand-delivered certificate and stock power.
 - 2. The day the certificate and stock power are postmarked (if mailed).
 - 3. The day the transfer of ownership actually takes place (not when instructions are given).

2. Closely-Held Gifts

Gifts of closely-held business interests will be evaluated on a case by case basis and will be subject to approval by the Finance Committee where appropriate. All such gifts must be valued by a qualified appraiser. Considerations include the following:

- A. Are there restrictions on the security that would prevent the Foundation from ultimately converting those assets to cash?
- B. Is the security marketable?
- C. Will the security generate any undesirable tax consequences for the Foundation?
- D. Would the security subject the Foundation to a potential liability?

C. Planned Gifts

Planned gifts encompass all forms of gifts whose benefits do not fully accrue to the Foundation until some future time, such as the death of the donor or other income beneficiaries or the expiration of a predetermined period of time. Planned gifts may include Charitable Remainder Unitrusts, Charitable Remainder Annuity Trusts, Charitable Lead Trusts, Life Estate Agreements and Life Insurance Policies. Planned Gifts are evaluated on a case by case basis and are subject to Finance Committee approval.

1. Charitable Remainder Unitrusts

Under a charitable remainder unitrust, the donor irrevocably transfers money, securities or other property to a trustee selected by the donor. The trustee pays the donor (or one or more income beneficiaries designated by the donor) a fixed percentage of the net fair market value of the trust assets, as determined each year. The payments are made for the life or lives of the income beneficiaries or for a fixed period of years not to exceed twenty years. Upon termination of the income beneficiary's interest, the assets of the unitrust are transferred to the Foundation.

2. Charitable Remainder Annuity Trust

A charitable remainder annuity trust is identical to a unitrust, except that the income beneficiary receives a fixed dollar amount annually from the trust.

3. Charitable Lead Trust

Under a charitable lead trust, the Foundation is given an income interest in the trust assets for a period of years or the lives of one or more individuals, at the end of which time the assets of the trust are distributed to noncharitable beneficiaries designated by the donor.

4. Life Estate Agreement

A donor may contribute a personal residence or farm to the Foundation and retain the right to occupy the property until death. Upon the donors' death, the Foundation will, upon acceptance, own the entire interest in the property.

5. Life Insurance

Life insurance is easy to give and to receive. The donor must make the Foundation both **owner** and **beneficiary** of the insurance policy in order for the IRS to regard the transaction as a charitable gift.

Advantages for the donor include:

- a. The donor can make large gifts by paying relatively small, regular premiums or can make a significant gift with a paid-up policy which he/she no longer needs.
- b. The donor does not need to pay financial professionals to establish a gift.

Considerations include:

- a. On a case by case basis the Foundation will determine if the policy should be kept in force or cashed in.

b. Prior to accepting an insurance policy requiring ongoing premium payments, the Foundation will obtain a written agreement with the donor regarding how such premiums will be paid. One option is that the donor could make gifts to the Foundation equal to the premium amount and the Foundation, in turn, pays the insurance company. This provides tax benefits to the donor and maintains a relationship.

D. Real Estate

Real estate gifts are evaluated on a case by case basis and are subject to Finance Committee approval. All real estate gift offerings may (based on use of the property, the history of existing structures, and any other factors that the DCCF Finance Committee believe are relevant) require at a minimum a Phase I/Level I Environmental Assessment – completed within 180 days by a licensed professional - and will be accepted at fair market value as established by at least one qualified appraisal (completed within 60 days by a licensed professional). The following considerations should be made before accepting real estate:

1. In order to avoid potential liability for environmental cleanup and toxic and hazardous waste issues relating to real estate, the Foundation requires inspection of all proposed gifts of real estate. Every proposed gift of property will be subject to a preliminary review by the Executive Director. This review will be submitted in writing to the Finance Committee together with a recommendation regarding the proposed gift.
2. Real estate that is encumbered by a trust deed, loan or mortgage will be accepted only in exceptional circumstances and upon advice from the Foundation's legal counsel.
3. Before acceptance of real estate as a gift, the Foundation and the donor must agree in writing on arrangements for paying expenses associated with the property such as taxes and assessments, appraisal fees, environmental evaluations, insurance coverage and maintenance costs. Generally, the Foundation will not make advances for the payment of such expenses.

E. Tangible Personal Property

Tangible personal property is property that can be held physically. Examples are art, furniture, livestock, automobiles and jewelry. The Foundation and the donor must comply with Treasury regulations for obtaining and reporting qualified appraisals. Tangible property is evaluated on a case by case basis and is subject to Finance Committee approval.

Considerations include the following:

1. Is the property marketable?
2. Are there any undue restrictions on the use, display or sale of the property?
3. Are there any public relations issues related to acceptance of the property?
4. Are there carrying costs, such as insurance, lease space, maintenance to preserve value, costs of sale or appraisal that would create a negative cash flow for the Foundation?

F. Public Fundraising

Fundraising undertaken by donors in connection with funds of the Foundation requires special consideration. See Donor-Initiated Fundraising Policy.

G. Other Gifts

Any other types of gifts not discussed above are subject to review and approval of the Finance Committee.