Gift Acceptance and Ethical Considerations Regarding Financial Gifts-in-kind

By Elizabeth Moxham, LLM, CFRE

Once a charity's bequest program is in full swing, the organization may wish to attempt obtaining a broader range of planned gifts. In the past 15 years, ideas such as 'buy low-donate high' schemes for art or vacation time-share units, donation tax shelters, and leveraged-donation schemes have emerged. While they may have seemed to some like a good idea at the time, most have ultimately have proven misguided and been denied as legitimate gifts by CRA. The next new idea may or may not be a good one. When a financial professional contacts a charity about the next new and novel donation idea, what is a charity's role in informing its donors of it?

Decisions regarding how to educate donors about potential planned gifts should be based on a charity's gift acceptance policies and ethical codes. Privacy and anti-spam legislation may also be relevant, but are not discussed here.

All members of CAGP are required to commit to and abide by a stringent Code of Ethics, which outlines principles, guidelines and practices they will adhere to in their relations with current and prospective donors. In this article, I refer to members as "gift planners".

Literal compliance with the words of the Code may not, in and of itself, mean a person has acted ethically. Sometimes ethical behavior requires going beyond the literal words of the Code.

In summary, the Code provides that the primary role of the gift planner is to help donors realize their philanthropic goals. The Code requires that gift planners shall act with competence, honesty, integrity and fairness in their relations with donors or prospective donors. They have a responsibility to provide donors with accurate and comprehensive information on all aspects of gifts, including the roles of all interested parties. They are required to encourage donors to consult with their personal and professional advisors in the case of significant and complicated gift transactions. Gift planners have a responsibility to cooperate with other professionals who promote their donor's interests as well as those of the organization they represent. Gift planners must respect the payment schedule and contribution method chosen by donors, insofar as the methods comply with the organization's gift acceptance policies or guidelines. As well, gift planners are required to avoid actual, potential and perceived conflict of interest situations, and are required to notify all interested parties of any situation that may represent a conflict of interest so that the parties can make an informed decision.

Even where a potential gift is handled in an ethical way, a charity's gift acceptance policy may prevent a situation or gift from proceeding.

Gift acceptance policies typically govern fundraising activities and gift acceptance parameters and procedures. They usually provide that a charity is required to issue donation receipts in accordance with the Income Tax Act and Canada Revenue Agency guidelines. They will often provide that the charity does not provide legal, accounting, tax or financial advice to its donors, and will encourage donors to seek independent advice. They may set out the situations under which the charity may reject a gift, which often includes situations where a gift could bring the charity into disrepute, where it improperly benefits an individual or organization, where it is financially unsound, and where it could expose the charity to uncertain or unacceptable risks.

It is useful and important for charities to inform their donors, personally or through media channels such as mail or a website, about general types of planned gifts, such as how life insurance can work as a charitable gift or the advantages of giving publicly-listed securities over cash. However, it is not appropriate for a charity to promote a specific company's donation product and suggests that donors should participate in it. The point at which appropriate information sharing crosses the line to become an activity to be avoided, such as providing financial advice or the intentional or unintentional promotion of a potentially inappropriate product, is somewhere between these two extremes. A charity's role is to evaluate each new and novel donation idea in accordance with the above principles thereby acting in accordance with sound ethical and organizational guidelines.

The complete Code of Ethics is available on the CAGP website at https://www.cagp-acpdp.org/en/code-of-ethics.

Liz Moxham (B.Comm, LLB, LLM, CFRE) is legal counsel in the Office of the University Counsel at The University of British Columbia primarily supporting the Development and Alumni Engagement portfolio, and is a member of the Canadian Association of Gift Planners and its Government Relations Committee.