



Mind the gap

CARÍ JACKSON LEWIS SETS OUT BEST PRACTICE FOR GIFT ACCEPTANCE POLICIES FOR NOT-FOR-PROFITS IN THE US

In the wake of recent debate surrounding not-for-profits' acceptance of gifts from controversial sources, many charities¹ are reassessing their gift acceptance policies (GAPs).² There are well-established core standards and practices that are essential to the transparent, ethical and accountable administration of any development programme. Of the best practices of development programme management, the most important is the GAP.³

WHY IS HAVING A GAP IMPORTANT?

The Planned Giving Design Center in California states that a GAP 'provides discipline' for a not-for-profit's development programme by defining the types of asset that are acceptable, establishing the gift forms that are acceptable and defining the organisation's role in gift administration.⁴

A GAP is vital to the proper administration of a development programme for several reasons. First, the GAP requires development staff to think deeply about gifts, their origin, their value

and their saleability, helping them become more sophisticated about the types of gift they solicit and from whom. This minimises incidences of unacceptable gifts being offered or gifts being offered from a problematic source.

Second, a GAP allows the development officer to reject a donor's gift without personally alienating the donor. A well-crafted GAP will not only set out the charity's policies surrounding the acceptance of gifts, but also clearly articulate the reasons for the non-acceptance of gifts. This both manages the donor's expectations and enables development staff to point to the GAP as the basis for a gift's rejection, thereby maintaining their good relationship with the donor.

Third, a GAP will prevent a not-for-profit from accepting a gift that may impose risks or undue burdens on the organisation, such as:

- reputational problems, like a gift of cash from a dealer of 'blood' or conflict diamonds;
- legal or logistical problems, like a gift of illegal substances or of real property permanently contaminated by hazardous waste;
- ethical problems, such as an incompatibility with the mission or values of the not-for-profit (e.g. a gift of stock in a gun manufacturer to a gun control charity); or
- financial problems, such as the improbability of a reasonable financial return on the investment as a result of the potential expenses of storing, shipping and marketing the items versus the low resale value of the items (e.g. the gift of heavy antique furniture).

WHO DRAFTS THE GAP AND MAKES DECISIONS ABOUT GIFTS?

A charity should create an advisory committee (the Committee) whose role is to draft and adopt the GAP, and then assess and approve or reject gifts according to its terms. The Committee should include the executive director or president, as well as leadership from the finance, development and legal divisions. If the charity is small and does not have staff with this expertise, it is incumbent upon the organisation to acquire individuals with this acumen from its board of directors or outsource this expertise.

WHAT SHOULD A GAP CONTAIN?

A comprehensive GAP should include the following:

- the not-for-profit's mission statement;
- a donor 'bill of rights' setting out the donor's right to privacy and other commitments from the charity to the donor;⁵
- a statement articulating the purpose of the GAP, which is usually to provide the charity's donors and their advisors

with clear guidance regarding the not-for-profit's policies on gifts;

- the titles and roles of each member of the Committee;
- the charity's right to consult legal counsel when needed; and
- an itemised list with a description of each type of gift the not-for-profit will and will not accept, with clear distinctions made between the administration of cash and non-cash gifts.

The GAP should also address matters such as:

- conflicts of interest;
- handling of restricted gifts;
- responsibility and costs of performing due diligence, inspections and appraisals, and obtaining investment and legal advice; and
- gift recording and gift acknowledgement policies.

Importantly, the GAP should also provide for a waiver or a variance in the policy when needed, allowing the Committee to determine on a case-by-case basis if, when and from whom the charity may accept gifts. Other board committees, such as the finance and investment committees, should work with the development team to ensure compliance with state and federal law with respect to the treatment and characterisation of donations during audit. Finally, the Committee should review the GAP annually.

While a GAP will not anticipate every potential issue associated with a not-for-profit's acceptance of gifts, comporting with best practices in development programme management by adhering to the terms of a comprehensive GAP may allow development staff to play a significant role in saving a charity's 'time, money, and possibly, reputation, by reminding the organisation when to say, "No"'.⁶

#US #CHARITIES #BUSINESS PRACTICE

¹ The terms 'charity' and 'not-for-profit' are used interchangeably. ² Aidan F. Ryan, 'Provost Garber Calls for "Principled Approach" to Reviewing Gifts', *The Harvard Crimson* (29 October 2019); Victoria Stapley-Brown, 'The Met is Re-Evaluating its Gift Acceptance Policy in Wake of Sackler Lawsuits', *The Art Newspaper* (21 January 2019)

³ Not-for-profits are not required by federal law to have a GAP; however, sch.M, Part I, line 31 of Form 990 asks whether the subject not-for-profit organisation has 'a gift acceptance policy that requires the review of any non-standard contributions'. In-kind or non-cash contributions must also be reported on that Schedule.

⁴ Kathryn W. Miree, 'Understanding and Drafting Nonprofit Gift Acceptance Policies', Planned Giving Design Center (18 May 2011) ⁵ *The Donor Bill of Rights*, Association of Fundraising Professionals (1964) ⁶ Above, note 4



Carí Jackson Lewis TEP is an attorney and a Senior Development Officer at the California Community Foundation