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EFFECTIVE GIFT AGREEMENTS: DOCUMENTING DONOR INTENT

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LEARNING OUTCOME

After participating...
...you will be able to accurately document incoming gifts.

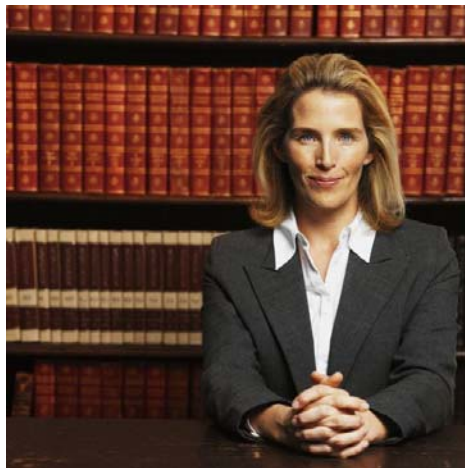


AGENDA

- Understanding and capturing donor intent
- Educating gift officers on gift documentation
- Legal considerations for drafting gift agreements
- Practical considerations for drafting gift agreements
- Case study review: navigating complicated gift agreements
- Leveraging gift documentation as a donor relations tool



DISCLAIMER



I'm not a
lawyer.



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UNDERSTANDING & CAPTURING DONOR INTENT



DONOR MOTIVATION & MINDSET

BASIC PREMISES ABOUT DONORS:

- They have good hearts and noble intentions
- They want to leave a legacy
- They want to pay back for help they received



■ DONOR
MOTIVATION
& MINDSET

BUT SOMETIMES...

- They have little knowledge of or interest in how we function
- They have unrealistic expectations
- They request preferences that are illegal or want to be active in administering their funds

■ HOW TO
SAY NO



- State institutional policy
- Show best interest but do not go into tremendous detail
- Delve into intent to identify and meaningful alternative

MANAGING EXPECTATIONS

- Start with education
 - Gift officers
 - Donors
- Manage expectations before starting the gift documentation process



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EDUCATING GIFT OFFICERS ON GIFT DOCUMENTATION



EDUCATION



- Make gift officers and donors aware of legalities and practicalities
- Keep gift officers up to date on current legislation and social reform


EDUCATION

- Know and preach what your institution allows and doesn't allow
- Have a good working relationship with your legal counsel and financial aid office
- Recommend few preferences, if any; do not offer restrictions
- Remember, endowments are forever

TOOLS

FOR YOUR TOOLBOX:

- Training presentation
 - Informative brochure for donors
 - White paper from legal counsel and financial aid
 - Checklist
 - Handbook with templates and process flow chart
- Also, be open to suggestions from gift officers and donors



The Brave New World of Gift Documentation

Presenting new processes, templates and handbook


Office of Donor Relations
and Stewardship

YOU SHOULD EXPLAIN

- When a gift agreement is needed
- Why we document gifts
- Acronyms of offices involved
- Overall process
- Legal/illegal preferences



Effective Gift Agreements: Documenting Donor Intent




Restriction 1
English major

Preference 1
From New York

Preference 2
3.5 GPA

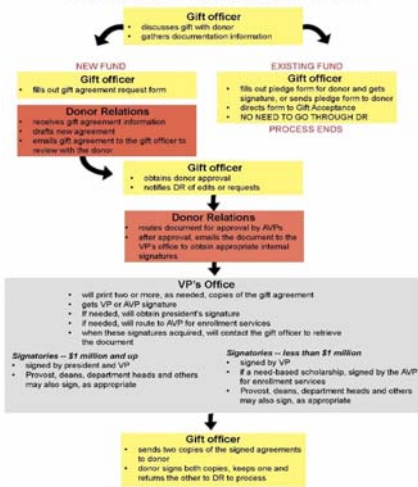
Preference 3
First in family to attend college

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RESOURCE

Gift Documentation Flow



```

graph TD
    GO1[Gift officer] --> DR1[Donor Relations]
    DR1 --> GO2[Gift officer]
    GO2 --> DR2[Donor Relations]
    DR2 --> VPO[VP's Office]
    VPO --> GO3[Gift officer]
    GO3 --> DR3[Donor Relations]
    DR3 --> GO4[Gift officer]
    GO4 --> END[PROCESS ENDS]
    
```

NEW FUND Gift officer

- fills out gift agreement request form

EXISTING FUND Gift officer

- fills out pledge form for donor and gets signature, or sends pledge form to donor
- directs form to DR/Acceptance
- NO NEED TO GO THROUGH DR

Donor Relations

- receives gift agreement information
- drafts new agreement
- emails gift agreement to the gift officer to review with the donor

Gift officer

- obtains donor approval
- notifies DR of edits or requests

Donor Relations

- retains document for approval by VP's
- after approval, emails the document to the VP's office to obtain appropriate internal signatures

VP's Office

- will print two or more, as needed, copies of the gift agreement
- gets VP or AUP signature
- if needed, will obtain president's signature
- if needed, will route to AUP for enrollment services
- when these signatures acquired, will contact the gift officer to retrieve the document

Signatories -- \$1 million and up

- signed by president and VP
- Provost, deans, department heads and others may also sign, as appropriate

Signatories -- less than \$1 million

- signed by VP
- if a need-based scholarship, signed by the AUP for enrollment services
- Provost, deans, department heads and others may also sign, as appropriate

Gift officer

- sends two copies of the signed agreements to donor
- donor signs both copies, keeps one and returns the other to DR to process

New Commitment Process Flow

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RESOURCE

Gift Documentation Form

One form, preferably electronic, that enables you to capture the must-haves for gift documentation



DONOR NAME AND ADDRESS INFORMATION

Donor Name: (How the name appears here is how it will appear in all donor recognition vehicles.)

Advance ID#:

Does the donor have an existing outstanding pledge:

Please list who should receive stewardship reports: (include donor children if appropriate)

COMMITMENT DETAILS

Personal Commitment

Expectancy Commitment (DAF, DDF, MG)

Total Commitment

Payment Schedule
(five year maximum)

First Payment (use last day of calendar year if unknown)



DESIGNATION DETAILS

Funding Initiative

Faculty Support Full professorship Center Support Other Faculty Support

Student Support Endowed Scholarship Graduate Fellowship

Financial Aid Scholarship Merit-based Scholarship Prize/Award Student Programs


Athletics College/Department/Unit Unrestricted Support:

Fund Name

Fund Preferences

Yes (if more than one, indicate priority order)

1. 2. 3.


Donor Motivation for this gift (short summary that will be incorporated into agreement) 

Has the donor expressed interested in making gifts toward this pledge through a donor advised fund or family foundation?

Yes No If yes, who?

SIGNING

How quickly do you need this agreement approved and signed by UA leadership?



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**LEGAL CONSIDERATIONS FOR DRAFTING
GIFT AGREEMENTS**





POLL

Are gift agreements legally binding documents?



RESOURCE

Is your will legally binding? What about pledges? The answer to both is yes. These are written contracts.

I prefer the term "legally enforceable" which is exactly what FASB uses when discussing bookable pledges. The fact that you likely will never sue a donor for failure to comply is irrelevant. These documents are clearly legally enforceable. How many cases do we read about when institutions fail to honor their part of the agreement?

-- John Taylor

John H. Taylor Consulting, LLC



WHY
DOCUMENT?

FOR DONORS

- To ensure donor intent
- To make the donor feel good

FOR YOUR INSTITUTION

- Track payment and administration preferences
- To keep out of court




IN THE
NEWS




**MUST-HAVE
ELEMENTS**

ABOUT THE DONOR


- ✓ Official donor
- ✓ Gift type
- ✓ Gift amount



 **RESOURCE**

Sample Language


The University of ABC acknowledges the generous commitment of \$XXX from John Smith to establish the John Smith Endowed Scholarship for students in the College of Agriculture and Natural Resources.




**MUST-HAVE
ELEMENTS**

ABOUT THE DONOR


- ✓ Recognition elements, if applicable



 **RESOURCE**

Sample Language


To express appreciation and help attract gifts for similar purposes, the University may recognize Mr. Smith publicly, through announcements in internal and external publications and other media.




**MUST-HAVE
ELEMENTS**

ABOUT THE FUND


- ✓ Payment schedule



 **RESOURCE**

Sample Language


The donor pledges \$30,000 to be paid over three years as follows: the first installment of \$10,000 on Dec. 31, 2014; the second on Dec. 31, 2015; and the final on Dec. 31, 2016. Any other individual or organization may add to the fund, and additions will follow terms of this agreement.




**MUST-HAVE
ELEMENTS**

ABOUT THE FUND


- ✓ Fund name
- ✓ Fund purpose
- ✓ Fund administrators



 **RESOURCE**

Sample Language


The Smith Scholarship will support students in the College of Agriculture and Natural Resources who demonstrate financial need, with a preference will for students majoring in agricultural economics. The dean of the college or his/her designee will select recipients, in consultation with the Office of Student Financial Aid, which will administer the fund.




MUST-HAVE ELEMENTS

ABOUT THE AGREEMENT


- ✓ Standard administration language



 **RESOURCE**

Sample Language

The University will manage the fund under guidelines established by its Board of Trustees, which allow it to assess reasonable administrative fees and expenses. The fund principal will be held in perpetuity and invested in the endowment pool, which generates spendable income for each fund at the beginning of every fiscal year on July 1, beginning the first July 1 after the fund is created. The first disbursement of spendable income will be a proportional amount of a full year's spendable income calculation, based on how long the fund principal was invested during the previous fiscal year.



MUST-HAVE ELEMENTS

ABOUT THE AGREEMENT

- ✓ Out clause
- ✓ Signature



RESOURCE

Sample Language

John Smith and the University can change terms of this agreement only by a written amendment that both parties agree to and sign. If future circumstances render this fund illegal, impossible or impractical to award, the University will consult with Mr. Smith to redirect the fund purpose to areas most consistent with his wishes. If he is deceased, the University and the Foundation will direct the fund to areas it deems most consistent with his wishes.

LEGAL PREFERENCES

- Socio-economic status
- Major, class level, GPA
- Residency in a particular area (city, county, state)
- Graduating from particular high school or school district
- Fluency in or primary language other than English



LEGAL PREFERENCES

- Growing up in single-family household
- First generation to attend college
- Demonstrating commitment to working with historically underprivileged or underrepresented populations
- Disabilities or having overcome specific challenges



■ ILLEGAL PREFERENCES

- Race or color
- Religion
- Citizenship or national origin
- Athletic participation
- Narrow exception under Title IX for gender-restricted gifts in wills, trusts or bequests if pooling used

■ INVOLVING LEGAL COUNSEL

- Whitepaper on where university stands on various issues
- Document from legal counsel about what university can and cannot do
- Invite legal counsel to present to development staff



RESOURCE

Sample Legal Whitepaper

Legal Guidelines for Establishing Scholarship Preferences and Restrictions




RESOURCE


Relevant Legislation

- Title VI of Civil Rights Act of 1964
- Title IX of Education Amendments of 1972
- Age Discrimination Act of 1975
- Section 504 of Rehabilitation Act of 1973 and Title III of the Americans With Disabilities Act
- 42 U.S.C. Section 1981



 RESOURCE

**Gift Documentation
Handbook**



 QUESTIONS



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PRACTICAL CONSIDERATIONS FOR DRAFTING GIFT AGREEMENTS



MEETING DONOR'S INTENT

LEGALLY

- Gender
- Race
- Religion
- Citizenship
- Choosing the recipient

LOGISTICALLY

- Possible
- Legal
- Practical





CHAT

When do you refuse a gift?



■ ALIGNING DONOR INTERESTS & ORGANIZATIONAL PRIORITIES

- Know your mission
- Will the gift help you get there?
- Is it legal?
- Is it mutually beneficial?
- Don't be afraid to say no



**PRACTICAL
MATTERS**

- Subjective characteristics
- Selection by essay, a process or committee
- Anything your institution is unable to track now or will be unable to track 100 years from now
- Restrictions

**PRACTICAL
MATTERS**

- Front page of the newspaper test
- Endowment is forever
- Providing for pledge payments in wills

■ PRACTICAL
MATTERS

- Donors holding strings on their gifts
- Quid pro quo
- Sponsored research vs. a charitable contribution




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CASE STUDY REVIEW:
NAVIGATING COMPLICATED GIFT
AGREEMENTS




CASE STUDY


Donor wants to require students who receive his scholarship to contribute back to the school after they graduate.



CASE STUDY




Donor wants to give a full-ride scholarship to an in-state student in the honors college who lives on campus and is the first generation to attend college.




CASE STUDY

Donor wants to create a scholarship for students of Cretan heritage.

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**LEVERAGING GIFT DOCUMENTATION AS
A DONOR RELATIONS TOOL**

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CHAT

What are you currently doing to make gift documentation a special touch for your donors?



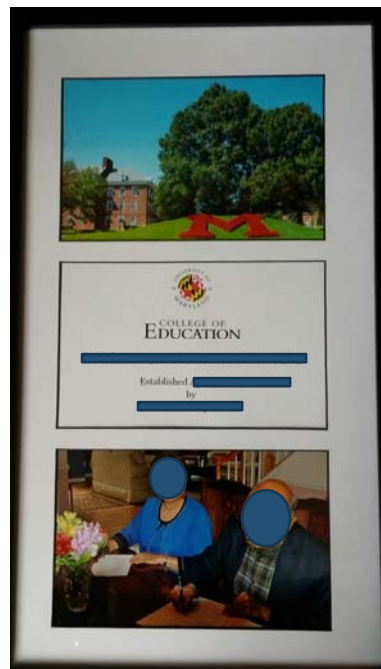
■ FEEL-GOOD ELEMENTS

- Signatory - highest person possible
- Legacy box or certificate
- Nice paper



■ FEEL-GOOD
ELEMENTS

- Photograph when signing
- Framed piece
- News release
- Event with first recipient/beneficiary





■ LANGUAGE

- Refer to “XYZ” scholars or professor
- Add donor bio (“legacy statement”)
- No legalese, particularly out clause
- Reassure that your institution is committed to following donor intent as much as possible

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TAKEAWAYS

Key takeaways

1. Manage expectations ahead of time - with the donor and your development staff.
2. Know what your institution can/can't and will/won't do.
3. Know what's legal; be mindful of what's practical.
4. Don't forget to make it memorable!



QUESTIONS





EVALUATION

Thank you!

Please remember to complete the event evaluation.
Your comments will help us continually improve the
quality of our programs.

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