Identifying Gift Traps

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The nature of planned gift fundraising (and sometimes outright giving as well) is that there are times when donors, gift plans, and assets present situations where there is little gift component. Even worse, some "gifts" create a net liability in terms of the asset or reputational damage. Nonetheless, there are danger signals that a gift may be problematic and procedures to prevent accepting gifts with traps.

Danger Signals of Potential Gift Traps

A. The Unknown Donor

The motivation to make charitable gifts is deeply seated in the emotional attachment of the donor to the charity. Offers of gifts of complex assets or non-standard gift vehicles from those with no prior relationship with a charity should be immediately suspect. It is unusual for someone to make a generous offer of a valuable asset to an organization that is not the natural object of one's bounty. In short, beware strangers bearing gifts.

B. The Unknown Donor

Research the prospect. What can you find about their history and how they made their money? What other assets can you find in the public record? Can you find press reports of philanthropy to other charities? Is the prospect well known to your charity, or does the prospect have a superficial or non-existent knowledge of your charity's history and mission? Are there signs the prospect could create a reputational or public relations problem?

It is common sense to reject gifts earned from illegal sources. Gifts from polarizing public figures or those whose activities are inconsistent with your mission require heightened scrutiny. While a donor's prior criminal record does not automatically disqualify them from making a gift, carefully examine whether your organization wants to be associated with such a donor. Be wary of gifts that provide the donor with real or perceived substantive influence over the gift. For example, some charities have a bright line rule that gifts may not influence decisions about admissions, financial decisions, financial aid, hiring, faculty or research topics.

C. Too Good to Be True

The value proposition of any gift should be readily apparent. Offers of illiquid assets (real estate, tangible personal property, closely held business assets) must be accompanied by a clear explanation of how the asset can be monetized, that is, converted to cash

The lure of exceptionally large gifts raises suspicion. Gifts that will raise "millions" also raise questions. If the gift is that valuable, why does the prospect want to give it away? The larger the reward, typically the larger the risk.

What are the exact terms of the gift? Planned giving specialists may not have advanced training in law or finance. Nonetheless, even the lay person should be able to grasp the general terms of any legitimate gift. Of course, some perfectly acceptable gift plans may require specialized assistance to evaluate. If the arrangement is that complicated, engage competent advisors to determine the risk and reward to charity. Don't rely exclusively on the donor and the donor's advisors if there is any question as to how the gift is structured.

D. Charity/Gift Shopping

Gift annuity rates are often the subject of charity shopping. A prospect claims charity X offered him a certain percentage. The prospect will make the gift if the charity meets or exceeds the annuity rate the other charity is offering. The American Council on Gift Annuities (ACGA) issues uniform rate tables that are followed by almost all charities in the United States. Uniform rates encourage donors to make gifts to the charity most important to them, not where they can get the higher rate.

Procedures to Use to Evaluate Whether to Accept a Gift

A. Comprehensive Gift Acceptance Policies

No matter if a charity is large or small, comprehensive gift acceptance policies are the first line of defense against accepting assets subject to unacceptable levels of risk. Such policies can't cover every possible gift situation or asset but do create a mechanism for careful systematic acceptance of any gift.

It is essential for a charity to have well-defined policies codified in their gift acceptance policies. Drafting of the policies should be a collaborative effort among members of the development, finance, and legal departments, executive officers, and board. The gift acceptance committee described below will review the results of due diligence efforts and will make a recommendation to leadership as to whether a property should be accepted – or not.

Gift acceptance policies are a set of rules as to acceptable assets and gift vehicles to minimize risk and maximize gift potential. Acceptance policies represent guidance for staff and leadership. Donors expect timely responses as to the acceptability of assets and vehicles. A clear set of acceptance policies facilitates a short decision cycle to accommodate donor expectations. Particularly if your organization is large and/or geographically diverse, a good set of policies facilitates consistent interpretations across multiple gift situations.

Gift acceptance polices should start by defining assets and gift vehicles that can be accepted without the approval or input from charity leadership or outside experts. Typically, the development office can accept gifts of cash and publicly traded securities without prior approval or examination. Gift annuities funded with these assets may be subject to age and dollar minimums, and at some charities, dollar maximums, but are otherwise not subject to review. Gift acceptance policies should also identify assets that require a heightened level of due diligence prior to being accepted.

B. The Gift Acceptance Committee

Gift acceptance policies will typically create a Gift Acceptance Committee to determine whether to accept these more complex gifts. The Committee may have a modest standing membership of the chief executive officer, the chief development officer and the chief financial officer. While the Committee sounds formal and complicated, it is in fact an ad hoc group without regular meetings or structure. They are called upon only when gifts require due diligence prior to acceptance. The small number of standing members may call upon internal or external resources to evaluate a gift. For example, a proffered gift of real estate may require input from experts on the type of property offered, the potential risk of ownership and strategies for quickly disposing of the property. Depending on the level of potential liability, there may be some situations where Board approval is required.

The Gift Acceptance Committee should consider obvious liabilities such as financial risk and environmental responsibility. The Committee may need input from outside experts on assets and unusual planned gift arrangements. The committee should consider the reputational risk to the charity in accepting gifts that could be problematic because of the identity of the donor. (Are there criminal ties or polarizing politics involved, for example?) The Board should examine an asset that it is the subject of public controversy such as an industrial facility adjacent to residential property or a property of historical significance. The work of the Committee should be transparent, fair, and evenly applied. A perception, real or imagined, that the process favors insiders over others will create controversy and should likely get wide review.

Conclusion

Troublesome gifts are often revealed only after accepting a gift. Wise charities have policies and procedures as a first line of defense, particularly in the case of donor behavior after making a gift, consider including “morality clauses” in gift agreements that give the charity the right to remove names, revoke recognition, or even return a gift. For example, if it became known the donor engaged in acts involving “moral turpitude” or “that compromise the public trust or reputation of the charity” the gift is subject to reconsideration. Even though an offering to your charity may seem genuine and generous, it’s wise to be consistently vigilant for those gifts that are not, and have more value to the giver than the receiver.