



Gift Acceptance Policy

Approved September 8, 2015

This amended and restated policy replaces all prior gift acceptance policies of the Community Real Estate and Personal Property Foundation, Inc.

INTRODUCTION

This policy is designed to ensure that illiquid gifts entrusted to the Community Real Estate and Personal Property Foundation [“CREPPF”] are mutually beneficial for CREPPF and its donors. Because some gift situations may be complex, or more costly than beneficial, this policy has been developed to establish standards for evaluating potential gifts. These standards account for the uniqueness of each donor’s charitable plans and potential gift assets, and allow for full and fair assessment of any proposed gift in a timely and professional manner.

GUIDING PRINCIPLES

Responsibility to donors. CREPPF welcomes gifts from all sources, including individuals, corporations, foundations, and governmental entities, in support of charitable purposes. CREPPF will use its best efforts to provide donors with appropriate information to facilitate the gift-giving process, and to ensure that staff responds to donors in a timely, professional, and courteous manner. All information relating to donors’ assets, gift plans, and personal goals shall be held in strict confidence.

Institutional integrity. CREPPF values and is responsible for maintaining its character as a charitable organization of the highest professional and ethical caliber. As such, CREPPF reserves the right to decline certain gifts, including those that are not clearly in furtherance of charitable purposes, that are likely to generate little or no financial gain, that may inhibit gifts from other donors, or that would cause CREPPF to violate current legal or ethical principles.

Professional advice. Although staff strives to maintain a high degree of familiarity with current tax and related laws that affect charitable gift planning, individual staff members cannot provide legal or tax advice to donors. CREPPF encourages all donors to consult with their personal legal, tax, and financial advisors prior to making a gift. CREPPF will seek the advice of its own legal, tax, or other advisors as appropriate and necessary prior to accepting gifts of a complex nature.

Expenses. CREPPF may incur and pay reasonable fees for legal or other professional services rendered to the organization in direct connection with the acceptance, administration, and/or disposition of a gift. Fees for tax, legal, or other professional services rendered to the donor, including but not limited to fees for document preparation, filing, or appraisal services, cannot be paid by CREPPF.

GENERAL PROCEDURES

CREPPF is relied upon by the Community Foundation for the Fox Valley Region, Inc. [the “Foundation”] and its affiliates to assess and, if acceptable, to administer gifts of assets that may create issues of valuation, marketability, or liability (tax, financial, or otherwise). Although CREPPF may accept gifts of cash, marketable securities, and similarly uncomplicated assets, CREPPF will generally direct such gifts to the Foundation and/or the appropriate affiliated entity, to be assessed and administered in accordance with that organization’s gift acceptance policies.

All gifts proposed to CREPPF shall be evaluated promptly, as provided in the sections that follow. Foundation staff will immediately notify donors if a proposed gift is not accepted. Any questions concerning the applicability of those sections, or regarding any proposed gift, shall be directed to the Foundation’s chief development officer, chief financial officer, or chief executive officer.

AUTHORITY TO NEGOTIATE AND SIGN AGREEMENTS

The Foundation’s President/CEO will have the authority to handle inquires, negotiate with donors, assemble documentation, retain expert and technical consultants, and execute agreements on behalf of the Foundation and CREPPF.

PURPOSE OF GIFTS

The purpose of each gift to CREPPF must fall within the Foundation's broad charitable purposes. CREPPF cannot accept any gift that will be directly or indirectly subject to any material restriction or condition by the donor that prevents CREPPF or the Foundation from freely and effectively employing the gift assets or the income from such assets to further its charitable purposes. In addition, CREPPF reserves the right to reject any gift that might place the other assets of CREPPF or the Foundation at risk or that it believes is not readily convertible into assets that fall within the Foundation's investment guidelines. CREPPF may also decline a gift if it is not able to administer the terms of the gift in accordance with the donor's wishes.

COSTS OF ACCEPTING AND ADMINISTERING GIFTS

Generally, costs associated with the acceptance of a gift, such as the donor's legal fees, accounting fees, and appraisal and escrow fees, are borne by the donor. The direct costs of administering gifts are generally paid out of the asset account to which the gift is assigned. Custodial, investment, and administrative fees are paid from the respective asset accounts in accordance with the Foundation's guidelines and fee schedules. The Foundation reserves the right to establish such fees as it shall determine in its sole discretion.

SPECIFIC GIFT ASSETS

Closely held securities, restricted securities, and business interests. CREPPF will accept gifts of restricted or closely held securities, including debt and equity positions in non-publicly traded companies, interests in general and limited partnerships, and interests in limited liability companies and similar entities, subject to the approval of its Board of Directors. Factors affecting the evaluation of such gifts shall include:

- the nature and character of the business interest, with preference for passive interests in conservative, fiscally sound, and well-managed business entities;
- the structure of the business, with preference for structures offering limited legal and financial liability, preferred economic interests, and protection from unrelated business income taxes;
- the anticipated role of CREPPF in the business, with preference for limited managerial, financial, and legal responsibility;
- revenue expected to be generated by the interest, whether through subsequent sale or redemption of the interest or through retention of income-generating interests;

- carrying costs associated with acceptance of the property, including pro-rata shares of taxes, organizational expenses, and the value of staff time necessary to manage the property; and
- marketability or liquidity of the interest, with preference for interests that are readily marketable or reasonably expected to become marketable or convertible into a readily marketable or profitable form within the foreseeable future.

Such gifts generally will not be approved if the interest is likely to generate unfavorable tax, managerial, or financial consequences, including a likely inability to convert the interest to cash within a reasonable timeframe.

CREPPF reserves the right to sell or otherwise dispose of gifted business interests upon or at any time after receipt.

Real Estate. CREPPF will accept gifts of real estate, including residential, commercial, and undeveloped property, subject to the approval of its Board of Directors. In evaluating such gifts, CREPPF may require that a member of its Board of Directors or Foundation staff conduct a site visit to the property. Factors to be considered in the evaluation of such gifts shall include:

- the nature and condition of the property, with preference for properties that are in good physical condition, free from environmental damage, compliant with applicable land use and zoning restrictions, and of a character consistent with that of surrounding properties;
- the form of ownership, with preference for properties owned in their entirety by the donor(s) and/or entities owned and controlled by the donor(s);
- encumbrances, with preference for properties that are not subject to burdensome easements, liens, mortgages, or other debt;
- revenue expected to be generated by the property, whether through subsequent sale or through retention and rental of the property;
- carrying costs associated with acceptance of the property, including taxes, assessments, insurance coverage, maintenance costs, expenses of sale, and the value of staff time necessary to manage the property; and
- marketability of the property, with preference for properties that are readily saleable to third parties at reasonable value as determined by current market conditions.

Contributions of real estate generally will not be approved if the donor cannot provide clear title, if the property is subject to significant carrying costs (such as maintenance, taxes, or substantial debt), if the property shows signs of un-remediated environmental damage, or if the property is not expected to be readily marketable within a reasonable period of time.

Unless otherwise agreed prior to approval of the gift, CREPPF reserves the right to sell or otherwise dispose of gifted real estate upon or at any time after receipt.

Remainder interests in real estate. Subject to the provisions of the preceding section and upon the approval of its Board of Directors, CREPPF will accept remainder interests in real estate, including personal residences and farms. Unless otherwise agreed prior to approval of the gift, the donor will remain responsible for insurance, property taxes, maintenance and repairs, and any mortgage or similar encumbrance on the property.

Tangible personal property. CREPPF will accept gifts of tangible personal property, subject to the approval of its Board of Directors. Factors to be considered in the evaluation of such gifts shall include:

- the marketability of the property;
- the carrying costs of the property, including transportation, storage, maintenance, and insurance;
- the effect of any existing or proposed restrictions on the use, display, or disposition of the property; and
- the extent to which the property relates to the charitable purposes of CREPPF, the Foundation, or its affiliates.

Unless otherwise agreed prior to approval of the gift and unless the gifted assets are directly related to the charitable purposes of CREPPF, the Foundation, or its affiliates, CREPPF reserves the right to sell or otherwise dispose of gifted tangible personal property upon or at any time after receipt.

Bargain sales. Subject to the provisions of the preceding sections and upon the approval of its Board of Directors, CREPPF will enter into bargain sales that are reasonably expected to further its charitable purposes or those of the Foundation or its affiliates. Factors to be considered in the evaluation of such gifts shall include:

- the nature and value of the property,
- the proposed purchase price and anticipated carrying and transaction costs, and
- the ability to sell or otherwise dispose of the purchased property.

Other gifts. Acceptance of any proposed gifts not described above shall be subject to the approval of the CREPPF Board of Directors. Factors to be considered in the evaluation of such gifts shall include:

- the extent to which the gift (or any sales proceeds thereof) may be used for charitable purposes,
- the marketability and/or carrying costs of the gift, and
- any legal, financial, or other risks related to the gift.

Unless otherwise agreed prior to the approval of any such gift, CREPPF reserves the right to sell or otherwise dispose of the gifted asset upon or at any time after receipt.

EXCESS BUSINESS HOLDINGS

Under the Pension Protection Act of 2006 (PPA), the private foundation excess business holdings rule applies to donor-advised funds as if they were private foundations.ⁱ 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 percent ⁱⁱ of the voting stock ⁱⁱⁱ 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 proprietorship ^{iv}

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 U.S. Treasury.^v

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 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. ^{vi}

The rule will not apply to assets held by the sponsoring charity – as long as they are not held by the donor-advised fund – 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 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

How do the rules apply to existing holdings?

Donor-advised funds that together with their disqualified persons held more than a combined 50 percent interest in a business on the day of the PPA enactment in 2006, as part of phase one, were/are required to reduce their combined holdings to 50 percent, and, in most cases reduce the foundation’s share of the holdings to 25 percent. The time period for doing so is:

- Twenty years if the donor-advised fund and disqualified persons collectively own 95 percent or more of the voting or profits interests of a business enterprise
- Fifteen years if the combined total is 75 percent or more, but less than 95 percent

- Ten years if the combined total is more than 50 percent, but less than 75 percent

Phase two is the 15-year period that begins at the end of phase one. During this period, the combined holdings are limited to 50 percent, but if the disqualified persons' share is two percent or more, the Foundation may own no more than 25 percent of the total. At the end of phase two, the combined holdings may not exceed 35 percent, and the Foundation's share may not be more than 25 percent if the disqualified persons' share is two percent or more ^{vii}.

This provision took effect at the start of the first full tax year following the date of enactment (August 17, 2006)—January 1, 2007, for calendar-year taxpayers. Note that the transition rules for existing holdings were applicable only to assets held on the date of enactment.

Community Foundation for the Fox Valley Region, Inc.'s Policy regarding assets categorized under the PPA as "excess business holdings":

The Foundation will identify and monitor any new gift to a donor advised fund of any interest qualifying as an "excess business holding" under the PPA. The Foundation will exercise its best effort to dispose of the contributed interest at the best possible price within five years of the date of the gift, as required under the PPA. In any event, the Foundation will dispose of any excess business holding prior to the five year time limit, except in the event that the Treasury Department grants an additional five-year holding period. The Foundation will notify potential donors of such interests of this requirement prior to the contribution of such interest.

ⁱ The language is clear that it is only the donor-advised fund – not the sponsoring charity – that is to be treated as a private foundation. Accordingly, it appears that this section does not apply to assets held by the sponsoring charity's investment pools, or assets held by funds that are not donor-advised.

ⁱⁱ Thirty-five percent if it can be shown that persons who are not disqualified persons have effective control of the business.

ⁱⁱⁱ Additionally, the donor-advised fund will be barred from holding non-voting stock of any incorporated business unless the disqualified persons collectively own less than 20 percent of the voting stock.

^{iv} According to Treas. Reg. Section 53.4943-10(e), a sole proprietorship is a business enterprise which is actually and directly owned by the private foundation and not held by a corporation, trust, or other business entity for the foundation. Further, to be considered a sole proprietorship, the foundation must have a 100 percent equity interest. If the foundation has less than a 100 percent equity interest, the business enterprise would be treated as a partnership for the purposes of the excess business holding rules.

^v Excess holdings acquired by purchase must be disposed of immediately. If purchases by disqualified persons cause the donor-advised fund to have excess holdings, the donor-advised fund will have 90 days to dispose of the excess.

^{vi} Under the de minimis rule, the donor-advised fund could continue to hold an interest that did not exceed two percent of the voting stock and two percent of the value.

^{vii} Additional rules apply to cover situations such as mergers, redemptions, and acquisitions.

AMENDMENT

This policy may be amended from time to time to address certain forms of gifts or types of gift assets that warrant particular attention due to increased popularity, changes in legal or financial practices, or any other reason. Such amendments shall be approved by CREPPF's Board of Directors and shall be incorporated into this policy upon approval.

Dated this _____ day of _____, 20____

Board Secretary

Policy Approved by CREPPF Board: 3/17/2009
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