

ELEMENTS OF A SOUND GIFT AGREEMENT



The gift agreement is a critical part of the giving process. You do not need immediately to sign the initial gift agreement given to you by the college. The document ought to be the result of a conversation between you and the college or university you wish to give to. By the end of the process, you should have a well-crafted gift agreement that is specific about your intent, the mechanics of the gift, and what you and the college should expect from each other. Be confident that the institution is aligned with the gift agreement before you sign. Enlist the help of legal counsel, and ask a qualified third-party organization to review the agreement. In order to set up your gift for success, the gift agreement should articulate your intent, set expectations, and anticipate changes.

ARTICULATE YOUR INTENT

A statement of purpose. Consider adding biographical details and the personal reasons why you are making the gift. The staff at the university will change, and over time, they may no longer be familiar with you as a donor. Including biographical information communicates your vision and values to whomever reads the gift agreement. It also helps guide the university in implementing the gift appropriately for many years in the future.

Use of the gift. You should be as clear as possible when expressing donor intent. Restrictions should be specific enough to do the job, making it explicit to the grant recipient what would and what would not fulfill your intent. Focus carefully on the issues that matter to you, but do not include aspects that are not really essential.

Naming rights. Communicate your expectations for naming rights and recognition in the gift agreement. Whether on a plaque, at events, in publications, and/or through online and digital media, the university should not have to guess how you would like to be recognized for your contribution. Retain the right to revoke the use of your name, as you may not wish to be associated with a particular institution or project in the future. Naming rights are particularly complicated for buildings, which may eventually need to be renovated substantially or taken down. Be clear about what you would like to happen in this circumstance.

SET EXPECTATIONS

Payment schedule. While some donors give the full amount at once, others may pledge a certain amount but pay in installments. Whichever choice you make should be obvious in the gift agreement. You may make payment contingent on receiving progress reports with detailed information about the management of the gift.

Reporting obligations. When you make the gift, establish when you would like to receive progress reports and what those reports should include. State the goal of the gift in such a way that it is possible to devise clear criteria for evaluating results. Requesting financial details, if appropriate, is one effective method for monitoring the use of your gift. At the very least, require an annual report, stipulate the contents of that report, set a deadline for its submission, and clarify to whom it should be sent. The more precise you are, the better.



Distribution schedule. Some donors give an initial gift but restrict spending until the endowment has grown to a certain amount. If you would like the endowment to hold funds until a specific point, either a dollar amount or a number of years, make sure you include that restriction in the gift agreement.

Administrative fees. Colleges and universities often charge a fee on endowment gifts, but they do not always disclose this practice to donors. You may be able to negotiate out of this fee or reduce the fee. If possible, include a clause that specifies that no portion of the gift is to be used to defray administrative costs or general overhead charges.

ANTICIPATE CHANGES

Reverter clause. A reverter clause, or “clawback” provision, creates a strong incentive for the institution to honor your intent. Should the university fail to abide by the gift’s terms or fail to select a chair recipient by the agreed-to criteria within the agreed-to time frame, then a reverter clause may require the university to return the gift to the donor. Depending on the circumstances, reverter clauses may have tax consequences for the donor.

Standing. Donors should explicitly reserve the right to have standing to enforce the terms of the gift agreement. Because standing has traditionally been reserved to states’ attorneys general, there is a chance that the court will not recognize your right to standing. Legal recourse should be a last resort, but if it comes to that, reserving standing is an essential step.

Alternative beneficiary. Consider adding a provision that stipulates an alternate recipient to receive your gift (or remaining balance) should the university depart from your stated intent. This arrangement may provide an additional incentive for the university to follow your intent by setting up the third party as a watchdog of sorts. But remember, there are no guarantees with such a provision, as the alternate beneficiary is under no obligation to step into a watchdog role or to accept your gift even if there is a legal right to do so.

Changed circumstances. If you make a gift in perpetuity, it is only natural that the college or university will eventually go through significant changes. Most gift agreements contain a clause that addresses what the college should do with a gift when circumstances change. You may be able to include language that requires any redirection of the gift to be approved by you or, if leaving an estate gift, by another person you trust to carry out your vision.

Contact FAR to learn more about our services and to begin a conversation about planning your gift.

The Fund for Academic Renewal is a program of the American Council of Trustees and Alumni, a tax-exempt nonprofit organization as defined by section 501(c)(3) of the Internal Revenue Code. Neither FAR nor ACTA offer legal or tax advice. Donors should always consult their personal advisors before making a gift.



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