

BRANCH COUNTY COMMUNITY FOUNDATION GIFT ACCEPTANCE POLICY

01/23/2013

PURPOSE

The Branch County Community Foundation, a not for profit organization organized under the laws of the State of Michigan, encourages the solicitation and acceptance of gifts to Branch County Community Foundation (hereinafter referred to as the Community Foundation) for purposes that will help the Community Foundation fulfill its mission.

The mission of the Branch County Community Foundation is to build a permanent endowment by attracting funds from and providing services to a wide range of donors and to grant the income from those funds to serve our community.

The Board of Directors of the Community Foundation and its staff solicit current and deferred gifts from various sources to secure the future growth and missions of the Community Foundation. This policy governs the acceptance of gifts by the Community Foundation and provides guidance to prospective donors and their advisors when making gifts to the Community Foundation. The provisions of this policy shall apply to all gifts received by the Community Foundation for any of its programs or services.

FOUNDATION RESPONSIBILITIES

Foundation staff will disclose to all prospective donors the benefits and liabilities that could reasonably be expected to influence the donor's decision to make a gift to the Foundation. Donors will be encouraged to consult with legal counsel and financial advisors in making their decision. In particular, donors will be made aware of:

- the irrevocability of a gift,
- prohibitions on donor restrictions,
- items subject to variability (market value, investment return, and income yield),
- the Community Foundation's responsibility to provide periodic financial statements on donor funds, and
- the Community Foundation's responsibility to provide a donor bill of rights to donors.

Staff will maintain a written record of discussions with donors. The role of Community Foundation staff shall be to inform, guide and assist a donor in fulfilling his or her philanthropic wishes, but never to pressure or unduly influence a donor's decision. In addition, the Community Foundation reserves the right to refuse any gift it believes is not in the best interests of promoting a healthy, caring community. Further, the Community Foundation will not knowingly accept a charitable gift from a donor who:

- Has insufficient income and assets remaining after making a gift to provide for his/her needs such as personal support and healthcare.
- Has insufficient income and assets remaining after the gift to provide for his/her heirs for whom he/she is fiscally responsible.
- Has an apparent insufficient mental capacity to make a rational decision.
- Has insufficient input from competent financial, legal, and/or personal counsel.

USE OF LEGAL COUNCIL

The Community Foundation shall seek the advice of legal counsel in matters relating to acceptance of the following gifts:

- Closely held stock transfers that are subject to restrictions or buy-sell agreements.
- Documents naming the Branch County Community Foundation as Trustee.
- Gifts involving contracts, such as bargain sales or other documents requiring the Branch County Community Foundation to assume an obligation.
- Transactions with potential conflict of interest that may invoke IRS sanctions.
- Other instances in which use of counsel is deemed appropriate by the Investment Committee.

CONFLICT OF INTEREST

The Community Foundation will urge all prospective donors to seek the assistance of personal legal and financial advisors in matters relating to their gifts and the resulting tax and estate planning consequences. The Community Foundation will comply with the *Model Standards of Practice for the Charitable Gift Planner* adopted by the National Committee on Planned Giving and the American Council of Gift Annuities, shown as an attachment to this document.

RESTRICTIONS ON GIFTS

The Community Foundation will accept unrestricted gifts, and gifts for specific programs and purposes, provided that such gifts are not inconsistent with its stated mission, purposes, and priorities. The Community Foundation will not accept gifts that are too restrictive in purpose. Gifts that are too restrictive are those that violate the terms of the corporate by-laws, gifts that are too difficult to administer, or gifts that are for purposes outside the mission of the Community Foundation. All final decisions on the restrictive nature of a gift, and its acceptance or refusal, shall be made by the Board of Directors upon recommendation of the Investment Committee of the Community Foundation.

THE GIFT ACCEPTANCE COMMITTEE

The **Investment Committee** is charged with the responsibility of reviewing all gifts made to the Community Foundation, properly screening and accepting those gifts, and making recommendations to the Board on gift acceptance issues when appropriate.

TYPES OF GIFTS

Gifts Not Requiring Committee Review

- Checks, cash, or cash equivalents
- Marketable securities
- Gifts of personal property for use in Foundation offices or programs
- Life insurance policies (except requiring future premium payments by the Community Foundation)

Gifts Requiring Committee Review

- Life insurance policies requiring future premium payments by the Community Foundation
- Tangible personal property
- Real property
- Closely-held and S corporation securities
- Partnership interests
- Accounts receivable (gifts of loans, notes, mortgages, etc.)
- Gifts of intellectual property, mineral reserves, precious metals, and other types of assets carrying their own challenges
- Gifts whose structure fall outside the ordinary purposes, bylaws, and procedures of the Community Foundation

CRITERIA COVERING ACCEPTANCE OF EACH GIFT FORM

Cash. The Community Foundation accepts cash, checks, or money orders. Checks and money orders shall be made payable to the Community Foundation and shall be delivered to the Community Foundation's administrative offices.

Securities. The Community Foundation can accept both publicly traded securities and closely held securities.

Publicly Traded Securities. Marketable securities may be transferred to an account maintained at one or more brokerage firms or delivered physically with the transferor's signature or stock power attached. The Foundation will govern the disposition of securities, and will make all decisions regarding the sale or retention of securities. In some cases marketable securities may be restricted by applicable securities laws; in such instance the final determination on the acceptance of the restricted securities shall be made by the Investment Committee of the Community Foundation.

Securities in Privately-Owned Companies and Partnerships. Donors wishing to make gifts of stock in a closely-held corporation or S corporation or a gift of a partnership interest, must have it valued by a qualified independent accounting or appraisal company prior to making a contribution. Such gifts can be accepted subject to the approval of the Investment Committee of the Community Foundation. Gifts will be reviewed prior to acceptance to determine:

- there are no restrictions on the security that would prevent the Community Foundation from ultimately converting those assets to cash;
- the security is marketable; and
- the security will not generate any undesirable tax consequences for the Community Foundation.

Excess Business Holdings

Such gifts to donor advised funds, if accepted, will be disposed of within five years of the date of the gift. Such gifts to other funds that are not donor advised funds may be held by the Community Foundation for longer than five years. See Addendum at the end of this document for guidelines to prevent violation of the excess business holding rules for assets held in donor advised funds.

If potential problems arise on initial review of the security, further review and recommendation by an outside professional may be sought before making a final decision on acceptance of the gift. The Investment Committee of the Community Foundation and legal counsel shall make the final determination on the acceptance of closely held securities when necessary.

Generally, the Community Foundation does not accept gifts of general partnership interests due to potentially unlimited liability.

Life Insurance. The Community Foundation must be named as both beneficiary and irrevocable owner of an insurance policy before a life insurance policy can be recorded as a gift. The gift is valued at its interpolated terminal reserve value, or cash surrender value, upon receipt. If the donor contributes future premium payments, the Community Foundation will include the entire amount of the additional premium payment as a gift in the year that it is made.

If the donor does not elect to continue to make gifts to cover premium payments on the life insurance policy, the Community Foundation may:

- continue to pay the premiums;
- convert the policy to paid up insurance; or
- invoke procedures under which the existing policy values can sustain the policy without further outlay of Community Foundation funds for premium. This can take on any of the following forms:
 - Change the dividends to Net (Have the dividends pay future premiums)
 - Use the Automatic Premium Loan feature (Borrow against the cash value to pay future premiums)
 - Use a combination of the two previous options (Have the dividends pay as much of the premium as possible and borrow against the cash value for the remainder amount)
 - Change the policy to Paid-Up in which case, no more premiums will be due

The Community Foundation discourages the contributions of life insurance policies subject to policy loans and reserves the right to accept or reject such policies as well as those carrying assignments to other entities. The Community Foundation will consider its own interest and the best interest of the donor in the light of tax ramifications in determining on a case-by-case basis the acceptability of encumbered life insurance policies. Particular care will be given to problems of self-dealing, jeopardy investments, and unrelated business income in this regard.

Tangible Personal Property. Gifts of tangible personal property other than for use in the Community Foundation offices or programs shall be examined in light of the following criteria:

- Does the property fulfill the mission of the Community Foundation?
- Is the property marketable?
- Are there any undue restrictions on the use, display, or sale of the property?
- Are there any carrying costs for the property?

The Investment Committee of the Community Foundation shall make the final determination on the acceptance of other tangible property gifts. The donor will be advised whether the gift will be used by the Community Foundation or disposed of immediately.

Real Estate. Gifts of real estate may include developed property, undeveloped property, or gifts subject to a prior life interest. Following the Appendixes is the *Branch County Community Foundation Real Estate Acceptance Checklist*. This checklist will be utilized for all transactions involving real estate.

Prior to acceptance of real estate, the Investment Committee of the Community Foundation shall require an initial environmental review of the property to ensure that the property has no environmental damage. In the event that the initial inspection reveals a potential problem, the Community Foundation shall retain a qualified inspection firm to conduct an environmental audit. The cost of the environmental audit shall generally be an expense of the donor.

Remainder Interests in Property. The Community Foundation will accept a remainder interest in a personal residence, farm, or vacation property subject to the same provisions as other gifts of real estate. The donor or other occupants may continue to occupy the real property for the duration of the stated life. At the death of the donor, the Community Foundation may use the property or reduce it to cash. Where the Community Foundation receives a gift of a remainder interest, expenses for maintenance, real estate taxes, and any property indebtedness are to be paid by the donor or primary beneficiary.

Accounts Receivable. The Community Foundation will consider gifts of loans, notes, and mortgages, subject to review by the Investment Committee.

Oil, Gas, and Mineral Interests. The Community Foundation may accept oil and gas property interests, when appropriate. Prior to acceptance of an oil and gas interest the gift shall be approved by the Investment Committee, and if necessary, by the Community Foundation's legal counsel. Criteria for acceptance of the property shall include:

- Gifts of surface rights should have a value of \$20,000 or greater.
- Gifts of oil, gas, and mineral interests should generate at least \$3,000 per year in royalties or other income (as determined by the average of the three years prior to the gift).
- The property should not have extended liabilities or other considerations that make receipt of the gift inappropriate
- A working interest is rarely accepted. A working interest may only be accepted where there is a plan to minimize potential liability and tax consequences.
- The property will undergo an environmental review to ensure that the Community Foundation has no current or potential exposure to environmental liability.

Bargain Sales. The Community Foundation will enter into a bargain sale arrangement in instances in which the bargain sale furthers the mission and purposes of the Community Foundation. All bargain sales must be reviewed and recommended by the Investment Committee and approved by the Board of Directors. Factors used in determining the appropriateness of the transaction include:

- The Community Foundation must obtain an independent appraisal substantiating the value of the property.
- If the Community Foundation assumes debt with the property, the debt ratio will generally be less than 50% of the appraised market value.
- The Community Foundation will determine that it will use the property, or that there is a market for sale of the property (ideally, allowing sale within 12 months of receipt).
- The Community Foundation must calculate the costs to safeguard, insure, and expense the property (including property tax, if applicable) during the holding period.

Charitable Gift Annuities. The Community Foundation may offer charitable gift annuities. The minimum gift for funding is \$10,000. The minimum age and total annual income payment for life income beneficiaries of a gift annuity shall be subject to final determination of the Investment Committee. No more than two life income beneficiaries will be permitted for any gift annuity.

Annuity payments may be made on a quarterly, semi-annual, or annual schedule. The Investment Committee may approve exceptions to this payment schedule.

The Community Foundation will not accept real estate, tangible personal property, or any other illiquid asset in exchange for current charitable gift annuities. The Community Foundation may accept real

estate, tangible personal property, or other illiquid assets in exchange for deferred gift annuities so long as there is at least a 5-year period before the commencement of the annuity payment date, the value of the property is reasonably certain, and the Investment Committee and Board of Directors of the Community Foundation approves the arrangement.

Funds contributed in exchange for a gift annuity shall be set aside and invested during the term of the annuity payments. Once those payments have terminated, the funds representing the remaining principal contributed in exchange for the gift annuity shall be transferred to the Community Foundation's general endowment funds, or to such specific fund as designated by the donor.

Charitable Remainder Trusts. The Community Foundation may accept designation as remainder beneficiary of a charitable remainder trust with the approval of the Investment Committee of the Community Foundation. The Community Foundation may accept appointment as trustee of a charitable remainder trust after consultation with legal counsel and after review and recommendation by the Executive Committee and/or special committee appointed by the Executive Committee. Before acceptance of the appointment as trustee, the Executive or special committee will consider, at minimum, the role and duties of the trustee, including any conflicts of interest; whether or not BCCF will need to hire an individual or firm to perform those duties and the cost of acting as trustee and/or outsourcing those duties; and whether or not to purchase liability insurance ("bond") specific to the performance of the trustee role.

Charitable Lead Trusts. The Community Foundation may accept a designation as income beneficiary of a charitable lead trust. The Community Foundation may accept appointment as trustee of a charitable lead trust after consultation with legal counsel and after review and recommendation by the Executive Committee and/or special committee appointed by the Executive Committee. Before acceptance of the appointment as trustee, the Executive or special committee will consider, at minimum, the role and duties of the trustee, including any conflicts of interest; whether or not BCCF will need to hire an individual or firm to perform those duties and the cost of acting as trustee and/or outsourcing those duties; and whether or not to purchase liability insurance ("bond") specific to the performance of the trustee role.

Retirement Plan Beneficiary Designations. Donors and supporters of the Branch County Community Foundation will be encouraged to name the Community Foundation as beneficiary of their retirement plans. Such designations will not be recorded as gifts to the Community Foundation until such time as the gift is irrevocable. When the gift is irrevocable, but is not due until a future date, the present value of that gift may be recorded at the time the gift becomes irrevocable.

Bequests. Donors and supporters of the Branch County Community Foundation will be encouraged to make bequests to the Community Foundation under their wills and trusts. Such bequests will not be recorded as gifts to the Community Foundation until such time as the gift is irrevocable. When the gift is irrevocable, but is not due until a future date, the present value of that gift may be recorded at the time the gift becomes irrevocable.

Life Insurance Beneficiary Designations. Donors and supporters of Branch County Community Foundation will be encouraged to name the Community Foundation as beneficiary or contingent beneficiary of their life insurance policies. Such designations shall not be recorded as gifts to the Community Foundation until such time as the gift is irrevocable. Where the gift is irrevocable, but is not due until a future date, the present value of that gift may be recorded at the time the gift becomes irrevocable.

MISCELLANEOUS PROVISIONS

Securing appraisals and legal fees for gifts to the Community Foundation. It will be the responsibility of the donor to secure an appraisal (where required) and independent legal counsel for all gifts made to the Community Foundation.

Valuation of gifts for development purposes. Except as noted above, the Community Foundation will record a gift received by the Community Foundation at its valuation for gift purposes on the date of gift.

Gifts Naming Multiple Beneficiaries. From time-to-time, donors may wish to designate multiple beneficiaries of the proceeds from their life insurance policies, IRA's, other qualified retirement plans, pooled income funds, gift annuities, or other forms of gifts to the Foundation. Donors will be encouraged to name other charitable organizations as beneficiaries on the contract. However, if the Foundation is selected as sole beneficiary and then requested to distribute funds to other organizations, the following guidelines shall apply:

- The Investment Committee will take into consideration the amount of the total gift, the amount designated for the Foundation both discretionary and restricted, the added value to the community, and in the case of life insurance policies, whether or not the premiums are paid up.
- In the case where the Foundation becomes the sole owner of a donor's life insurance policy, the Foundation subsequently has the exclusive right to change the beneficiary/distributee designations. It can then name the Foundation or other charitable organizations as beneficiaries. These other charitable organizations must qualify as such under Section 501 (c) (3) and which are described under section 170(b)(1)(A) of the Internal Revenue Code.
- If a policy beneficiary/distributee designation is to be changed to a charitable organization other than the Foundation, the Foundation shall consider the charitable intentions of the donor. It is understood, however, that a donor's recommendations in this regard are advisory and that the Foundation, as owner of the policy, retains exclusive authority to direct the death benefits, maturity, and surrender proceeds of the policy.

Responsibility for IRS Filings upon sale of gift items. The Investment Committee of the Community Foundation is responsible for filing IRS Form 8282 upon the sale or disposition of any asset sold within two years of receipt by the Community Foundation when the charitable deduction value of the item is more than \$5,000. The Community Foundation must file this form within 125 days of the date of sale or disposition of the asset. Form 8282 with Filing Instructions is attached as an appendix to these policies.

Acknowledgement of all gifts made to the Community Foundation and compliance with the current IRS requirements in acknowledgement of such gifts shall be the responsibility of the Board of the Community Foundation. IRS Publication 561 *Determining the Value of Donated Property* and IRS Publication 526 *Charitable Contributions* are attached to these policies as an Appendix.

Changes to Gift Acceptance Policy

The policy has been reviewed and accepted by the Board of Directors of the Branch County Community Foundation. The Board of Directors must approve any changes to, or deviations from, these policies.

Revised on the 24th day of October, 2012.

ATTACHMENTS

Model Standards of Practice of the Charitable Gift Planner

Forms for Real Estate Acceptance

1. Real Estate Acceptance Checklist
2. IRS Form 8283 and Instructions.
3. IRS Form 8282 and Instructions.

ADDENDUM – 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.¹ 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 percent² (20%) of the voting stock³ of an incorporated business
- Twenty percent (20%) 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 proprietorship⁴

The provision was effective 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 was applicable only to assets held on the date of enactment. BCCF did not have any such holding at the time of enactment.

If BCCF receives and accepts gifts of interests in a business enterprise to donor-advised funds that exceed the holdings limitations, BCCF will 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 Treasury.

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 is a donor-advised fund?

A donor-advised fund

- is a separately identified fund with reference to the contribution of a donor or donors,
- is owned and controlled by the community foundation, and
- designed so that the donor or a person appointed by the donor has, or is reasonably expected to have, the privilege of providing advice with respect to the fund’s investments and/or distributions.

What contributions will be affected?

The new 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.⁶

The rule will not apply to assets held by the sponsoring charity—as long as they are not held by the donor-advised fund—apparently 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 is a particularly dangerous situation because 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