

BAINBRIDGE PERFORMING ARTS
GIFT ACCEPTANCE POLICIES (Rev. 4/19/18)

Bainbridge Performing Arts, a nonprofit organization headquartered in Bainbridge Island, WA, encourages the solicitation and acceptance of gifts to Bainbridge Performing Arts (hereinafter referred to as BPA) for purposes that will help BPA further and fulfill its mission. The following policies and guidelines govern acceptance of gifts made to BPA or for the benefit of any of its endowment or any of its programs.

I. Purpose of Policies and Procedures

The purpose of this document is to set forth the criteria that BPA and its Gift Exceptions Committee use to determine that a proposed gift is acceptable and to inform prospective donors and their advisors of the types of gifts BPA accepts. While these guidelines establish best practices, they are designed to provide flexibility as directed by the Gift Exceptions committee.

II. Use of Legal Counsel

BPA seeks the advice of outside legal counsel as appropriate on matters relating to acceptance of gifts. Review by legal counsel is usually sought in connection with:

- a. Closely held stock transfers that are subject to restrictions or buy-sell agreements
- b. Documents naming BPA as Trustee
- c. Gifts involving contracts, such as bargain sales or other documents requiring BPA to assume a legal obligation
- d. Gifts of patents and intellectual property
- e. Transactions with potential conflict of interest that may invoke IRS sanctions
- f. Other instances in which use of counsel is deemed appropriate by BPA's Board of Directors or Gift Exceptions Committee.

III. Communications with Donors

BPA holds all communications with donors and information concerning donors and prospective donors in strict confidence, subject to legally authorized and enforceable requests for information by government agencies and courts. All other requests for or releases of information concerning a donor or a prospective donor will be granted only if permission is first obtained from the donor.

IV. Conflict of Interest

BPA does not provide personal legal, financial or other professional advice to donors or prospective donors. Donors and prospective donors are strongly urged to seek the assistance of their own professional advisors in matters relating to their gifts and the resulting tax and estate planning consequences. BPA endorses the Model Standards of Practice of the Charitable Gift Planner promulgated by the National Committee on Planned Giving (attached as Appendix A) and the Donor Bill of Rights promulgated by the Association of Fundraising Professionals) (attached as Appendix B).

V. Restrictions on Gifts

Unrestricted gifts and gifts for specific programs and purposes may be accepted, provided they are consistent with BPA's mission, purposes and priorities. BPA will not accept gifts that are inconsistent with its mission, purposes or priorities or are judged too difficult to administer.

VI. The Gift Exceptions Committee of BPA

The Gift Exceptions Committee will review all non-marketable gifts to BPA, and those gifts referred to it by the Director of Development. The Gift Exceptions Committee consists of the following individuals: the Executive Committee of the Board and the Development Director.

The Gift Exceptions Committee is responsible for regularly reporting its decisions on gift acceptance to the Board of Directors. The Committee is also responsible for reviewing these Policies and Procedures at least annually or more often as needed to ensure that they remain consistent with applicable laws and the programs of BPA.

VII. Types of Gifts

A. The following gifts may be considered for acceptance by BPA:

1. Cash
2. Tangible personal property, including in-kind gifts
3. Securities
4. Real estate
5. Remainder interests in property
6. Oil, gas, and mineral interests
7. Bargain sales
8. Life insurance
9. Charitable gift annuities
10. Charitable remainder trusts
11. Revocable trust agreements
12. Charitable lead trusts
13. Retirement plan beneficiary designations
14. Bequests
15. Life insurance beneficiary designations
16. Intellectual property rights

B. The following criteria apply to the acceptance of gifts in these categories.

1. Cash: Cash may be accepted in any negotiable form. Checks must be made payable to Bainbridge Performing Arts and should be delivered to BPA's administrative offices.

2. Tangible Personal Property: BPA will accept tangible personal property gifts valued at \$10,000 or greater if the gift will generate adequate revenue for the organization, and meet the purposes for which the gift is intended. In assessing the appropriateness of the gift, BPA should address the following questions:

- Is the property marketable? What is the market for and costs of transportation to market and sale?
- Are there any undue restrictions on the use, display, or sale of the property?
- Are there any carrying costs (insurance, storage, ongoing maintenance) for the property?

3. Securities: BPA can accept both publicly traded securities and closely held securities.

Publicly Traded Securities: Marketable securities will be transferred to an account maintained at one or more brokerage firms or delivered physically with the transferor's signature or stock power attached. As a general rule, all marketable securities will be sold upon receipt unless otherwise directed by the Budget & Finance Committee of BPA. In some cases marketable securities may be restricted by applicable securities laws; in such instance the final determination on the acceptance of the restricted securities may be made by the Gift Exceptions Committee of BPA.

Options and Other Rights in Securities: The following questions apply to acceptance of warrants, stock options and stock appreciation rights:

- Is BPA required to advance funds upon exercise of the gift? If so, does BPA have the required funds?
- Is BPA at risk of loss of funds in accepting the gift?
- Are the rights restricted? And if so, does the restriction affect the ability of BPA to dispose of the asset? Does the restriction materially impact the value of the gift to BPA?
- Will acceptance of the gift and/or exercise of the option trigger any tax consequences to the donor?

Closely Held Securities: Proposed gifts of closely held securities, which include not only debt and equity positions in non-publicly traded companies but also interests in LLPs and LLCs or other ownership forms, will be reviewed by addressing the following questions:

- What type of entity is represented by the gift? (For example, C Corporation, S Corporation, LLC, LLP)
- Will the security generate unrelated business taxable income to BPA? If so, does BPA have the funds to pay this tax?

- Will the gift trigger any negative tax consequences to the donor? If the donor is unsure, please advise him to talk with his accountant.
- Are there restrictions on the security that would prevent BPA from ultimately converting those assets to cash?
- How does the company operate? Does its operation of the gift interest create liability for BPA?
- Is the security marketable? If so, what is the market for sale, and estimated time required for sale?

If potential problems arise on initial review of the security, further review and recommendations may be sought from an outside professional before making a decision whether to accept the gift. Every effort will be made to sell non-marketable securities as quickly as possible.

4. Real Estate: BPA will consider real property gifts with a market value of \$50,000 or greater. Gifts of real estate may include developed property, undeveloped property, or gifts subject to a prior life interest. Prior to acceptance of real estate, BPA requires an initial environmental review of the property to ensure that the property is free of environmental damage. In the event that the initial inspection reveals a potential problem, BPA may retain a qualified inspection firm to conduct an environmental audit. The prospective donor must bear the cost of the initial environmental review and any subsequent environmental audit. When appropriate, a title binder shall be obtained by BPA prior to the acceptance of the real property gift. The cost of the title binder will be borne by the donor.

The following criteria applies to gifts of real estate:

- Is the property useful for the purposes of BPA?
- Is the property marketable?
- Are there any restrictions, reservations, easements, or other limitations associated with the property?
- Are there carrying costs, which may include insurance, property taxes, mortgages, or notes, etc., associated with the property?
- Does the audit reflect that the property is free of environmental damage?

5. Remainder Interests In Property: BPA may accept a remainder interest in a personal residence, farm, or vacation property subject to the provisions of paragraph (4). At the death of the life tenants, BPA may use the property or reduce it to cash. Where BPA receives a gift of a remainder interest, expenses for maintenance, real estate taxes, and any property indebtedness will be paid by the donor and/or primary beneficiary.

6. Bargain Sales: BPA may enter into a bargain sale arrangement in instances where the bargain sale furthers the mission and purposes of BPA. All bargain sales must be reviewed and recommended by the Gift Exceptions Committee of BPA. In determining the appropriateness of the transaction, BPA will consider whether:

- The value of the property has been substantiated by an independent appraisal.
- Any debt ration assumed with the property is less than 50% of the appraised market value.
- BPA will use the property, or there is a market for sale of the property allowing sale within 12 months of receipt.
- The costs to safeguard, insure, and expense the property (including property tax, if applicable) during the holding period have been determined

7. Life Insurance: BPA must be named as both beneficiary and irrevocable owner of an insurance policy before a life insurance policy can be recorded as a gift. If the donor contributes future premium payments, BPA will include the entire amount of the additional premium payment as a gift in the year that it is made.

If the donor does not elect to continue to make gifts to cover premium payments on the life insurance policy, BPA may:

- continue to pay the premiums,
- convert the policy to paid up insurance, or
- surrender the policy for its current cash value

Once the policy is accepted, life insurance holdings will be reviewed annually to determine whether it is best to continue to pay the premiums, convert the policy to paid up insurance, surrender the policy for its current cash value, or change the underlying investment structure.

8. Charitable Gift Annuities: BPA offers both current and deferred charitable gift annuities to its donors. The minimum funding amount is \$10,000. BPA adheres to the rates set by the American Council on Gift Annuities. The minimum age for current life income beneficiaries of a gift annuity shall be 65, and the minimum age for a deferred charitable gift annuity is age 55. No more than two life income beneficiaries will be permitted for any gift annuity.

Annuity payments may be made on a quarterly, semi-annual, or annual schedule. BPA will accept only cash or marketable securities for current annuities, and will consider real estate or closely held stock for deferred gift annuities with a deferral period of five years or more, with the approval of the Gift Exceptions Committee.

9. Charitable Remainder Trusts: BPA encourages its donors to name the organization as a remainder beneficiary of a charitable remainder trust and will work with its donors to structure such agreements. However, BPA will not serve as trustee of a charitable remainder trust and will instead encourage the donor to use a professional fiduciary.

10. Revocable Trust Agreements: BPA encourages its donors to name the organization as a beneficiary of all or a portion of a revocable trust agreement. However, BPA will not serve as trustee of a revocable trust agreement and will instead encourage the donor to use a professional fiduciary.

11. Charitable Lead Trusts: BPA may accept a designation as income beneficiary of a charitable lead trust. BPA will not accept an appointment as Trustee of a charitable lead trust.

12. Retirement Plan Beneficiary Designations: Donors and supporters of BPA will be encouraged to name BPA as beneficiary of their retirement plans. Such designations will not be recorded as gifts to BPA until such time as the gift is irrevocable.

13. Bequests: Donors and supporters of BPA will be encouraged to make bequests to BPA under their wills and trusts. Such bequests will not be recorded as gifts to BPA until such time as the gift is irrevocable.

14. Life Insurance Beneficiary Designations: Donors and supporters of BPA will be encouraged to name BPA as beneficiary or contingent beneficiary of their life insurance policies. Such designations shall not be recorded as gifts to BPA until such time as the gift is irrevocable.

15. Intellectual Property Rights: Intellectual property rights, which include royalties, patents, copyrights, contract rights or other similar interests, will be examined in light of the following criteria:

- Is the intellectual property right related to the mission of BPA?
- Can the ownership of the intellectual property right be clearly transferred or assigned to BPA?
- Is the intellectual property right a full or fractional interest? If fractional, who are the other owners of the property and percentage interests? Is the gift deductible to the donor under the IRS partial interest gift rules?
- Does the right in the intellectual property generate, or have the potential to generate, at least \$5,000 or more each year?
- Is there a market for the sale or licensing of the intellectual property right?
- Are there any costs associated with acceptance of the intellectual property right? (i.e., is the gift a patent application that will require further action to secure, are there any claims, liens or other contests associated with the property, or are there likely to be costs associated with defending the intellectual property right?)
- Are there any restrictions on the retention or use of the property?
- What agreements or other legal documents would BPA be required to execute in order to obtain patents, market the property and grant licenses in the name of BPA?

VIII. Miscellaneous

- A. *Securing appraisals and legal fees for gifts to BPA*: It will be the responsibility of the donor to secure an appraisal (where required) and the advice of independent legal, financial or other professional advisers as needed for all gifts made to BPA.
- B. *Valuation of gifts for development purposes*: BPA will record a gift received by BPA at its valuation for gift purposes on the date of gift.
- C. *Responsibility for IRS Filings upon sale of gift items*: The Treasurer's office is responsible for filing IRS Form 8282 upon the sale or disposition of any non-marketable asset sold within three years of receipt by BPA when the charitable deduction value of the item is more than \$5,000. BPA must file this form within 125 days of the date of sale or disposition of the asset. Form 8282 with Filing Instructions is attached as an appendix to these policies.

- D. *Acknowledgement of all gifts made to BPA and compliance with the current IRS requirements in acknowledgement of such gifts is the responsibility of the Secretary/ General Counsel of BPA or his/ her designee.* IRS Publication 561 Determining the Value of Donated Property and IRS Publication 526 Charitable Contributions provide excellent guidance and can be downloaded from www.irs.gov.
- E. *Disclosure provided for pooled funds.* BPA will provide all appropriate disclosures as required by the Philanthropy Protection Act of 1995 for gifts contributed to pooled funds.

Adopted by : _____ on _____.

APPENDIX A

MODEL STANDARDS OF PRACTICE FOR THE CHARITABLE GIFT PLANNER

PREAMBLE

The purpose of this statement is to encourage responsible gift planning by urging the adoption of the following Standards of Practice by all individuals who work in the charitable gift planning process, gift planning officers, fund raising consultants, attorneys, accountants, financial planners, life insurance agents and other financial services professionals (collectively referred to hereafter as "Gift Planners"), and by the institutions that these persons represent.

This statement recognizes that the solicitation, planning and administration of a charitable gift is a complex process involving philanthropic, personal, financial, and tax considerations, and as such often involves professionals from various disciplines whose goals should include working together to structure a gift that achieves a fair and proper balance between the interests of the donor and the purposes of the charitable institution.

I. PRIMACY OF PHILANTHROPIC MOTIVATION

The principal basis for making a charitable gift should be a desire on the part of the donor to support the work of charitable institutions.

II. EXPLANATION OF TAX IMPLICATIONS

Congress has provided tax incentives for charitable giving, and the emphasis in this statement on philanthropic motivation in no way minimizes the necessity and appropriateness of a full and accurate explanation by the Gift Planner of those incentives and their implications.

III. FULL DISCLOSURE

It is essential to the gift planning process that the role and relationships of all parties involved, including how and by whom each is compensated, be fully disclosed to the donor. A Gift Planner shall not act or purport to act as a representative of any charity without the express knowledge and approval of the charity, and shall not, while employed by the charity, act or purport to act as a representative of the donor, without the express consent of both the charity and the donor.

IV. COMPENSATION

Compensation paid to Gift Planners shall be reasonable and proportionate to the services provided. Payment of finders fees, commissions or other fees by a donee organization to an independent Gift Planner as a condition for the delivery of a gift are never appropriate. Such payments lead to abusive practices and may violate certain state and federal regulations. Likewise, commission-based compensation for Gift Planners who are employed by a charitable institution is never appropriate.

V. COMPETENCE AND PROFESSIONALISM

The Gift Planner should strive to achieve and maintain a high degree of competence in his or her chosen area, and shall advise donors only in areas in which he or she is professionally

qualified. It is a hallmark of professionalism for Gift Planners that they realize when they have reached the limits of their knowledge and expertise, and as a result, should include other professionals in the process. Such relationships should be characterized by courtesy, tact and mutual respect.

VI. CONSULTATION WITH INDEPENDENT ADVISORS

A Gift Planner acting on behalf of a charity shall in all cases strongly encourage the donor to discuss the proposed gift with competent independent legal and tax advisors of the donor's choice.

VII. CONSULTATION WITH CHARITIES

Although Gift Planners frequently and properly counsel donors concerning specific charitable gifts without the prior knowledge or approval of the donee organization, the Gift Planners, in order to insure that the gift will accomplish the donor's objectives, should encourage the donor, early in the gift planning process, to discuss the proposed gift with the charity to whom the gift is to be made. In cases where the donor desires anonymity, the Gift Planners shall endeavor, on behalf of the undisclosed donor, to obtain the charity's input in the gift planning process.

VIII. DESCRIPTION AND REPRESENTATION OF GIFT

The Gift Planner shall make every effort to assure that the donor receives a full description and an accurate representation of all aspects of any proposed charitable gift plan. The consequences for the charity, the donor and, where applicable, the donor's family, should be apparent, and the assumptions underlying any financial illustrations should be realistic.

IX. FULL COMPLIANCE

A Gift Planner shall fully comply with and shall encourage other parties in the gift planning process to fully comply with both the letter and spirit of all applicable federal and state laws and regulations.

X. PUBLIC TRUST

Gift Planners shall, in all dealings with donors, institutions and other professionals, act with fairness, honesty, integrity and openness. Except for compensation received for services, the terms of which have been disclosed to the donor, they shall have no vested interest that could result in personal gain.

Adopted and subscribed to by the National Committee on Planned Giving and the American Council on Gift Annuities, May 7, 1991. Revised April 1999.

APPENDIX B

The Donor Bill of Rights was created by the American Association of Fund Raising Counsel (AAFRC), Association for Healthcare Philanthropy (AHP), the Association of Fundraising Professionals (AFP), and the Council for Advancement and Support of Education (CASE). It has been endorsed by numerous organizations.

The Donor Bill of Rights

Philanthropy is based on voluntary action for the common good. It is a tradition of giving and sharing that is primary to the quality of life. To ensure that philanthropy merits the respect and trust of the general public, and that donors and prospective donors can have full confidence in the nonprofit organizations and causes they are asked to support, we declare that all donors have these rights:

- I. To be informed of the organization's mission, of the way the organization intends to use donated resources, and of its capacity to use donations effectively for their intended purposes.
- II. To be informed of the identity of those serving on the organization's governing board, and to expect the board to exercise prudent judgment in its stewardship responsibilities.
- III. To have access to the organization's most recent financial statements.
- IV. To be assured their gifts will be used for the purposes for which they were given.
- V. To receive appropriate acknowledgement and recognition.
- VI. To be assured that information about their donation is handled with respect and with confidentiality to the extent provided by law.
- VII. To expect that all relationships with individuals representing organizations of interest to the donor will be professional in nature.
- VIII. To be informed whether those seeking donations are volunteers, employees of the organization or hired solicitors.
- IX. To have the opportunity for their names to be deleted from mailing lists that an organization may intend to share.
- X. To feel free to ask questions when making a donation and to receive prompt, truthful and forthright answers.