Winter 2014

GG+A Quarterly Review

GG+A Grenzebach Glier and Associates

Philanthropic News & Analysis

A Delicate Balance

Philanthropy, particularly the philanthropy made possible by the generosity of individual donors, often rests on a complicated foundation of relationships between those donors and development officers that are fundamentally professional in nature, yet depend on the ability to develop and strengthen personal connections.

As the line between "business" and friendship blurs, conversations about such matters as donor intent and the best interest of the institution can be challenging at times. In this issue of the *Grenzebach Glier Quarterly Review*, advancement professionals from higher education, cultural, and healthcare institutions consider how best to achieve the clarity and transparency that characterize best practice in fundraising.

Honoring the Intent of Donors

Experienced fundraisers must often navigate an inherent tension between donor intent – an intent that grows, in almost every case, from a genuine wish to help address a perceived problem in society and/or need at the recipient institution – and institutional priorities. "Striking that balance between donor desire and institutional aspiration in a way that respects the process is, in many ways, the art of fundraising," says John Malcolm, vice president for college relations at **Williams College**. "The donor might want to push the institution to do things that are not comfortable. You must be deeply principled and think hard about the integrity of the institutional governance process before saying 'yes' to a proposal from the donor about how his or her gift will be used."

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Preparing Development Officers to Act Responsibly

Even when clear institutional policies help guide fundraising decisions, many situations require further discussion among staff members to ensure that both donor expectations and institutional priorities are addressed.

Jim McKey, vice president for institutional advancement at **Earlham College**, has worked with many new development officers over his 25-plus years of leadership in development programs for Friends schools and colleges. "One of the wonderful aspects of major gifts work is the chance to build relationships over time with fascinating, successful people. Our donors often become our friends. An advancement leader has to educate frontline fundraisers to focus on building the institutional relationship that can last beyond any individual."

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Robert Groves, vice president for university advancement at **Michigan State University**, recalls a number of narrowly defined gift agreements that required additional conversations with donors. "Identifying appropriate individuals to hold endowed chairs was no longer practical because the area of study had evolved over the years since the original endowments were established. Working with donors, we modified the endowment agreements to allow us to move in slightly different directions. You want to be sure to capture the donor's intent without putting the institution into a box that does not make sense for the long term."

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An international leader in philanthropic management consulting, Grenzebach Glier and Associates (GG+A) has more than 50 years of experience with educational, cultural, medical, and other non-profit institutions. The goal of the *Review* is to provide timely information about issues and events that are relevant to philanthropy.

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More than 15 years ago, the **University of California, Los Angeles** (UCLA) altered gift agreement language "...to include a specific provision that explains that, in the event the program supported by a designated gift ceased to exist, we could redirect the funds to another area that most closely relates to the gift's original purpose," says Rhea Turteltaub, UCLA's vice chancellor for external affairs and executive vice president of The UCLA Foundation. In terms of naming gifts for physical spaces, "...we no longer use the phrase 'in perpetuity.' Naming agreements are now established 'for the useful life of the building.'"

In the healthcare environment, most grateful patients are inspired by their care experience and the wish to support related research, explains Ellen Medearis, vice president of development and alumni affairs for **Duke Medicine**. "Our job is to find the intersection between patient experience and gratitude and the institution's medical priorities," says Medearis, who describes important measures taken in finalizing an eight-figure gift made to Duke Medicine. "For that gift, we worked with the donor's team on five separate gift agreements to detail what was needed to pursue all of the elements over time. Other lawyers or donors may have chosen to write a single gift agreement, but there were five components to the support, and we thought it in the best interests of the donor and the medical center to establish five distinct agreements."

Building Trust, Relinquishing Control

The charitable impulse, which has at its heart a trust in the ability of the recipient institution to use philanthropic support well, is central to the gift-giving enterprise.

For some donors, particularly those who have created and managed highly successful businesses and investments, relinquishing control of gifts can be difficult even when the terms are carefully detailed in formal gift agreements. In fact, the *2012 Bank of America Study of High Net Worth Philanthropy* reports that 70.9 percent of high net worth individuals have a strategic plan for their charitable giving, and that individuals who have built their wealth through real estate or a family/start-up business are nearly half again as likely to have a charitable strategy than are those who have inherited their wealth.

Reaching today's donors may require a shift in thinking for fundraisers and the leaders to whom they report, according to Medearis. "We need to realize that many people who have made money on their own may wish to apply the principles they pursued in becoming successful to the way they make philanthropic decisions. We need to be more transparent and communicate better with donors as we discuss potential gifts."

For medical and research institutions, Medearis says, this means doing a better job of describing the arc of research, including the long timelines and resources required. Medearis describes how one entrepreneurial couple, who originally considered funding Alzheimer's research at Duke Medicine, expanded their interests. "After two days of conversations with different scientists, the donors understood how the concept of high risk and high reward, which was very familiar to them, applied to research. The couple decided to make a more broadly defined gift to support neurological research as a result of those conversations. Our research team, in turn, has developed a wonderful Medical Mystery Dinner, during which scientists discuss their research with each other and with the donors. What a great way to learn together," Medearis adds.

"When you talk about control, you are really talking about trust," says Groves. "Donors must have confidence that you have listened closely to them, you respect their wishes, and you will not disregard their intent once the funds are transferred. This is often at odds with institutional desires to retain programmatic flexibility." John Zeller, vice president for development and alumni relations at the **University of Pennsylvania**, cautions against potential problems, saying, "It is always important to address any emerging issues, such as a wish to retain more control of the use of the funds than is wise or legal, before a gift is made."

A reluctance to give up control may mean the donor is not genuinely ready to make the gift, according to Malcolm. "If someone is reticent to make a gift in perpetuity, then think about a gift for operating support. It is perfectly appropriate to make a gift to provide operating capital for a project for several years before deciding if the project is of deep mutual interest and should be endowed."

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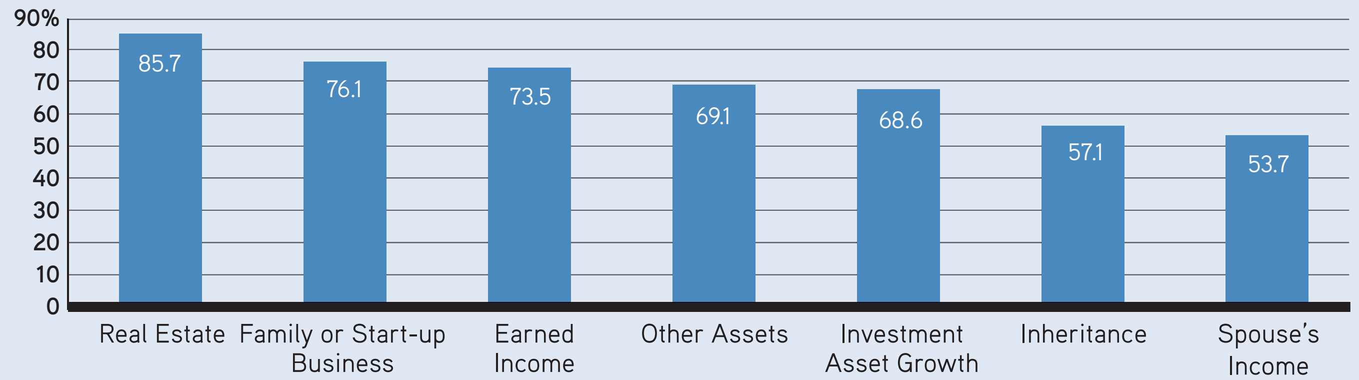
Percentage of High Net Worth Donors Reporting a Charitable Giving Strategy by Primary Source of Wealth in 2011*



* A primary source of wealth is a source that makes up 50 percent or more of the household's total wealth.

Source: 2012 Bank of America Study of High Net Worth Philanthropy

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Accepting gifts of art, especially collections that the donors have assembled over time, brings its own complex set of considerations. "When we are offered donations of this type, we have to think of all the implications – space, budgetary resources, the curatorial resources needed, and stewardship – and it is important to discuss these with the potential donor openly," says Timothy Rub, the George D. Widener director and chief executive officer of the **Philadelphia Museum of Art** (PMA) and current president of the Association of Art Museum Directors (AAMD). "Beyond that, we are duty bound, ethically and morally, to ensure that any work of art offered as a gift is carefully researched to confirm that its title and history of ownership are clear."

PMA has a long-time policy requiring that any special conditions regarding a gift of works of art be approved in advance by its board members. Rub explains that donor expectations vary widely: "Some donors offer their collections with many restrictions, and museums have to decide whether they are practical and acceptable." ❖

The Challenges of Selling Art Collections

Ethical concerns associated with deaccessioning collections have been in the spotlight recently, including **Fisk University**'s request for court permission to sell a stake in an art collection that Georgia O'Keefe donated with the provision that it never be sold ("Museums Grapple With Strings Attached to Gifts," by Patricia Cohen, *The New York Times*, February 4, 2013), and the recent bankruptcy filing of the city of Detroit and consideration of sales of works of art held by the public **Detroit Institute of Art.**

In an August 10, 2013, letter to the editor in *The New York Times*, Rub wrote that the sale of the museum's collection "...– if, indeed, such a step is legally permissible – would be both terribly shortsighted and wrong from an economic point of view. However much the collection is worth on the market today, this figure is inconsequential in comparison to its long-term value to the city and the region as a cultural asset." The Association of Art Museum Directors (AAMD) notes that the deaccessioning and disposal of works of art from a collection by sale, exchange, or other means requires "...a particularly rigorous examination and should be pursued with great prudence." The AAMD further advocates that any funds gained through deaccessioning should be used to support acquisition of other works of art for the collection.

Honesty is Always the Best Policy

Whatever ethical concerns are brought to the table for discussion, interviewees agree that candor and transparency are critical.

Yet, too often, difficult situations are kept opaque, especially when it comes to managing endowments. This fall, the **New York City Opera** filed for bankruptcy following an endowment drop from $51.6 million in 2001 to $5.2 million in 2013, according to *The New York Times* ("A Ransacked Endowment at New York City Opera," by James B. Stewart, October 11, 2013). A request to invade the opera's endowment several years ago gained approval from the court and then-Attorney General Andrew M. Cuomo, but was never disclosed to the Wallace Foundation, which funded the majority of the endowment.

The City Opera situation appears to be an extreme case, yet nearly every institution with an endowment has wrestled with the problem of "underwater" funds (for which the market value falls below the level of the originating gift or gifts) following the severe drop in U.S. and global markets in the spring of 2009. **Duke University** already had a practice of reporting to endowment donors each year, yet when the university went through a period when a number of endowment funds dropped below their original value, the university chose a path of direct communication with donors. "At the time, university leaders made sure that development officers informed every donor whose endowment fund was underwater and noted what the effects might be," says Medearis.

"I HAVE COMPLETE TRUST AND CONFIDENCE IN YOU, AND OUR TWENTY-PAGE AGREEMENT."

Rhea Turteltaub also recalls a time "…when UCLA had a number of underwater endowments. We did a full analysis of each endowment fund and crafted letters to every donor who was affected, as well as any faculty beneficiaries. Then we had one-on-one dialogues with each donor."

As difficult as the conversations may be, Williams College's John Malcolm asserts, "It is fundamentally inappropriate not to share fiscal information related to gifts with donors." The Williams advancement staff produces an annual report for each donor on the status of his or her endowment that includes recent gifts made to named endowments, endowment performance, and how the income generated has been used.

Two years ago, Michigan State instituted a modest stewardship charge on all endowed funds to help support advancement operations. Groves shared information with all donors affected before the policy was implemented. "There were a few cases where we had to meet with donors to discuss the appropriateness of the charge. Those meetings were not always pleasant, but it was best to communicate with all donors openly and transparently instead of waiting for questions to arise."

Then there is the case of the donor whose values may not align with those of the organization, but who would like to make a major gift. Along with his colleagues at peer institutions, Malcolm says, "We often think of what we would do if an oligarch of an evolving nation with dubious human rights practices offers to make a highly visible gift to our institution. We have to look at how embedded we are in the global economy, yet we must think of the public relations consequences. We want to approach gifts with eyes wide open, thinking about all of the implications."

Malcolm cites one gift acceptance decision that raised some eyebrows at the time. "When I was managing fundraising for the national organization of **Big Brothers and Big Sisters** in the early 2000s, the CEO made a strategic decision to accept a major grant from Philip Morris that enabled us to serve many more kids. Philip Morris would have loved to be very visible with its youth smoking cessation program, but we made a decision there would be no co-branding with our organization. The gift ultimately had a big effect on the future of at-risk youth in many different markets." ❖

The Ethical Pursuit of Planned Gifts

By Michael J. Degenhart

*Michael J. Degenhart is executive director of gift planning for **The Pennsylvania State University**, where he develops and implements planned giving efforts for 24 campuses. He also serves as a consulting vice president for Grenzebach Glier and Associates, bringing some 20 years of experience in fundraising and planned giving with higher education institutions, including **Syracuse University** and **Cornell University** before he joined the staff at Penn State.*

Planned giving officers may be more vulnerable to ethical concerns than other advancement staff members since they may be asked by major donors to provide limited tax and legal advice while soliciting planned gifts. The complexities of charitable remainder trusts and annuities, coupled with concerns about possible declining mental and physical conditions of elderly donors, can elicit closer scrutiny of the behavior of planned giving officers. The following situations could raise ethical concerns for the institution.

Misperception of the planned giving officer as a professional advisor. It is not uncommon for donors to view planned giving staff members as trusted advisors despite the absence of any kind of fiduciary relationship. Planned giving officers who assume advisor roles can create potential legal liabilities for themselves and their organizations. In a recent conversation with another GG+A consultant, Carolyn Osteen, consultant and retired partner of global law firm Ropes & Gray LLP, who co-authored the *Harvard Manual—Tax Aspects of Charitable Giving*, noted, "It is essential that any donor who is considering a significant gift be encouraged to talk to his or her own advisor. It can become complicated when the donor begins to ask an institution's fundraising representative for advice on finances, tax planning, and other estate considerations."

Every nonprofit should have a proper disclosure document as part of any templates that are provided to the donor and his or her legal counsel. A gift disclosure document gives the staff member and the nonprofit extra protection should the family or other potential heirs of the donor decide to contest the gift in the future. In working with a donor's advisors, Osteen stated, "You can only go to an attorney or financial advisor with the assent or encouragement of the donor, and it is always best to back that up with an e-mail to both the donor and advisor. Any reputable advisor will be annoyed if a charity attempts to go around the back of the client, and this could backfire badly."

Potential misuse of charitable remainder trusts. It is acceptable for donors and their advisors to follow tax laws to provide the maximum financial benefit possible to the donor, such as setting a charitable trust payout rate at the maximum level while still satisfying the rule that at least 10 percent of the fair market value of the original trust assets must go to the beneficiary charity or charities. However, planned giving officers have to be sure that donor intent is always taken into consideration. The selection of a payout rate is one of the most visible design features of a charitable trust, and it often raises the most serious questions of charitable intent. Non-profit organizations should establish policies regarding payout rates and charitable deduction percentages that comply with Internal Revenue Service rules and help ensure a meaningful gift will be provided to the organization.

Soliciting and cultivating elderly prospects. As planned giving officers begin working with elderly prospects, the influence they carry with the donors may become an issue. Planned giving staff members must determine whether or not each donor is competent to make financial decisions, and policies should be in place regarding who makes that determination. Does the donor live independently or does he or she need assistance? Does the donor suffer from any cognitive disorder or prognosis? Should medical or family input be sought? The growth in recent years of state legislation to prohibit elder abuse makes it very important to engage family members in the charitable gift plan design for an elderly donor. Planned giving officers must be aware of expanding legal restrictions in this area.

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Gift design and management. Should a nonprofit act as the trustee of charitable trusts? Does the organization have the technical competence and internal staff to handle these responsibilities? For nonprofits using a third-party administrator, who is paying for the cost of trust administration? To ensure equity and avoid the hint of bias, institutional policies and procedures relating to gift design and management are needed. Osteen warned, "The donor may expect the charitable institution will pay for legal expenses incurred in completing a complicated gift agreement. If the institution agrees, it is very important to make it clear in writing that the law firm is representing the institution rather than the donor." ❖

RESOURCES FOR DONORS AND FUNDRAISERS

The *Donor Bill of Rights* was created to build respect and trust between donors and the non-profit organizations and causes they support. To access the document, visit **www.afpnetfiles/content/documents/Donor_Bill_of_Rights**

The *Model Standards of Practice for the Charitable Gift Planner* encourages responsible gift planning for fundraising professionals and the institutions they serve. To access the standards, visit **www.pppnet.org/model_standards.html**

Mark Dorgan, assistant vice president for leadership and planned giving at **Carnegie Mellon University**, agrees with McKey. "We've had to learn over time to recruit staff members with good judgment who know where to draw the line." Carnegie Mellon's prospect management policy provides a safeguard against unhealthy "exclusive" relationships with donors by requiring gift officers to document that each prospect has a minimum of three strong relationships with university volunteers, administrators, faculty members, or staff members. McKey identifies one possible warning sign of a relationship that has veered too strongly toward the personal: "When the gift officer stops talking about the cultivation or stewardship of a gift and talks more about dinners or connections with the donor, it is important to bring the conversation back to strategy."

At the same time, Robert Groves spends time convincing advancement staff members that while all agreements must be handled professionally, this need not reduce donor relationships to mere transactions. He cites the example of a donor who was aggravated that Michigan State "lawyerized" a gift pledge for renovating a facility.

"If for some reason that pledge could not be fulfilled during the donor's lifetime, we needed to make it binding on his estate. He was a little offended that he was trying to do a good thing, and we were putting him in a straitjacket."

Groves adds, "We had to remind him that we were moving the project forward before we had the funds in hand. While these conversations can seem hard-nosed at time, and development staff sometimes want to shy away from them, I often must remind staff that good, solid gift agreements prevent future misunderstandings with the donor or other family members. We need to be appreciative and respectful of the generosity of our donors, but we also have to be good stewards of our institutions."

As always, good stewardship can help avoid future problems. "Stewardship responsibilities have grown enormously over the last few decades, not because donors are invasive or intrusive, but because they simply want to know their investments are having the intended impact," offers University of Pennsylvania's Zeller. "We cannot go back to a donor who has not been well informed about the use of previous gifts. Otherwise, we risk our donors going somewhere else to make gifts in the future." ❖

Best Practices for Protecting Donor Privacy

GG+A's philanthropic analytics team, which manages the analysis and screening of more than 40 million donor records from over 200 non-profit institutions each year, has worked diligently to ensure appropriate levels of data security and confidentiality throughout our process. In return, we offer the following advice to non-profit organizations as they manage their own data and donor records.

Determine federal, state, and local laws that govern the protection of constituent data. At the federal level, many U.S. nonprofits must comply with following laws, but others may apply. Consult legal counsel on applicable regulations and tailor policies to avoid violating governing laws.

FERPA. The Family Educational Rights and Privacy Act of 1974, also known as the Buckley Amendment, protects the privacy of a student's educational records. The federal law applies to all educational agencies or institutions that receive funds under any program administered by the U.S. Secretary of Education. For more information, visit **www.ed.gov/policy/gen/guid/fpco/ferpa/index.html**

HIPAA. The Health Insurance Portability and Accountability Act of 1996 provides standards and regulations for handling patient health data. HIPAA's standards and regulations cover the privacy, security, encoding, integrity, and availability of patient health information on paper, electronically, and in conversation. Fundraisers should be particularly attentive to 2013 HIPAA revisions, which have eased several restrictions that had applied since April 2003. For more information, visit **www.hhs.gov/ocr/privacy/**

PCI DSS. The Payment Card Industry Data Security Standard is a set of requirements to ensure that all organizations that process, store, or transmit credit card information maintain secure environments. The standards were created to increase controls around cardholder data and to reduce credit card fraud. For organizations handling large volumes of transactions, a qualified security assessor completes an annual compliance report. Small institutions complete a self-assessment questionnaire. For more information, visit **www.pcisecuritystandards.org/security_standards/**

Evaluate the data you collect about donors and prospective donors. Determine if this information is required for fundraising operations. The more sensitive the stored information, the greater the security risk. Do you need social security numbers or exact dates of birth for donors? Develop a policy on the information you collect and how it is used. Never collect data for the sake of collecting it or for the possibility of future use.

Limit access to personal data to the fewest number of individuals possible. Determine which staff members should have access to data and define specifically the information they need to perform their jobs. Constituent information should never be published on websites or shared networks. A regular, thorough technical audit is recommended.

Communicate how you use information and how you protect it. Develop a statement for donors and prospective donors that clarifies the type of data you collect and the intended use of that data. Donors will appreciate the respect and confidentiality you afford their personal information.

Create a security policy and enumerate steps taken to protect information. Inventory the ways in which donor information is tracked and stored. Limit copies or redundant sources, and decide how long to store and retain information. Use encryption or password protection for data files when sending or receiving data over public networks or media.

Educate staff members and volunteers about policies and practices regarding donor information. Conduct seminars and training sessions to ensure awareness of best practices and policies regarding sensitive information. Consider testing or certifying staff members and volunteers on the proper handling of donor information. Every staff member with access to constituent data should sign a confidentiality agreement. ❖