

Some Early January Thoughts About Gift Acceptance Policies

01.09.25 | Linda J. Rosenthal, JD



Against a background of uncertainty and – perhaps – turmoil, the nation’s charitable nonprofits are now at the start of the 2025 fundraising season.

A few years ago in 2022, just ahead of the critical holiday-season rush to secure as many donations as possible by New Year’s Eve, we distilled [widely accepted key advice](#) for charitable fundraising down to three points. In no particular order, they are: 1. Dot I’s and Cross T’s; 2. Follow the Rules; 3. Say “No” Sometimes. To briefly recap –

- *“Dotting the I’s and Crossing the T’s”*

[Not unsurprisingly, our final blog post of 2024 was a reminder about Point 1. See [Just One Last Fundraising Task](#) (December 30, 2024), FPLG Blog.]

For cash contributions of \$250 or more, the 501(c)(3) donee must draft and deliver to the donor a “contemporaneous written acknowledgment” (CWA). It’s “[not exactly rocket science](#)” The IRS provides sample “magic words” for the one-paragraph document. And it “... doesn’t have to be done right away.”

But it *must* be done – without even a minor mistake or deviation from the strict statutory requirements. Otherwise, there are [catastrophic consequences for the donor](#) who will be denied the entire claimed federal tax deduction. See, e.g., [Year-End Fundraising: A Few Random Reminders](#) (November 30, 2022), [FPLG Blog](#) and [Charitable-Deduction Substantiation: A Reminder and a Reprieve](#) (December 28, 2023), [FPLG Blog](#).

The most prudent way to comply with this requirement is to take care of it during the year as each (qualifying) donation is completed. If, for example, it’s the final item on a fundraising/donation

checklist, no one will forget about it until after the cut-off which is a few months into the next calendar year. Catastrophe averted.

While it's technically a duty imposed on *the donor* in order to substantiate the claimed tax deduction, many generous supporters don't have a clue about this requirement or what a properly worded CWA should include. So it's up to the donee-organization to make sure it's done – and done right.

- ***“Follow the Rules”***

“Even in our brave new world of online giving, crowdfunding, and various novelties of payment, it's all still “fundraising” as that term is understood by each and every government regulator looking over your shoulder. Each time anyone clicks the 'donate' button on your website, it may trigger registration duties and other legal requirements – not only in your own state of incorporation but beyond those borders to other jurisdictions.”

Simply put, merely having a federal tax exemption does not give a green light to soliciting donations. State law governs: The jurisdiction arises from several hundred years of common law oversight authority of making sure that charitable trusts and assets are not diverted away from their proper purposes.

For two reasons, complying with this Point 2 should be near the top of your January priorities. First, you may not fundraise until required registrations and other filings are completed.

Second, it's complicated: You'll likely need help. In addition to the expertise of your lawyer and accountant, there are consultants who specialize in the maze of multi-state solicitations duties. For a general idea of what's involved, see – for instance: *Major Revisions to California AG's Guide to Charities* (December 5, 2024) *FPLG Blog*; *California Crowdfunding: New Online Registration Portal* (June 19, 2024) *FPLG Blog*; and *Charitable Solicitations Registration*, *National Council of Nonprofits*.

- ***“Say ‘No’ Sometimes ”***

“Since the earliest days of [our FPLG] blog ..., we've regaled you with tales of tainted donations or donors, overbearing philanthropists tying you down with unbearable conditions, property gifts-turned-albatrosses, and other horror stories of gifts-gone-bad....” Even when, as in the last few years, inflation has been roaring, more people have been asking for your services, and you are short-staffed, that is not a go-ahead excuse to take any and every offer of support that walks in the door. “Sometimes the cost of a gift can be much too high to justify. It's okay to just say no....”

A formal written gift-acceptance policy adopted sooner rather than later does wonders to prevent mistakes and provide “cover” when you must tactfully decline a donation.

It is *not* mandatory, though – just highly recommended.

It's considered a fundraising “best practice” to carefully consider your organizational needs as well as an acceptable level of risk, determined in an intentional and collaborative process that includes key leaders and fundraising people on your team. See, particularly: *Understanding and Drafting Nonprofit Gift Acceptance Policies*, Kathryn J. Miree, J.D., 25 pp. PDF, *giftplanners.com*. The process, itself, is almost as important as the contents of the final document presented to, and

approved by, the board of directors.

The fact that the Internal Revenue Service, on the annual Form 990, requests that you disclose whether or not you have a gift-acceptance policy – along with additional information if you check the “yes” box – does not turn this into a mandatory requirement although it may factor in your decision about how quickly your organization puts this issue on the table.

In any event, there are many other reasons to proceed asap to form a committee and begin work.

First Blog Post of 2025

Let's now switch this conversation over entirely to the topic of gift-acceptance policies.

At the outset, it's important to acknowledge the existence of a more than an insubstantial level of ambivalence in the charitable community about the topic. Yes, it is a choice and not a statutory requirement. Nevertheless, a surprising number of people are wobbly on the matter. They aren't sure about: (1) the need for a written gift-acceptance policy *at all*; or (2) the need for one *right now* (especially) if the organization is relatively small or new and receiving only cash donations.

More worrisome is that too many people in key decision-making positions at charities don't know whether – or under what circumstances – they can or should turn down a donation.

“To a struggling charity, the idea of refusing to accept a charitable gift is a strange concept. After all, whatever the gift is, and whatever its worth, the gift is more than the charity had before, right?” In *Gift Acceptance Policies— Why, When, What, How And Who* (March 2007) 11 pp. PDF, *Charitable Gift Planning News*, adlercolvin.com., attorney Barbara Rhomberg relayed this hypothetical argument she has heard all too often. Her response was clear in stomping down against this misguided thinking: “Wrong,” she wrote. “Some charitable gifts are more trouble or expense than they are worth. Some gifts expose the charity to more potential liability than they are worth.”

Ms. Rhomberg's article then continues in great detail about the many ways that a donation can backfire as well as why and how a gift-acceptance policy in writing can avoid bad outcomes.

Kathryn V. Miree, cited [above](#), also offered context: “Gift acceptance policies are rarely adopted at the inception of a nonprofit organization's fundraising program....Early development activities usually focus on cash, and occasionally marketable securities. There is little discussion of, or involvement with, other gift forms....” So many newer and smaller organizations don't consider drafting a formal policy.

She elaborated: “Gift acceptance policies are a product of capital campaigns or planned giving campaigns in which planned giving concepts, such as gifts made from assets, split interest gifts, and deferred gifts, are introduced.” That's the point at which much of the ambivalence or hesitation to make this planning a priority evaporates.

How Urgent is It?

On its current website, the National Council of Nonprofits tackles what it described as a frequent question by organizations that receive donations “only by cash or check.” They want to know if they

need to spend valuable time and limited resources right away to develop a formal gift acceptance policy: NCN's advice: "...[Y]ou never know when an unusual gift will arrive." See [Gift Acceptance Policies](#), [councilofnonprofits.org](#).

NCN adds: "Having a written policy that is adopted by the board will help expedite a process that otherwise might be delayed, and provides volunteers and staff with a consistent way to handle unanticipated and unusual situations. A policy also de-personalizes the situation for staff members on the frontline of receiving an unusual gift who may be in the awkward position of explaining to a donor that the nonprofit will not automatically accept the donor's gift."

See also: [Donation Policy – Controversial Donations](#) (April 15, 2009) Emily Chan, Esq., *NEO Law Blog*: "The best time to address an organization's donation policy is before a controversial donation arises."

Fundraising "Best Practice"

According to the National Council of Nonprofits: "Having a comprehensive, custom-drafted, gift acceptance policy in place well ahead of any decision on a particular offered donation is accepted '[best practice](#)' from [multiple perspectives](#) – whether relating to relationships with donors or managing the nonprofit's own risks.

First, the board of directors has fiduciary duties that include creating policies that "[protect the charity](#)" including determining which people in the organization are authorized "... to make important decisions for the charity, like accepting a major gift."

Second, "since individuals come and go," memorializing the gift-acceptance policy as it is reevaluated and revised over time becomes "a tool that embodies the [collective wisdom of the organization](#)." This process improves "the policy based on what they have learned from their experience in handling difficult gifts. Potential problems are flagged, checklists on how to evaluate gifts are developed..."

There are many other benefits to this undertaking, including educating new or inexperienced board members or staff to fully appreciate how many ways a gift go terribly wrong. According to Kathryn Miree and other experts, this [process is, in many ways, as important as the content](#) of the final approved document." It "...allows the staff and the board to work through the practical issues, such as costs associated with certain gifts, and is a far more valuable educational tool than a seminar or article on the subject..."

The Horror-Story Approach

One of the best aspects of Kathryn Miree's guide, [Understanding and Drafting Nonprofit Gift Acceptance Policies](#), is her special approach to persuading new or otherwise unreceptive or on-the-fence board members or staff.

We all know, she explained, that "[r]eview of gift acceptance policies is always a tedious process. Invariably, the committee working to draft the policies [loses its focus by the second or third reading](#) and begins to wonder of the need for such painstaking detail..."

“At this point,” throwing in “a cautionary tale or two...” is a good idea. It “..provides the incentive to keep moving. Sometimes experience is the best teacher, and learning from the mistakes of others is always less expensive and less painful.” It’s a great persuasion technique for swatting away doubts and objections to nixing this or that category of gift.

And to reinforce this technique (following the lengthy main section of her guide that includes the in-depth discussion of why this or that category of donation is acceptable or may be unsafe or unwise), she plunked down a special section titled *Cautionary Tales: Stories of Disaster – The Importance of Learning Through Other Organization’s Disasters (Rather Than Your Own)*.

“There are many cautionary tales to learn from,” she explained, “but the following stories address the need for policies.”

Conclusion

Twenty-years ago, when Kathryn Miree’s Guide was first published, some of these tales were already well-known in the charitable community, having achieved the status of “urban legends” of fundraising calamities.

Since then, on a fairly regular basis, new examples suitable for exposure and examination pop up regularly in the national and local news headlines as well as in legal publications and court reports.

In the decade since the launch of the For Purpose Law Group blog, more than two dozen charitable-donation horror stories have made their way into our pages: poked and prodded for the express purpose of demonstrating “what *not* to do.”

Last August, we launched a special Tenth-Anniversary Blog Favorites series. Our fourth installment, ready to go, is right on point: *Naming Rights: It’s a Philanthropic Jungle Out There* (March 2, 2015).

That’s coming up, along with some more discussion about the value of gift acceptance policies and advice about creating them.

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