



# **TIDEWATER JEWISH FOUNDATION GIFT ACCEPTANCE POLICY**

## **1. PURPOSE**

The Tidewater Jewish Foundation (“Foundation”) is a nonprofit, 501(c)(3) community foundation under the Internal Revenue Code (“IRC”). The mission of the Foundation is to create permanent resources to meet the challenges and needs of the Jewish community in Hampton Roads, the United States, Israel and nations worldwide. The Foundation works with donors on both current and deferred gifts to achieve their philanthropic goals.

The purpose of this Gift Acceptance Policy (“Policy”) is to:

- 1.1. Protect the interests of donors of charitable gifts to the Foundation and/or Affiliates.
- 1.2. Protect the interests of the Foundation and its Affiliates for which it receives or administers gifts.
- 1.3. Delineate the administrative and management responsibilities of the Foundation with respect to such charitable gifts.

## **2. THE GIFT ACCEPTANCE COMMITTEE**

The Gift Acceptance Committee (“Committee”) develops and administers written and specific guidelines and policies for the approval and acceptance of monetary and non-monetary gifts to the Foundation, and makes recommendations regarding such policies to the Board of Directors (“Board”); such policies are contained in this document.

The Gift Acceptance Committee is a standing Committee that meets as needed, either (i) in person or (ii) via telephone meeting or (iii) without a meeting as approved in the Foundation’s bylaws (requiring approval of all Committee members) to make recommendations on the acceptance of specific gifts to the Foundation’s President & CEO, who is authorized under the Foundation’s bylaws to execute documents accepting gifts based on such recommendations that are pursuant to this document.

The Committee is also available to assist with the acceptance of gifts, as described in this Policy, that are to benefit the endowment of the Foundation’s Affiliates, subject to the concurrence of such Affiliate’s leadership.

## **3. FOUNDATION RESPONSIBILITIES & ROLE OF THE BOARD OF DIRECTORS**

Foundation staff will disclose to all prospective donors certain important benefits and obligations that reasonably could be expected to influence the donor’s decision to make a gift to the Foundation. In particular, donors will be made aware of:

- the irrevocability of a gift,
- prohibitions on certain donor restrictions, and
- items subject to external conditions not controlled by the Foundation (market value, investment return and income yield, for example).

### 3.1. Conflict of Interest:

The Foundation will not provide specific tax, financial or legal advice to a prospective donor. The role of the Foundation staff is to inform, guide and assist the donor in fulfilling his or her philanthropic wishes but never to pressure or unduly influence a donor's decision. Donors will be urged to seek the assistance of their own legal and financial advisors in matters relating to their gifts and the resulting tax and estate planning consequences.

### 3.2. Confidentiality:

All communications with donors and information concerning donors and prospective donors or their gifts shall be held in strict confidence by the Foundation, subject to: (i) legally authorized and enforceable requests for information by government agencies and courts and (ii) unless otherwise specifically directed by the donor, disclosure to the Board. All other requests for or releases of information concerning a donor or a prospective donor will be honored or allowed only if permission is obtained from the donor prior to the release of such information.

The Foundation will comply with the *Model Standards of Practice for the Charitable Gift Planner* promulgated by the Partnership for Philanthropic Planning (see Appendices).

The Board is responsible for policy-making and oversight of the Foundation's operations. All gift and fund policies referenced in this Policy have been adopted by a majority vote of the Board. This document is an extension of TJF's *Procedures for Operation of Philanthropic Funds*, as amended. The Board may amend or supplement these policies and guidelines at any time.

## 4. TYPES OF GIFTS

As a reference, Publication 526 of the Internal Revenue Service ("IRS"), *Charitable Contributions*, provides guidelines to those items that can be contributed and limitations on charitable income or estate tax deductions.

### 4.1. Gifts that are acceptable include, but are not limited to, the following (with criteria):

4.1.1. **Cash:** Cash is acceptable in these forms: United States currency not to exceed \$1,000, check or credit card. Checks shall be made payable to the Tidewater Jewish Foundation and should be delivered to the Foundation's administrative offices located at 5000 Corporate Woods Drive, Suite 200, Virginia Beach, VA, 23462 (delivery by wire and ACH may also be available). The minimum gift amount for credit cards is \$18. Visa, MasterCard and American Express are accepted. All cash gifts are recorded the date received.

4.1.2. **Tangible Personal Property:** All other gifts of tangible personal property (any property, other than land or buildings, that can be seen or touched) shall be examined in light of the following criteria:

4.1.2.1. Does the property fulfill/can it be used as related to the mission of the Foundation?

i. **Related Use Rule:**

- If the tangible personal property is related to the tax-exempt purposes of the Foundation the donor is allowed a full fair market value (“FMV”) deduction for the contribution of the appreciated property available to the extent of 30% of the donor’s contribution base (IRC Reg. § 1.170A-4(b)(3)(i)).
- If appreciated property is considered unrelated to the Foundation’s exempt purpose, the deduction is based on the lesser of its FMV or cost basis and is available to the extent of 50% of the donor’s contribution base.

ii. **Future Use Rule:**

- “Future interest” generally includes reversions, remainders and other interests or estates, whether vested or contingent, and whether or not supported by a particular interest or estate, which are limited to commence in use, possession or enjoyment at some future date or time.
- A charitable contribution that consists of a future interest in tangible personal property is made only when all intervening interests in, and rights to the actual possession or enjoyment of, the property have expired or are held by persons other than the taxpayer or those standing in a relationship with the taxpayer (IRC §§267(b) or 707(b)).

4.1.2.2. Is the property marketable?

4.1.2.3. Are there any undue restrictions or obligations on the use, display, safeguarding or sale of the property?

4.1.2.4. Are there any carrying costs for the property?

4.1.2.5. Does the Foundation have the capacity and technical skills to adequately manage, safeguard and dispose of the property as required either internally or via qualified agents?

4.1.2.6. **Special Considerations**, all of which may be donated to the Foundation for unrelated use (deductibility is the lesser value of FMV or cost basis):

- Artworks:* Examples of artworks include fine art (such a paintings, drawings, prints, sculpture and photography), decorative art and collectibles. The Copyright Act of 1976 differentiates between original artwork and its copyright. An original work of art and its copyright are considered separate property for gift and estate tax deduction purposes.
- Coins and stamps:* Coins function as both currency and collectible art and it is necessary to differentiate between the two functions.

Collectible coins and stamps as tangible personal property may be contributed.

- iii. *Jewelry and Gems:* Jewelry and gems vary widely and are generally thought of as decorative, precious and long lasting. Because of their specialized nature, they should be appraised by a specialized jewelry appraiser. Sentimental personal value has no effect on FMV.
- iv. *Cars, Boats and Aircraft:* Donors should consult market guides to determine the approximate FMV of these items (these guides are not considered an appraisal) and special rules limiting deductibility.
- v. *Crops:* Crops are only considered tangible personal property if they have been harvested. A contribution of unharvested crops is considered a futures contract and the donor is limited to cost basis only.

4.1.2.7. An independent appraisal is required for all gifts of tangible property (see section 7.).

4.1.2.8. Tangible personal property donated in exchange for charitable remainder and lead trusts present an additional set of rules and will be reviewed by the Committee and the criteria used and issues decided by the Committee should be documented.

4.1.3. **Intangible Personal Property:** Property that has no physical form but has evidence of value based on rights/ownership.

4.1.3.1. IRC § 936(h)(3)(B) defines intangible property to include:

- i. Copyright, literary, musical or artistic composition;
- ii. Patent, invention, formula, process, design, pattern, or know-how;
- iii. Trademark, trade name or brand name;
- iv. Franchise, license or contract;
- v. Method, program, system, procedure, campaign, survey, study, forecast, estimate, customer list or technical data; or
- vi. Any similar item, which has substantial value independent of the services of any individual.

4.1.3.2. An independent appraisal is required for all gifts of intangible property (see section 7).

4.1.3.3. Related use and future use rules do not apply to intangible personal property.

- 4.1.3.4. Unrelated Business Taxable Income (“UBTI”) considerations need to be taken into account; each case should be examined to determine whether any income falls within any of the modifications provided in IRC §512(b).
- 4.1.3.5. With the exception of Securities (listed separate in this Policy) and Life Insurance Contracts, which are forms of intangible personal property, all other types of intangible personal property are subject to approval of the Committee.
- 4.1.3.6. Additional considerations include whether the property is marketable and whether the Foundation has the capacity and technical skills to adequately manage, safeguard and dispose of the property as required either internally or via qualified agents.
- 4.1.4. **Securities:** The Foundation can accept both publicly traded securities and closely held securities.
  - 4.1.4.1. Publicly traded (marketable) securities may be transferred to an account maintained by the Foundation 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 shall be sold upon receipt unless otherwise directed by the TJF Investment Committee. 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 shall be made by the Gift Acceptance Committee. Note: positions in “cryptocurrencies” are not considered marketable securities and are not currently accepted by the Foundation.
  - 4.1.4.2. 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, can be accepted subject to the approval of the Committee. However, gifts must be reviewed prior to acceptance to determine that:
    - i. There are no restrictions on the security that would prevent the Foundation from ultimately converting those assets to cash.
    - ii. The security is marketable, and the security will not generate any undesirable tax consequences for the Foundation or otherwise create a liability to the Foundation.

The Pension Protection Act of 2006 (“PPA”) made changes under §4943 of the IRC imposing taxes on Excess Business Holdings. These changes will generally preclude donor-advised funds (“DAFs”), private foundations and certain supporting foundations from holding more than a minor interest in a business enterprise when the donor or a related party (disqualified person) also holds an interest in the business. The DAF/foundation and associated disqualified persons collectively may not hold more than 20% of the voting stock (or partnership/membership interests) of a business enterprise. If someone else can be shown to have a control of the business, the limit is raised to 35%.

TJF staff will work with the donor during the gift acceptance process to identify any potential gift to a relevant DAF/foundation that may qualify as an excess business holding and will resolve compliance with specific PPA requirements. It is the Foundation's policy to monitor all such business holdings and dispose of any determined to be "excess" as required by law.

- iii. An independent appraisal is required for all gifts of closely held securities (see section 7.)

Generally, the Foundation would be more likely to accept minority or limited partnership interests rather than any general or managing partnership interest and there should be a clear exit strategy determinable by the Committee that would limit the term of the Foundation's ownership.

If potential problems arise on initial review of the security, further review and recommendation by an outside professional may be sought before making a final decision on acceptance of the gift. The final determination on the acceptance of closely held securities shall be made by the Committee. Every effort will be made to sell non-marketable securities as quickly as possible.

- 4.1.5. **Real Estate:** Gifts of real estate may include developed property and undeveloped property.

- 4.1.5.1. Environmental review: Prior to acceptance of real estate, the Foundation shall inquire as to the environmental status of the property to understand current and prior uses. In the event that the initial inquiry reveals a potential problem or a current land use with inherent potential for existing contamination and/or future liability, the Foundation shall require that the donor retain a qualified inspection firm to conduct a Phase I environmental site assessment. The cost of any environmental reviews or assessments shall be borne by the donor(s). Optionally, based on findings from its initial review, TJF may permit acceptance of a Letter of Indemnity from the donor(s) known to the Foundation in lieu of a formal environmental review.

- 4.1.5.2. An independent appraisal is required for all gifts of real estate (see section 7).

- 4.1.5.3. When appropriate, a title binder or, preferably, a title policy for longer expected holding periods, shall be obtained by the Foundation prior to the acceptance of the real property gift. The cost of this title binder or title policy shall be borne by the donor(s) or netted from the proceeds of the subsequent sale.

- 4.1.5.4. Prior to acceptance of the real property, the gift shall be approved by the Committee. Criteria for the acceptance of the property shall include:

- i. Is the property useful for the purposes of the Foundation?
- ii. Is the property marketable? And if so, over what time period?

- iii. Is the property income-producing to the extent of satisfying all anticipated costs and other expenditure, and are there UBTI concerns?
- iv. Are there any restrictions, reservations, easements or other limitations associated with the property?
- v. Are there carrying costs, which may include insurance, property taxes, mortgages or notes, etc., associated with the property, or other operating expenses?
- vi. Is there any existing debt related to the property? May the property be conveyed subject to the existing debt? If so, can the debt be assumed without forcing acceleration of amounts due? Or, is the donor willing and able to satisfy the debt as it relates to the property to be donated?
- vii. Are there potential buyers (no pending offers)? [Buyer in-the wings]
- viii. Does the environmental review and/or assessment reflect that the property is compromised or at undue risk? If so, is there a reasonable means to remediate the damage or mitigate the risk at the donor's expense and/or to insure for the contingency of exposure?

#### 4.1.5.5 Fractional ownership interests:

- i. The Foundation may accept an undivided interest granted from a donor's fee simple interest in real property under criteria noted above and subject to an acceptable co-tenancy agreement that establishes the rights and responsibilities of the donor and the charity. Eligible properties should be debt-free and candidates for sale in the near future to arms-length purchasers.
- ii. Due to the potential for excessive holding period expenses and limited secondary/resale markets, the Foundation will NOT accept gifts of timeshare units/interests (unless specifically approved by the Board).

To assist with the collection of all potentially relevant information and documentation of a proposed gift of real estate, the TJF Gift Acceptance Checklist (located in Appendices) is available for use by staff. All real estate will be titled to a single-member LLC of the Foundation, where it will be held until it can be sold.

- 4.1.6. **Remainder Interests in Property:** The Foundation will accept a remainder interest in a personal residence, farm or vacation property subject to the provisions of section 4.1.5. above. The donor(s) or other approved occupants may continue to occupy the real property for the duration of the stated life or an approved term of years. At the death of the donor(s) or other designated person(s), or at the end of the specified term of years, the Foundation may use the property or reduce it to cash. Where the Foundation receives a gift of a remainder interest, expenses for maintenance fees, real estate taxes, condo or homeowner association assessment fees and any property indebtedness are to be paid by the donor(s) or primary beneficiary of the lifetime interest.

A specific maintenance, insurance and taxes agreement (“MIT”) will be executed by the Donor/Beneficiary and the Foundation that seeks to preserve the unencumbered remainder value of the property. Under the MIT, the Foundation may approve lease of the property to other parties with provision for market rents to be paid to the Foundation at the end of the stated term for the remainder of the lease period. All remainder interest in property will be transferred to a single-member LLC of the Foundation, where it will be held until liquidation of such interests.

4.1.7. **Bargain Sales:** A bargain sale occurs when a donor transfers an asset to a charity and receives less than the FMV in return (i.e. part gift, part sale). The Foundation will enter into a bargain sale arrangement in instances in which the bargain sale furthers the mission and purposes of the Foundation. All bargain sales must be reviewed and recommended by the Committee. Factors used in determining the appropriateness of the transaction include:

- i. The Donor must obtain a qualified, independent appraisal substantiating the value of the property, a copy of which is to be submitted to the Foundation.
- ii. The Foundation will not accept property subject to debt. A clear title and confirmation of prior taxes paid is required.
- iii. The Foundation must determine that it will use the property, or that there is a market for sale of the property within 12 months of receipt.
- iv. The Foundation must calculate and consider the costs to safeguard, insure and pay expenses for the property (including property tax, if applicable) during the holding period.
- v. Most of the considerations listed in Section 4.1.5.

Many bargain sale arrangements include a trust (charitable remainder trust or charitable lead trust), resulting in a split-interest agreement with the donor(s). The agreement clearly outlines what the donor(s) will receive in return for the sale. Real estate acquired through a bargain sale will be titled to a single-member LLC of the Foundation.

4.1.8. **Life Insurance:** The Foundation, or one its Affiliate partners, shall be named as both beneficiary and irrevocable owner of an insurance policy. (In some instances the Foundation or its Affiliate partner will be named only as beneficiary or partial beneficiary on a life insurance policy, though a transfer of ownership may be pursued. No completed gift is made unless ownership is transferred.)

The gift of existing life insurance is valued at the lower of its interpolated terminal reserve value, or cash surrender value, upon receipt as verified by a qualified, independent appraiser (see section 7).

Premium payment amounts made by the donor will be recorded as a gift in the year the payments are made to the Foundation by the donor. The Foundation will make the premium



payment to the life insurance company directly. Reimbursement to the Foundation may also be secured from a DAF over which the donor has advisory privileges.

If the donor does not elect to continue to make gifts to cover premium payments on the life insurance policy, the Foundation may do one of the following:

- i. Continue to pay the premiums;
- ii. Convert the policy to paid-up insurance; or
- iii. Surrender the policy for its current cash value, if any.

In determining which course of action to take, the Foundation may seek advice of qualified insurance experts.

The Foundation may also accept gifts of life insurance through an incentive/matching program as may be approved by TJF's Board. See Appendices for the Foundation's current *Life Insurance Policy Guidelines*.

4.1.9. **Charitable Remainder Trusts:** The Foundation may accept designation as both a trustee and remainder beneficiary of a charitable remainder trust with the approval of the Committee. The Foundation may expect to be compensated for serving as a trustee by charging its customary administrative fee to the assets of the trust. The Foundation may also be named as beneficiary only, with no associated compensation.

4.1.10. **Charitable Lead Trusts:** The Foundation may accept a designation as both a trustee and income beneficiary of a charitable lead trust. The Foundation may expect to be compensated for serving as a trustee by charging its customary administrative fee to the assets of the trust. The Foundation may also be named as beneficiary only, with no associated compensation.

4.1.11. **Retirement Plan Assets:** The Foundation may accept gifts of retirement plan assets through: (a) plan beneficiary designations; and (b) qualified charitable distributions (QCD) from plan custodians as authorized under the Internal Revenue Code (IRC), also known as "charitable IRA rollovers."

## 5. OTHER KINDS OF GIFTS

Any other type of gift(s) shall be reviewed by the Committee, which shall determine the acceptability of such gift(s).

## 6. ADMINISTRATIVE FEES

Unless otherwise negotiated, the Foundation's standard administrative fee applies to all gifts.

## 7. MISCELLANEOUS PROVISIONS

7.1. **Securing qualified appraisals and legal fees for gifts to the Foundation:** It will be the responsibility of the donor(s) to secure and pay for a qualified, independent appraisal or independent legal counsel (where required) for gifts made to the Foundation. Appraisals

(along with an IRS Form 8283 signed by the appraiser) are required for gifts other than cash or marketable securities if the value is \$5,000 or more. It will further be the responsibility of the donor(s) to secure and pay for any formal environmental assessment (see Section 4.1.5.1)

- 7.2. **Valuation of gifts for development purposes:** The Foundation will record a gift at its independent appraised valuation for gift purposes on the date of the gift for those gifts requiring a formal approval. As a reference, IRS Publication 561, *Determining the Value of Donated Property*, provides guidelines regarding FMV and the valuations of various types of property.
- 7.3. **Responsibility for IRS Filings upon sale of gift items:** The Foundation is responsible for filing IRS Form 8282 upon the sale or disposition of any asset sold within three (3) years of receipt by the Foundation when the charitable deduction value of the item is \$5,000 or greater. The Foundation must file this form within 125 days of the date of sale or disposition of the asset.
- 7.4. **Acknowledgement** of all gifts made to the Foundation and compliance with the current IRS requirements in acknowledgement of such gifts shall be the responsibility of the Foundation.

## **8. RESTRICTIONS ON GIFTS**

The Foundation will accept unrestricted gifts and gifts restricted for specific programs and purposes, provided that such gifts are not inconsistent with its stated mission, purposes and priorities. The Foundation will not accept gifts that are too restrictive in purpose or too restrictive as to investment specifications or use of income vs. principal. Gifts that are too restrictive are those that violate the terms of the Foundation's Bylaws and Articles of Incorporation, gifts that are too difficult to administer or gifts that are for purposes outside of the mission of the Foundation. All final decisions on the restrictive nature of a gift, and its acceptance or refusal, shall be made by the Foundation's Board upon recommendation of the Committee.

## **9. APPENDICES**

- 9.1. Model Standards of Practice for the Charitable Gift Planner
- 9.2. Association of Fundraising Professionals Donor Bill of Rights
- 9.3. Life Insurance Policy Guidelines (as amended September, 2016)
- 9.4. TJF Gift Acceptance Checklist

## **10. POLICY IMPLEMENTATION**

The Policy was approved at the regularly scheduled meeting of the Board of Directors on December 18, 2018.