

# Western Carolina University Foundation

## Gift Acceptance Procedures

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## **I. General Statement of Purpose**

Western Carolina University (“the University”) adheres to a fundamental belief in the transforming influence of private gifts. Private giving helps the University to achieve its goals of growth, academic improvement, and service to the region and helps to ensure excellence in higher education by providing funding for a number of initiatives including but not limited to programs, scholarships, fellowships, professorships, research, campus renovations, and new facilities.

In accordance with University Policy #55 (Appendix A) and in alignment with University Policies #11 (Appendix B) and #104 (Appendix C) and the WCU Foundation Gift Naming Guidelines (Appendix J), the Division of Advancement (“The Division”) is responsible for the solicitation of all contributions from private sources, under the general supervision of the Vice Chancellor for Advancement. The division receives, records, receipts, and acknowledges all private gifts to the University; conducts annual fundraising activities for support of academic programs and the athletic program; and designs and executes the systemic pursuit of major, principal, corporate, and planned gifts. Any fundraising activities for voluntary contributions from individuals, corporations, foundations, or philanthropic agencies conducted on behalf of the University or any unit thereof therefore must be coordinated through the division.

The mission of the division is to develop and maintain positive relationships throughout the institution’s broad range of constituents in order to encourage and facilitate financial support of the University’s teaching, research, and engagement activities.

The overarching principle that shapes the encouragement of private support of the University is a commitment to determining the points of intersection between donors’ interests and the needs and priorities of the institution. University employees involved in the activity of seeking and securing private gifts are guided in their work by adherence to “A Donor Bill of Rights” (Appendix D) and the principles of ethical conduct as put forth by the Association of Fundraising Professionals (AFP) (Appendix E) and the Standard of Ethics as put forward by the Council for the Advancement and Support of Education (CASE) (Appendix F)

Established in 1971, the Western Carolina University Foundation, (“the Foundation”) exists to receive and manage private gifts for the benefit of the University. The Foundation is organized as a corporation, exempt from federal tax liability by Internal Revenue Code (IRC) Section 501(c)(3), and qualifies as a public charity under IRC Section 509 and is operated for the benefit of the University.

To ensure compliance with all laws, rules, regulations, and guidelines pertaining to charitable giving the division has adopted these Gift Acceptance Procedures (“GAP”). The purpose of these guidelines is to give direction and counsel to those individuals within the University community concerned with soliciting gifts on behalf of the University and the Foundation. References herein to the University or the Foundation shall apply to both entities unless otherwise specified. All gifts are to be accepted or rejected in accordance with the guidelines. To prevent misunderstandings and conflicts, these guidelines should be viewed as flexible and realistic in order to accommodate unpredictable fundraising situations and donor expectations. Such situations and expectations, however, must be consistent with the University’s mission and University and Foundation policies.

While this document is intended to provide guidance to the Division of Advancement and other University personnel regarding the acceptance of prospective gifts, donors are ultimately responsible for ensuring that the proposed gift furthers their charitable, financial, and estate planning goals. The Division of Advancement does not provide legal, accounting, tax, or other advice to prospective donors. Therefore, each prospective donor is urged to seek the advice of independent legal counsel in the gift planning process.

Gift Acceptance Procedures at Western Carolina University shall be interpreted taking into account two overriding principles:

### **A. University Interest**

A gift shall not be accepted by the University unless there is a reasonable expectation that

acceptance of the gift will support the University in its missions of teaching, research, and engagement.

In certain unique cases, a gift may be considered inappropriate due to particular restrictions imposed by the donor. By its very definition, a gift cannot be associated with a private benefit that would jeopardize the charitable contribution deduction under Internal Revenue Code (“IRC”) section 170 if the donor and beneficiary of the restriction have less than an arms-length relationship. There must be a distance between the donor and recipient such that the recipient does not receive benefits that are otherwise not available to colleagues of similar status and interest. For example, in the capacity of donor, an individual cannot subsidize his/her own salary or fringe benefits.

#### **B. Donor Interest**

A gift shall not be accepted by the University if such acceptance is known to conflict with the donor’s best interest. A determination of the donor’s “interest” may include, but shall not be limited to, the donor’s financial situation, philanthropic interests, and any tax or other legal matters revealed while planning for a gift. The University shall not encourage any gifts that are inappropriate as related to the donor’s personal or financial situation as such is revealed to representatives of the University.

### **II. Gift Acceptance Committee**

The GAP outlines specific types of gifts that can, and cannot be accepted, however there are often gifts which must be considered by an independent body both to determine acceptability and to ascertain the appropriate dollar value for counting and recognition purposes. The Gift Acceptance Committee (GAC) of the Foundation shall be comprised of the following members.

- WCU Foundation Treasurer
- WCU Foundation Executive Secretary
- WCU Assistant Vice Chancellor for Development
- WCU Senior Director of Advancement Services
- WCU General Counsel
- WCU Foundation Board Chairperson
- WCU Foundation Board Finance & Audit Committee Chairperson

The GAC may be convened by the Treasurer and Executive Secretary if a specific gift constitutes an exception to the standards as outlined in the GAP or gifts of significant risk. The GAC will review the information that has been presented by staff and, if the issues involved have been satisfactorily resolved, may accept or reject the gift in question. The GAC will endeavor to respond promptly so that the gift can be completed in a timely manner to ensure donor good will.

Examples of Gifts of Significant Risk:

- non-publicly traded securities
- all gifts of real property
- gifts of tangible personal property if not to be used by the University
- all gifts of real or tangible personal property subject to donor restrictions regarding the disposal of such property
- any bargain sale of property where a donative element is associated with the acquisition of property by the University or Foundation below its fair market value.
- gifts with significant donor restrictions
- all gifts of unusual items or gifts of questionable value

The GAC shall meet as necessary to consider specific gifts and shall consult with the legal counsel as deemed necessary by the GAC.

### **III. Guidelines Amendment and Review**

These guidelines shall be reviewed periodically and whenever it becomes inconsistent with applicable university, state or federal laws. Corrections and/or amendments shall be made by the Gift Acceptance Committee to the WCU Foundation Finance and Audit Committee which shall make take action as necessary.

### **IV. Foundation Acceptance of Gifts and Grants**

The Division of Advancement can accept all philanthropy on behalf of the Foundation, provided such gifts are in conformity with the GAP. Those individuals designated to accept or negotiate gifts should follow the guidelines set forth herein, particularly when negotiating or, when authorized, entering into endowment agreements, trust agreements and other restricted gift agreements or deferred gift agreements. As stated in these guidelines, certain types of gifts must be reviewed and approved by the GAC prior to acceptance.

Once the Foundation has accepted a gift, it becomes Foundation property. From that point, the donor has no direct decision-making power regarding the disposition of the gift. In the case of a gift to a restricted fund, however, the Foundation may consult with the donor on the use of the gift after the Foundation has accepted the gift.

The level of information required by the Foundation to make an informed decision regarding the acceptance of a gift will vary depending upon the nature of the gift. If it appears that a gift may not be acceptable from the outset of discussions with the donor, the GAC will endeavor to reach that conclusion as soon as possible and convey this fact to the development officer so that he or she can suggest alternate types of contributions to the donor.

### **V. General Information**

#### **A. Definitions**

##### **1. Gifts**

For purposes of these guidelines, the term "gifts" refers exclusively to private contributions given for the benefit of the University even though such contributions are sometimes called "grants" by foundations and corporations. A gift is an outright or deferred contribution received from an individual, foundation, or corporation (the "donor") for which no goods or services are expected, implied or forthcoming for the donor.

Gifts might occasionally include a "quid pro quo contribution" within the definition of the IRC where goods or services may be provided to the donor in recognition of the consideration given by the donor. With quid pro quo contributions, only the amount of the contribution that exceeds the value of the benefits that the donor receives will be considered a gift.

Gifts usually take the form of cash, securities, real property, or tangible personal property. The following criteria generally identify a gift:

- A gift is motivated by charitable intent.
- A gift is an irrevocable transfer of assets. The Foundation is not obliged to return unexpended funds. (If, for some reason, the Foundation is unable to comply with the donor's intent, or if the gift has been misdirected to the Foundation, a return of gift may be issued at the Foundation's discretion. Out of pocket expenses may be deducted from the gift before it is returned. The GAC is authorized to approve the return

of a gift if the Foundation is unable to comply with the donor's intent or if the gift has been misdirected to the Foundation.

- A gift is not generally subject to an exchange of consideration or other contractual duties between the Foundation and the donor, except for certain deferred gifts as set out in these guidelines.
- A gift does not specify a period of performance. For example, formal financial accounting to the donor is not required as it would be, for example, with a research grant.
- Generally, funds received from individuals, closely held corporations, and family foundations will be classified as gifts. Funds received from corporations, corporate foundations, and other foundations are classified as gifts unless the grant requires performance or other consideration. (Funds received that *do* require performance considerations, e.g. research grants, are managed by the Office of Research and Graduate Studies in accordance with University Policy # 55 (Appendix A)).
- A gift is not completed until it has been accepted by the Foundation.

## **2. Current Gifts**

Current gifts are utilized to benefit a University program or to add to or establish an endowed fund at the University.

## **3. Pledges**

Pledges are commitments to give a specific dollar amount according to a fixed time schedule. Annual Fund pledges are usually for amounts less than \$25,000 and for periods of less than one year. All pledges other than Annual Fund pledges are required to be in writing, typically with the specific details outlined in a statement of intent and gift agreement between the donors and University or Foundation.

At a minimum, the following information must exist to substantiate a pledge:

- the amount and designation of the pledge must be clearly specified;
- there should be a clearly defined payment schedule;
- the donor may not prescribe contingencies or conditions;
- the donor must be considered to be financially capable of making the gift, based on information that has been provided by the donor,
- changes to original pledges must be documented in writing.

Pledge timetable:

- Pledges for amounts less than \$1,000,000 may be completed over a period of five years.
- Pledges in excess of \$1,000,000 may be for longer periods with approval of the Vice Chancellor of Advancement.

Pledge recording:

- Anticipated matching gifts may not be included in individual donors' pledge amounts.
- Pledges and expected matching gifts will qualify for donor recognition in appropriate giving level categories.
- Under- and over-paid pledges (as a result of rounding, gift valuation, or incremental giving) will be noted as completed when paid in full or substantially satisfied as determined by the division.
- Before defaulted pledges are written off, pledge deactivation requests must be reviewed and approved by the Vice Chancellor for Advancement.
- Pledge balances will be written off when the University is notified of a donor's death or other extenuating circumstance, unless there are

provisions made to complete the pledge

**4. Planned / Deferred Gifts**

Deferred gifts postpone the benefit to the University until sometime in the future and the donor benefits from the gift in the interim period. Many of these gifts are described as life-income gift plans because they utilize vehicles that provide an income to the donor as part of the gift plan.

Planned gifts include those gifts - whether given currently or deferred - that require the assistance of a University staff person and/or or the donor's advisors to complete the gift. Some planned gifts may be established to benefit the University without the University's involvement, for example: a bequest, a life insurance beneficiary designation, or a charitable trust managed by a bank or commercial trust firm. Planned gifts are pledged based on CASE standards and campaign counting guidelines.

Gifts of real estate, securities, and other assets are planned gifts that may also be utilized to establish a life-income gift plan to benefit a donor.

**B. Designation**

Gifts to the Foundation may be either for the general purposes of the University or for the specific use of one of its constituent colleges, departments, institutes, centers, or programs.

Donors may direct:

- that a gift be expended in full during one or more years for unrestricted or restricted current operations;
- that the gift be used to establish a special restricted or unrestricted endowment fund (subject to restrictions set forth in Sections VI and VII herein);
- that funds be added to existing unrestricted or restricted expendable funds or endowment funds;
- that funds be handled in other ways not inconsistent with the purpose and policies of the Foundation and the University.

While the preference is for unrestricted gifts, the uses of gifts may be specified for a wide range of purposes such as scholarships, professorships, book funds, or University-approved building funds, except as indicated in these guidelines and subject to acceptance by the GAC.

**C. Beneficiary**

In general, all gifts should name the Western Carolina University Foundation as owner or beneficiary. If conditions warrant, the GAC at its discretion and in accordance with any applicable University policies, can determine that naming Western Carolina University as owner and beneficiary is acceptable or preferred.

**VI. Guidelines Concerning Restrictions in Uses**

**A. General**

The University recognizes the educational benefits of diversity. In consultation with the WCU Office of Financial Aid, scholarships and other funds can be established to give preference to the support of diversity. While neither the Foundation nor the University will accept any gift that contains restrictions based on race, color, religion, gender, disability, age or national origin, donors are encouraged to consider criteria which would give preference to historically underrepresented populations.

**B. Financial Aid**

- With regard to gifts to the University for the purposes of scholarships,

fellowships or other student financial aid, a gift will not be accepted if it contains restrictions that permit the donor to designate particular individual recipients;

- restrictions related to the future employment of the recipient, except where such restriction is consistent with the purpose of the establishment of the award and does not require the recipient to accept an otherwise undesirable position solely for the benefit of the donor or any other private individual or corporation;
- restrictions by the donor regarding conditions or terms of repayment (such as loans to students from donated funds or their proceeds).

This list is intended to be illustrative and not inclusive. The WCU Scholarship Office will be consulted prior to the establishment of a fund relating to financial aid.

### **C. Contingency Clauses**

The needs, policies, and circumstances at the University may change in unforeseen ways over the many decades following the establishment of an endowment fund. Therefore, the University must be able to make use of funds in its best interest under changed conditions, while continuing to perpetuate the name and memory of the donor or delegate. An example of a changed condition would be a department or school that merges into another department or school.

This flexibility can be accomplished by including the following statement in the instrument that establishes the endowment:

“If at any time the Chancellor of the University certifies to the Board of Directors of the Foundation that funds in the endowment cannot achieve the purposes stated in this document, the Donor and the Foundation agree that distribution from this endowment henceforth may be made to a related purpose as nearly aligned as possible to the original intent of the Donor as determined by the Chancellor in consultation with the Donor or the Donor’s designated representative. In all events, the Fund will retain the designated name and will remain active to support the University.”

## **VII. Guidelines on Named Endowment Funds**

### **A. Establishment**

Donors may establish special purpose (restricted) and unrestricted endowment funds as described in the requisite written endowment agreement upon the receipt of gifts or commitments that meet the approved financial and other criteria for such funds. An endowed fund may be established, however, even though the principal amount may not have reached the required minimum if the donor agrees to complete the endowment within a reasonable period of time. “Reasonable period of time” will vary depending on the level of the commitment, but typically is defined as 2 - 5 years.

The Vice Chancellor of Advancement will consider deviations from this definition on a case-by-case basis. Donors may recommend names for endowment funds. Further guidance can be found in the division’s Endowment Amount Procedure (Appendix G)

## **VIII. Guidelines on Gifts for Facilities or Landscapes**

Campaigns for contributions for new structures, extensions of present structures, or major modifications to present structures and grounds of the University and the naming thereof must follow the WCU Criteria and Procedures for Naming Facilities and Programs Policy #11 (Appendix B)

## **IX. Guidelines on Acceptance of Gifts**

The Foundation will accept only gifts and grants that are consistent with the core educational values of the University and are:

- compatible with the missions of the University and of its individual programs;
- in compliance with the IRC and other federal statutes, regulations, rulings, or court decisions that stipulate the conditions under which contributions can be tax favored;
- in compliance with North Carolina statutes and other regulations that stipulate the conditions under which contributions can be given and received; and
- compatible with the Foundation's tax-exempt status.

Unless a specific exception is granted by the GAC, the Foundation will not accept any gift that:

- violates any federal, state or local statute or ordinance;
- creates a fund to provide for programmatic support, scholarships, fellowships, professorships or lecture series with restrictive clauses that could cause embarrassment to the University, or that reserve to the donor or his/her representative the right to designate the use of funds or recipient(s);
- contains a condition that requires any action on the part of the University that is unacceptable to University administration;
- commits the University to name a fund where the gift is potentially revocable in any way;
- requires the University and its administration to employ a specified person at a future date;
- contains unreasonable conditions (i.e. a lien or other encumbrance) on gifts of partial interests and property;
- requires admission to the University or tuition payments for the donor or a family member of the donor;
- exposes the Foundation to potential litigation or other liabilities;
- requires the payment of maintenance costs or other expenses (e.g. debt service) for which no specific provision has been made;
- generates unrelated business income tax; or
- appears to be financially unsound.

Unless a specific exception is granted by the GAC, the Foundation will immediately sell all gifts of stock or property so that it can invest the proceeds in accordance with the Foundation's investment policies.

## **X. Guidelines Pertaining to Outright Gifts**

In the vast majority of cases, the Foundation will convert outright gifts to cash immediately or as soon as is feasible in order to support the activities for which the funds are given. Notable exceptions are gifts of tangible personal property (e.g. works of art, rare books, etc.) or certain gifts of real property (land, buildings, etc.) that can be used to support the University's missions of teaching, research, or engagement. Types of outright gifts include the following items.

### **A. Cash and Cash Equivalents**

Cash is often the easiest way for donors to give and is the most frequently received form of gift accepted by the Foundation. These gifts can take the form of currency, check, or credit card contribution. Cash may be delivered in person, by mail, or by wire transfer. Cash gifts are reported the date the cash is received in the Division of Advancement. If gifts are transferred by wire, the date of the gift is the date that the money is transferred into the Foundation's bank account. Check gifts are generally dated on the day of recording by the division with one exception to accommodate donors' tax issues - calendar year-end gifts that are post-marked on or before December 31 of any given year are recorded as received in that year. Credit card gifts are reported on the date that the credit card charges are processed. If an online gift is timestamped prior to midnight on December 31 of any given tax year it will be recorded as received in that year. In all cases gifts should be made as payable to the Western Carolina University Foundation.

### **B. Publicly Traded Securities**

Securities such as stocks, municipal and corporate bonds, treasury bills and notes, warrants, and stock options that are:



(1) listed on an exchange in which quotations are published daily;

(2) regularly traded in national or regional over-the-counter markets for which published quotations are available; or

(3) shares of a mutual fund for which quotations are published on a daily basis in a newspaper of general circulation throughout the United States, will be accepted as outright gifts or payments toward pledges. The value of securities is determined on the recognized gift date, which is established when the donor relinquishes control of the securities. The average of the high and low trading prices on the gift date determines the value of securities for recording and reporting purposes.

**C. Closely Held Securities (non-public)**

The Foundation will examine any issue that is not publicly traded prior to its acceptance as a gift and may decline a gift of such securities if it deems them difficult to value or not easily marketable. In addition, the GAC must approve gifts of non-publicly held securities prior to acceptance.

**D. Other Personal Property / Gifts-in-Kind**

The Foundation may consider gifts of other personal property and tangible personal property (often used interchangeably with "gifts-in-kind"), including but not limited to works of art, patents, copyrights, antiques, automobiles, boats, stamp and coin collections, jewelry, furniture, rare books, manuscripts, or any other item that has a determinable value. The GAC may approve such contributions only after a review indicates that the property is either readily marketable or needed by the University. It is the practice of the Foundation to sell or otherwise dispose of all gifts of personal property, unless the items can be used by the University in a manner related to teaching, research, or engagement. The Foundation's intention to either sell the property or to retain and use it to further its charitable activities shall be communicated to the donor in writing at the time of the gift.

Gifts-in-kind for which donors are eligible for a charitable gift deduction in accordance with current IRS regulations should be reported at the fair market value per IRS regulations. Only those gifts-in-kind that can be readily converted to cash, or items such as equipment, books, artworks, etc. that can be used in support of teaching, research, or engagement, will be accepted provided that the receiving departments agree to use the in-kind materials before accepting the gift.

Depending on the appraised value of the donated item, the donor may submit a copy of their IRS Form 8283 (Appendix H) to the Foundation which would include an appraised value if the item is valued over \$5,000. If the donor does not supply a value, someone in the receiving department who has knowledge of the general type of item may provide a value for **internal purposes only. This substantiation of value can also be provided by other experts or other process as defined by IRS publication 561.** The receiving department must submit a contribution form for in-kind gifts (Appendix I). **Internal values of donated items are not to be shared with donors unless included in external audit confirmations.**

The Foundation is able to accept gifts-in-kind only if the following conditions apply:

- The gift shall not require of the University to commit significant additional expense for its present or future use, display, maintenance, or administration.
- The gift shall not commit the University to any financial or other burdensome obligation, either directly or indirectly.
- The valuation of the gift for the donor's tax purposes shall be based on market value as determined by a qualified independent third party who is neither the donor nor an officer or employee of the University.

- There shall be no expectation, understanding or condition that gifts such as books, paintings, or other tangible property will be loaned back to the donor or his designee for life or for extended periods of time determined by the donor.

## **E. Real property**

The Foundation may accept gifts of real property, both improved and unimproved, only after review and approval by the GAC in consultation with legal counsel where deemed appropriate. Real estate gifts can include personal residences, rental properties, office buildings, land, leasehold interests and other structures. Such gifts may be outright gifts, bargain sales, installment sales, or part of a charitable life-income plan. As real estate can be costly to maintain until liquidation and can have pre-existing conditions attached to it, any offer of real estate will be carefully scrutinized, and information gathered on the property will be provided to the GAC before acceptance by the Foundation. In most cases, gifts of real property are deeded to the Foundation to be held on behalf of the University.

### **1. General Conditions**

A potential contribution of real property requires a thorough evaluation of the condition and characteristics of the proposed gift before it is formally accepted. Typically, the donor must provide a legal description and location of the property; copies of all relevant and available information about the property including evidence of clear title; zoning restrictions; a copy of the most recent appraisal, if available; and information concerning any environmental problems on the property including the most recent environmental assessment if available. In some instances, the Foundation will commission an environmental assessment and appraisal of the property for its own use before accepting the gift.

The GAC will require the following items in order to review a gift of real property:

- Basic information from county tax assessor's office (PIN, tax history, etc)
- a preliminary title report clear of unacceptable encumbrances, performed by a reputable title insurance company
- an appraisal by a qualified, independent appraiser (MAI preferred)
- a phase one environmental audit indicating that ownership will not expose the Foundation to environmental liabilities (the GAC may waive the phase one requirement for non-farm residential properties)
- a market feasibility study for purposes of liquidation
- an on-site evaluation by member of GAC
- evidence of compliance with ADA (when applicable)
- a structural engineering report (when applicable)
- a review of leases (for commercial properties)
- a disclosure statement for residential properties (when applicable)

Under IRS regulations, donors are responsible for valuing property for tax deduction purposes and therefore must pay for any initial appraisal made on the property. Unless waived by the GAC, it is the responsibility of a donor to cover all the costs involved in an environmental impact study, title search and any other related studies.

### **2. Environmental Issues**

It is the responsibility of the Foundation to determine the liabilities associated with the acceptance of any gift. A site inspection may ascertain the probable potential for environmental risk. Unless otherwise waived, the GAC requires that an outside technical consultant be engaged to complete a Phase I Environmental Site Assessment report, as a minimum, for each property contributed to the Foundation.

### **3. Indebtedness**

Accepting and holding properties subject to a mortgage is likely to involve the Foundation in unrelated business activity, thereby raising the issue of unrelated business income tax liability. The GAC will consider on a case by case basis a bargain purchase of mortgaged properties.

**4. Costs**

The marketability of a property must be considered before a gift is accepted. The cost to hold the property for sale is important in deciding whether or not to accept the gift. Carrying costs may include property taxes, mortgage payments, maintenance, insurance, and association or membership fees. Unless otherwise agreed to by the GAC, the carrying costs shall be borne by the donor through additional contributions to the Foundation until the donated property is sold. All direct expenses related to outright gifts of real estate will be charged to the project, and only the net proceeds will benefit the gift purpose.

**5. Designated Purpose**

The donor may designate a purpose within the University for a fund created by the assets received from the transfer of such property, subject to the guidelines for establishing named endowment funds.

**6. Maintenance**

No financial or other burdensome obligation or expenses shall be incurred directly or indirectly by the Foundation or the University as a result of a gift of real property without the prior approval of the GAC.

**7. Life Estate**

A donor may retain a life estate interest for himself and others in the gift property. Expenses for maintenance, real estate taxes, insurance, and indebtedness relating to the property will normally be borne by the donor or his primary beneficiary where a life estate is retained in such property.

**8. Disposition of Property**

The basic practice of the Foundation is to sell all gifts of property as soon as advantageous. The GAC or its approved designees are responsible for the sale or disposal of property on behalf of the Foundation. The donor may assist in locating a buyer for the property, but under no circumstances should the donor have established a marketing or sales agreement with any agent or principal, nor should the buyer have a signed sales agreement on the property prior to the gift. To do so would bind the Foundation's hands and jeopardize the donor's tax deduction. The Foundation will seek to obtain the best possible price to meet its fiduciary responsibility to the Foundation, the University, and the donor. In most cases, the Foundation will receive a copy of the donor's appraisal utilized to establish the fair market value of the contributed property. This appraisal will aid the establishment of a market price for the property.

**F. Bargain Sale Arrangements**

A bargain sale is a sale of property for less than its fair market value. A bargain sale may be utilized when the donor wants to maximize the charitable deduction, and the donor needs some funds or an installment income stream from the sale. It is also one way to enable a gift of encumbered property to proceed. If the property or item is desired by the Foundation or the University, a bargain sale is one means to acquire the property that may be advantageous for the donor and the University. A gift of this type must be reviewed by the GAC before acceptance.

**XI. Guidelines Pertaining to Bequests and Other Deferred Gifts**

**A. Bequests and Estate Distributions**

Distributions received by the foundation through an individual's estate plan may involve a devise by will (commonly called a bequest) or a distribution from a trust. Bequests should

be directed to the Foundation. The Foundation should obtain a copy of a bequest designation to ensure that the devise is properly described and directed.

In many cases the University is not aware of a bequest or trust distribution until notice is received from the personal representative or trustee of a deceased donor. In some cases, it may be best for the Foundation to disclaim a bequest or distribution upon institutional concerns of liquidity, marketability, holding costs, environmental contamination, liability, or the existence of unacceptable conditions or restrictions pertaining to the utilization of the funds. If the bequest involves securities, real estate, or personal property, the GAC will follow the appropriate guidelines for acceptance of those items.

In those cases in which the Foundation is the recipient of undesignated bequests, these gifts will be deemed unrestricted and therefore will be utilized in order to address the greatest needs of the University. Except for extraordinary circumstances, undesignated bequests of amounts that reach minimum endowment threshold levels will be used to establish permanent endowment funds in the name of the donor according to the University's naming policies. Undesignated bequests of amounts less than minimum endowment levels will be deposited in an unrestricted endowment.

While it is customary that no University staff member may serve as Executor, Personal Representative, or Successor Trustee for an estate of an individual not related to him/her and of which the University or Foundation is the beneficiary, in select cases where the University or the Foundation is the sole beneficiary, the GAC may allow the Foundation to serve in these roles on the condition that a qualified and appropriate outside counsel or agent will be secured to provide all necessary services.

During the probate of estates containing a devise to the Foundation or University and during the post-death administration of revocable trusts containing dispositive provisions benefiting the Foundation or University, the Vice Chancellor of Advancement, or their designee, in consultation with legal counsel, shall represent the Foundation in dealings with the attorney and personal representatives of the estate.

#### **B. Revocable Trusts**

Revocable trusts may be established by individuals for a number of reasons. Revocable living trusts are commonly utilized as part of an estate plan. Sometimes the grantor(s) will establish a revocable trust, retaining the ability to gain access to those funds in the future. A revocable charitable trust has a prominent charitable purpose and is designed to provide for an ultimate gift of real estate, cash, or other property.

Since the property may be returned to the grantor if needed later, there are no current income tax advantages to a revocable trust plan. At the grantor's death, title passes under the terms of the trust agreement.

Property in a revocable trust passing to Foundation or the University is eligible for the unlimited charitable estate tax deduction to the extent otherwise allowable by law. The income from a revocable trust during the grantor's lifetime may be paid to the Foundation as the grantor may direct. Neither the Foundation nor University may serve as trustee for a trust that may be amended or revoked during the grantor's lifetime.

#### **C. Charitable Remainder Trusts**

WCU Foundation partners with other UNC System Schools in the NC Gift Planning LLC. In most instances, the NCGP LLC entity serves as trustee for all trusts and agent for all annuities.

Charitable remainder trusts are irrevocable, separately administered trusts established by the donor. Trust payments are provided to the donor and/or other named beneficiary(ies) for life or a term of years (not exceeding twenty), whereupon the remaining assets are distributed to one or more charities.

A charitable remainder annuity trust pays a fixed amount each year. This distributed amount cannot exceed an amount that would likely exhaust the trust assets during the anticipated term of the trust. The amount payable in an annuity trust does not change, and no additional gifts may be made to the annuity trust after its creation.

**D. Charitable Lead Trusts**

WCU Foundation partners with other UNC System Schools in the NC Gift Planning LLC. In most instances, the NCGP LLC entity serves as trustee for all trusts and agent for all annuities.

In many ways lead trusts are the opposite or reverse of charitable remainder trusts. A charitable lead trust pays out income (or the lead interest) to the Foundation for the life or lives of persons living when the trust is created or for a specified term of years. At the end of the term, the trust assets revert to the donor, the donor's estate, or specific beneficiaries named in the trust document. The amount paid to the Foundation during the term of the trust may be either a fixed sum (an "annuity trust" interest) or a percentage of the trust assets as valued each year (a "unitrust" interest).

Unlike the charitable remainder trust, there is no 5% minimum payout rate with the lead trust. The lead trust may be a grantor lead trust, or a nongrantor lead trust, and the income tax implications will vary depending on the type of trust selected. There are estate planning advantages in using a lead trust to transfer appreciated assets to heirs. The donor shall be responsible for understanding and evaluating the tax implications of a lead trust, including income, estate, and the Generation Skipping Tax (GST) implications.

Currently, it is the practice of the University that neither the Foundation nor University may serve as trustee of a charitable lead trust in which either is also the charitable beneficiary.

**E. Charitable Gift Annuities**

WCU Foundation partners with other UNC System Schools in the NC Gift Planning LLC. In most instances, the NCGP LLC entity serves as trustee for all trusts and agent for all annuities.

A charitable gift annuity is a combination of a gift to a charitable organization and an annuity. It is an irrevocable transfer by a donor of cash (or other property) to a qualified organization in exchange for that organization's commitment to pay a fixed amount for the lifetime of one or two beneficiaries.

Gift annuities are governed by state regulation, and those regulations vary from state to state. Some states have specifically exempted gift annuities from regulation, and other states do not address gift annuities by statute. Currently, the Foundation is registered to issue charitable gift annuities in North Carolina and Missouri. The Foundation will issue gift annuities in other states in compliance with the appropriate regulations. By establishing a gift annuity, the donor receives a charitable income tax deduction based on the donor's age and established actuarial tables governing annuities. The tax deduction is based on the anticipated value of the asset after the income payments have stopped.

Generally, a gift annuity may be funded with a gift of cash or securities. When the annuity is funded with appreciated assets, a portion of the capital gain is avoided by the gift and the balance is spread over the life expectancy of the donor. A gift annuity reduces but does not avoid the capital gain tax obligations of the donor. At this time, the GAC will consider real estate as the funding asset for a gift annuity only if the annuity is deferred to allow time to sell the property.

**F. Life Insurance Gifts**

The Foundation will accept whole life policies, either new, partially paid-up or fully paid-up policies. Term insurance provides few options if the donor is unable to continue paying

the premiums and therefore ownership of term life insurance is not accepted by the Foundation; however, donors can certainly name the Foundation as beneficiary of term life insurance policies.

Donor's who name the Foundation as beneficiary of term life policies will be recognized as members of the appropriate planned giving society, but the value of the policy cannot be counted toward the donor's cumulative giving totals and cannot be counted toward campaign or fundraising totals.

A gift of life insurance is considered a gift of ordinary income property. There are four primary ways that life insurance can be utilized as a charitable gift to benefit the University:

- The donor transfers ownership of an existing, paid-up policy to the Foundation as owner/beneficiary (in whole or part). The gift is accomplished with an absolute assignment form obtained from the insurance company and is recorded at its value at the time of transfer as valued in accordance with tax regulations.
- The donor purchases a new policy with the Foundation as owner and irrevocable beneficiary or transfers an existing, but non-paid-up policy. The premium payments under this scenario are deemed to be cash contributions to the University, which in turn makes the premium payments to the insurance company. The donor makes a pledge to make regular gifts to cover the premium payments. Cash or negotiable securities may be accepted for premium payments. In the case of existing, non-paid-up policies, the initial gift will be recorded at its value at the time of transfer as valued in accordance with tax regulations.
- The donor retains ownership of a policy and designates the University as a beneficiary or contingent beneficiary of the policy. While the donor retains ownership of the policy, there is no immediate tax deduction available.
- The donor purchases life insurance to provide a benefit to heirs when other assets are contributed to the Foundation. Through an irrevocable life insurance trust, heirs of the donor and/or the Foundation may receive additional benefits through the donor's estate plan.

In instances where donors of non paid-up policies discontinue making gifts that satisfy premium payment requirements, the GAC retains the option of cashing in the policy or continuing premium payments from other Foundation or University assets if circumstances warrant.

#### **G. Life Estate Agreements**

A life estate agreement is a charitable instrument by which a personal residence, vacation home, or farm is transferred by deed to a charitable organization during a donor's lifetime and the donor retains usage of the property for life. A donor may retain a life estate interest for himself and others in the gift property. Expenses for maintenance, real estate taxes and indebtedness relating to the property will normally be borne by the donor or his primary beneficiary during the period of the life estate. All potential life estate agreements must be reviewed by the GAC before acceptance.

#### **H. Retirement Assets**

Supporters are encouraged to list the Foundation as the beneficiary of accumulated assets in qualified plans such as IRAs, 401(k), 403(b), and other such retirement instruments. Under current regulations, donors should carefully consider the income tax consequences before transferring retirement accounts to the Foundation during life.

## **XII. Guidelines on Investment of Gift Property**

The responsibility for the investment of Foundation and University endowment funds is exclusively that of the WCU Foundation Board and the WCU Endowment Fund Board. Donors expressing an interest in the investment guidelines or expected income yield on their gifts should be advised of the general investment policies of the Foundation and University. Information as to these policies may be obtained from the Vice Chancellor for Administration and Finance who also serves as Treasurer of the Foundation.

In the case of charitable trusts for which the donor may elect to serve as his/her own trustee or appoints another as trustee, the setting of the investment policy shall be between the donor and trustee.

## **XIII. Other Guidelines**

### **A. Fees**

#### **1. Finder's Fees or Commissions**

Consistent with the codes of ethics of the Association of Fundraising Professionals, the Council for the Advancement and Support of Education, and the National Committee on Planned Giving, no finder's fee or commission of any type will be paid by the Foundation to any party in connection with the completion of a gift to the Foundation without the prior written approval of the GAC.

#### **2. Professional Fees**

Reasonable costs of gift acquisition, such as transaction costs and professional fees, will normally be borne by the donor. However, there may be occasions when a prospective donor conditions the gift on the Foundation's agreement to pay such costs. The Foundation will verify the reasonableness of the costs and that the cost reimbursement complies with state and federal requirements, including but not limited to tax laws and professional ethical guidelines. If appropriate, the Foundation may agree to cover gift acquisition costs from its operating budget.

#### **3. Administrative Fees**

To the extent permitted by law, the Foundation reserves the right to levy an administrative fee or trustee fee on endowment accounts, life income plans, charitable trusts and, generally, where appropriate. The Foundation's Finance Committee may establish fees annually based on the Foundation's actual cost of administration of gifts.

### **B. Appraisals**

All appraisals of real and personal property contributed to the Foundation shall be done in accordance with IRS Publication 561, "Determining the Value of Donated Property." A real property valuation should be prepared by an MAI appraiser. Personal property should be appraised by a qualified appraiser acceptable to the Foundation.

Expenses incurred to obtain an appraisal shall be the responsibility of the donor unless special circumstances exist that make it appropriate for the Foundation to share the cost. Any appraisal cost borne by the Foundation must be approved by the GAC.

### **C. Refunds**

It is the practice of the Western Carolina University Division of Advancement that charitable gifts received by the Foundation shall not be returned to the donor, except in the following limited circumstances:

- (1) A payment to the Foundation which is clearly made in error, such as (A) an

erroneous duplicate payment, or (B) a payment which the donor clearly intended to make to another individual or entity. Payments within this category will be returned to the donors upon approval of Foundation management.

(2) The Foundation is required under a legally binding contract to return a charitable gift to the donor. The classic example is a circumstance under which a donor makes a charitable gift to a charitable organization to construct a building, and the building is never constructed, and there is a provision in the applicable binding contract which requires the charitable organization to return the funds to the donor. Returns to a donor that meet the criteria of this category will be processed upon approval by the Executive Secretary and the Treasurer. Legal counsel advice will be sought as necessary.

(3) A court orders the Foundation to return the gift to the donor (or to transfer the fund to another charitable organization), in a court proceeding in which the Office of the Attorney General of North Carolina has been given an opportunity to be heard. Legal counsel will consult with the Board of Directors of the Western Carolina University Foundation as necessary, in connection with any gift which may become, or which becomes, the subject of such a court proceeding.

(4) The University Gift Acceptance Committee has reviewed the request and supporting documentation and has made a determination that the return of a gift is the most appropriate course of action. This decision should take into account the legal, financial, and donor relations implications to the University and the Foundation.

Foundation staff and management shall consult with legal counsel, as necessary, as to the tax reporting obligations, if any, with respect to a returned payment or gift. The donor should also be made aware of potential tax reporting obligations and informed that they should seek their own advice / counsel.

**D. Tax Exempt Status**

Neither the Foundation nor the University shall accept any gift or enter any agreement which would improperly benefit any individual or would jeopardize the tax-exempt status of the Foundation or University as determined upon the advice of Foundation and University legal counsel.

**E. Naming Gift Contingencies**

In all its dealings and agreements, the University will seek to guard its reputation within the community. In cases where its reputation is jeopardized by the actions of a donor, the University reserves the right to revoke previously approved naming rights for any purpose including but not limited to endowed funds; academic units, programs, and activities; facilities; and landscapes. In the unlikely event that this action must be taken, University Policy 11 procedures will be followed to make such recommendation to the appropriate committee of the Board of Trustees for action by the Board.

**F. Confidentiality**

To the extent possible, all information concerning deferred gift donors, including names and addresses, amount of gift, names of beneficiaries, nature and value of estate, amounts of provisions, etc., will be kept strictly confidential by the University and its committees unless permission is granted by the donors to release such information or is otherwise required to be released by law.

**G. Legal Counsel and Other Advisors**

All prospective donors will be urged to seek their own counsel in matters of estate planning, taxes and planned gifts. It is not the province of the Foundation to give legal advice, which function is for the donor's counsel who alone must bear responsibility for all legal conclusions and advice. Prior to accepting any gift, the Foundation shall advise the prospective donor to seek professional advice from his attorney and/or accountant,



particularly if the prospective donor intends to make a deferred gift through use of a will, trust, annuity contract or other instrument. If the prospective donor has not yet established a relationship with a qualified professional adviser, representatives of the Foundation may refer the prospective donor to qualified professionals. The professional receiving the referral must understand that the professional is being retained by the prospective donor to represent only the prospective donor's interests and not those of the Foundation.

**H. Tax Advice**

Prospective donors will be encouraged to seek independent tax counsel regarding the completion of planned gifts. Although neither the Foundation nor the University is in the position of giving tax advice, donors must be informed of certain consequences related to their gifts. For example, donors should be given information regarding the requirement for an appraisal of certain non-cash contributions exceeding \$5,000 on the IRS Form 8283, and that the University must notify the IRS if the donated item is sold, exchanged or otherwise disposed of within two years of receipt (on IRS Form 8282).

**I. Forms and Agreements**

University staff or counsel may provide suggested language for trust or other gift documents, subject to review or utilization by the donor's own counsel. Suggested language pertinent to a bequest or other planned gift document may be provided by the division to the donor, donor's counsel and/or professional representatives. Legal counsel shall be utilized to review or prepare appropriate formal and legal documents. Certain deferred gifts, such as charitable gift annuities and pooled income agreements, require the use of standard forms provided by the University and approved by appropriate governmental agencies.

**J. Signature Authority**

Only certain authorized officials at the University have authority to sign documents on behalf of the University or the Foundation. Deans, directors, chairs or other employees do not have authority to sign on behalf of their school, unit or department unless authority has been specifically given by the Board of Trustees or the Foundation Board of Directors.

Currently, the following individuals have authority to sign on behalf of the WCU Foundation:

Kelli R. Brown, President  
Michael T. Byers, Treasurer  
Jamie T. Raynor, Executive Secretary

**Appendix**

- A. [WCU University Policy #55](#)
- B. [WCU University Policy #11](#)
- C. [WCU University Policy #104](#)
- D. [Donor Bill of Rights](#)
- E. [Association of Fundraising Professionals Code of Ethical Standards](#)
- F. [CASE Statement of Ethics](#)
- G. [WCU Division of Advancement Endowment Amounts Guidelines](#)
- H. [IRS Form 8283](#)
- I. [Advancement Guidelines for Non Cash Gift](#)
- J. [WCU Foundation Gift Naming Guidelines](#)