

The Marshall Community Foundation
Policy: Gift Acceptance and Guidelines

Approved by the MCF Board of Trustees:

November 8, 2016

MARSHALL COMMUNITY FOUNDATION GIFT ACCEPTANCE AND GUIDELINES POLICY

The Marshall Community Foundation (Foundation) Board of Trustees (Board) and its employees solicit current and deferred gifts from individuals, corporations and foundations to secure the future growth and mission of the Foundation. The Gift Acceptance and Guidelines Policy govern the acceptance of gifts and also provide guidance to prospective donors and their advisor(s). The provisions of this policy shall apply to all gifts received by the Foundation for any of its programs or services.

Fund Establishment

For information on types of Funds available at the Foundation, as well as fund parameters, please reference the Administration of Funds Policy.

Acceptance

Prior to acceptance, the Foundation's Board shall have the final decision on all gifts received, and the terms associated with those gifts.

Procedures for Gifts not requiring Board approval

However, some gifts pose little threat to the assets of the Foundation, and the Executive Director may accept those types of gifts without the prior review and/or approval of the Board. They are subject only to the gift(s) being consistent with this policy, the Bylaws of the Foundation and pursuant to the standard fund agreements approved by the Board. The Executive Director shall negotiate the terms of and execute any fund agreement related thereto on behalf of the Foundation. The fund agreement(s) are then submitted for the Board to review and approve.

Gifts that may be accepted without Board of Trustees prior approval are:

1. Cash and Cash Equivalents;
2. Publicly-Traded Securities;
3. Gifts of Tangible Property for Foundation Use;
4. Various charitable instruments, including charitable remainder trusts and charitable lead trusts if funded with marketable securities and/or cash and further provided that the Foundation does not serve in a trustee capacity.

Procedures for Gifts requiring Board approval

In conjunction with their tax and financial planning, some donors may be interested in making gifts of specific assets (illiquid assets) that create more risk for the Foundation. These types of gifts (identified below) will require the approval of the Board prior to being accepted. In addition, the Executive Director may, in his or her discretion refer any other proposed gift transaction to the Board for review and advice if he or she has any concerns about the valuation; disposition or other issue which suggests a review of the proposed gift is warranted.

Gifts that may NOT be accepted without Board approval are:

- 1) Non-public securities, including S corporation stock, partnership interests;
- 2) Real property;
- 3) Tangible property which is not readily needed for the Foundation's use or related to its purpose;
- 4) Life insurance policies whose premiums are not paid up;
- 5) Retained life tenancy;
- 6) Any gift which falls outside the ordinary purposes, Bylaws, and procedures of the Foundation;
- 7) Any gift proposed to be made pursuant to an agreement that is substantially or materially different from the standard fund agreements established by the Executive Director and/or the Foundation's legal counsel prior to Board review and acceptance.
- 8) Any gift that includes a restriction or suggestion regarding the Foundation's use of funds that would raise legal, ethical, policy or practical concerns for the Foundation
- 9) Various charitable trust instruments, including charitable remainder trusts and charitable lead trusts funded with assets other than marketable securities and/or cash or where the Foundation would act in a trustee capacity.

The Board will also take the following into account when deciding upon the acceptance of a gift (requiring their approval) to ensure the charitable benefit to the Marshall Community Foundation.

- the value of the asset
- the likelihood that the asset can be liquidated
- projected income from the gift if the Foundation holds it as investment (e.g. rental income stream)
- charitable nature of the gift (e.g. historic building)
- risks to the Foundation (e.g. environmental, hazards, potential liability)
- carrying costs (e.g. insurance, property taxes)
- unrelated business income tax consequences

In addition, if the Board accepts a gift that falls under this category, the Board shall, within a reasonable time after receiving any property, make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio in order to bring the Foundation's institutional funds into compliance with the purposes, terms, and distribution requirements of the Uniform Prudent Management of Institutional Funds Act.

Right of Refusal

The Foundation reserves the right to refuse gifts. Reasons for refusing a gift may include, but are not limited to:

- The cost to manage the asset exceeds the eventual benefit of the gift to the Foundation
- The gift or purpose could potentially jeopardize the Foundation's tax exempt status.
- The fund purpose is believed to be discriminatory in nature.

The Executive Director has the authority to refuse gifts that clearly do not benefit the Foundation. If the benefit is questionable or difficult to determine, again, the Board shall make the final decision whether to accept or refuse.

Minimum Required to create a New Fund

A Fund may be established with a minimal gift amount of \$100 and over a five (5) year period grows to at least \$5,000 and/or shows significant activity which indicates growth potential. Also, the fund agreement with its criteria/purpose must be in keeping with the mission and all regulations governing the Foundation.

Use of Legal Counsel

The Foundation shall seek the advice of legal counsel in matters relating to acceptance of gifts when appropriate. Review by counsel is recommended for:

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

Conflict of Interest

The 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.

Restrictions on Gifts

The Foundation will accept unrestricted gifts, and gifts for specific programs and purposes, provided that such gifts are not inconsistent with its stated mission, purpose, and priorities. The 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 charter (or trust document if charity is established under trust), gifts that are too difficult to administer, or gifts that are for purposes outside the mission of the Foundation. All final decisions on the restrictive nature of a gift, and its acceptance or refusal, shall be made by the Board of Trustees of the Foundation. (Also, note Section I; Right of Refusal)

Types of Gifts

- A. The following gifts are acceptable:
 1. Cash
 2. Securities
 3. Real estate
 4. Life insurance

5. Charitable Gift Annuities
6. Charitable Remainder Trusts
7. Charitable Lead Trusts
8. Retirement Plan Beneficiary Designations
9. Bequests
10. Life Insurance Beneficiary Designations

B. The following criteria govern the acceptance of each gift from:

1. **Cash:** Cash is acceptable in any form. Checks shall be made payable to the Marshall Community Foundation and shall be delivered to the Foundation's administrative offices.
2. **Securities:** The Foundation can accept both publicly traded 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. As a general rule, all marketable securities shall be sold upon receipt unless otherwise directed by the Donor. 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 Foundation Board.

Closely Held Securities: Closely held securities, which included not only debt and equity positions in non-publicly traded companies but also interests in LLP's and LLC's or other ownership forms, can be accepted subject to the approval of the Foundation Board. However, gifts must be reviewed prior to acceptance to determine: the issuer's business activities, the underlying assets and liabilities, the nature of the interest proposed to be conveyed, and the actual or potential liabilities, if any associated with holding such securities.

The Board must also investigate to ensure the following:

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

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 final determination on the acceptance of closely held securities shall be made by the Foundation Board and legal counsel, when necessary. Every effort will be made to sell non-marketable securities as quickly as possible.

3. **Real Estate:** Gifts of real estate may include developed property, undeveloped property, or gifts subject to a prior life interest. Prior to acceptance of real estate, the 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 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.

When appropriate, a title binder shall be obtained by the Foundation prior to the acceptance of the real property gift. The cost of this title binder shall generally be an expense of the donor.

Prior to acceptance of the real property, the gift shall be approved by the Foundation's Board and legal counsel. Criteria for acceptance of the property shall include:

- Is the property useful for the purpose of the Foundation?
- Is the property marketable?
- Are there any restrictions, reservations, easements, or other limitations associated with the property?
- Does the environmental audit reflect that the property is not damaged?

Remainder Interests in Property: The Foundation will accept a remainder interest in a personal residence, farm or vacation property subject to the provisions noted here and the above. 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 Foundation may use the property or reduce it to cash. When the Foundation receives a gift of a remainder interest, expenses for maintenance, real estate taxes, and any property indebtedness, these are to be paid by the donor or primary beneficiary.

4. **Life Insurance:** The 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 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 Foundation may:

- continue to pay the premiums,
- convert the policy to paid up insurance, or
- surrender the policy for its current cash value.

5. **Charitable Gift Annuities:** The Foundation may offer charitable gift annuities. The minimum age for life income beneficiaries of a gift annuity shall be 55. Where a deferred gift annuity is offered, the minimum age for life income beneficiaries shall be 45. 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 Foundation Executive Director may approve exceptions to this payment schedule.

The Foundation will not accept real estate, tangible personal property, or any other illiquid asset in exchange for current charitable gift annuities. The Foundation may accept real estate, tangible personal property, or other illiquid assets in exchange for deferred gift annuities so long as there is a least a five (5) year period before the commencement of the annuity payment date, the value of the property is reasonably certain, and the Foundation Board reviews and 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 Foundation's general endowment funds, or to such specific funds as designated by the donor.

7. **Charitable Remainder Trust:** The Foundation may accept designation as remainder beneficiary of a charitable remainder trust with the approval of the Board. The Foundation will not accept appointment as Trustee of a charitable remainder trust.
8. **Charitable Lead Trust:** The Foundation may accept a designation as income beneficiary of a charitable lead trust with the approval of the Board. The Foundation will not accept an appointment as Trustee of a charitable lead trust.
9. **Retirement Plan Beneficiary Designations:** Donors and supporters of the Foundation will be encouraged to name the Foundation as beneficiary of their retirement plans. Such designations will not be recorded as gifts to the 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.

10. **Bequests:** Donors and supporters of the Foundation will be encouraged to make bequests to the Foundation under their wills and trusts. Such bequests will not be recorded as gifts to the 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.
11. **Life Insurance Beneficiary Designations:** Donors and supporters of the Foundation will be encouraged to name the Foundation as beneficiary or contingent beneficiary of their life insurance policies. Such designations shall not be recorded as gifts to the 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.

VI. *Miscellaneous Provisions*

- A. **Securing appraisals and legal fees for gifts to the 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 Foundation.
- B. **Valuation of gifts for development purposes:** The Foundation will record a gift received by the Foundation at its valuation for gift purposes on the date of gift.
- C. **Responsibility for IRS Filings upon sale of gift items:** The Executive Director of the Foundation is responsible for filing IRS Form 8282 upon the sale or disposition of any asset sold within two years of receipt by the Foundation when the charitable deduction value of the item is more than \$5,000. The 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.
- D. Acknowledgement of all gifts made to the Foundation and compliance with the current IRS requirements in acknowledgement of such gifts shall be the responsibility of the Executive Director and the Foundation's. The employees shall maintain strict control over all donor/prospective donor information and files (hard copy or on-line). No public media exposure shall be made with respect to the donor's gift without the consent of the donor.