

Gift Agreements and Gift Restrictions

Jennifer I. Reynoso
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General Provisions of a Gift Agreement

- Amount, timing and form of gift payments;
- Statement as to whether the agreement is intended to be legally binding and enforceable, including on and by heirs and executors;
- Conditions that the donee must meet before payment is made;
- Whether the funds are restricted to a specific purpose;
- How the funds will be invested and distributed;
- Compliance with project budget;
- Reporting requirements;
- Donor benefits, including naming rights or other recognition; and
- Administrative provisions.

Amount of Gift

- For gifts payable other than in cash, agreement should specify when and how the value of that property will be determined.
- If the gift is for a particular project of donee, agreement should specify whether the donee required to return any amounts unspent at the end of the project.
- For gifts payable in the future, whether the payable amount is to be determined by reference to some outside fact or circumstance.

Timing of Gift

- Made in one lump sum or over a period of years.
- Specify when first payment of the gift will be made (*e.g.*, within 2 weeks of receipt of a signed gift agreement from the donee).
- State the period of years over which the gift will be payable, the total number of payments, the amount of each payment and when each payment will be made each year.
- Payment schedule may be conditional, and timing may depend on outside circumstances, such as receipt of matching funds.
- Specify what happens if the donee breaches the gift agreement between payments.
 - Whether an event of breach by the donee cancels the donee's obligation to make future payments.
 - Whether the donee will have an opportunity to cure the breach.

Form of Gift

- The type of property used to make a gift will have significant implications for the donor and the donee.
- A donor may already know what type of property he or she wishes to contribute, but the donee may also help donors determine which assets are most appropriate.
- General considerations for form of gift
 - Tax benefits of the gift to the donor.
 - The charity should not provide tax advice to the donor, but tax considerations will influence the type of property (*e.g.*, appreciated securities) that donors wish to give.
 - Whether the property is marketable and how much time and expense will be required to sell it.
 - Potentially complex nature of the property (options, complex securities).
 - Financial obligations (capital calls, property maintenance, service as a trustee) or financial risk (environmental remediation obligations, claims and litigation) of ownership of the property.
 - Unrelated business taxable income (“UBTI”).
 - Ongoing business relationships with other parties (partnerships, interests in closely-held businesses, joint ownership of real property).
 - Involvement of personnel who will be responsible for managing or disposing of the property involved at all appropriate stages of the process.

Form of Gift, cont'd.

- Transfer considerations:
 - Specify correct name of the payee in the gift agreement.
 - If payable by stock transfer, include stock transfer instructions (*e.g.*, name and address of brokerage house, brokerage account number, etc.) in the gift agreement or otherwise provide them to donor.
 - If payable in other property, the gift agreement should specifically describe the property (or permissible type of property) and address how it will be transferred (*e.g.*, by deed or other legal instrument).
- Considerations for property to be used by donee:
 - If the use will be as part of an exhibition or collection of the donee, credit line for such exhibition or collection may be specified in the gift agreement.
 - Gift agreement may specify any display or storage restrictions for the property.
 - Gift agreement may specify if and when the property can be sold by the donee and restrict the use of sale proceeds.

Also available as part of the eCourse

[2019 Nonprofit Organizations eConference](#)

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"Restricted Gifts and Endowments: Documentation and Financial Statement Disclosure"