The High Stakes of Gift Acceptance

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Working in the Gift Planning office can be a high stakes game. You need to make judgment calls on the “tough gifts.” There can be multiple issues in the gift acceptance process, including managing donor relations. Consider these three gift scenarios:

1. An influential board member wants to pay her seven-figure pledge with a little-known cryptocurrency.
2. A donor not familiar to your organization offers a gift of a vacant factory building, which gift could put your campaign over the top.
3. A member of the President’s Council advises you their donor advised fund will send a check to fulfill their legally binding pledge to fund a key initiative of the president.

What are the guidelines to be followed in the gift acceptance decision-making process? Two questions must be answered: (1) Does your charity have gift acceptance policies? (2) When is the last time your gift acceptance policies were reviewed and updated? As for what a charity should do in the three gift scenarios described above, read on.

The Purpose of Gift Acceptance Policies

Gift acceptance policies are a set of rules for acceptable assets and gift vehicles to minimize risk and maximize potential to your charity. Gift acceptance policies provide guidance for staff and leadership. Well-drafted policies also serve to manage donor expectations and provide transparency for due diligence. If your organization doesn’t have gift acceptance policies, there are templates online that can be a starting point. Ask another similar-mission organization for their policies. The drafting of gift acceptance policies should be a collaborative process with development, finance, legal, and executive officers, that should ultimately be approved by the board. Once gift acceptance policies are in place, it’s not “one and done.” They need to be reviewed periodically to reflect changes in tax laws and in gift planning best practices.

Gift Acceptance Committee

Every gift acceptance policy should provide for a Gift Acceptance Committee. The Gift Acceptance Committee is responsible for oversight of gifts that could subject your charity to liability. The committee is an ad hoc group called together to evaluate high risk gifts such as real estate or closely-held businesses. The committee identifies the potential risk in accepting certain assets, customarily financial but could be environmental or otherwise. An often-ignored risk is violating IRS regulations that may result in penalties to your organization or the donor. The work of the committee should be transparent, fair, and evenly applied to all donors. Outside experts may be necessary in certain gift situations.

Areas for Review in Gift Acceptance Policies

When was the last time you reviewed your gift acceptance policies? Below are some of the areas for review that may be missing from your policies.

Donor advised funds (DAF)

Donor advised funds are experiencing explosive growth. In 2016, the Fidelity Charitable Gift Fund received more gifts than any other charity in the United States. In December 2017 the IRS issued guidance that it would not challenge a donor advised fund used to fulfill a legally binding pledge, provided certain conditions are met. This was a change from previous IRS guidance. There are also strict IRS prohibitions regarding DAF grants to pay for charity event and gala tickets, or even for the charitable portion of such tickets. The practice is called “bifurcation” and gift acceptance policies should clearly set forth the permissible uses of DAF contributions.

Charitable IRA rollover

The charitable IRA rollover, known by many in the financial planning field as a Qualified Charitable Distribution (QCD), is a permanent part of the tax law. Hopefully, your organization is getting more of these gifts each year. Do your policies address the prohibitions for these gifts (i.e. cannot be used to contribute to a donor advised fund, a private foundation, or where the donor gets any benefit in return such as in exchange for a life income gift) and how to properly acknowledge these gifts. The donor is not entitled to a charitable deduction when making an IRA charitable rollover. Your policies should also require that the donor meet the requirements to make an IRA charitable rollover - being 70 ½ or older and transferring the assets directly from an IRA account to your organization.

Life insurance

Life insurance, typically a part of most planned giving programs, can be problematic because there are so many variations of life insurance policies. In some cases, no further premiums are due for the policy to remain in force. In other cases, additional premiums may become due. Who is responsible for the future premiums, the charity or the donor? The Gift Acceptance Committee may want to seek the advice from a consultant qualified to evaluate the most financially advantageous path for the charity when accepting gifts of life insurance.

Real estate

Many charities are, understandably, reluctant to accept a gift of real estate. Well-defined policies detailing the steps to be taken during due diligence will ensure that the Gift Acceptance Committee has the necessary information to make an informed recommendation to organization leadership. At a minimum, such information will include a property inspection, environmental report, qualified appraisal, title search, and who is to bear the expense of such reports. The policies should address the preparation and cost of the qualified appraisal and completion of the required IRS forms to document the donor's income tax charitable deduction. If your organization has determined it does not want to accept any gifts of real estate, the policies should offer an alternative such as a donor advised fund that will accept and administer such gifts and then transfer the proceeds to your organization.

Life Income Gifts

If your organization offers life income gifts, do your gift acceptance policies provide guidelines for such gifts, including minimum funding and age requirements, acceptable funding assets, and whether your charity will serve as trustee of charitable trusts? Periodic review for the requirements of life income gifts is essential to ensuring that such gifts are providing the financial support desired by charity leadership. For example, while the most common minimum funding amount for gift annuities is $10,000, some charities have increased the minimum gift to $25,000. Also, as donors live longer, some charities are raising the minimum age for an immediate payment gift annuity from 60 to 65 and even to 70. Will your charity offer rates suggested by the American Council on Gift Annuities (ACGA)? May your charity offer a lower rate if disclosed to the donor? Will your charity accept real estate in exchange for a charitable gift annuity? Development staff need to be able to consult and rely on current gift acceptance policies when questions arise around life income gifts.

Our Three Gift Scenarios

How will gift acceptance policies assist in due diligence for the three gift scenarios described in the first paragraph of this article?

1. *A gift of cryptocurrency* – The Gift Acceptance Committee will research valuation of such an asset, fluctuations in market value, if markets are readily available to liquidate such a gift, and the speed with which such liquidation can take place. It may be wise to engage an outside expert who deals in such currency to provide guidance.

2. *A vacant factory building from an unknown donor* – If the charity is willing to consider accepting a gift of real estate – and especially a gift of industrial real estate - the Gift Acceptance Committee will require building and environmental reports, a title search, and a qualified appraisal, at a bare minimum. The committee may also wish to explore why an unknown donor is interested in making what could be a significant gift to the organization. Is the donor making a gift or unloading a white elephant to charity that is a net liability to them?

3. *A grant from a donor advised fund to fulfill a legally binding pledge* – By consulting the gift acceptance policies, which hopefully have been updated to reflect the December

2017 IRS guidance, the Gift Planning office can advise the president that the IRS will not challenge such a grant, and the president's key initiative can be funded with this grant. No doubt the president will heap praise on the Gift Planning office for being aware of the new IRS guidance and for having kept the gift acceptance policies up to date.

Conclusion

While the gift acceptance process can be a high-stakes game, well-drafted and current gift acceptance policies can open the door to your organization accepting high-value assets that pose minimum risk. Put those gift acceptance policies to work!