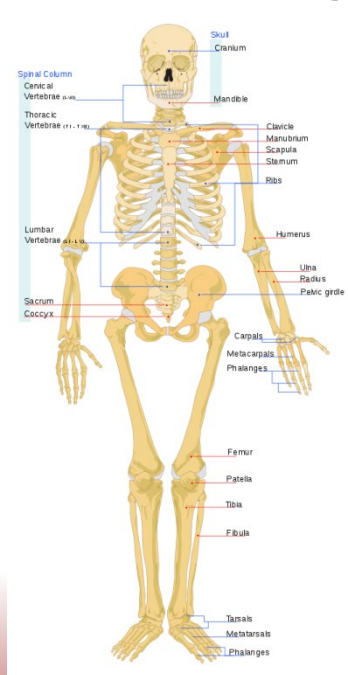




RODRIGUEZ,
HORII, CHOI &
CAFFERATA LLP

Anatomy of a Gift Agreement



Reynolds T. Cafferata

Interactive Session

Review and Mark Up Gift Agreement with Group

Our Sample

LETTER OF INTENT

This Pledge Agreement is entered into by and among Robert Smith, the Jane and Robert Smith Foundation, and Really Good Charity on this _____ day of _____, 20____.

Parties to the Agreement

- Include both spouses
- Consider consequences of multiparty enforceable agreements
- Get signatures for all parties



Opening

- “Pledge Agreement” or “Letter of Intent”

This Pledge Agreement is entered into by and among Jane Smith and Robert Smith (“Donors”), and Really Good Charity (“Charity”) on this _____ day of _____, 20____.

This Letter of Intent is entered into by and among Jane Smith and Robert Smith, the Jane and Robert Smith Foundation (“Donors”) and Really Good Charity (“Charity”) on this _____ day of _____, 20____.

Our Sample

The donors pledge to give charity Ten Million Dollars (\$11,000,000.00). The gift will be paid in six annual installments of One Million Five Hundred Thousand Dollars (\$1,500,000.00).

Gift Amount

- Include total gift amount
- Identify specific due dates
- Make sure word and numbers agree
- Make sure installments add up to total gift
- Identify what can be used to satisfy gift
- State method to value property gifts



Gift Amount

The Donors pledge to give charity Ten Million Dollars (\$10,000,000.00). The gift will be paid in five annual installments of Two Million Dollars (\$2,000,000.00) each as follows:

\$2,000,000 on or before December 31, 2018;

\$2,000,000 on or before December 31, 2019;

\$2,000,000 on or before December 31, 2020;

\$2,000,000 on or before December 31, 2021; and

\$2,000,000 on or before December 31, 2022.

The Fine Print (but don't make it fine print)

The gift may be paid in cash or publicly traded securities. All payments will be valued in accordance with Internal Revenue Code requirements for valuing charitable gifts for an income tax deduction.

Donor hereby acknowledge that Charity is relying on fulfillment of this pledge. If Donor does not survive until all the amounts due under this Agreement have been paid in full, any amount remaining due to fulfill this Agreement after the date of Donor's death shall be paid from Donor's estate within nine months of Donor's death.

Our Sample

Charity will name its administration building in its lobby for Jane and Robert Smith in perpetuity.

Recognition

- Clearly describe recognition
- Set duration and reasons for change
- Have an out for bad reputation problems



Naming Specifics

Charity will name the administration building at 1212 Main Street, Charityville, “Jane and Robert Smith Hall”. The name will appear on the exterior of the building substantially as shown on Exhibit A. Other spaces and rooms within the building will be named for other donors.

Naming Duration

Charity reserves the right to remove or modify the recognition of the Donor if necessary to protect the reputation of Charity or to achieve fundraising objectives. If the building on which the recognition resides is destroyed by fire, earthquake, flood, or other casualty, and if Charity is able to rebuild the building with the proceeds of insurance payments, Donor's name will be placed on the replacement building in substantially the same manner as it appeared in the original building. On the other hand, if the building is demolished because of obsolescence or other circumstances and is not replaced, or is not replaced with the proceeds of insurance, Donor's contribution will be acknowledged with a plaque in a prominent location in a replacement building or on the facilities of Charity.

Our Sample

Charity will create the Jane and Robert Smith Fund. Charity can use the dividends and interest of the Fund for promotion of the charity on social media programs on Facebook, YouTube and Twitter. The naming and Fund shall exist in perpetuity.

Endowment and Use Restrictions

- Design endowment restrictions to evolve long-term
- Use UPMIFA spending amount language
- Make sure use restrictions are workable



Restrictions-Endowment

- Endowment or Permanent Fund
 - Only a prudent amount may be spent from fund annually
 - More than 7% is presumptively impudent
 - Typical spending policy is 3% to 5%
 - May want to expressly allow to drop below historic dollar value
 - Refer to charity spending policy as it exists from time to time for evolution of use of funds that will exist for a long period of time

Restrictions-Purpose

- Unless also endowment, treated as temporarily restricted until fund is appropriated for allowed purpose
- Can include other time limits other than endowment
- Review purpose of fund carefully, particularly with an endowed fund

Modifying Restrictions

- Donor and Charity can modify by mutual agreement
- Court may release or modify if purpose or use of fund is:
 - Unlawful
 - Impracticable
 - Impossible to achieve
 - Wasteful

Endowment Language

Charity shall use the Gift to establish the Jane and Robert Smith Fund ("Fund"), pursuant to the terms of this Agreement and Charity policies adopted and as revised from time to time by the Board of Trustees. The Fund shall be classified as a restricted fund, and the terms "income" and "principal" will be defined in accordance with STATE law for charitable endowments and an endowment spending policy as adopted by Charity from time to time. The balance of the Fund may be reduced below the value of the amounts contributed to the Fund by market losses and by distributions under Charity's spending policy.

Purpose

Charity shall use the Gift to establish the Jane and Robert Smith Fund ("Fund"), pursuant to the terms of this Pledge and Charity policies adopted and as revised from time to time by the Board of Trustees. The Fund shall be classified as a temporarily restricted fund with assets held and expended exclusively for supporting the capacity of Charity to develop resources to carryout its charitable purpose.

In the event the above purpose of the fund is frustrated, becomes unreasonably burdensome, becomes inconsistent with the charitable objectives of Charity or cannot otherwise be accomplished, the Fund shall be made available as specified by Charity for uses most consistent with the above purpose, and the source of alternative use shall clearly be identified as the Jane and Robert Smith Fund.

Our Sample

This pledge may be satisfied by other foundations, donor advised funds and individual gifts.

Enforceable gift agreements

- General rule is a promise to make a gift is not enforceable
- Exceptions
 - Consideration
 - Detrimental Reliance
 - Donations of others in response



Consideration

- Naming
- Seat benefits
- Recognition society



Detrimental Reliance

- Make expenditures on a building, project or program that arguably would not have been made without pledge
- Raise funds from other donor's citing the pledge



Reliance Language

Donor acknowledges that Charity is commencing construction on the administration building in reliance upon Donor's pledge.

Donor acknowledges that Charity is relying Donor's pledge in determining the timing and completion of its campaign and that other donors are supporting charity in reliance upon Donor's support of the campaign.

Make Sure the Donor Knows

This Pledge is irrevocable and shall be enforceable against and be binding upon the Donor, the Donor's estate, the Donor's personal representative, and Donor's heirs, successors and/or assigns.



To be Enforceable or Not to be Enforceable

- Enforceable Pledges Allow Charity to Sue
 - Most won't in most cases
 - Cases are difficult
 - Might file creditor's claim



Problems with Enforceable Pledge for Charity

- Possible private or excess benefit transaction to forgive
- Forgiveness impacts financial statements
- May be imprudent to forgive pledge of solvent donor



Problems with Enforceable Pledge for Donor

- Cannot use PF or SO to satisfy
- DAF may satisfy under Notice 2017-73
- Cannot have friends or other tax entities satisfy



Warning to Donor about Self-Dealing Issues



Donor acknowledges that this Agreement creates a personal obligation. Satisfaction of Donor's obligations under this Agreement by a private foundation or supporting organization may subject Donor and such organization to excise taxes and penalties. Furthermore, Donor may be required to repay the organization the amount paid in those circumstances. Payments by other persons or entities of this obligation will be a gift to the Donor.

Our Sample

This agreement is enforceable by Robert Smith and any
descendant of Robert Smith.

Other Key Terms

- Standing to enforce
- Counterparts
- E-mail signatures
- Governing Law
- Application of payments from DAFs



Additional Clauses

This Pledge shall be governed by and construed in accordance with the laws of the State of California without regard to its conflict of law principles.

This Pledge embodies the entire agreement and understanding of the parties and supersedes all prior negotiations, agreements and understandings among the parties with respect to subject matter of this Pledge.

Donor alone, and not any other heir, successor or assignee, shall have standing to enforce the terms of this Pledge.

This Pledge may be executed in multiple counterparts with the same effect as if all parties hereto had signed the same document. All counterparts so executed shall be deemed to be an original, shall be construed together and shall constitute one Pledge.

Any payment received from a donor advised fund for which Donor is identified to Charity as the donor by the organization sponsoring the donor advised fund will be applied to Donor's obligations under this Agreement.

Our Sample

- Agreed by:
- Donor:
- _____
- Robert Smith
- _____
- Charity:
- Really Good Charity
- By: _____
- Its: _____
- _____

Signatures

- Makes sure all parties sign
- Best if entities have two officers sign

Signature Block

Robert Smith

Jane Smith

- ROBERT AND JANE SMITH FOUNDATION

Jane Smith, President

Robert Smith, Secretary