

# Montgomery College Foundation

## Gift Acceptance Policy Manual

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Prepared in consultation with

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The Sharpe Group



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## **1 Staff Gift Acceptance Committee**

A Gift Acceptance Committee (GAC) is created to review and seek consensus on complex gift arrangements, gifts that have potential risk aspects, and to ensure that key players are aware of these gifts early enough in the process to raise concerns effectively.

The GAC will include the Senior Vice President for Advancement and Community Engagement, Vice President of Development & Alumni Relations/Executive Director of the Montgomery College Foundation, Director of Foundation Finance, Senior Campaign Director, include the Chair of the Foundation when a gift is high risk or complex, and the Foundation's General Counsel when applicable. Additional individuals may be brought in on an ad hoc basis, but should always include the staff person with the primary relationship with the donor of the gift.

The GAC may provide exceptions to or modify details of policies as needed in the case of individual gift situations with unusual issues or where existing policies do not apply. When the GAC needs to review a potential gift, the Committee will meet in person or by conference call, typically within two to three days.

## **2 General Guidelines**

All gifts accepted by the Montgomery College Foundation (MCF) shall conform to all applicable tax laws and regulations, in particular those affecting nonprofit organizations and charitable giving.

All gifts accepted by MCF shall be recorded and will be receipted by the development department with a personalized letter. Flexibility will be maintained regarding gift acceptance, since some gift situations may be complex, and proper decisions can be made only after careful consideration of all relevant factors. The merits of a particular gift may require extensive evaluation by appropriate staff or board committee, or, when necessary, by outside advisors.

The GAC is authorized to provide exceptions to policies when conditions require.

Gifts to MCF can be restricted or unrestricted, depending on the specific instructions of the donor. Gifts without instructions are presumed to be unrestricted.

All gift agreements that are intended to provide income for the future, specifically deferred gifts or gifts intended for the endowment or similar long-term use, will include language allowing for the possibility that the program or scholarship purpose outlined in the agreement may change to the extent that MCF may not offer such a program or scholarship in the future.

Such gift language will permit MCF to apply the gift proceeds or the gift's income to a program or scholarship as close to the original intention of the donor as possible as determined by the board.

Testamentary gift donors are encouraged to clearly identify MCF, the address, and its IRS-issued tax-exempt Employer Identification Number (EIN) in the document as follows: **Montgomery College Foundation**  
9221 Corporate Boulevard, 3<sup>rd</sup> Floor  
Rockville, MD 20850  
**EIN: 52-1267008**

### **3 Legal Counsel**

#### **3.1 Legal Counsel for Donors**

MCF will encourage donors to seek their own advisor or independent legal counsel and to discuss proposed planned gifts with that counsel. Even if MCF's legal counsel is assisting in the discussions of a possible gift, the donors should clearly understand that the attorney is representing MCF and not the donor. The larger the gift, the more important such counsel becomes.

While smaller or average size Charitable Gift Annuities generally will not require legal review, wills and trusts are always best examined, addressed and drafted or given final legal approval by the donors' own attorney. Montgomery College Foundation will not recommend specific attorneys (particularly attorneys that might be serving on the MCF board or any affiliated boards).

#### **3.2 Review of Gifts By MCF's Legal Counsel**

MCF will obtain the advice of its own legal counsel before accepting certain gifts when appropriate. These gifts may include, but are not be limited to:

1. Restricted securities;
2. Arrangements where MCF is named trustee, co-trustee or is agreeing to serve as trustee on a current, future or stand by basis;
3. Real estate gift agreements, option or contract;
4. Gifts involving a bargain sale arrangement;
5. Charitable gift annuity arrangements not prepared using standard specialized gift annuity software programs (such as PG Calc or Crescendo);
6. Gifts where MCF is accepting liability as a part of the gift arrangement (excluding normal gift annuity arrangements);
7. Gifts where conflict of interest situations may arise or may have the potential for a perception of potential conflict to an uninformed observer;
8. Situations where IRS questions about the tax status of the gift or the use of MCF's tax status could reasonably be raised. (For example, a potential step transaction might be reviewed by MCF's legal counsel to identify possible problems in advance of the completion of a gift.);
9. Gifts involving buy/sell agreements;
10. Partnership agreements;
11. Gifts requiring a contract or legal document other than a gift annuity where MCF has potential responsibility or liability beyond simply being the recipient of the gift proceeds at some point in the future; and

12. Gifts where unrelated business income tax (UBIT) is a reasonable possibility.

## **4 Appropriate Types of Gifts**

The gift types below may be accepted, subject to MCF policies and IRS rules governing charities.

1. Cash
2. Marketable Securities
3. Restricted or closely held securities
4. Real estate: outright, to fund life income arrangements and subject to life estates
5. Oil, Gas & Mineral Interests
6. Life Insurance
7. Tangible, Personal and Intellectual Property
8. Bargain Sales
9. Retirement Plan Beneficiary Designations
10. Bequest & Trust Gifts
11. Charitable Gift Annuities (Current, Deferred, & Flexible Deferred)
12. Charitable Remainder Trusts
13. Charitable Lead Trusts
14. Pooled Income Fund gifts
15. Limited partnership gifts, subject to legal review
16. Royalties, Patents and Copyrights
17. Miscellaneous Gifts of A Complex Nature

## **5 Endowment Gifts**

1. MCF encourages donors to make current and deferred gifts that will be placed into one of MCF's endowments. Gifts to the endowment are known as "permanently restricted gifts." Donors are permitted to specify the purpose of their gifts (such as giving to or establishing a scholarship or a grant).
2. Permanently restricted gifts will generate an income to be put into the operating budget each year and used as the donor has specified. The income is determined by the spending rule in place at the time the income is generated – when the gift is realized and every year thereafter.
3. From time to time MCF reviews and changes the funding levels for permanently restricted funds.
4. The amount of a permanently restricted gift may at times not be sufficient to realize the purposes of the donor. MCF will provide a statement to the donor explaining this and providing for alternatives in such event.
5. The appropriate MCF staff will determine if a bequest amount that is insufficient for an endowment may still qualify as a named endowed fund or if the gift should be added to the general corpus of the endowment without a naming opportunity.
6. If the gift is restricted to a specific project and the amount received is insufficient to fund the project, MCF reserves the right to add contributions from other donors or to apply the gift's income to as close a project as is possible, as determined by the staff.
7. When the fair market value of a gift of publicly traded securities is different from the actual proceeds of a gift, the fair market value will be used to determine if the

- funding level of an endowment project gift is sufficient. This will be honored even though, on occasion, stock gift proceeds are realized at lower levels than the fair market value on the date of transfer.
8. When a donor wishes to fund an endowment project with real estate and the gift's fair market value is different from the actual proceeds of a gift, the net proceeds, (after expenses are subtracted) will be used to determine if the funding level of an endowment project gift is sufficient. This is because gifts of real estate often are less valuable – and by such a large amount – than the appraised value. In this case, donors will be expected to supplement their gifts with cash to realize the funding level of the endowed project.

### **5.1 Named Endowments and Minimum Gift Size**

An endowed fund or current use fund may be established for any purpose which is within the Montgomery College Foundation's mandate to further its mission.

Current Montgomery College faculty, staff, and retirees may establish a named fund with a minimum commitment of \$10,000. For all other donors, the minimum gift commitment to establish an endowed fund is \$25,000. An agreement must be signed by the donor or his/her representative and the Montgomery College Foundation's Executive Director.

To reduce the administrative costs associated with managing endowed and current use funds, new gifts may be placed in existing funds and still fulfill the donor's intent or a specific need.

## **6 Restricted Gifts**

MCF will accept restricted gifts as long as they are consistent with the mission and purpose of the organization. Gifts may be restricted to broad scholarship, endowment or similar capital purposes. For gifts involving other types of use restrictions, donors will be urged to provide some flexibility should the purpose of the restriction no longer be appropriate or necessary.

For gifts that are restricted to a particular purpose, but where there is no restriction on spending the corpus, there will be no minimum amount set by the board, but the staff may set minimums as appropriate with an eye toward maximizing income for the organization without creating an undue administrative burden.

### **6.1 Gift Restrictions**

The Gift Acceptance Committee will review and approve restrictions on the use of significant gifts, unless clearly consistent with past MCF practices or existing policy.

## **7 Outright Non-Cash Gifts**

Outright gifts are those gifts that are placed at MCF's immediate disposal and in which the donor retains no interest. Outright gifts of non-cash assets should be liquidated after the Foundation accepts ownership of the asset.

## **8 Gifts of Securities**

### **8.1 Publicly Traded Securities**

1. Gifts of publicly traded securities are stocks that are traded on the open market and are available to all investors and shall be accepted in negotiable form.
2. Mutual fund gifts shall be accepted, but the Foundation staff should counsel the donor promptly about potential time delays in getting such gifts actually transferred. Additional detail about mutual fund gifts is further detailed elsewhere.
3. When the donor has physical possession of the stock certificate, the donor can:
  - Endorse the stock certificate on the back and hand-deliver the stock certificate to MCF; or
  - Mail the unendorsed stock certificate to MCF by registered mail and separately mail an executed stock power form (a legal document that the donor signs to transfer ownership of the stock, is available from the development office); or
  - Take the stock certificate to a bank or brokerage house to be converted into an electronic transfer (see #3 below).
4. When the donor's stock is in a street account at a bank or brokerage house (by far the most common holding form), the donor can direct her or his broker to make a gift by electronic transfer directly to an MCF account. Donors should contact the development staff for the appropriate stock transfer account information.
5. When a gift of stock is anticipated by the development staff, the MCF Director of Finance, the Executive Director, and MCF's banking institution should be notified in advance of the donor's name, the name of the stock, the number of shares, and the day and time the transfer is anticipated.
6. Stock gifts shall be sold by MCF's finance office in accordance with MCF's finance policies. Exceptions may be made with the approval of the Gift Acceptance Committee.
7. Stock gifts are credited in accordance with IRS regulations at the mean value on the date of the gift. When the stock is electronically transferred, the day of the gift is the day the stock is received in the MCF account. When the stock is sent through the United States Postal Service in certificate form, the day of the gift is the day of the postmark on the envelope in which the stock and stock power are sent. MCF will send a receipt in a timely manner to the donor. The receipt letter notes the name of the stock, the number of shares gifted, the date the stock (and stock power, if appropriate) was received (if electronic) or postmarked (if mailed), and whether any goods or services were provided by MCF to the donor in exchange for the gift. The letter also describes the gift's value as understood by MCF staff: the stock's high and low values on the day of transfer or postmark, and the mean value (as described above). The donor is encouraged to confirm MCF's understanding of the value of the gift.
8. The mean average value of the stock is what is posted to the donor's record and the amount credited to the donor's branch and state.



**From IRS Publication 561:** Selling prices on valuation date. If there is an active market for the contributed stocks or bonds on a stock exchange, in an over-the-counter market, or elsewhere, the FMV [fair market value] of each share or bond is the average price between the highest and lowest quoted selling prices on the valuation date. For example, if the highest selling price for a share was \$11, and the lowest \$9, the average price is \$10. A donor calculates the average price by adding \$11 and \$9 and dividing the sum by 2.

## **8.2 Closely Held and Restricted Securities**

Gifts of closely held and restricted securities shall be accepted after approval of the GAC.

1. Staff is encouraged to explore options for sale, but is not authorized to make any commitments with a donor prior to acceptance of the gift of securities. Doing so can create tax problems for the donor and potentially for MCF.
2. Prior to accepting closely held securities, the estimated fair market value shall be determined and methods of liquidation shall be explored. Valuation shall be the responsibility of the donor for tax purposes. In the absence of a recent sale, the fair market value of the gift shall be determined by an acceptable authority.
3. If the value of a non-cash or non-marketable security gift is determined to be more than \$5,000, an IRS required appraisal must be conducted. The donor is normally responsible for determining and justifying the value for their own tax deduction purposes.
4. When an IRS appraisal is required to justify the charitable income tax deduction and the Foundation is required to sign IRS Form 8283 acknowledging receipt of the gift and the deduction being taken, the Foundation will request a copy of that appraisal.
5. On rare occasions, MCF may find that it is in its best interest to pay for an appraisal for the donor and reduce the gift value by the cost of that appraisal as an incentive for the gift to be made. This is permitted on rare occasions, such as when a donor gives up his or her life income from a CGA.
6. When MCF determines that it is in the interest of the Foundation to have an appraisal that is separate and independent from that of the donor, the Foundation will pay for such appraisal. This should be the exception, but conditions do arise.
7. MCF will send a receipt in a timely manner to the donor. The receipt letter should note the name of the security, the number of shares gifted, the date the stock was received (if electronic) or postmarked (if mailed), and whether any goods or services were provided by MCF to the donor in exchange for the gift.

## **9 Bequests**

MCF shall actively encourage donors and other constituents to make bequests through their wills, living trusts, or other estate planning vehicles.

Bequest gifts are generally not complete until the death of the donor and the donor's estate is administered and settled. The Executive Director and/or other development staff shall work with the donor's executor or personal representative and others as necessary and appropriate to ensure timely estate distributions to MCF.

When the language of a bequest restricts the gift to a specific project or fund, the gift will be subject to the applicable rules and funding levels at the time the funds are received, absent a written agreement to the contrary. If the amount received is insufficient to fund the project, MCF reserves the right to apply the gift's income to as close a project or fund as is possible, as determined by the staff.

No one employed by MCF shall serve as the executor of the estate of a donor making an estate gift to MCF.

## **10 Charitable Gift Annuities**

MCF will accept Charitable Gift Annuity (CGA), Deferred Gift Annuity (DGA) and Flexible Deferred Gift Annuity (FDGA) gifts and retain all gift annuity funds plus related earnings minus required payouts and minus expenses associated with administering the gifts. These funds will be maintained in segregated accounts to secure the required CGA payments.

Only after income beneficiaries have passed away will MCF spend any remaining funds for other purposes. As the Director of Foundation Finance deems appropriate, CGA funds may be divided into separate segregated funds as necessary to comply with state regulatory requirements or to facilitate appropriate investing of CGA funds.

Only when the donor passes away or if the annuity is reinsured will the MCF remove the appropriate funds from the gift annuity pool and use it for other MCF purposes.

### ***10.1 Minimum & Maximum Ages for Immediate CGAs***

The minimum age for MCF accepting an immediate payment CGA will be age 70. There will be no maximum age for accepting a CGA. If MCF decides to reinsure a given CGA and an appropriate insurance company is willing to provide such insurance, the mortality and investment risk to MCF is essentially eliminated and MCF may accept such CGA gifts at any age.

### ***10.2 Minimum Age for Deferred & Flexible Deferred Gift Annuities***

DGA and FDGA gifts may be accepted covering the lives of any donor who is age 50 or older so long as the earliest point that the payout can begin will not start before the annuitant's 70<sup>th</sup> birthday. There will be no maximum age

### ***10.3 Minimum Gift Amounts***

The minimum gift amount for a CGA, DGA or FDGA is established at \$10,000.

### ***10.4 CGA Rates***

MCF will follow the maximum rates recommended by the American Council on Gift Annuities (ACGA).

### **10.5 CGA Application**

All donors establishing any form of charitable gift annuity will fill out and sign an application form and be given a copy of MCF's disclosure statement.

### **10.6 Reinsuring CGAs**

MCF is authorized and retains the right to reinsure CGAs when the GAC deems it appropriate and prudent. The Director of Foundation Finance is authorized to reinsure CGAs as appropriate with the approval of the Executive Director.

### **10.7 Payout Frequency**

CGA payout frequency will be allowed on a quarterly, semi-annual or annual basis. If a donor requests payments on a monthly basis, this may be done if the monthly payout is \$100 or greater or in the case of unusual circumstances.

### **10.8 Gift Acceptance, Valuation and Liquidation Date**

The gift acceptance date for a CGA gift is the date that cash, marketable securities or other acceptable assets are irrevocably transferred to MCF.

If the CGA gift is funded with more than one asset transferred on different dates, the gift date (for purposes of establishing the gift annuity amount and payout) will be the date of the last transfer. Alternately, MCF may choose to create separate CGAs-- each based on the date of transfer.

Unless otherwise explicitly agreed, the valuation of any asset (for purposes of the gift annuity amount and payout) will follow IRS rules for determining the value of a charitable gift. In the case of securities, this means the average of the high and low for the date of transfer.

In the case of slow to transfer mutual funds or other more difficult to handle assets that may require a longer than ordinary time period to obtain and sell, the gift valuation and gift date will be based on the date the asset is actually received by MCF. If the gift is funded by a type of asset that tends to be slow to transfer, MCF should advise the donor of this fact, particularly if there is any time sensitivity, such as at year end.

### **10.9 Real Estate and Other Hard To Sell or Value Gifts**

With the approval of the GAC, MCF may accept real estate gifts in return for a CGA/DGA/FDGA so long as appropriate safeguards are taken and the payments are based on a conservative determination of the net present value of the expected sale proceeds and those proceeds are expected to amount to \$100,000 or more.

The staff shall take great care in accepting such gifts and they may only be accepted when it is abundantly clear that the property can be converted to cash within 60 days of the gift for a net amount that is equal to or greater than the projected CGA nominal gift amount.

MCF may also consider accepting the property if it will be sold with an adequate down payment and under such terms that will generate funds adequate to exceed the expected earnings under which the American Council on Gift Annuities' rates are based.

MCF shall seek to put in place mechanisms (such as the use of purchase or sale contracts or purchase options that are binding on the CGA donor/seller, but not on MCF) that will insure that the property can be quickly liquidated at the appropriate price and will obtain independent appraisals or opinions of value and will not simply accept the value or appraisal obtained by the donor.

If it is not clear that the property can be sold quickly and at an appropriately conservative price, MCF will not accept such gifts in return for a CGA/DGA/FDGA.

Real estate gifts subject to a life tenancy or other real estate or non-real estate hard to value or hard to sell assets may also be accepted to fund a CGA/DGA/FDGA, but only with the express approval of the GAC.

### **10.10 *Deferred Gift Annuities/Flexible Deferred Gift Annuities***

MCF will accept DGAs and FDGAs and will follow CGA policies. The period of deferral must run at least through the point at which the income beneficiary reaches age 70. MCF will accept DGAs and FDGA gifts for as long a deferral period as the donor desires, but the annuitant must be at least age 50. The minimum DGA/FDGA amount will be the same as for CGA minimums.

## **11 Charitable Remainder & Charitable Lead Trusts**

MCF will accept Charitable Remainder & Charitable Lead Trust gifts. MCF recognizes that such trusts should be established by the donor in consultation with his or her own legal and financial advisors. MCF may provide potential donors with appropriate information and assistance in establishing these trusts.

If permitted by the donor, MCF should seek to have MCF's specialty legal counsel review the document prior to execution both to ensure that it does not contain potentially fatal flaws that could unintentionally create problems for either the income (typically the donor and/or family) and remainder (MCF) beneficiaries, as well as to identify potential aspects that might provide additional benefits or flexibility for either party.

Donors may direct MCF to designate the remainder value of such gifts. Donors may designate their CRT or CLT gift to fully name a project or fund if the IRS-calculated remainder value equals or exceeds the minimum cost of that project or fund.

### **11.1 *Serving as Trustee for Charitable Lead & Charitable Remainder Trusts***

MCF may not serve as trustee of a Charitable Lead Trust. MCF may agree to serve as Trustee of a CRT under the following conditions:

1. Filling this role is allowed by state law.

2. The trust gives MCF the authority to immediately appoint and remove or replace (without limitation) a bank or trust company as co-trustee, special trustee or trust administrator with full discretion to administer and invest the trust.
3. MCF will immediately appoint a bank or trust company to serve as co-trustee with appropriate authority and responsibility. The trust administrator will perform all of the administrative duties of the trust, to include providing the necessary tax documentation to the donor and MCF on a yearly or as-needed basis.
4. There are no discretionary decisions regarding who is to receive the income payments.
5. If the trust contains real estate, all of the necessary MCF requirements for accepting real estate gifts have been complied with before MCF fills the role of trustee.
6. If the trust contains real estate or assets that require expenses to maintain or care for the assets, the trust must contain enough liquidity to handle any foreseeable expenses and/or obtain an explicit commitment from the donor to provide additional gifts of cash or securities promptly when required to meet those expenses. The MCF staff must be comfortable that this will occur quickly and easily if excess liquidity does not exist from the initial point of creation.
7. MCF is the irrevocable beneficiary of 51% or more of the remainder of the trust or, in the case of particularly large trusts, enough to make it worthwhile for MCF.
8. MCF retains the right to resign as trustee at any time for any reason.
9. The approval of the GAC is obtained.
10. MCF's attorney has reviewed the trust and finds that filling this role is appropriate under the circumstances.
11. MCF will not take a fee for the management of the CRT, although it will deduct any out of pocket trust expenses from the trust corpus or corpus and earnings as those expenses are incurred.
12. MCF may also wish to include a provision allowing the donor to retain the right to remove MCF as trustee during his or her lifetime without cause.
13. The initial or expected value of any gifts in to the trust will be a minimum of \$150,000.

### ***11.2 Serving as Trustee for Discretionary Trusts***

MCF will not serve as trustee for charitable or non-charitable trusts where there are discretionary decisions to be made as to who will receive the trust income over time.

## **12 Pooled Income Fund (PIF)**

MCF does not currently have a Pooled Income Fund (PIF) and thus is not currently able to accept PIF gifts. Should conditions change, MCF may decide to establish a new PIF fund in the future.

## **13 Life Insurance**

MCF may accept gifts of life insurance policies upon the death of the policyholder or where the premiums are fully paid. MCF welcomes being named as the beneficiary of life insurance policies.

MCF will accept gifts of life insurance policies where additional premiums must be paid only where there is significant policy cash value, where the donor agrees to make annual contributions to MCF to cover premiums, agrees to pay the premiums directly or where the insurance is appropriate for a life settlement arrangement and the donor agrees to cooperate with the process.

Such gifts will only be accepted if MCF has the right to cash out the policy when and if it sees fit. Should the donor cease to make the required payments, MCF may:

1. Cash out the policy;
2. Convert the cash value to a fully paid up policy;
3. Convert the current policy by exchanging it for a new policy, usually at a reduced amount;
4. Sell the policy to a life settlement or viatical company. These are companies that will buy permanent and even term (if it has a provision allowing it to be converted to a permanent policy) at a discount to the face value of the policy, but often for an amount higher than cash value—sometimes significantly higher; or
5. Continue to make the premium payments if this appears worthwhile as an investment matter.

Prior to accepting a gift of permanent or cash value life insurance, MCF will seek to obtain an in-force illustration from the issuing life insurance company to assist in determining the real value and potential cost and premium liability of holding the gifted policy.

MCF will not accept a term or other life insurance policy with no cash or life settlement value, absent extraordinary circumstances. However, donors may designate MCF as the remainder beneficiary.

### ***13.1 Gifts Made To Purchase Life Insurance***

MCF does not accept gifts from donors for the purpose of purchasing life insurance on the donor's or anyone else's life. If a donor wishes to purchase a life insurance policy and subsequently make a gift of that policy to MCF, that is fine.

### ***13.2 Getting Current Cash from Life Insurance: Life Settlement***

When MCF receives gifts of life insurance from living donors and, with the explicit the permission and cooperation of the insured, MCF may explore life settlement options and sell these policies on the secondary market as an alternative to cashing out the policies or holding them to full term.

### **13.3 In- Force Illustrations**

**14** After receipt of a gift of life insurance policy on a living individual, MCF will obtain an “in force” illustration from the issuing insurance company prior to determining if the policy should be kept until maturity, sold back to the insurance company for cash value, sold via other means such as a life settlement arrangement or converted to a different type of policy. Closely Held, Restricted or “S” Corp Stock

Closely held, “letter,” or restricted stock may be accepted after examining any restrictions associated with the stock. If the restrictions seriously impact the Foundation’s ability to sell the stock or contain other issues of concern, the gift should be brought to the GAC for approval.

In such matters, the donor should be made aware that MCF will be free to sell the stock to whomever it sees fit, whenever it sees fit. The valuation of the stock is the responsibility of the donor and MCF may be required to notify the IRS by filing a Form 8282 if sold within three years of accepting the gift. The same rule applies to gifts of real estate.

Occasionally, MCF will be subject to the same limitations as the donor was, either due to “pre-existing conditions” or because the donor is considered to be an “insider” by the S.E.C. rules. In such cases, the donor will inevitably inform MCF. As a result, MCF simply needs to be aware that such rules exist and when such gifts are offered, it will be necessary to examine the situation more closely and confirm that the rules are something that does not create undue problems or concerns for MCF.

In virtually all cases, the issues have to do with when the stock can be sold and ( to whom it can be sold. Unless the value of the restricted stock is to be used to pay for a project, fund or life income arrangement where the asset must be liquidated quickly or MCF will somehow be at risk and dependent on the value in advance of receiving the cash, it is normally a minor paperwork issue combined with a delay in the ability to sell the asset for some period of months or occasionally years.

## **15 Real Estate**

Real estate gifts can be some of the largest gifts that may ever come to MCF. At the same time, they can also pose potential financial, public relations, environmental and liability risks if they are not handled properly. MCF will actively solicit gifts of real estate. Any real estate gift must be approved by the GAC.

### **15.1 Carrying Costs**

In considering any gift of real estate, MCF shall closely consider potential carrying costs for holding the property, including hazard & liability insurance, property taxes, repairs, maintenance fees, upkeep, security and potential commitment of staff time. Prior to accepting any real estate, MCF will prepare an estimate of such costs and how they will be handled for both best and worst case scenarios.

### ***15.2 Bargain Sale***

MCF may consider the bargain sale of real estate if such a sale will generate significant net income to MCF with minimal risk and as long as the purchase price to MCF does not exceed 30% of the fair market value.

As a general rule, this will be considered in cases where there is a pre-existing mortgage or where there are other special circumstances. Bargain sales will only be considered if the asset can be sold promptly after purchase or the sale is part of a carefully thought out approach that contemplates a holding period for solid economic reasons. This will apply to both outright gifts and gifts being used to fund life income gifts where MCF is an irrevocable beneficiary of 51% of the gift arrangement.

### ***15.3 Minimum Gift Amounts & Marketability***

The minimum net value of a real property gift must be expected to be \$100,000 for MCF to accept it. MCF will assess the marketability for any gift of real estate prior to acceptance. Developed property that is not readily marketable will not be accepted unless there is a mechanism in place to handle the interim management until a sale can be completed.

Undeveloped property with the potential for few management issues will generally take longer to sell, but the potential risks are often much lower.

### ***15.4 Site Visit by MCF Representative***

Prior to accepting any gift of real property, a representative of MCF and/or surveyor will physically inspect the property, walk the boundary lines and take photographs.

### ***15.5 Title Search & Boundary Issues***

Prior to accepting a gift of real property, MCF shall confirm good title and seek a title insurance binder from a reputable title insurance firm. If there is any question about the location of the property boundaries or if there is not an existing survey available from the donor, registry of deeds, zoning office or building inspector's office, a boundary line survey will be obtained.

MCF will independently confirm the zoning status of the property in question and will not rely on the representations made by the donor.

### ***15.6 Phase I Environmental Assessment***

A Phase I Environmental Assessment will be obtained on any real property gift prior to MCF accepting the gift in any situation where MCF will be in the chain of title unless explicitly waived by the GAC.

### ***15.7 Insuring Property Held by MCF***

Whenever MCF accepts or holds real property, it should immediately obtain hazard and liability insurance that will cover the property to protect general corporate assets.



### **15.8 Retained Life Estates**

Gifts of retained life estates (aka real estate subject to a life tenancy) are subject to approval by the GAC and will be accepted by MCF so long as proper precautions are obtained and there is a written agreement covering and confirming the separate responsibilities of MCF and the life tenant(s) to avoid any future misunderstandings.

The agreement should address, but not be limited to:

1. Property maintenance and repairs;
2. Property taxes to be paid by the life tenant;
3. Property and liability insurance to be paid by the life tenant covering 100% of the value of the property to meet standard replacement insurance requirements
4. Flood insurance if in a flood plain zone;
5. Ability of the life tenant to rent or lease the property and for what period of time;
6. If the life tenant and MCF decide to jointly end the life tenancy and sell the property, what the mechanism will be for determining the remaining value and discount rate of the life tenancy for purposes of dividing sale proceeds;
7. Annual inspection of the property at a mutually convenient time; and
8. Who can act on behalf of the life tenant should the life tenant no longer be able to act for medical or other reasons.

MCF will also obtain separate insurance to cover its separate insurable interest or jointly obtain an appropriate policy with the life tenant.

Such gifts will be subject to the same requirements as all other real estate gifts.

Except with approval of the GAC, retained life estate gifts will be limited to personal residences, vacation homes and farms that include the donor's personal residence.

### **15.9 Leased Property**

Real estate subject to an existing lease or rental agreement may be accepted as a gift, but must be carefully examined by MCF's attorney for potential tax implications prior to accepting it.

### **15.10 Timeshare Gifts**

MCF will not accept gifts of timeshares.

### **15.11 IRS Reporting**

When a donor makes a charitable gift of real estate with a claimed tax deduction of more than \$5,000, he or she is required to notify the IRS by including form 8283 as part of the tax return claiming the tax deduction. The donor must sign the form, a qualified appraiser must sign attesting to the claimed value of the gift and the charity must sign acknowledging the gift valuation being claimed, but not attesting to the gift value.

If the property is sold or otherwise disposed of within 3 years, MCF must file Form 8282 with the IRS notifying it of the sale price or means of disposal if not sold.

No representation shall be made to the potential donor of a gift of property regarding the length of time it will be held by MCF, except where MCF intends to retain ownership for an extended period of time for related use.

## **16 Complex and Other Non-cash Gifts**

There are a wide variety of gifts that are offered to charities. This section is designed to identify and discuss some of the less common. As donors age, they tend to accumulate unusual assets. Since they are often unsure what to do with these assets or how to properly dispose of them, they decide to give them to charities that they believe in. While most gifts will be gifts of cash or publicly traded securities, donors tend to give what they have and this often means other types of assets.

### **16.1 Mutual Funds**

Mutual fund gifts will be accepted in general and for purposes of establishing a gift annuity based on the date the gift is actually transferred into MCF's name. The Director of Foundation Finance is authorized to open and maintain such mutual fund accounts as necessary for the sole purpose of accepting gifts of mutual funds from donors.

### **16.2 Tangible, Intangible and Intellectual Personal Property**

Gifts of personal property will be accepted as long as the value makes the gift worthwhile, the gift can be easily liquidated, there are not donor imposed restrictions on the timing or minimum sale price of the gift and they do not require a significant amount of staff time in proportion to the expected value of the gift. Such gifts must also be approved by the GAC.

Such gifts include copyrights, trademarks, royalties, intellectual property and licenses.

Except for gifts clearly of use to MCF in its ordinary course of business, no gift of personal property will be accepted without a clear understanding of how it will be liquidated, who will be responsible for the disposal and what the realistic timeframe for the disposal will be. Personal property gifts will not normally be accepted for MCF's own use, but rather will be treated as a gift of an asset that will normally be liquidated and the proceeds used to further MCF's mission.

No commitments may be made regarding the length of time property will be held by MCF, except where MCF intends to retain ownership for an extended period of time for related use.

If the personal property is to be used to fund a gift annuity, the expected net proceeds from the gift must exceed the minimum CGA gift value. If the value is being used to fund a CGA or other arrangement requiring MCF to accept liability in return for the gift, MCF will obtain a credible appraisal, opinion of value or otherwise confirm the value of the gift prior to acceptance.

As with real property, personal property gifts where the donor intends to claim a tax deduction of \$5,000 or more are subject to IRS appraisal and reporting requirements and the filing of Form 8283 documenting the value.

### **16.2.1 Tangible Personal Property Gifts & IRS Related Use Rules**

Gifts of tangible personal property that are desired for actual use (as opposed to being liquidated for cash value) by MCF or by any unit of the College may be accepted by MCF. This may also include gifts in kind.

Under IRS “related use” rules, if a gift of personal property is for related use, the donor is generally entitled to an income tax deduction of the full fair market value of the asset. For example, artwork to be used or exhibited in a museum, an X-ray machine to be used in teaching a radiological technician class or an automobile given to the College for use by students as part of an auto repair course. If such an item cost \$100 but is worth \$10,000, the donor could receive a \$10,000 tax deduction.

If the same gift was not for related use, the donor would be entitled to a tax deduction for the lesser of the current fair market value or the donor’s cost, whichever is less. Thus a gift of artwork worth \$1,000,000 purchased by the donor for \$1,000 given to the MCF that is unrelated to the Foundation’s mission and not used by the Foundation would provide a tax deduction of only \$1,000.

### **16.3 In-Kind Gifts**

In-kind gifts are non-monetary gifts.

1. MCF will accept in-kind gifts after favorable evaluation by the appropriate development officer, Montgomery College staff and/or faculty member and the Director of Development. MCF provides a receipt that describes the in-kind gift. As the gift is not one of check or cash, the receipt does not state a dollar value of the gift. For internal accounting purposes only, however, MCF asks that the in-kind donor provide an estimated value of the in-kind gift.
2. All in-kind gifts receive a thank you letter.
3. In discussing in-kind gifts, MCF will make an effort to ensure that the donor is aware of the IRS “related use” rule that generally limits the tax deduction for gifts other than cash, securities and real estate to the lesser of cost basis or current fair market value unless the asset being given is for “related use.”
4. When appropriate, MCF will also make an effort to ensure that the donor is aware the IRS requires that it be notified by MCF if gifted assets (other than cash or marketable securities) are sold within 3 years.
5. Montgomery College Foundation does not accept food as in-kind gift.

#### **16.3.1 Criteria For Acceptance**

Gifts of tangible personal property include, but are not limited to boats, motor vehicles, works of art, manuscripts, literary works, and items solicited for special event auctions only after a thorough review indicates that the property is readily marketable or usable by a specific college unit in a manner that is related to the mission of the college.

### **16.4 Gift Valuation**

An item or group of similar items of donated property with a fair market value of more than \$5,000 is recorded at the fair market value placed upon them by an independent qualified appraiser, as required by the IRS for valuing non-cash charitable contributions.

In those instances where the donor is not required to provide an appraisal (if the donor is the creator of a piece of donated artwork, in which case the donor's deduction is limited to the cost of materials), the College's appraisal obtained for insurance purposes is sufficient. The MCF adheres to guidance from the IRS related to qualified independent appraisals.

In cases where an appraisal for a gift of more than \$5,000 is not submitted because a donor is not claiming a tax deduction, the Foundation will pay for a qualified appraisal so as to value the gift appropriately in its records.

Small gifts of tangible personal property with an apparent value of \$5,000 or less are valued by the donor and their informal valuation is used for internal reporting purposes.

### **16.5 Oil, Gas & Mineral Interests**

MCF will only accept gifts of oil, gas and mineral interests with the approval of the GAC and after careful examination. Unless it is possible to resell the interest immediately and for a value that can be determined prior to the gift, such gifts will not be accepted in return for gift annuities.

### **16.6 Gold and Silver In Various Forms: Metal and Coins**

MCF will accept gifts of gold or silver coins and other forms of gold or silver.

### **16.7 Patents**

MCF will accept gifts of Patents.

### **16.8 Partnership Interests**

Gifts of limited partnership interests may be accepted, but must first be reviewed by the MCF's legal counsel to address unrelated business income tax issues, avoid potential liability issues and to insure a clear understanding of the real gift value to MCF. Limited partnership interest gifts must be approved by the GAC.

General partnership interests will not be accepted absent a very unusual situation and prior approval by the GAC due to potential liability issues.

### **16.9 US Savings Bonds**

US Savings Bonds will be accepted by MCF whenever appropriate. Under current US Treasury rules, US savings bonds are can only be effectively transferred to a charity upon the death of the donor.

## **17 Ethical Guidelines**

1. MCF does not accept gifts that are inconsistent with its mission or gifts that involve unlawful discrimination based on gender, race, creed, age, sexual orientation, national origin, disability, or class.
2. Individuals representing MCF shall be circumspect in all dealings with donors in order to avoid even the appearance of any act of self-dealing or conflict of interest.
3. For complex trusts, Charitable Remainder Trusts, and very large Charitable Gift Annuities, MCF will advise the donor to consult with her or his own legal and tax advisors before acting on any recommendations.
4. All gifts to MCF will be proposed, encouraged, and accepted in a form consistent with the known best interests of the donor.
5. No MCF employee shall accept personal gifts of significance from donors, including gifts made via bequest. When an employee is told by the donor of her or his intentions to leave a personal gift, the employee shall inform the donor that the practice violates MCF's ethical policies. If the donor makes the gift despite knowledge of this policy, the MCF employee is encouraged to give the asset to MCF. (MCF encourages and does not require the employee to donate the assets of either cash or property so as to preserve the income tax deduction potentially available to the employee. Gifts that are required to be made are not considered gifts by the IRS for deduction purposes.)
6. The guidelines set forth in these Gift Acceptance Policies are in full compliance with the "Standards of Professional Practice" of the Association of Fundraising Professionals, and with the "Model Standards of Practice for the Charitable Gift Planner" from the National Committee on Planned Giving/Partnership for Philanthropic Planning.

### ***17.1 Looking Out For The Interests Of The Donor First***

The interests of the donor should be paramount in gift planning arrangements with MCF. MCF should refrain from any program, agreement, trust, contract or commitment that would knowingly jeopardize the donor's financial or estate planning interests.

It will be the policy of MCF for the staff to look out for the interests of the donor first in the case of any life income gift or similar arrangement where there is a conflict between the donor's interests and that of MCF. While getting the gift is important, watching out for the donor and protecting MCF's good name is far more important.

This can be a delicate task, since donors do not generally share most of their financial affairs with MCF staff, nor is the planned giving staff broadly trained in this area. However, to the extent that issues or concerns are identified, the MCF should always look out for and discuss the donor's interests first.

The Association of Fundraising Professionals and the Partnership for Philanthropic Planning (formerly the National Committee on Planned Giving) created and adopted ethical standards in the early 1990s.

The MCF hereby adopts and accepts the Model Standards of Practice for the Charitable Gift Planner and the Association of Fundraising Professionals' Donor Bill of Rights (Appendices A and B)

## **18 Miscellaneous**

### **18.1 Primary Responsibility For Disposal Of Assets**

**18.2 Unless otherwise agreed, the MC Foundation finance office will be responsible for the handling, disposal and sale of gifts other than cash or easily marketable securities. As the gift is under active consideration, the staff should explore the best way to dispose of the asset and identify the person who will have responsibility for insuring that the gift is sold. Reporting to the IRS: Forms 8282 & 8283**

Periodically MCF is required to fill out and file forms 8282 and 8283 in response to various gifts being made or gifted assets that are sold within three years of the receipt of the gift. The Executive Director of the Foundation will be responsible for insuring that this is filled out and signed on behalf of MCF.

## **19 Periodic Review of Policies**

The gift acceptance policies should be reviewed every three years by the staff and GAC to insure that they are still relevant and up to date.

## **20 Monitoring Life Income Investments**

At least annually, key MCF staff members shall meet, examine and review all life income and trust investments where MCF is responsible for or the beneficiary of with an eye toward insuring that the investments are broadly appropriate.

While the actual investments will generally be managed by MCF's banks or other professional investment managers, the MCF staff must periodically review the performance and insure that the approach is generally appropriate for the needs of each gift arrangement. This review will also include any perpetual trusts, including those where MCF does not maintain any direct control or responsibility for management. These reviews should be documented and a report made in writing to the Board.

In the case of charitable trusts (including CRTs) that may be managed by the donor or some other outside entity, MCF should perform a similar review, but only if the donor chooses to share financial and investment statements with the Foundation.

## **21 Commissions and Finders Fees**

MCF shall not pay commissions or finder's fees in any form to compensate any individual or firm for obtaining or generating charitable gifts for MCF. MCF may not

pay any commissions or finder's fees in conjunction with CGAs, since these are explicitly prohibited by the S.E.C. Gifts tied to the payment of commissions or finder's fees will be rejected.

This does not prohibit payment of commissions for other services rendered in the ordinary course of business such as commissions on the sale of real estate or securities gifts.

If necessary, MCF may pay finder's fees to collect testamentary gifts that have already been made and intended to go to MCF, but where an error was made and the foundation has not been notified.

## **22 Board Authorization to Accept Gifts**

The Montgomery College Foundation Executive Director (or his/her designee) is authorized to accept bequests and other planned gifts and to sign such related documents as are appropriate.

The Montgomery College Executive Director is authorized to accept and sign related documents on behalf of MCF for bequest, living trust, retirement fund, life insurance, charitable remainder trust and standard charitable gift annuity gifts on behalf of MCF. The Montgomery College Executive Director is authorized to delegate authority to specific MCF staff members to sign such gift and estate related documents as necessary.

## **Appendix A: Model Standards of Practice for the Charitable Gift Planner**

### **PREAMBLE**

The purpose of this statement is to encourage responsible gift planning by urging the adoption of the following Standards of Practice by all individuals who work in the charitable gift planning process, gift planning officers, fundraising consultants, attorneys, accountants, financial planners, life insurance agents and other financial services professionals (collectively referred to hereafter as "Gift Planners"), and by the institutions that these persons represent.

This statement recognizes that the solicitation, planning and administration of a charitable gift is a complex process involving philanthropic, personal, financial, and tax considerations, and as such often involves professionals from various disciplines whose goals should include working together to structure a gift that achieves a fair and proper balance between the interests of the donor and the purposes of the charitable institution.

### **I. PRIMACY OF PHILANTHROPIC MOTIVATION**

The principal basis for making a charitable gift should be a desire on the part of the donor to support the work of charitable institutions.

### **II. EXPLANATION OF TAX IMPLICATIONS**

Congress has provided tax incentives for charitable giving, and the emphasis in this statement on philanthropic motivation in no way minimizes the necessity and appropriateness of a full and accurate explanation by the Gift Planner of those incentives and their implications.

### **III. FULL DISCLOSURE**

It is essential to the gift planning process that the role and relationships of all parties involved, including how and by whom each is compensated, be fully disclosed to the donor. A Gift Planner shall not act or purport to act as a representative of any charity without the express knowledge and approval of the charity, and shall not, while employed by the charity, act or purport to act as a representative of the donor, without the express consent of both the charity and the donor.

### **IV. COMPENSATION**

Compensation paid to Gift Planners shall be reasonable and proportionate to the services provided. Payment of finder's fees, commissions or other fees by a donee organization to an independent Gift Planner as a condition for the delivery of a gift are never appropriate. Such payments lead to abusive practices and may violate certain state and federal regulations. Likewise, commission-based compensation for Gift Planners who are employed by a charitable institution is never appropriate.

### **V. COMPETENCE AND PROFESSIONALISM**

The Gift Planner should strive to achieve and maintain a high degree of competence in his or her chosen area, and shall advise donors only in areas in which he or she is professionally qualified. It is a hallmark of professionalism for Gift Planners that they realize when they have reached the limits of their knowledge and expertise, and as a result, should include other professionals in the process. Such relationships should be characterized by courtesy, tact and mutual respect.



## **VI. CONSULTATION WITH INDEPENDENT ADVISORS**

A Gift Planner acting on behalf of a charity shall in all cases strongly encourage the donor to discuss the proposed gift with competent independent legal and tax advisers of the donor's choice.

## **VII. CONSULTATION WITH CHARITIES**

Although Gift Planners frequently and properly counsel donors concerning specific charitable gifts without the prior knowledge or approval of the donee organization, the Gift Planners, in order to insure that the gift will accomplish the donor's objectives, should encourage the donor, early in the gift planning process, to discuss the proposed gift with the charity to whom the gift is to be made. In cases where the donor desires anonymity, the Gift Planners shall endeavor, on behalf of the undisclosed donor, to obtain the charity's input in the gift planning process.

## **VIII. DESCRIPTION AND REPRESENTATION OF GIFT**

The Gift Planner shall make every effort to assure that the donor receives a full description and an accurate representation of all aspects of any proposed charitable gift plan. The consequences for the charity, the donor and, where applicable, the donor's family, should be apparent, and the assumptions underlying any financial illustrations should be realistic.

## **IX. FULL COMPLIANCE**

A Gift Planner shall fully comply with and shall encourage other parties in the gift planning process to fully comply with both the letter and spirit of all applicable federal and state laws and regulations.

## **X. PUBLIC TRUST**

Gift Planners shall, in all dealings with donors, institutions and other professionals, act with fairness, honesty, integrity and openness. Except for compensation received for services, the terms of which have been disclosed to the donor, they shall have no vested interest that could result in personal gain.

*Adopted and subscribed to by the National Committee on Planned Giving and the American Council on Gift Annuities, May 7, 1991. Revised April, 1999*

## **Appendix B: A Donor Bill of Rights**

PHILANTHROPY is based on voluntary action for the common good. It is a tradition of giving and sharing that is primary to the quality of life. To ensure that philanthropy merits the respect and trust of the general public, and that donors and prospective donors can have full confidence in the non-for-profit organizations and causes they are asked to support, we declare that all donors have these rights:

I.

To be informed of the organization's mission, of the way the organization intends to use donated resources, and of its capacity to use donations effectively for their intended purposes.

II.

To be informed of the identity of those serving on the organization's governing board, and to expect the board to exercise prudent judgment in its stewardship responsibilities

III.

To have access to the organization's most recent financial statements.

IV.

To be assured their gifts will be used for the purposes for which they were given.

V.

To receive appropriate acknowledgement and recognition.

VI.

To be assured that information about their donations is handled with respect and with confidentiality to the extent provided by law.

VII.

To expect that all relationships with individuals representing organizations of interest to the donor will be professional in nature.

VIII.

To be informed whether those seeking donations are volunteers, employees of the organization or hired solicitors.

IX.

To have the opportunity for their names to be deleted from mailing lists that an organization may intend to share.

X.

To feel free to ask questions when making a donation and to receive prompt, truthful and forthright answers.

**DEVELOPED BY:**

Association of Fundraising Professionals (AFP)  
Association for Healthcare Philanthropy (AHP)  
Council for Advancement and Support of Education (CASE)  
Giving Institute: Leading Consultants to Non Profits

**ORIGINALLY ENDORSED BY:**

Independent Sector  
National Catholic Development Conference (NCDC)  
National Committee on Planned Giving (NCPG)  
Council for Resource Development (CRD)  
United Way of America

Adopted in 1993

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