

# Tidewater Council, BSA 2016

## GIFT ACCEPTANCE AND POLICY GUIDELINES

### GENERAL

It is the policy of the Board of the Tidewater Council (hereinafter "Council") to offer donors the opportunity to make lifetime or testamentary gifts to the Council primarily for the benefit and support of Scouting programs and facilities of the Council. It is also the policy of the Council to actively seek and solicit such gifts to the Council, and to provide adequate staff and resources in support of the Council's gift program needs and requirements.

These guidelines provide the parameters within which Council staff and volunteers shall function in discussing and promoting acceptable gifts from interested prospects. The guidelines also identify procedures and limitations on gifts that are offered to the Council, for consistent consideration of such gifts in determining their suitability for the Council. These Guidelines are adopted as official policy by the Council's Board.

### GUIDELINE 1 -- PRIORITY OF THE DONOR'S INTEREST

The interest of the donor shall have priority over the interest of the Council. No program, trust agreement, contract or commitment may be urged upon any donor or prospective donor to benefit the Council at the expense of the donor's intent, or which would knowingly jeopardize a donor's interests. Agents or representatives of the Council must make full disclosure to the donor on all aspects of benefits and liabilities of which they are aware that may reasonably be expected to influence the decision of the donor to make a gift with the Council.

### GUIDELINE 2 -- USE OF LEGAL COUNSEL

- a. The Council shall seek legal counsel as needed in matters pertaining to its planned gift program and shall execute no planned giving agreement unless and until all relevant documents have been duly reviewed. The use of documents that have received prior review and approval shall be acceptable.
- b. All agreements in which the Council is the trustee shall follow the format of the specimen agreements approved by the BSA Foundation or the Council's legal counsel, or shall be otherwise approved by them.
- c. Though the Council is obligated to provide donors with as much information as possible regarding benefits, limitations and tax implications of specific gifts or gift arrangements, the Council shall not be considered to be offering tax or legal advice to donors or prospects. All

prospects and donors shall be advised, both orally and in writing, to seek their own legal counsel in matters relating to their gifts, tax and estate planning. In particular, donors will be informed that the Council cannot take into consideration the effect or impact that state laws, statutes, or taxes may have upon the suitability of a gift, or upon the terms of an agreement.

### **GUIDELINE 3 -- AUTHORIZATION FOR NEGOTIATION**

- a. Representatives and agents of the Council, BSA Regional Endowment Counsel, Scout Executives, and other appropriate BSA professionals and volunteers are encouraged to discuss planned giving with prospective donors. However, only persons authorized by the Council Board may accept and formalize any Council gift from a donor.
- b. No gift or gift agreement may be accepted by the Council unless it complies with the requirements of the guidelines herein stated. Any variances must receive prior approval by the Council's legal counsel and/or Executive Board.

### **GUIDELINE 4 -- CONFIDENTIAL INFORMATION**

All information concerning donors and prospective donors, including names, names of beneficiaries, amount of gift, size of estate, etc., shall be kept in strict confidence by the Council and its authorized personnel. A donor or, in the case of a testamentary gift or other acceptable circumstances, an executor, beneficiary, or close family member, may grant permission to the Council to publicly announce or recognize a gift.

### **GUIDELINE 5 -- ACCEPTABLE GIFT ASSETS**

The following assets may be deemed acceptable as outright gifts to the Council. Acceptance and suitability of any such property used to fund a charitable trust or income arrangement is discussed herein in Guideline 6. Acceptable assets include:

- a. Cash
- b. Securities
  1. *Publicly Traded Stocks and Bonds* -- may be accepted at fair market value of the stock on the day the gift is received by the Council, as determined under IRS rules.
  2. *Stock in a Closely Held Corporation* -- may be accepted if a valuation has been made by a recent and reliable appraisal acceptable to the Council and as described in Guideline 6 herein. The Council recognizes the difficulties that may arise with such gifts, and

will give special attention in the preparation of gift proposals and agreements to any issues relating to restrictions on excess business holdings, restricted or controlled stock, potential redemptions, pending corporate liquidations, and capital gains treatment upon sale or maturity.

c. Real Estate

1. The Council may accept gifts of real property at fair market value if, at the time of the gift, there are no outstanding mortgages, tax liens, or other encumbrances upon the land. Such value shall be established by at least one recent, reliable, and qualified appraisal acceptable to the Council.
2. If any encumbrances are present at the time the gift is offered, and such encumbrances represent a nominal amount when compared with the total value of the property, such property may be accepted with the approval of the Council Board. How the encumbrance will be removed, and by whom, shall be agreed upon by the Council and the donor in writing prior to acceptance of such property.
3. No gift of real property may be accepted by the Council unless and until such property has been personally visited by a designated Board member, Council staff member, or appropriate agent or designee of the Council (e.g. a council employee or recommended real estate agent). In addition, a written analysis of the marketability and potential use of the gift property shall be prepared by the Council prior to acceptance of the property.
4. No gift of real property may be accepted until a preliminary environmental evaluation, questionnaire, or disclosure statement has been completed or made available for the property in question. This should include a recent Phase I Environmental Site Assessment prepared by an assessor suitable to the Council. In the event that this evaluation or Phase I assessment discloses any information indicating the presence or reasonable possibility of toxic materials, hazardous waste, oil seepage, or other contaminants on the property, additional environmental studies and phase assessments must be completed before the gift is accepted.
5. Arrangements to cover post-transfer expenses should be agreed upon in writing by the donor and the Council prior to the gift. Such expenses include taxes and assessments, insurance, and maintenance costs of the land or any buildings on the land.
6. Tax benefits previously derived by the donor from the gift property, as well as a reasonable estimate of the net value of a real estate gift, shall be taken into

consideration

when

offering and discussing gift proposals, especially involving charitable or split

interest trusts funded with real estate.

7. Any tangible personal property associated with real property gifts, such as furnishings for a home or ranch, should be segregated into separate gift proposals or agreements.

d. Oil and Gas Properties

Acceptable by the Council if in the form of a royalty interest. Working interests and limited partnership interests will not be accepted.

e. Life Insurance

The Council may only accept gifts of a life insurance policy if the Council is irrevocably named as owner and beneficiary of the policy, with all incidents of ownership intact in the policy. Gifts of paid-up policies are preferred. If a policy is accepted that is not paid up, the Council is under no obligation to continue premium payments, but may do so if it is found to be in the best interest of the Council.

f. Tangible Personal Property/Gifts in Kind

1. Gifts of tangible personal property, or gifts in kind, including but not limited to cars, boats, art, stamp/coin collections, equipment, inventory, etc., may be accepted if there are no significant restrictions, limitations, or unreimbursed additional expenses for their present or future use, display, maintenance, transfer, sale, insurance, storage, or other fees and costs. In particular, donors may not require the council to hold any property of any kind for a minimum or specified period of time prior to sale or disposition.
2. Such gifts are normally not accepted if there is a condition, understanding, or expectation that the items will be loaned or sold back to the donor or the donor's family or designee. The Council will presumptively sell all tangible personal property it receives, unless specifically needed for use or consumption related to its charitable purposes, and such sales shall be to disinterested third parties.
3. Prior to any gift of tangible personal property, the Council will provide all donors or prospects written guidance on possible related or unrelated use of the gift property, and IRS Form 8283 and its accompanying instructions. This shall be provided only for the convenience and general information of the donor on the reporting and tax issues relevant to such gifts.

g. Other Acceptable Gift Assets

Upon consideration prior to acceptance, the Council Board may accept gifts to the Council of other types of assets not herein specified or discussed. All appropriate liability and cost/benefit issues related to the gift or gift property shall, as usual, be considered.

#### **GUIDELINE 6 -- APPRAISALS FOR COUNCIL GIFTS**

The Council will not be responsible for furnishing a donor with property appraisals or valuations for gifts to the Council. The Council also will not, under any circumstances, participate in a transaction in which the value of a gift is known to have been significantly inflated above its true fair market value to obtain a tax advantage for a donor.

It is the intention of the Council to follow the requirements and guidelines set out, and from time to time amended, by the Internal Revenue Code related to qualified appraisals and appraisers and gift reporting. Proper receipts will be provided to each donor in a timely manner, and appropriate reporting forms will be used for all property sold by the Council within two years of the date of contribution.

#### **GUIDELINE 7 -- GIFTS AND SPECIFIC ACCEPTANCE CRITERIA**

In considering the acceptance of any gift and its value to the Council, the following factors must be taken into account:

1. The nature of the assets contributed;
2. Total return on investment of the gift assets;
3. The length of the management or trust period; and
4. Factors that cannot be controlled by the council, but are subject to estimate such as investment performance, life expectancy, etc.

Donors and Council representatives should consider as controlling all restrictions and minimums on the following types of gifts. Gifts may vary from these guidelines in certain circumstances, where permitted by law, but must receive prior approval from the Council Board, if it is determined that such variance is to the advantage of both the Council and the donor.

It is the intention of the Council to sell all gifts it accepts, as soon as reasonably prudent and in the sole discretion of the Council trustee, and to reinvest the proceeds from those gifts in keeping with its recommended investment guidelines and portfolio mix.

a. Outright Gifts

No minimum is required, except for gifts of real estate which require a minimum appraised fair market value before they may be accepted by the Council. Donors may not retain any significant rights or benefits in any property or asset offered to the Council, except as herein described in Guideline 7 (e) and (f).

Gifts for a specific purpose will not be segregated or designated as a separate account within the Council, unless the gift value is a minimum of \$50,000, and either the donor requests it or the Council believes it is in its best interest to create a segregated account for the gift.

b. Charitable Remainder Unitrusts

As a general rule, because of staffing limitations, the Council would prefer not to serve as trustee for charitable remainder trusts. We encourage donors to either use a bank or trust company of their choice, or the National BSA Foundation (if the unitrust meets its required guidelines). However, the Council would serve as trustee if this was an important aspect of the gift for the donor.

If the council were to serve as Trustee, the minimum initial gift to fund the Charitable Remainder Unitrust shall be cash or marketable securities with a face value of at least \$100,000. For a unitrust funded with real property or other assets (as approved by the Council) the minimum initial gift shall be \$250,000.

Subsequent additions to a unitrust may be made at any time, with a minimum gift of \$10,000 for each. The percentage to be paid by the unitrust to the donor or to donor's designee(s) shall represent no less than 5% each year of the value of the trust assets, as revalued annually. The maximum unitrust payment may not exceed the IRS guidelines requiring that a minimum of 10% of the trust's value must be available for charitable benefit at the end of the trust. Payments shall be made quarterly to all trust beneficiaries.

The Council may accept unitrusts a) that last for no more than two measuring lives; b) for a selected term of years with a term of no longer than 20 years; or c) an appropriate combination of both. For a one or two life unitrust, all income beneficiaries must be at least 50 years of age at the time the trust is created. For a term of years unitrust, there is no minimum age for beneficiaries. The Council will not accept unitrusts funded with gifts of tangible personal property or gifts in kind.

c. Charitable Remainder Annuity Trusts

As with unitrusts, because of staffing limitations, the Council would prefer not to serve as trustee for charitable remainder annuity trusts. We encourage donors to either use a bank or trust company of their choice, or the National BSA Foundation (if the annuity trust meets its required guidelines). However, the Council would serve as trustee if this was an important aspect of the gift for the donor.

The minimum initial gift to fund a Charitable Remainder Annuity Trust shall be cash or marketable securities with a face value of at least \$100,000. No additions to the annuity trust may be made at any time. The initial annuity amount to be paid annually by the annuity trust, to the donor or to donor's designee, shall represent not less than 5% of the trust assets. The maximum annuity payment may not exceed the IRS guidelines requiring that a minimum of 10% of the trust's value must be available for charitable benefit at the end of the trust. Payments shall be made quarterly to all beneficiaries.

The Council may accept annuity trusts that a) last for no more than two measuring lives; b) for a selected term of years if such term is no longer than 20 years; or c) for an appropriate combination of both. For a one or two life annuity trust, all income beneficiaries must be at least 50 years of age at the time the trust is created. For a term of years annuity trust, there is no minimum age for beneficiaries. The Council will not accept any annuity trusts that are funded with gifts of tangible personal property, gifts in kind, real property, closely held stock, or other property that the Council deems potentially difficult to sell in a timely manner.

d. Charitable Lead Trust

As with remainder trusts, because of staffing limitations, the Council would prefer not to serve as trustee for charitable lead trusts. We encourage donors to either use a bank or trust company of their choice, or the National BSA Foundation (if the lead trust meets its required guidelines). However, the Council would serve as trustee if this was an important aspect of the gift for the donor.

The minimum initial gift to fund a Charitable Lead Trust (either a lead unitrust or a lead annuity trust) shall be cash or marketable securities with a face value of at least \$100,000. For a lead unitrust funded with real property or other assets (as approved) the minimum initial gift shall be \$250,000. Subsequent additions to the lead unitrust may be made at any time, with a minimum gift of \$10,000 for each.

The Council will not accept lead unitrusts funded with gifts of tangible personal property or gifts in kind. Also, the Council will not accept any lead annuity trusts funded with gifts of tangible personal property, gifts in kind, real property, closely held stock, or other property that the Council deems potentially difficult to sell in a timely manner. No additions are permitted to a lead annuity trust.

The percentage to be paid annually by the lead trust to the Council, BSA local council, or other charitable designee shall represent no less than 5% each year of the value of the trust assets, as revalued annually. There is no maximum annual payout rate. Payments shall be made quarterly to all lead trust beneficiaries.

The Council may accept lead trusts of any length or term.

e. Bargain Sales, Gift/Sales, and Undivided Interests

The Council is authorized to enter into a bargain sale with donors, to purchase property of an appropriate nature at less than its fair market value. While each proposed bargain sale gift must be considered on an individual basis, it is the policy of the Council to purchase such property for no more than 50% of its established or appraised value. The property must have a minimum fair market value of \$100,000 at the time the gift is made. The Council may only expend or commit its undesignated and unrestricted fund assets for any bargain sale transaction.

The Council is also authorized to enter into gift/sale transactions (where a donor contributes an undivided interest in property to the Council prior to, and in anticipation of, a subsequent sale of the property). It is the policy of the Council to accept undivided interests of no less than 25% of the total established or appraised value of the property. The Council shall recommend to such Donors that they discuss with their own advisors the possible tax implications for pre-arranged sale contracts or agreements entered into, prior to a charitable gift of that property.

Appropriate safeguards shall be taken with respect to any bargain sales, gift/sales, or undivided interests offered to the Council involving real estate, and all procedures as described in Guideline 5(c) herein shall be followed for such gifts.

f. Life Estate Agreements

The Council may enter into a life estate agreement on homes, vacation homes, farms, ranches, or other real property interests that the Council deems suitable, beneficial, or advisable for use or investment by the Council. The minimum fair market value of the property must be \$200,000 at the time of the gift, and the minimum age for any measuring life on a life interest will be 60 years of age at the time of the gift. Under no circumstances will a life estate agreement be entered into for more than two measuring lifetimes.

Prior to acceptance of any life estate agreement, the guidelines and restrictions on real estate gifts in general, as described in Guideline 5 (c) herein, shall be followed by the Council. No life estate agreement shall be entered into in exchange for any annual income or annuity amount payable by the Council.

g. Testamentary Gifts

The Council may accept any gifts approved by these Guidelines if offered to the Council through bequests, will substitutes, or testamentary trusts and instruments. Such gifts will be subject to the same guidelines and restrictions as if the gift had been made to the Council during the donor's lifetime. The Council may disclaim any bequest or testamentary gift if determined by the Council Board to be in the best interests of the Council to do so.



h. Revocable Trusts

The Council may accept or serve as trustee on trusts subject to amendment or revocation by the donor. Such trust must, however, be established by a donor who has, in the past, demonstrated significant support of Scouting either in contributions of service or financial gifts. Revocable trusts are subject to the same minimums and restrictions as described herein for irrevocable gifts and trusts of similar nature.

i. Gift Annuities/Pooled Income Fund Gifts

The Council will not accept gifts in exchange for a gift annuity or pooled income fund payment from the Council. Donors interested in such gifts shall be referred to the National BSA Foundation and encouraged to get information from them about the BSA Gift Annuity Program and the BSA Pooled Income Fund.

**GUIDELINE 8 - FINAL DISPOSITION OF PLANNED GIFT FUNDS**

Upon the death of the surviving beneficiary, or termination, of a gift agreement, the assets and any accruals derived therefrom shall be paid to the Council for its general purposes or specific purposes, unless otherwise restricted or designated by the donor and stated in the gift agreement. It is the policy of the Council to direct all gifts received for general purposes to the Council for discretionary use. All gifts that are donor-restricted shall be directed to the appropriate restricted or endowment funds, for such uses as are consistent with the donor's restriction or request. Gifts received by the Council may not be subsequently distributed to packs, troops, or units.

**GUIDELINE 9 -- INVESTMENT OF FUNDS, PHILOSOPHY, DUTIES AND RESPONSIBILITIES**

Guidelines related to investment of Council funds, investment strategies, philosophies, asset allocations, duties and responsibilities may be set out in a separate document, as drafted and duly adopted from time to time by the Council Investment Committee and/or Endowment Committee, and the Council Board.

**GUIDELINE 10 -- AMENDMENT OF POLICIES AND GUIDELINES**

All Gift Acceptance and Policy Guidelines for the Council are subject to amendment, upon appropriate resolution and vote by the Council Board. However, such amendments may not be used to defeat or infringe upon the rights or expectations of any donor who may have made a gift, or entered into a gift agreement, prior to such amendment.

*August 2007*