

**West Virginia State University
Gift Acceptance & Valuation Policies**

August 22, 2013

I. INTRODUCTION

The purpose of these Gift Acceptance and Valuation Policies is to give guidance and counsel to those individuals within the West Virginia State University Foundation and the WVSU campus community concerned with solicitation, acceptance, and disposition of gifts. All gifts are to be accepted in accordance with the policies set forth herein. To prevent misunderstandings and conflicts, Foundation gift guidelines must be carefully drawn, adequately publicized and impartially applied to the fullest extent possible. However, since fundraising is more 'art' than science, the guidelines presented must be viewed as flexible and realistic in order to accommodate unpredictable situations as well as donor expectations as long as such situations and expectations are consistent with the Foundation's mission and policies. Flexibility must be maintained since some gift situations will be complex, and proper decisions can be made only after careful consideration of all related factors. These policies may, therefore, require that the merits of a particular gift be considered by the appropriate officers and/or involved persons of the Foundation along with legal counsel and board members, if necessary.

The Foundation Board of Directors, through its Gift Policy Committee, along with the President of the Foundation, is responsible for the gift policies of the Foundation. This responsibility cannot be delegated or waived.

All fundraising programs and gift acceptance policies, and their day-to-day implementation, are designed and managed by the President of the Foundation in conjunction with the appropriate Foundation directors and/or senior administrators, WVSU administrators, and are subject to approval by the President of the Foundation and the Gift Policy Committee of the Foundation's Board of Directors (hereinafter "Gift Policy Committee").

All gifts offered to the Foundation on behalf of West Virginia State University, will be seriously considered by the Foundation.

All gifts accepted by the Foundation will utilize charitable gift-making methods which conform to federal and state tax regulations.

These Gift Acceptance and Valuation Policies may be reviewed and amended by the Gift Policy Committee, Finance Committee, or full Board, as appropriate.

II. CATEGORIES OF GIVING COMMITMENTS

The overall fundraising program at the Foundation consists of three basic categories:

- A. **Annual gift support** is either unrestricted or designated (restricted) in purpose. The most versatile gifts are annual unrestricted gifts that can be used for ongoing current expenses of the Foundation and West Virginia State University as determined by the appropriate administrator or administrators.
- B. **Support for special projects** (designated or preferred use gifts) provides expendable funds for purposes over and above current operations. The donor designates the use of his/her gift for a specific purpose.
- C. **Restricted or legally binding gifts for endowment purposes** are subject to specific restrictions as to the application and use of the gift and its income.

All gifts received for restricted endowment purposes will be accepted only on the condition that should the purpose for which the funds are provided cease to exist, the Foundation shall allocate the income from those funds to purposes as near as possible to the original intent of the donor (provided that the purpose is tax exempt). Such provisions should be noted and/or specified in all agreements.

To assure continuity and integrity of the gift, all endowed gift agreements should contain language similar to:

"If, at any time, the Board of Directors of West Virginia State University Foundation determines, upon advisement from the College of (applicable college), that the purpose for which this Fund was established no longer exists, this Fund shall be utilized for such alternative purpose as may be determined by the Foundation's Board of Directors, and the College of (applicable college), and the donor (if available)."

III. MAJOR POLICY CONCERNS

The Board of Directors, at the recommendation of the Gift Policy Committee, shall adopt, implement and periodically evaluate this policy.

- A. Board Acceptance of Gifts and Grants: The Board of Directors shall, through the President of the Foundation, or designee(s), determine acceptance of all philanthropy to the Foundation. Philanthropy is defined as an act of goodwill to fellow men. It implies one is giving something out of generosity, mercy or a sense of justice.
- B. Philanthropic Intent: The Board shall determine that gifts and grants to the Foundation are evidence of philanthropic intent and that the donor's philanthropy is in accord with the stated mission and goals of the Foundation and West Virginia State University.
- C. Finder's Fees or Commissions: In general, West Virginia State State University Foundation, or its agents, will pay no fees in consideration of directing a gift to the Foundation without the written approval of the President of the Foundation and the Gift Policy Committee.
- D. Professional Fees: All fees will be paid by the donor unless payment by the Foundation is authorized by the President. If authorized, the following guidelines shall be followed:
 - 1. The payment of professional fees should be limited to situations where the Foundation will reap significant benefit from the gift, and the donor believes it is proper for the Foundation to bear all or part of the attending fees for completion of the gift.
 - 2. Such fees will be paid only with prior written approval of the President and prior notification to the donor, where the recipient of such fees and amount, is disclosed. Donors will be apprised of any tax implications of any fee payment(s) on their behalf.
 - 3. Fees should be reasonable and directly related to the completion of a gift.
 - 4. Fees shall be limited to:
 - a. appraisal fees by persons who are competent and qualified to appraise the property involved and who have no conflict of interest;
 - b. legal fees for the preparation of documents;
 - c. accounting fees related to the transaction; and
 - d. fees of "fee for service" financial planners.
 - 5. In the case of financial planners, such persons must attest in writing that they are compensated only for services rendered, and not for the sale of

products to clients. (This distinction is vital in avoiding the payment of commissions which could be construed as triggering securities regulations.)

6. In the case of legal, accounting and other professional fees, the officers and staff of the Foundation shall attempt to determine the reasonableness of these fees prior to payment. An hourly breakdown of time should be requested. In cases where the fees appear excessive, the summary of fees shall be submitted to the Foundation's legal counsel for review and approval prior to payment.
7. In cases where the persons receiving fees were initially employed by the donor and the donor requests that the Foundation pay the fees involved, the Foundation will notify the donor that its payment of such fees may result in taxable income to the donor in the amount of the fees paid.
8. In situations where advisors or consultants retained by the Foundation prepare documents or render advice in any form to the Foundation and/or a donor to the Foundation, the Foundation will inform the donor that these documents or advice should be reviewed by the donor's counsel prior to completion of the gift.

- E. Unacceptable Gifts: The Foundation reserves the right to refuse any gift that is inconsistent with its mission.

Gifts will not be accepted by the Foundation:

1. That violate any federal, state or local statute or ordinance;
2. That create a fund to provide for scholarships, fellowships, professorships or lecture series with restrictive clauses that could cause embarrassment to the Foundation or West Virginia State University, or that reserve to the donor or his/her representative the right to designate the recipient;
3. That require any action on the part of the Foundation which is unacceptable to the Board of Directors.
4. That commit the Foundation to name a faculty, program, or endowment fund that is revocable in any way;
5. That require/stipulate to the Foundation, and its Board of Directors, the future employment of any specified person;
6. That contain unreasonable conditions (i.e., a lien or other encumbrance) on gifts of partial interest and property;
7. That are intended to be tuition payments for a family member of the donor; or

8. That are financially unsound or could expose the Foundation to liability.

- F. Conflict of Interest: The Board of Directors will assure itself that Foundation personnel are circumspect in all dealings with donors in order to avoid, even the appearance of, any act of self-dealing. The Board will consider a transaction in which the employee has a "material financial interest" with a donor an act of self-dealing. In reviewing self-dealing transactions, the Board shall consider financial interest "material" to an employee if it is sufficient to create an appearance of a conflict.

The Board will examine all acts of self-dealing including, but not limited to, the following:

1. Prohibition against personal benefit: Those individuals who normally engage in the solicitation of gifts or grants on behalf of the Foundation shall not personally benefit by way of commission, contract fees, salary, or other benefits from any donor in the performance of their duties on behalf of the Foundation. {The definition of individuals includes each of the three categories of employees at the Foundation (officers, administrators and support staff) or their family members. Individuals are further defined to include associations, partnerships, corporations or other enterprises in which a Foundation officer, administrator or support staff holds a principal ownership interest. }
2. Purchase, sale, exchange or leasing from a donor: The relationship nurtured between Foundation personnel and an individual donor is sacrosanct; consequently, the purchase, sale, exchange or leasing of property from an individual donor by a Foundation officer, administrator or support staff of the Foundation will be subject to review by the Board.
3. Borrowing from a donor: Officers, administrators or support staff of the Foundation are prohibited from borrowing funds or entering into any form of credit extension with a donor, unless the donor is in the business of extending credit on a regular basis.

Officers, administrators or support staff of the Foundation also includes associations, partnerships, corporations or other enterprises in which an officer, administrator, support staff or family member holds a principal ownership interest.

- G. Consistent with Public Policy: The Board shall satisfy itself that the Foundation accepts only those gifts and grants which are consistent with the public policy of the State of Illinois and the United States Government.
- H. Conformity to Federal and State Laws: The Board will assure itself that fundraising events and affairs comply with local, state and federal laws.

I. Gift Valuations: The Foundation shall follow accepted guidelines for the valuation of gifts to the Foundation. Cash and checks are self-explanatory. However, gifts such as stock, real estate, personal property, life insurance and other forms of contributions require specific methods of valuation for the protection of both the donor and the Foundation. The proper method of valuing non-cash items will be covered in the appropriate section which describes each type of gift. However, if an appraisal is required, then the following holds true for all appraisals:

1. All property requiring valuation for tax purposes will be made by a "qualified appraiser" who shall furnish to the taxpayer a "qualified appraisal" as defined by the Internal Revenue Code.
2. Without a qualified appraisal or an acceptable substitute (i.e., a current receipt of sale or invoice for personal property purchased and presented to the Foundation), the donor's acknowledgment will carry a stated value of zero (\$0).

In accordance with IRS Regulations, services performed for the Foundation or University and then "donated" to the Foundation may not be claimed by the donor as a charitable deduction for the value of his/her service rendered. However, the provider may be assigned gift credit for the purposes of recognition.

3. Qualified Appraiser: A qualified appraiser is an individual (other than a person who cannot be a qualified appraiser, as described below) who includes in an appraisal summary a declaration that:
 - a. The individual holds himself or herself out to the public as an appraiser or performs appraisals on a regular basis.
 - b. Because of the appraiser's qualifications as described in the appraisal, the appraiser is qualified to make appraisals of the type of property being valued.
 - c. The appraiser is not one of the persons (described below) who cannot be a qualified appraiser.
 - d. The appraiser understands that an intentionally false or fraudulent overstatement of the value of the property described in the appraisal or appraisal summary may subject the appraiser to a civil penalty for aiding and abetting an understatement of the donor's tax liability, and, moreover, the appraiser may have appraisals disregarded for tax purposes.
4. An individual is not a qualified appraiser with respect to a particular gift, even if the declaration described above is provided in the appraisal summary, if the donor had knowledge of facts that would cause a reasonable person to expect the appraiser to falsely overstate the value of the donated property (e.g., the donor and the appraiser make an agreement

concerning the amount at which the property will be valued and the donor knows that such amount exceeds the fair market value of the property).

5. Persons who cannot be qualified appraisers: The following persons, per IRS Regulations, cannot be qualified appraisers with respect to particular property:
 - a. The donor or the taxpayer who claims or reports a deduction for the contribution of the property that is being appraised.
 - b. A party to the transaction in which the donor acquired the property being appraised (i.e., the person who sold, exchanged or gave the property to the donor, or any person who acted as an agent for the transferor or for the donor with respect to such sale, exchange or gift), unless the property is donated within two months of the date of acquisition and its appraised value does not exceed the acquisition price.
 - c. The donee of the property.
 - d. Any person employed by any of the foregoing persons (e.g., if the donor acquired a painting from an art dealer, neither the art dealer nor persons employed by the dealer can be qualified appraisers with respect to the painting).
 - e. Any person related to any of the foregoing persons under certain attribution rules or married to a person who is related to any of the foregoing persons under such attribution rules.
 - f. An appraiser who is regularly used by the donor, by a party to the transaction in which the donor acquired the property being appraised or by the donee, or who does not perform a majority of his or her appraisals made during his or her taxable year for other persons.
6. A qualified appraisal should be:
 - a. Timely regarding the date of gift.
 - b. Prepared, signed and dated by a qualified appraiser.
7. A qualified appraisal contains many specifics with the following listing some of the more important criteria:
 - a. A description of the property in sufficient detail to easily permit the identification of the property in question.
 - b. Physical condition of tangible property.
 - c. A statement that the appraisal was prepared for income tax purposes.
 - d. The appraised fair market value of the property on the date (or expected date) of contribution.

- e. The method of valuation used to determine the fair market value, such as the income approach, the market-date approach or the replacement cost-less depreciation approach.
 - f. The specific basis for the valuation, such as specific comparable sales transaction or statistical sampling. If statistical sampling is used, the sampling procedure used should be explained.
- J. Required Reporting of Gifts to the Internal Revenue Service: Should the Foundation sell, exchange, or otherwise dispose of any gift (other than checks, cash or publicly traded stocks or bonds), within two (2) years after the date of the gift, the Foundation will furnish the Internal Revenue Service and the donor with a completed Treasury Form 8282.

IV. TYPES OF ACCEPTABLE GIFTING INSTRUMENTS

The following gifting instruments and established standards will be followed in the solicitation, acceptance and administration of gifts and grants to the Foundation:

Gifts can be generally categorized as either outright or deferred.

A. Outright Gifts consist of:

1. Cash and Checks:

- a. Cash and checks shall be accepted regardless of amount.
- b. Checks shall be made payable to West Virginia State University Foundation. Checks made payable to an employee, agent, student, or volunteer for the credit of the Foundation will not be accepted as a gift to the Foundation.
- c. The value of any cash gift is the face value of the check or cash.

2. Publicly Traded Securities:

- a. Securities, which are traded on the New York and American Stock Exchange, as well as other major U.S. and International Exchanges and the NASDAQ, shall be accepted by the Foundation.
- b. Such securities may be sold immediately by the Foundation according to instructions given by the President of the Foundation or his/her designee.

No employee or volunteer working on behalf of the Foundation may commit to a donor that a particular security will be held by the Foundation, sold through a specific broker or traded on instruction of the donor without the approval of the President of the Foundation.

- c. The value of a gift of securities in this category will be the mean (average) of the high and low of the stock(s) or bond(s) price on the day the transfer is completed by the donor to the Foundation.
- d. Regularly traded securities on the exchanges or NASDAQ are easy to value. Less actively traded securities or a security that does not trade on the gift date present various options for valuation which, while rare, must be handled. Each gift case will most likely dictate the method of valuation but some of the options are to:
 - i. take the average of the bid and ask for the security for that gift date: take the average of the bid and ask for the security for that gift date:
 - ii. take the average of the high and low for days the security actually traded before and after the gift date and average those two averages.

3. Closely Held Securities:

- a. Closely-held or non-publicly traded securities may be accepted only after approval of the Finance and the Gift Policy Committees.
- b. Such securities may be subsequently sold only with the approval of the President of his/her designee.
- c. Valuation of stock in this category may be difficult since the infrequent trading nature of this type of security makes it difficult to establish a fair market value.

The value of unlisted, closely held securities may be determined by the last sale or trade of the security if it occurred recently. In the absence of a recent sale, a fair market value should be determined by an acceptable authority. Regardless, if the value of the gift is estimated to be \$5,000 or more, a qualified appraisal shall be required.

4. Restricted Securities: Restricted securities (also known as unregistered securities, investment-letter stock, control stock or private placement stock) are infrequently given as gifts because of the difficulty in transferring ownership and determining fair market value. If there is a potential situation where restricted securities may be given as a gift to the Foundation, then the Finance and Gift Policy Committees must review and approve the acceptance of the gift.
5. Mutual Fund Shares: The fair market value of mutual fund shares can be determined by the shares' public redemption price on the valuation date of a gift of this nature. If such a price cannot be affirmatively shown then the valuation procedure parallels that shown for inactively traded securities in paragraph B, section 4.
6. Gifts of Real Property: Gifts of real property can be challenging. Therefore, the following guidelines and procedures have been established to assist the WVSU Foundation in dealing with the many complex and multifaceted issues associated with these gifts.

Gifts of real property include land, as well as things that are naturally or artificially attached to the physical land, such as buildings and trees. Each parcel of real property is unique and should be treated individually.

The West Virginia State University Foundation accepts gifts of real property on a case-by-case basis after a thorough review of the following factors:

- a. Fair market value of the real estate as determined by an independent certified appraiser
- b. Existence of restrictions, reservations, easements, and/or other limitations
- c. Marketability of the property

- d. Clear title (are there liens, lawsuits, condemnation proceedings)
- e. Location of the property
- f. Likelihood of WVSU using the property for its exempt purposes
- g. Environmental assessment of the property
- h. Costs to WVSU in conjunction with owning the property (e.g. property owners' assoc. dues, taxes, insurance, maintenance)
- i. Archaeological review of property
- j. Full versus partial ownership interest

In all cases however, the following guidelines will be adhered to by the WVSU Foundation.

- a. All proposed gifts of real property must be reviewed and approved by the Gift Policy Committee of the WVSU Foundation Board of Directors prior to acceptance by the WVSU Foundation Board.
- b. Unless otherwise approved by the Gift Policy Committee of the WVSU Foundation Board of Directors, all transfer documents shall contain general warranties of title and general warranties of condition including environmental warranties. In addition to all other remedies, a breach of environmental warranties shall give the WVSU Foundation Board the option to rescind acceptance of the gift.
- c. Unless otherwise approved by the Gift Policy Committee of the WVSU Foundation Board of Directors, the donor shall be responsible for the following costs as needed:
 - i. Title insurance commitment for the appraised value of the property
 - ii. Appraisal fee (no earlier than 60 days prior to the gift date)
 - iii. Survey fee
 - iv. Transfer fees
 - v. Environmental audit – A Phase I Audit is required and if indicated by findings in a Phase I Audit, a Phase II Audit may be required by the WVSU Foundation.
 - vi. In the case of retained life estate gifts (RLEA), the donors are responsible for maintenance, taxes and insurance on the property as long as they occupy it under the RLEA, unless there is an agreement stating otherwise approved by the Foundation Board of Directors.
 - 1. Archaeological review as appropriate.

When the WVSU Foundation accepts a gift of real estate which it intends to sell in the near future, it will notify the donor of its intention in writing prior to the gift date and will also acknowledge the Foundation's obligation to file IRS form 8282.

Procedures: The WVSU Foundation gift planning staff will be responsible for the following in instances where prospective donors are interested in a gift of real property:

- i. Securing donor information (i.e. biographic information)
- ii. Securing preliminary information regarding the property (Preliminary Information Form)
- iii. Securing information on donor/gift intentions
- iv. Beginning the appropriate paper file and passing the preliminary information on to the Associate Vice President

The President or her/his designee in conjunction with legal counsel will be responsible for the following due diligence process.

- i. Title examination and approval
- ii. Appraisal by a certified independent appraiser
- iii. Environmental inspection
- iv. Any necessary survey work
- v. Any insurance issues
- vi. Deed and transfer tax

Upon completion of this comprehensive staff review process, the information will be presented to the Gift Policy Committee with a recommendation to accept or decline the gift. The Gift Policy Committee will then make its own recommendation to the Foundation Board of Directors.

The WVSU Foundation will be responsible for:

- i. Ensuring that all appropriate paperwork is available for appropriately recording and receipting the gift.
- ii. Record
- iii. Receipt
- iv. Preparing IRS form 8283 and/or 8282 if property is sold

7. Tangible Personal Property: Tangible Personal Property is commonly thought of as an asset that can be touched and moved. Examples of tangible personal property include artwork, collections, jewelry, books, antiquities, historical artifacts, rare coins and stamps, automobiles, boats, antiques, etc.

However, a gift of tangible personal property is subject to certain Internal Revenue Service rules regarding the charitable deduction. Specifically, the IRS has ruled that donated tangible personal property must be put to a use related to the purpose or mission of the organization. A related purpose, or use, of a personal property gift must exist in order that the full fair market

value of the asset be a charitable deduction. Otherwise, the charitable deduction is limited to the cost basis of the asset.

The West Virginia State University Foundation accepts gifts of tangible personal property on a case-by-case basis and in consideration of the following factors.

- . Any proposed gift of tangible personal property, including collections or individual pieces, which has a value of \$20,000 or more shall be referred by the President of the Foundation to the Gift Policy Committee for review and its written recommendation to the Foundation Board for disposition of the proposed gift. Collections or individual pieces valued at less than \$5,000 can only be accepted upon approval by the President of the Foundation. In all cases, consultation with the appropriate WVSU expert, e.g., director or department chair, will occur.
- a. Gifts of tangible personal property may be accepted only after a thorough staff review indicates the property is readily marketable or can be put to valuable use by the University in a manner consistent with the University's educational mission.
- b. Prior to the Foundation accepting a gift of tangible personal property, the donor will be informed of IRS regulations on such gifts, including whether or not the Foundation will hold the piece(s) for a requisite period of time for purposes related to the gifts' tax exempt status.
- c. Under all circumstances, with no exception, the donor shall be responsible for the valuation and substantiation of any contributed tangible personal property and shall be solely responsible for any expenses associated with the valuation and substantiation process. The Foundation may engage independent services to verify authenticity, provenance and marketability at the donor's expense.
- d. No gift of tangible personal property will be accepted requiring ownership in perpetuity without the express written approval of the President of the Foundation. Otherwise, the Foundation will be free to sell the piece(s) after a two-year period.
- e. No gifts of tangible personal property, which will require special facilities, insurance or security to be properly safe-guarded, will be accepted without the prior written approval of the President of the Foundation and the appropriate museum director, department chair or other university representative. The donor will assume responsibility for transporting gifts of tangible personal property to WVSU.
- f. Tangible personal property believed to have a value of \$5,000 or more will be accepted only after the authenticity and provenance of the property is established to the satisfaction of the Foundation and an appraisal, qualified under the terms of the Internal Revenue

Code, has been made and reviewed by the Foundation President, or Director of Gift Planning.

Procedures: In instances where a donor is interested in making a gift of tangible personal property, the WVSU gift planning staff will be responsible for the following:

- . Securing donor information (i.e., biographic information).
- i. Securing preliminary information regarding the property (i.e., detailed description, estimated valuation)
- ii. Securing information on donor/gift intentions.
- iii. Beginning the appropriate paper file and passing the preliminary information on to the President of the Foundation or her/his designee. (Complete the Submission Form for a Gift in Kind.)
- iv. Securing additional information from the donor which shall include authentication, provenance, appraisal and/or valuation documentation and any other information deemed relevant or otherwise required by the Foundation.
- v. Seeking the recommendation of the appropriate director or department chair.

The WVSU Foundation office will be responsible for:

- vi. Ensuring that all necessary paperwork is available for appropriately recording and receipting the gift.
- vii. Preparing IRS form 8283 and/or 8282 if property is sold.

In all cases and in every way, the WVSU Foundation will cooperate fully in matters related to IRS investigations of charitable gifts of tangible personal property to the Foundation.

8. Other Personal Property: Other property of any description, and including but not limited to: mortgages, notes, copyrights, royalties, easements, whether real or personal, may be accepted only upon approval of the President of the Foundation or persons acting on his/her behalf.

V. **Deferred Gifts:** The term "deferred gifts" (also known as "planned gifts" or "partial interest gifts") is a misnomer because it implies that the gift itself is deferred when, in fact, it is not. The charitable donee unquestionably receives an immediate gift of interest in the donated property. It is only the donee's enjoyment of the gift that is deferred to a sometime certain, sometime uncertain, future time.

A. **Bequests:** Bequests represent an important potential source of gifts for the Foundation. Direct, unencumbered bequests provide the Foundation the full value of whatever was bequeathed to the Foundation, and provides the testator's estate with a charitable deduction for the same value.

Nearly any gift that a living donor can make has its counterpart on the list of testamentary gifts. Several things can be given through an estate which cannot be given as **inter vivos** gifts. As an example, U.S. Government Savings Bonds (Series EE and HH) are perfectly legitimate bequests, even though they cannot be given during life.

Concerning Bequests:

1. Gifts (bequests) through wills shall be encouraged.
2. Gifts from bequests will be accepted according to the terms in the document listed in item I: Outright Gifts paragraphs **A – H**.
3. The Foundation reserves the right to **not** accept gifts from the estate of deceased donors which are not in keeping with the terms of this document.
4. Gifts of property from the estate of the deceased donors, which are not acceptable, shall be rejected only by agreement of the appropriate officers of the Foundation (i.e., the President, or other duly authorized officers). The legal counsel of the Foundation shall expeditiously communicate the decision of the Foundation to the legal representatives of the estate.
5. Attempts shall be made to discover bequest plans whenever possible in order to determine whether inappropriate property has inadvertently been left to the Foundation. For example, intended bequests of property other than cash or marketable securities should be brought to the attention of the President of the Foundation.
6. Some of the ways a bequest can be made to the Foundation:
 - a. A **fixed amount** of cash or securities, certain personal property or a percentage of the estate can be given.
 - b. In a **residual** bequest, after other beneficiaries receive a designated portion of the estate, the remainder of the estate is left to the Foundation.
 - c. A **contingent** bequest can be made where the Foundation will receive a portion of the estate only if the named beneficiaries predecease the maker of the bequest. This form is often selected by those who must provide for young families.

B. **Life Income Plans** (including charitable remainder annuity trusts, charitable remainder unitrusts, and gift annuities among others) have the following in common:

1. All life income plans entered into will comply with state and federal regulations for these types of charitable gifts.
2. Property contributed to a life income plan passes to the plan free of capital gains tax with the note that charitable gift annuities funded with long-term capital gain property are an exception.
3. Property contributed to a life income plan enters the plan credited at its current full fair market value, regardless of cost basis and regardless of reduction rules affecting income tax deductions.
4. If valuation is a question, refer to the section of this document covering qualified appraisals.
5. Each of these plans constitutes an irrevocable gift.
6. No representation of a life income plan shall be made which could be construed as marketing the fund as an investment or security of any type. All disclosures required by state and federal regulatory agencies shall be made in a thorough and timely manner.

There are several income arrangements in which the donor can make a gift to the Foundation and receive an income:

C. **Charitable Gift Annuities:**

A Charitable Gift Annuity (CGA) is a contractual arrangement between The Foundation and an individual where the individual irrevocably transfers cash or other assets (securities or real property) in exchange for the Foundation's promise to make payments to one or two persons for their lifetimes.

The amount of income received by the donor is determined by the value of the gift and the annuity rate. The annuity rate is determined by the donor's age at the time the gift is made.

The annuity rate is expected to yield at least 50% of the contributed principal remaining on the annuitant(s) death (called the residuum) to the Foundation.

In essence, the donor's transference of assets is part charitable gift and part purchase of an annuity.

1. There are two basic types of charitable annuities:
 - a. Immediate gift annuity: The gift is made and the income to the donor begins immediately.
 - b. Deferred annuity: The gift is made now but the donor does not receive income until a later date (that is chosen by the donor).
2. The minimum amount for a CGA will be \$1,000.

3. Property always acceptable in exchange for an annuity will be cash and/or publicly traded securities.
4. Form CGA agreements and disclosure statements will be used to formally enter into a contract with the donor/annuitant.
5. The President of the Foundation or designee of the President will be authorized signatory on all agreements.
6. The President of the Foundation or designee of the President will be designated as authorized agents for the receipt of gifts in exchange for CGA's.
7. The CGA's may be for one or two lifetimes only. The donor may or may not be an annuitant. However, in no event, should an annuitant (income recipient) be less than 60 years of age when payments begin.
8. Generally, the rates offered by the CGA program should be the recommended rates of the American Council on Gift Annuities. However, such rates should be reviewed annually by the Foundation Board of Directors.
9. Income payments to annuitants should begin with the next quarterly payment date (calendars quarters-March 31, June 30, September 30, December 31) after the gift is made and shall end with the last payment made before the date of death of the last annuitant. Deferred Payment Annuities, with payments beginning at least twelve (12) months after the gift is made, may be created in accordance with the rates recommended by the American Council on Gift Annuities. However, such rates should be reviewed annually by the Foundation Board of Directors.

There may be variances for the parameters indicated in paragraphs 2-9 above, with exception of paragraphs 2, 4 and 7, from which there can be no variance.

Variances from paragraphs 3, 5, 6, 8, 9 may be made by the President of the West Virginia State University Foundation, on a case-by-case basis, wherein at least two of the above positions have approved a variance with reasons documented in written form. **However, in no event shall a variance be permitted unless the value of the proposed gift annuity is at least \$50,000.**

- D. **Charitable Remainder Trusts** are legal agreements where a donor irrevocably transfers money, securities or real property to a trustee who invests, and reinvests, the assets as a separate and distinct fund. The donor (and/or another designated beneficiary) will receive income from the trust each year. On the income beneficiaries death, payments terminate and the trust assets go to the designated charitable remainder organization.

A donor who creates a qualified charitable remainder trust, retaining life income, is entitled to a charitable deduction for the present value of the charitable remainder interest as computed at the creation of the trust. The 'gift' value of the trust is based on the same present value calculations. Thus, the charitable deduction and 'gift value' are construed as one in the same.

Charitable Remainder Unitrusts and other life-income gifts shall be encouraged as a method of making gifts to the Foundation. Such trusts shall not be marketed as tax avoidance devices or as investment vehicles, since such activity may violate federal and/or state securities regulations.

Charitable Remainder Trusts share many of the same features as an annuity gift. At the same time, they differ in several ways from annuity gifts. While annuities are contractual obligations of the Foundation that cannot be evaded except by going out of business, trusts are separate legal entities, and their obligations are limited to their assets.

Trusts file their own tax returns and make all payments from their assets and must have a federal tax identification number. Trusts make payments to beneficiaries under strictly hierarchical rules. The sources of possible income payments include: 1) ordinary income, 2) realized capital gain, 3) tax exempt income, and 4) original principal (tax free). Those four income sources must be used, in the order given, to make required tax payments.

Types of Charitable Reminder Trusts are:

- Charitable Remainder Unitrusts
- Charitable Remainder Annuity Trusts

1. **Charitable Remainder Unitrusts:** Unitrusts must pay income beneficiaries a fixed percentage of trust assets, which is based on the trust's fair market value. That fixed percentage cannot be less than 5% nor greater than 50%.

Thus, a unitrust pays a variable amount to the income beneficiaries (due to annual fluctuation in the value of trust assets), rather than on a sum certain that must be paid by an annuity trust. The trustee of the trust assesses that value annually on the first business day of each year. Unitrusts may have a stated maximum life of 20 years or a term equal to the life of all income beneficiaries. Since all earnings in excess of the required payments are reinvested in the trust, growth in annual income depends on having an annual payment that is low enough to have some excess earnings available for reinvestment.

- a. There are four types of unitrusts:
 - i. The Regular Unitrust: This is the most common version and allows the trustee to invade the principal if income is insufficient to meet the required payment.
 - ii. Net Income Unitrust: In this version the donor receives the lesser of the stated percentage payment or the set income earned. This avoids invading the principal. This type of trust is especially appropriate for donors who are limited to

funding the trust with real estate or other non-income producing or hard to sell assets. Also, net-income Unitrusts are appropriate for donors who do not want their trust to pay them anything for some years.

- iii. Net Income Unitrust with Makeup Provisions: This version is similar in all respects to the previous (Item b) except for one very important difference. If the trust earns less than the set percentage payment in one year, only that net income is paid. However, if in a later year the trust earns more than the stated percentage, the trust will pay as much income as necessary to bring all prior payments up to the maximum amount which should have been paid in those prior years had income been sufficient.
- iv. Flip unitrust – The ‘Flip’ Trust begins as a ‘Net Income’ or ‘Net Income with makeup provision’ trust but at a future specified date "flips" to a regular unitrust. This type of trust combines the deferred income possible with an income trust during the initial period with the steady payment of a regular unitrust after the flip date (steady in the sense that the trust will pay the percentage amount regardless of the trust’s income).

- b. No charitable remainder trust shall be encouraged where the net present value of the remainder interest in the trust is less than **10%** of the value of the funds transferred to the trust, otherwise the trust, per IRS regulations, will not be considered a charitable trust.
- c. Additional funds may be added to the unitrust.
- d. The donor chooses the trustee or co-trustees for the trust. The Foundation will not serve as trustee of a unitrust which benefits the institution, unless specifically authorized and approved by the Foundation Board of Directors.
- e. If the trust is to be funded with property, the donor must obtain a qualified appraisal of the property per IRS regulations.
- f. The Foundation, through the Gift and Estate Planning Program, will identify a limited number of corporate fiduciaries who serve as trustees on such trusts. Only when specifically asked may any corporate fiduciary be recommended to a donor. Donors will be encouraged to interview potential trust officers and make their own informed choices.
- g. No representation shall be made by any employee or other persons acting on behalf of the Foundation as to the manner in which charitable remainder Unitrusts will be managed or invested by a corporate fiduciary.

- 2. **Charitable Remainder Annuity Trusts**: Annuity trusts share many of the rules and characteristics applicable to Unitrusts. Unlike Unitrusts, annuity trusts make the same payments, year in and year out. This fixed

dollar payment initially is determined as a percentage of the value of the assets as initially contributed to fund the trust. Therefore, everything is dependent upon the initial fair market value of the assets in the trust. Thereafter, the value of the trust assets is irrelevant, so long as there are assets enough to make the annual payments.

- a. No additional money can be added to the annuity trust once the trust is funded.
- b. The donor chooses the trustee or co-trustees for the annuity trust. The Foundation will not serve as trustee of an annuity trust which benefits the institution unless specifically authorized and approved by the Foundation Board of Directors.
- c. The trust should be funded with cash, equities or bonds.
- d. The Foundation will identify a limited number of corporate fiduciaries who serve as trustees on such trusts. Only when specifically asked may any corporate fiduciary be recommended to a donor. Donors will be encouraged to interview potential trust officers and make their own informed choices.
- e. No representation shall be made by any employee or other persons acting on behalf of the Foundation as to the manner in which charitable remainder annuity trusts will be managed or invested by a corporate fiduciary without the prior written approval of a representative of the fiduciary.
- f. Charitable remainder annuity trusts and other life-income gifts shall be encouraged as a method of making gifts to the Foundation. Such trusts shall not be marketed as tax avoidance devices or as investment vehicles, since such activity may violate federal and/or state securities regulations.

E. **Charitable Lead Trust:** In essence, this trust is the reverse of deferred giving. A charitable lead trust is a trust arrangement that provides an income payment to the Foundation at some designated rate for the donor's life or over a pre-established number of years.

The value of the 'gift' as related to a Charitable Lead Trust is the present value of the income stream that the Foundation will receive over the life of the trust. In computing the charitable deduction, per IRS Guidelines, the 'gift' value will be the same.

At the conclusion of the payment period, the trust assets are returned either to the donor or to someone designated by the donor. Whichever course is chosen brings different tax consequences.

If the donor designates himself/herself as the eventual recipient of the trust assets, he/she has given up his/her interest in the income value of the trust assets, and so earns an income tax deduction.

If the donor designates someone else as the eventual recipient of the trust assets, that individual has given up the benefit of what would have been a gift or bequest made in their favor; thus, a gift or estate tax deduction is earned from this gift.

In reality, lead trusts come in four different forms, the result of combining two different methods for calculating payments with two alternative classes of non-charitable remainder beneficiaries. In other words, income paid by a lead trust can be either a unitrust or an annuity trust amount, and either the donor or someone else can be designated to receive the trust assets at the end of the trust term.

If the donor is designated to receive the trust assets, the lead trust is called a "grantor trust", and under grantor trust rules, the donor must pay income taxes on income earned by the trust and paid to the Foundation.

This makes grantor trusts unattractive to most donors, unless they are able to fund the trust with tax-exempt property, or unless for some reason the value of the tax deduction earned in the year of the gift outweighs the burden of future taxes due.

Far more common is the "non-grantor" version of the lead trust. Non-grantor lead trusts have a beneficiary other than the donor named to receive the trust assets when the trust ends; non-grantor lead trusts do not generate any income tax bill to the donor (or anyone else) for income earned by the trust and paid to the Foundation. Because non-grantor trusts can shield assets from estate and gift tax bills, they are especially valuable to those with large estates.

The Charitable lead Trust can usually be funded with cash or securities (tax exempt securities may be warranted as stated above).

F. Life Insurance

1. Life insurance may be given to the Foundation. The Foundation encourages donors to name the Foundation to receive all, or a portion of, the benefits of life insurance policies which have been purchased on the life of the donor.

New or existing policies may be given outright to the Foundation.

2. The Foundation will accept fully paid life insurance policies in which the donor has named the Foundation to receive all, or a portion of, the benefits of the insurance policy. The donor's tax consequences hinge on whether the policy's ownership has been endorsed over to the Foundation and whether the benefits have been irrevocably assigned to the Foundation.

- a. A donor who irrevocably transfers life insurance to the Foundation can claim income tax deductions for the policy's cost basis or cash surrender value, whichever is less. The donor can never claim an income tax deduction for the policy's face value.
 - b. Naming the Foundation as the beneficiary on the policy is not sufficient to generate an income tax deduction for the donor because the donor can change his/her mind at some later date.
 - c. To be entitled to a deduction, the donor must make the Foundation both beneficiary and owner of the policy.
3. Upon receiving a paid-up policy, the Foundation, as owner, can surrender and obtain the cash value or keep the policy in force until the death of the donor.
 4. If the donor takes out a new policy with the Foundation as the irrevocable owner and beneficiary, the donor may pay the premium or give the premium money to the Foundation ("pass through") with the Foundation paying the premiums.
 5. The Foundation will not accept gifts of cash from donors for the purpose of purchasing life insurance on the donor's life.
 6. No insurance products may be endorsed for use in funding gifts to the Foundation without the approval of the Board of Directors.
 7. Lists of the Foundation's donors will not be furnished to anyone for the purpose of marketing life insurance benefiting donors and/or the Foundation as this practice constitutes a potential conflict of interest and may be construed as involvement in the marketing of life insurance.

G. Life Estate Gifts: Life estate gifts may be accepted based on the guidelines for accepting real property in situations where the asset involved appears to be a minor portion of the donor's wealth (estate), and the above mentioned are satisfied that there has been full disclosure to the donor of the possible future ramifications of the transaction.

The retained life estate agreement (RLEA) is unlike any of the other planned gifts for several reasons:

1. The item contributed to an RLEA must be a donor's home (actually a home, a vacation home, or a farm including a residence, qualify).
2. The donors irrevocably relinquish full or part ownership of their home in exchange for the right to enjoy use of the property as long as they wish. For this exchange, the donors receive an income tax deduction. The donors are responsible for maintenance, taxes and insurance on the property as long as they occupy it under the RLEA unless there is an agreement stating otherwise approved by the Foundation Board of Directors.
3. Since the asset contributed (a home) produces no income, no income can, nor will, be paid to the donor by the Foundation.

IN CONCLUSION

As indicated in the Introduction, the policies and guidelines set forth in this document are intended to assist, guide and establish conduct for those persons associated with the Foundation who are involved in the receipt of money or property of any kind intended as gifts to the Foundation on behalf of West Virginia State University.

- All procedures must be followed to the fullest extent possible.
- The responsibility of each Foundation and University representative in following these procedures is paramount.
- If questions should arise, the Foundation office should be consulted.

These policies shall be amended upon recommendation by the Gift Policy Committee and are subject to approval by the WVSU Foundation Board of Directors