



PROCEDURES FOR ESTABLISHMENT AND OPERATION OF FUNDS AND SUPPORTING ORGANIZATIONS

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PROCEDURES FOR ESTABLISHMENT AND OPERATION OF FUNDS AND SUPPORTING ORGANIZATIONS

THE COMMUNITY FOUNDATION FOR NANTUCKET has established the following procedures in order to carry out its mission:

To strengthen Nantucket now and for future generations through informed philanthropy and community leadership.

PART A. RULES GOVERNING ALL FUNDS AND SUPPORTING ORGANIZATIONS

Section 1. Types of Donors, Funds, Supporting Organizations and Split-Interest Arrangements

A Donor may establish with the Community Foundation one or more Funds, Supporting Organizations and Split-Interest Arrangements. A Fund is a component part of the Community Foundation; grants are made from each Fund to carry out the charitable purposes specified by the Donor. Supporting Organizations and Split-Interest Trusts are not Funds and generally constitute separate legal entities. Split-Interest Arrangements are ways to make a deferred gift to establish a Fund. Included within these categories are:

a. Eligible Donors

The Community Foundation will accept contributions from the following types of Donors:

1. Individuals and family members
2. Corporations/Partnerships/Limited Liability Companies
3. Nonprofit Organizations
4. Private Foundations
5. Various Branches of Government
6. Collective private groups of concerned citizens and associations
7. Bequests and Trusts

b. Funds

1. Donor Advised Funds
2. Designated Funds
3. Nonprofit Organization Funds
4. Field of Interest Funds
5. Scholarship Funds
6. Unrestricted Funds

c. Supporting Organizations

d. Split-Interest Arrangements

1. Charitable Gift Annuities
2. Charitable Remainder Annuity Trusts
3. Charitable Remainder Unitrusts
4. Charitable Lead Trusts
5. Retained Life Estate

Section 2. Acceptance of Contributions

a. General Policies and Approval

Requests to establish Funds, Supporting Organizations or Split-Interest Arrangements with the Community Foundation will be reviewed by the staff (and by the Board of Trustees (or a designated committee) if the staff determines such a review is necessary) for consistency with the Community Foundation's charitable purposes and specific charitable needs. The senior management officers of the Community Foundation have the authority to approve the establishment of individual Funds and affiliated relationships/agreements/contracts. With respect to supporting organizations, the senior management officers have the authority to recommend approval of a particular supporting organization relationship to the Board of Trustees, but the Board of Trustees (or a designated committee) shall have the final authority to formally approve the relationship by appointing the requisite number of Trustees to the supporting organization's board.

b. Review and Approval of Contributions

All contributions are subject to the review and approval by the Community Foundation prior to acceptance. The Community Foundation's staff generally has the authority to accept contributions of cash and marketable securities (those that are actively traded and sellable on the open market). A senior management officer of the Community Foundation before acceptance will review contributions of all other assets that are not readily marketable and shall consider the value of the asset, the likelihood that the asset can be quickly liquidated, the charitable nature of the gift, potential risks to the Foundation, carrying costs, and unrelated business income tax consequences. Contributions of illiquid assets include but are not limited to closely held securities, limited liability companies (LLC's), limited partnerships, real property and tangible personal property and require prior approval per gift acceptance policies as established and approved by the Board of Trustees (or a designated committee).

Contributions that would violate the excess business holdings rule for donor advised funds under the Pension Protection Act of 2006 are generally prohibited, but may be accepted in special circumstances if reviewed and approved by a senior management officer of the Community Foundation. Any interest in an entity in which any interest is owned by a donor or advisor to a donor advised fund, by a family member of any such person, or by an entity in which any of the foregoing persons has an interest shall be referred to the Foundation's senior management and corporate counsel for an opinion on the possible application of Code section 4943. *See Appendix: Section 5 for treatment of excess business holdings.*

For hard-to-value assets, the Donor will be required to sign a gift agreement whereby the Donor agrees to indemnify and reimburse the Community Foundation for, from and against all taxes owed or expenses and liabilities incurred because of the Community Foundation's ownership of the asset. The Donor must also agree to contribute additional funds to their Fund as necessary to cover such obligations should sufficient liquidity not be available in their Fund.

c. Written Acknowledgment of Acceptance of Contributions

The Community Foundation will provide written confirmation at the time of acceptance of any contribution that is required by the IRS to be documented by an acknowledgment for the Donor's tax return. The Community Foundation, in its discretion, may also provide written confirmation of contributions that are not otherwise required by the IRS to be acknowledged. Contributions not accepted will be returned as soon as practical. The confirmation will include the dollar amount of the contribution of any cash gifts and marketable securities such as publicly traded stocks, bonds and mutual fund shares. Acknowledgement of private securities and other illiquid assets will only include a description of the gift but will not include a

dollar value of the donated asset. Donors should obtain a qualified independent appraisal prior to making such a contribution. (The IRS generally requires a donor to obtain a qualified appraisal for illiquid assets no earlier than 60 days before the date of the gift and no later than the due date (including extensions) for the income tax return where the donor first claims a deduction for the gift.)

d. Donor's Counsel

The Community Foundation encourages each prospective Donor to have the terms of all proposed agreements reviewed by the Donor's legal and/or financial advisors. The Community Foundation does not provide legal, tax or financial advice. The Donor is advised that it is the Donor's responsibility to obtain any necessary appraisals, file appropriate tax returns, and defend against any challenges to claims of tax benefits.

e. Minimum Initial Contributions

Generally, there is a \$10,000 minimum amount to establish a named Fund with the exception of Scholarship Funds, which require a minimum contribution of \$20,000 to establish. In addition, all funds must maintain a minimum balance of \$10,000, except for Scholarship Funds which must maintain a \$20,000 balance. For funds falling below the minimum fund balance, the Foundation's Board of Trustees may exercise the option to retire the fund and move the corpus to an unrestricted fund or field of interest fund. To the extent practicable or feasible, the Board of Trustees shall distribute charitable grants from the converted Fund for purposes that are consistent with the original Donor's charitable interests.

The minimum amounts to establish a Split-Interest Arrangement are:

| | |
|---------------------------------------|-----------|
| 1. Charitable Gift Annuity | \$100,000 |
| 2. Charitable Remainder Annuity Trust | \$250,000 |
| 3. Charitable Remainder Unitrust | \$250,000 |

The minimum amounts necessary to establish a Supporting Organization will be mutually agreed upon by the Board of Trustees (or its designated committee) and the Donor or the governing body of the Supporting Organization.

f. Additional Contributions

Additional contributions of cash and actively traded marketable securities to an established Fund may be made in any amount at any time. Gifts of other assets (illiquid assets) require advanced approval per gift acceptance policies approved by the Board of Trustees (or a designated committee) (see Section 2.b. above). However, federal tax laws prohibit additional contributions to a charitable remainder annuity trust or a charitable gift annuity. In these cases, a new trust or annuity agreement will be necessary.

g. Contributions are Irrevocable

Any contribution made to the Community Foundation, once accepted, represents an irrevocable charitable contribution to the Community Foundation for Nantucket. Contributions to the Community Foundation are not refundable.

h. Donor Restrictions on Use of Property

Federal tax laws provide that a Donor to the Community Foundation may not impose any "material restriction" (a term defined in the Treasury Regulations), which prevents the Community Foundation from freely and effectively employing the contributed assets, or the income derived there from, in furtherance of its charitable purposes. Any restriction (beyond the specified charitable purposes stated in the instrument of transfer) sought to be imposed by a Donor is subject to review and approval by the Community Foundation.

i. Policy to Sell Contributed Property

The general policy of the Community Foundation is to sell all contributed property as soon as practical after receipt so as to minimize market risk. For non-publicly traded securities or other assets for which no readily liquid market exists, the Community Foundation will exercise discretion as to the timing and price of sales. Closely held stock or other assets for which no readily liquid market exists that are retained for any reason and that are valued in excess of \$1,000,000 (or, in the aggregate, are of material value compared to the other assets of the Community Foundation), shall be revalued using a qualified appraisal every three (3) years from the date of the gift to the Community Foundation. The cost of the qualified appraisal shall be an expense of the Fund, Supporting Organization or Split-Interest Arrangement holding such asset. Any costs incurred by the Community Foundation necessary for the disposition of securities and other assets (i.e., legal and appraisal fees) and for the management of such assets prior to disposition will be an expense of the Fund. Exceptions to this general policy will be made only in unusual circumstances and only with the prior approval of a senior management officer of the Community Foundation and in accordance with policies as established and approved by the Finance Committee.

j. Tax Deduction vs. Net Proceeds from Sale of Contributed Property

An individual for income tax purposes can deduct a charitable contribution only in the year in which the contribution is actually paid or ownership has transferred (excess contributions above adjusted gross income percentage limitations may be carried forward for up to five additional years). Tax laws generally provide rules on how the value of the contribution deduction is to be determined. Gifts to the Community Foundation for Nantucket are deductible at the highest "public charity" level allowed by law. Please see the Appendix for a further explanation of tax laws governing charitable contributions.

The value of the contribution for tax deduction purposes may vary from the net proceeds realized by the Community Foundation upon the sale of the contributed property. Donors are encouraged to consult with their professional tax advisors to determine the appropriate value for tax deduction purposes.

k. Confidentiality

All agreements with Donors and all information concerning Donors and prospective Donors shall be held in strict confidence by the Community Foundation, 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 will be honored or allowed only if permission is obtained from the Donor prior to release of such information.

Section 3. *Investment Policies*

The Community Foundation's investment program shall seek to provide competitive market returns with reasonable levels of risk. The officers of the Community Foundation so empowered or the Finance Committee shall direct the investments of these Funds consistent with the objective. Copies of the Community Foundation's investment program and policies are available to any interested party upon request.

Generally, if a particular investment portfolio is not recommended by the Donor, Donor Advisor(s) or Advisory Committee as provided below, Funds shall be invested in the Community Foundation's money market pool. If a Donor, Donor Advisor(s) or an Advisory Committee is interested in having all or a portion of a Fund invested in a particular investment portfolio provided by the Community Foundation, then the current Donor, Donor Advisor(s) or Advisory Committee may make an appropriate recommendation to the Community Foundation in accordance with the policies and procedures approved by the Investment Committee. Such recommendations are advisory, and the Community Foundation will exercise independent authority over the investments of the principal and income of each Fund in accordance with the Foundation's Investment Policy. Segregated asset accounts may be permitted, with advanced approval. The Fund holding such accounts shall pay the direct costs of such arrangements, including additional administrative costs.

Section 4. *Administrative Expenses*

Each Fund, Supporting Organization and Split-Interest Arrangement will be charged in accordance with the current administrative fee schedule as approved by the Board of Trustees (or a designated committee). If an expense is directly associated with a specific Fund, Supporting Organization or Split-Interest Arrangement, then the expense will generally be directly charged to the applicable fund. The current Community Foundation fee schedule is available to any interested party upon request.

Section 5. *Charitable Purpose*

For purposes of these Procedures, a "charitable purpose" is an educational, religious, scientific, literary, public or other purpose permitted to be carried on by organizations described in Sections 170(c)(1) and 170(c)(2)(B) of the Internal Revenue Code of 1986, as amended.

Section 6. *Educational Program*

The Community Foundation's mission and activities and the needs of the community will be well served by active promotion and community education concerning such activities and needs. The Community Foundation shall conduct educational programs that help connect donors to the priorities they care about and the needs of the community.

Section 7. *Amendments*

The Procedures for Establishment and Operation of Funds and Supporting Organizations may be amended by a majority vote of the Board of Trustees (or a designated committee) at any regular or special meeting.

PART B. FUNDS

Section 1. *Types of Funds*

Funds are categorized by their charitable purpose.

- a. *Donor Advised Funds*: the Donor, Donor Advisor(s) or Advisory Committee may recommend charitable grant recipients from time to time.
- b. *Designated Funds*: this type of fund is created to ensure that support will be provided to one specific charitable organization named by the Donor(s).
- c. *Organization Funds*: this type of fund (also referred to as an agency fund) is established by an organization that is recognized as a public charity described in Section 509(a)(1), (a)(2) or (a)(3) for the benefit of that organization.
- d. *Field of Interest Funds*: this type of fund allows the Donor to support multiple named organizations or an area of charitable interest, defined broadly (such as education) or narrowly (such as cancer research). A Donor can also select a defined geographic area or specific community to benefit from grant distributions.
- e. *Scholarship Funds*: Donors can support worthy students at an institution (high school, college, technical), students in a particular field of study, students from a particular geographic area, or students who have attended a specific high school or school district, provided that the students are selected through an objective and non-discriminatory competitive selection process.

- f. *Unrestricted Funds:* Donors may choose an unrestricted fund that allows the Community Foundation to determine where annual grant distributions will do the most good.

Section 2. General Policies

Each Fund, whether administered directly by the Community Foundation or through a separate trust, custodial account or agency agreement, shall be considered part of (and legally owned by) the Community Foundation and shall be governed by its Articles of Incorporation, Bylaws and by these Procedures. The Community Foundation is vested with ultimate authority and control over the principal and income of each Fund.

Section 3. Donor May Select Name of Fund

Each Fund will be named as the Donor wishes. However, the Community Foundation reserves the right to reject names that it finds objectionable.

Section 4. Distributions

a. Grants Shall Follow Donor's Intent

Grants will be made from each Fund consistent with the instructions given by the Donor at the time that the Fund was established. If, however, (1) the Donor's instructions are contrary to the Articles of Incorporation, Bylaws or Procedures, or (2) the "variance power" (described below in Sections B.5; B.8(b); B.9(b); B.10(c); and B.11(d)) is exercised, then the Donor's instructions shall be modified to a degree that is necessary for compliance with these Procedures. To the extent practicable or feasible, the Board of Trustees shall distribute amounts for purposes that are consistent with the Donor's charitable interests. The Community Foundation is vested with ultimate authority and control over the principal and income of each Fund.

b. Grants Will Normally Identify the Name of the Fund

Unless otherwise requested by the Donor Advisor, any distribution shall identify the name of the Fund from which it is made.

c. Grants Must Not Provide More Than an Incidental Benefit to Donor

The Community Foundation will not make a grant that provides a financial benefit to a Donor, Donor Advisor, Advisory Committee member, any person in whose honor a Fund is created or named, or any related party to such a person (for purposes of this Manual, a "related party" shall include (i) any family member of such person (i.e., such person's spouse, ancestors, children, grandchildren, great-grandchildren, brothers, sisters, nieces, nephews and any of their spouses) and (ii) any entity in which such a person or a combination of such persons owns more than 35% of the combined voting power, profits interest or beneficial interest). (The preceding sentence does not apply to grants made out of an Organization Fund to the Organization for which the Fund was established.)

Distributions from the Community Foundation may not be used in whole or in part for any pre-existing legally binding pledge or for any private benefit such as dues, benefit tickets or tables at fund-raising dinners, or goods and services bought at charitable auctions.

The Community Foundation may make grants that provide a Donor, Donor Advisor(s), Advisory Committee member or related party with name recognition and such other benefits that the Internal Revenue Service has recognized as not providing the Donor with more than an incidental benefit.

d. Other Limits on Distributions

Additional rules apply to funds classified as “donor advised funds” under the Pension Protection Act of 2006. The legal definition of a donor advised fund under this law is a fund or account that (i) is separately identified by reference to contributions of a donor or donors; (ii) is owned and controlled by a “sponsoring organization” (i.e., the Community Foundation); and (iii) the donor (or any person appointed or designated by the donor – a “donor advisor”) has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in the fund or account by reason of the donor’s status as a donor. This definition could include funds that the Community Foundation has classified as Donor Advised Funds, Designated Funds or Field of Interest Funds.

The Community Foundation will not make any grant, loan, compensation or similar payment (including expense reimbursement) to a Donor, Donor Advisor, Advisory Committee member, any person in whose honor a Fund is created or named or any related party from any fund.

The Community Foundation will also not make any grant directly to an individual or to an organization for the benefit of a specified individual from any fund other than a Scholarship Fund or a disaster relief fund.

If a distribution is proposed from any fund that is classified as a donor advised fund under the law to a non-charitable entity or to a Type III supporting organization that is not “functionally integrated” with its supported organization as defined by law, then such distribution will not be allowed until it has been reviewed by a senior management officer of the Community Foundation and, if required by law, procedures are in place so that the Community Foundation can exercise “expenditure responsibility” over such distribution. Expenditure responsibility generally requires the Community Foundation to exert all reasonable efforts and establish adequate procedures to (i) see that the distribution is spent solely for the charitable purpose for which it is made, (ii) obtain full and complete reports from the distributee regarding the use of such distribution and (iii) make full and detailed reports regarding such distribution to the Secretary of the Treasury.

e. Donor Generally Cannot Control Timing of Grants

The ultimate right to direct the timing and amount of all distributions of income or principal from any Fund is vested in the Board of Trustees. As is required by federal tax regulations, a Donor may not reserve the right to direct the timing of distributions from the Fund. However, a Donor can specify in the establishing document or instrument of transfer:

1. That some or all of the principal (as opposed to income or specific assets) may not be distributed for a specified period of time.
2. That distributions are limited to income only.
3. That distributions should be made annually (or more frequently).

If distributions are limited to income, and unless otherwise specified in the instrument of transfer, income shall be annually computed based on the current spending policy of the Community Foundation. The current spending policy of the Community Foundation is 5% of the average past three year-end Fund asset balances.

f. Board May Identify Specific Charitable Needs of the Community

In fulfilling that part of the Community Foundation’s mission of providing leadership on critical community issues, the Board may enumerate specific charitable needs and specific organizations that it deems are most deserving of support.

Section 5. Variance Power And Monitoring Function

a. Community Foundation to Follow General Donor Intent if Variance Power is Exercised

If the Board of Trustees exercises the variance power described in Section B.8(b), B.9(b), B.10(c), or B.11(d) to modify a Designated Fund, Organization Fund, Field of Interest Fund, or Scholarship Fund, or if the privilege of the Donor, Donor Advisor(s) or Advisory Committee and other persons designated to make recommendations from a Donor Advised Fund has been terminated in accordance with Section B.7, then the Board of Trustees shall convert the Fund into its choice of either an Unrestricted Fund or a Field of Interest Fund. To the extent practicable or feasible, the Board of Trustees shall distribute charitable grants from the converted Fund for purposes that are consistent with the original Donor's charitable interests.

b. Fund To Keep Donor's Name If Variance Power Exercised

Generally the Fund shall retain the name given by the Donor unless the Board of Trustees, in its discretion, has chosen to deposit all of the Fund's assets into a named Unrestricted or Field of Interest Fund.

c. Community Foundation to Monitor Beneficiary's Performance of Terms of Grant

In addition to the Monitoring Functions hereinafter stated, the Board of Trustees through the Board Committees and the Staff may periodically review the effectiveness with which agencies that receive grants from Funds and Supporting Organizations are performing their responsibilities in the utilization of these grants toward attainment of the Community Foundation's and the Donor's objectives. Where necessary, the Board shall initiate appropriate action.

Section 6. Advisory Committees of Funds

a. General Rules

A Donor or the Board of Trustees may appoint an Advisory Committee for a Donor Advised, Designated, Nonprofit Organization or Unrestricted Fund.

With respect to a Field of Interest Fund, the Donor may recommend an Advisory Committee (which may include the Donor) to be appointed by the Community Foundation in which case the senior management officers of the Community Foundation shall have the authority to appoint the Advisory Committee on behalf of the Board of Trustees of the Community Foundation.

The rules governing an Advisory Committee for a Scholarship Fund are set forth in Section B.11(a)(3) below.

The Advisory Committee may make recommendations to the Board of Trustees concerning grants from the Fund and any other matters that it deems of importance. Generally, each Advisory Committee should select one person who will have the authority to transmit the Advisory Committee's recommendations to the Community Foundation.

b. Usually Majority Vote Is Required

Unless contrary instructions have been made by the Donor or by the Community Foundation, whenever two persons are designated to make recommendations they shall act by unanimous consent; whenever more than two persons are so designated, then a recommendation by a majority of such persons shall constitute an effective recommendation for consideration by the Community Foundation. Otherwise, each committee may operate under such procedures as it finds appropriate.

c. Authority to Act as Agent of Community Foundation Restricted

The Community Foundation generally encourages Donors to contribute to the Community Foundation and its Funds. However, no person has the authority to act as the agent of the Community Foundation unless he or she has received express written authority from the Community Foundation. In particular, the Community Foundation does not authorize any volunteer or advisor to accept contributions on its behalf, to commit Community Foundation resources to any activity, or to engage in fundraising activities in the name of the Community Foundation or on behalf of any of its Funds without written permission from the Board of Trustees or an authorized employee.

The Community Foundation is generally supportive of charitable activities that benefit the residents of this region. The restrictions in this section are necessitated, in part, because of compliance with tax and other laws that require disclosure of benefits associated with charitable contributions as well as contemporaneous written acknowledgements to certain Donors of contributions (the failure for which could subject the Community Foundation and its Funds to fines and penalties). We need to be informed about activities being done in the name of the Community Foundation (and its Funds) and to monitor any obligations associated with those activities.

d. Fundraising

The Community Foundation will not sponsor any fundraising or other events for any Fund unless specifically approved by the senior management officers, and will not be responsible for the collection of any amounts from any benefit, ball, banquet or athletic event unless specifically approved in a duly executed Third Party Fundraising Policy agreement. Any advertising, promotional or other materials must be consistent with this policy.

e. Divorce/Separation of Current Donor Advisors

This policy generally will only affect current Donor Advisors whereby either spouse may request grant distributions from a Fund.

In the event spouses serve as the only Advisors to a Fund, and a legal action for divorce, separation or annulment is pending between the spouses, the Community Foundation may, upon receiving notice of such action:

1. suspend processing any grant distribution recommendation for such Fund(s) unless and until the spouses both agree in writing to approve the grant distribution recommendation, or
2. suspend processing any grant distribution recommendations for such Fund(s) unless and until the spouses have jointly agreed in writing to an alternative procedure, acceptable to the Community Foundation, to provide for the future administration of such Fund(s). Subject to the approval of the Community Foundation, the spouses may jointly authorize the Community Foundation to bifurcate any Fund(s), designating one spouse or other successor Advisor to serve as the Advisor to one of the successor Fund(s) and designating the other spouse or other successor Advisor to serve as the Advisor to the other successor Fund(s) created as a result of bifurcation.

In the event that the spouses cannot jointly agree as provided above and no divorce decree, order of legal separation, order of annulment, property settlement agreement, agreement of the parties or other legal order has been entered or approved which would otherwise resolve the issue to the satisfaction of the Community Foundation, the Community Foundation may, in its sole discretion, bifurcate any Fund(s) so affected into equal shares and designate one spouse to serve as the Advisor to one of the successor Fund(s) and designate the other spouse to serve as the Advisor to the other successor Fund(s) created as a result of bifurcation. However, the Community Foundation shall not take such action until at least six months have transpired since the date upon which the action for divorce, separation or annulment was filed with the court of record.

Section 7. Special Rules for Donor Advised Funds

a. Establishment and Purpose

A Donor may establish a Donor Advised Fund whereby the individual Donor(s) and/or designated Advisors, retain a lifetime privilege to recommend charitable grant recipients to the Community Foundation. Corporate Donor Advised Funds may continue to advise on charitable distributions as long as the Corporation continues to operate.

b. Distributions from Donor Advised Funds

Donors and/or Donor Advisors may make written recommendations of grants to tax exempt charitable organizations described in Section 501(c)(3) of the Internal Revenue Code, other than private non-operating foundations. Charitable organizations must be public charities as described in Sections 509(a)(1) or 509(a)(2) of the Internal Revenue Code, supporting organizations described in Sections 509(a)(3) of the Internal Revenue Code that are Type I, Type II or Type III functionally-integrated or private operating foundations. As provided in the Internal Revenue Code and Regulations, the Board of Trustees has the absolute right to direct all distributions of income and/or principal from Donor Advised Funds.

c. Minimum Grant Amount from Donor Advised Funds

The Board of Trustees may designate a minimum grant amount for Donor Advised Funds.

d. Grant Activity Policy

As the legal owner of assets contributed to the Community Foundation and held in its funds, the Community Foundation is responsible for ensuring the funds are used for grantmaking, exclusively for charitable purposes, and do not confer any private benefit on the Donor or any other person. With donor advised funds, the Community Foundation works with the Donor and/or Donor Advisor(s) to determine when grants will be made from those funds. To that end, the Community Foundation monitors the use of donor advised funds to ensure their activity leads to charitable distributions.

1. **Examples of Fund Activity.** The following are examples of Fund activity that lead to distributions. If this policy ever conflicts with federal law or state law (including the Uniform Prudent Management of Institutional Funds Act, commonly known as UPMIFA), the relevant law controls. A Fund is considered active when there is regular communication between a Donor, Donor Advisor(s) (or named successors) and the Community Foundation regarding the existence and purpose of that Fund. Examples of some of the activities that would deem a Fund active include, but are not limited to:
 - a. **Regular Grant Recommendations.** Donor advisor generally recommends grants at least annually to qualified charitable organizations. The amount of grantmaking can vary from year to year.
 - b. **Developing a Philanthropic Program.** Donor makes a substantial contribution to a Fund, for example upon the sale of his or her business, and refrains from recommending grants for a given initial period while the Donor consults with the Community Foundation and/or does his or her own research to determine what types of grants will best meet community needs and/or the Donor's philanthropic goals.
 - c. **Long-term Giving Plan.** Donor Advisor deliberately reduces the frequency or size of grant recommendations from the Fund, for example:

- i. During his or her working years, with the intention of increasing the Fund balance to support grantmaking during retirement when the Donor Advisor expects his or her income to change.
 - ii. To build a Fund over time so the Donor's children can make grants later (the idea being the Donor is leaving a charitable legacy for the next generation to administer).
 - iii. When the Fund is invested in an illiquid or undervalued investment and the Donor Advisor intends to begin making grant recommendations when the investment can be sold at a reasonable price.
- d. **Project Grants.** Donor makes a substantial contribution to a Fund and determines to recommend grants to a specific qualified charitable organization over a period of years so that the Donor can monitor how the charitable organization performs, and to consider whether another organization would better achieve the Donor's charitable objectives.
- e. **Starter Fund.** Donor wants to build the Fund balance to make substantial grants to the community. Therefore, there may be no distributions made until the Fund balance reaches an amount stated in the Fund file based on the Community Foundation's conversations with the Donor and/or Donor Advisor(s).
- f. **Specific Occasion Grant.** Donor Advisor refrains from recommending grants for a number of years with the specific charitable goal of recommending a grant upon a specific occasion. Examples may include, but are not limited to:
- i. Donor is incapacitated with no successor Advisor(s) named so the Community Foundation waits until the Donor's death to distribute the Fund according to the Donor's original intent on file with the Community Foundation;
 - ii. The Fund has transitioned to named successor Advisors but they are minors and no adult representative is named to represent them (so grants resume when successor Advisors are adults);
 - iii. Founders of Fund who are also the Donor Advisors are getting divorced so that grants are suspended until both the spouses agree on grants, which may include splitting the Fund into two separate funds, one for each spouse to advise, or eventually dissolving the Fund by the making of charitable grants;
 - iv. Grants are suspended during litigation involving a Fund (e.g., the Donor left his/her estate to a Fund, but the Donor's heirs are disputing the bequest so the Community Foundation does not allow grants until the litigation is resolved); or
 - v. Donor leaves a bequest to a Fund and distributions are made periodically to the Fund during the estate settlement process, but grants are not made until the estate is fully settled and the Fund receives a final distribution from the estate.
2. **Re-Activating Grantmaking.** Should there be no grant activity in a donor advised fund for three years, steps will be taken by the staff of the Community Foundation to activate the Fund. These steps may include, but are not limited to:
- a. Notifying the Fund Advisor regularly and periodically (at least annually) to encourage the Advisor to activate the fund.

- b. Distributing grants from the Fund to qualified grant recipients that align with the Donor's intent, but if the Community Foundation determines such intent is obsolete, incapable of being fulfilled, impractical, or inconsistent with the community's charitable needs, then the Community Foundation shall exercise its variance power to enable the Community Foundation to continue to use its resources to meet the needs of the community and to address the charitable purposes for which the funds were committed. These distributions could include Foundation-directed distributions from the fund according to the Foundation's spending policy (currently 5% of the past 36 months' trailing asset average). That distribution would be made to the Nantucket Fund, barring any legal restrictions placed on the fund by donors. For funds falling below the \$10,000 minimum fund balance, the Foundation's Board of Trustees may exercise the option to retire the fund and move the corpus to an unrestricted fund or field of interest fund. To the extent practicable or feasible, the Board of Trustees shall distribute charitable grants from the converted Fund for purposes that are consistent with the original Donor's charitable interests.

e. Eligible Advisors During the Donor(s)' Lifetime

Recommendations for distributions shall be subject to the following rules:

1. Generally the Donor(s) may designate any adult (i.e., at least age 18) person(s) to have the privilege of making recommendations throughout the lifetime of the Donor or his or her spouse, unless earlier terminated by resignation or incapacity. Donor(s) may designate additional and/or alternative Advisors at any time during the Donor(s)' lifetime.
2. A Donor other than an individual, such as a corporation, partnership or trust, will not be subject to a time limit for its privilege to make recommendations.

f. Successor Advisors After the Death of Donor(s)

1. The Donor(s) may designate one or more adult (i.e., at least age 18) person(s) to have the privilege of making recommendations throughout the successors' lifetimes, unless earlier terminated by resignation or incapacity. If more than one person is named, then the successor Advisors shall operate under the rules governing Advisory Committees described in Section B.6.
2. CFN allows one generation of successive advisers for each DAF. Exceptions may be made with approval by the Foundation's Board of Trustees. Upon the death of the last designated fund adviser, the corpus of the fund will be transferred to an Unrestricted Fund or Field of Interest Fund, unless otherwise specified in the fund documents.

g. Option to Split Funds for Successor Advisors

If a Donor has designated successor Advisors and if the charitable interests of the successor Advisors are sufficiently diverse, then the Community Foundation may, with the consent of the successor Advisors and subject to the terms of the Donor's instrument of transfer, divide the Donor Advised Fund into multiple Donor Advised Funds and limit each successor Advisor's advisory privilege to a separate Fund.

h. Conversion of Donor Advised Fund After Advisory Privilege Ends

Upon termination of the advisory privilege, a Donor Advised Fund will be converted at the discretion of the Community Foundation to an Unrestricted Fund or a Field of Interest Fund as provided for in Part B, Section 5.

Section 8. Special Rules for Designated Funds

a. Establishment and Purpose

A Donor may establish a Designated Fund for one public charity described in Sections 509(a)(1) or (a)(2) of the Internal Revenue Code or supporting organizations described in Sections 509(a)(3) of the Internal Revenue Code.

b. Monitoring Function and Variance Power

The Community Foundation shall monitor the performance of the designated charitable organization to determine that it is using payments for charitable purposes consistent with the Community Foundation's purposes and the Donor's intention at the time the contribution was made. If the Board of Trustees determines that continued payments for the designated organization have become unnecessary, obsolete, incapable of fulfillment, impractical or inconsistent with the community's charitable needs the Board may, in its discretion, select an alternative public charity with a similar mission and charitable purpose of the original Designated Charity as specified in the instrument of transfer or convert the Designated Fund to an Unrestricted Fund or Field of Interest Fund. The Fund shall then continue in accordance with the provisions of Section B.5.

Section 9. Special Rules for Organization Funds

a. Establishment and Purpose

An Organization described in Section 509(a)(1), (a)(2) or (a)(3) may establish an Organization Fund (also referred to as an agency fund) for its benefit.

b. Monitoring Function and Variance Power

The Community Foundation shall monitor the performance of the designated charitable organization to determine that it is using payments for charitable purposes consistent with the Community Foundation's purposes and the Donor's intention at the time the contribution was made. If the Board of Trustees determines that continued payments for the designated organization have become unnecessary, obsolete, incapable of fulfillment, impractical or inconsistent with the community's charitable needs the Board may, in its discretion, select an alternative public charity with a similar mission and charitable purpose of the original Designated Nonprofit Charitable Organization as specified in the instrument of transfer or convert the Organization Fund to an Unrestricted Fund or Field of Interest Fund. The Fund shall then continue in accordance with the provisions of Section B.5.

c. Back-Office Services for Community Foundations

Other community foundations wanting to utilize the Community Foundation for Nantucket's services may do so through an Organization Fund.

Section 10. Special Rules for Field of Interest Funds

a. Establishment and Purpose

A Donor or the Community Foundation may establish a Field of Interest Fund from which payments are made to multiple named organizations or for a specific charitable purpose (field of interest). The specified purpose may be broad, such as support of education, health care or arts and humanities; or narrow, such as the prevention of child abuse. Field of Interest Funds may also be established for specific geographic areas such as a neighborhood, section of city, county or metropolitan area. Any proposed Field of Interest Fund that is intended to provide aid to individuals who have suffered loss as a result of a catastrophic disaster

shall be reviewed and approved in advance by the Community Foundation's corporate counsel to ensure compliance with additional Internal Revenue Service rules governing disaster relief funds. In short, disaster relief funds must have a sufficiently large or indefinite pool of grantees and recipients must be selected based on a written and objective determination of need that is reviewed by an independent selection committee that is controlled by a staff member of the Community Foundation in a manner similar to that described for Scholarship Funds below.

b. Geographic Affiliates

The Community Foundation's governing body maintains oversight and control over geographic affiliates. A geographic affiliate is a component fund (or collection of component funds), established within or by the Community Foundation, serving a defined geographic region under a common advisory board. Grants recommended by the advisory board of a geographic affiliate shall be subject to the same due diligence process exercised by the Community Foundation for all other Field of Interest funds.

c. Monitoring Function and Variance Power

The Board of Trustees shall periodically evaluate all Field of Interest Funds. If the Board determines that continued payments for the specified charitable purpose have become unnecessary, obsolete, incapable of fulfillment, impractical, or inconsistent with the community's charitable needs, the Board in its discretion, may change the field of interest of the Fund or convert it to an Unrestricted Fund. The Fund shall then continue in accordance with the provisions of Section B.5.

Section 11. Special Rules for Scholarship Funds

a. Establishment and Purpose

A Donor or the Community Foundation may establish a Scholarship Fund from which grants are made for study or other similar purposes to support one or more worthy recipients, provided that the recipients are selected through an objective and non-discriminatory competitive selection process.

Scholarships must be awarded in accordance with a selection process that is consistent with the Community Foundation's tax-exempt status and consistent with the allowance of tax deductions for individuals making contributions to the Community Foundation. In addition, the selection process must include the following:

1. **A sufficiently broad pool of potential grantees.** The pool of scholarship applicants must be sufficiently broad so that the making of grants to the members of the group will be considered as furthering a charitable purpose and not merely benefiting private interests. However, if the scholarship program requires the selection of an exceptionally qualified individual to carry out its purposes and the pool of such individuals is small, the Fund shall include documentation of the efforts made to determine qualified members of the class of potential recipients. Any proposed limitation on the pool of grantees that is based on race or any other characteristic that the Internal Revenue Service might deem to be counter to public policy and inconsistent with the Community Foundation's tax-exempt status shall be reviewed by the Community Foundation's corporate counsel.
2. **Objective and non-discriminatory selection criteria.** The criteria used in selecting scholarship recipients shall be objectively related to the purpose of the scholarship and applied equally to all applicants. Criteria might include, but need not be limited to: prior academic performance, recommendations from professors, financial need, or evidence of an applicant's motivation, character, ability and potential. The specified criteria may be broad, such as attending any institution of higher learning at the discretion of the student, or narrow, such as a specific major at a specified named institution. Scholarship Funds may also be established for specific geographic areas such as a section of city, county or metropolitan area. Scholarships may be awarded for

students to attend a specific institution (elementary through high school, college, technical); students in a particular field of study or major; students from a particular geographic area; or students who have attended a specific high school or school district.

3. A sufficiently independent selection committee. The Donor may designate the Community Foundation to serve as the selection committee to review scholarship applications and select recipients. Alternatively, the Donor may recommend an Advisory Committee (which may include the Donor) to be appointed by the Community Foundation in which case the senior management officers of the Community Foundation shall have the authority to appoint the Advisory Committee on behalf of the Board of Trustees of the Community Foundation. The Advisory Committee will review scholarship applications and select scholarship recipients, and, if needed, the manager of scholarship funds for the Community Foundation shall control the Advisory Committee by having the equivalent of a supermajority vote on the Advisory Committee. The manager of scholarship funds for the Community Foundation shall have the ultimate authority to select the scholarship recipients and the Donor, Donor Advisor(s) and any persons related to the Donor or Donor Advisor(s) shall not directly or indirectly control the Advisory Committee. Donors who recommend Advisory Committees for Scholarship Funds shall strive to recommend individuals who are familiar with the community and who have expertise related to the scholarship being awarded.

b. Employer-Sponsored Scholarship Funds

Any proposed Scholarship Fund that will be sponsored by an employer and awarding scholarships to employees or family members of employees shall be reviewed and approved in advance by the Community Foundation's corporate counsel to ensure compliance with additional Internal Revenue Service rules governing such scholarship programs.

c. Other Permitted Grants to Individuals

In addition to scholarship grants for study at an educational institution described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code (i.e., an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students at the institution), Scholarship Funds may also provide for (1) grants to individuals that constitute a prize or award if the recipient is chosen from the general public and without any action on the recipient's part, the recipient is not required to render substantial services as a condition of receiving the prize or award and the prize or award otherwise complies with Section 4945(g)(2) of the Internal Revenue Code; or (2) grants to individuals that are made for the purpose of achieving a specific objective, producing a report or other similar product, or improving or enhancing a literary, artistic, musical, scientific, teaching or other similar capacity, skill or talent of the recipient as provided in Section 4945(g)(3) of the Internal Revenue Code.

d. Monitoring Function and Variance Power

The Board of Trustees shall periodically evaluate all Scholarship Funds. If the Board determines that continued payments for the specified charitable purpose have become unnecessary, obsolete, incapable of fulfillment, impractical, or inconsistent with the community's charitable needs, the Board in its discretion, may change the scholarship criteria of eligibility or convert it to an Unrestricted Fund. The Fund shall then continue in accordance with the provisions of Section B.5.

e. Conflict of Interest

No scholarship award shall be made to a Donor's family member including direct ancestors and direct lineal descendants, spouse, and other relatives including brothers, sisters, nieces, nephews, aunts, uncles, cousins, and their respective spouses and children. Non-donor Advisory Committee members shall also adhere to the same policy regarding scholarship recipients awarded to Advisory Committee family members.

Section 12. Special Rules for Trusts Created as Component Funds

The tax regulations provide that in order for a trust to be treated as a component part of a community foundation (rather than a separate trust), the following requirements must be met:

- a. The terms of the trust instrument and the Donor's instrument of transfer must subject the trust to the operation of the Articles of Incorporation and Bylaws of the Community Foundation;
- b. The Community Foundation must have the power to modify any restriction or condition on the distribution of assets for any specified charitable purpose or to any specified organization if, in the sole judgment of the Board of Trustees, such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community served;
- c. The Community Foundation must have the power to replace the trustee for breach of fiduciary duty under state law;
- d. The Community Foundation must have the power to replace any participating trustee for failure to produce a reasonable return of net income over a reasonable period of time;
- e. The Donor may not impose any "material restriction" (as that term is defined in the Treasury regulations) with respect to the transferred assets; and
- f. The Community Foundation must accept the contribution.

PART C. SUPPORTING ORGANIZATIONS

Section 1. Establishment and Purpose

a. Definition and Tax Status

A supporting organization is:

1. A charitable corporation or trust
2. Classified by the IRS as:
 - (a) a Section 501(c)(3) charity, and
 - (b) as a public charity (rather than a private foundation) because it supports a publicly supported charity, such as a community foundation.

The tax laws provide that a supporting organization will be a public charity, even if all contributions have come from related parties or even if it has not received any contributions over a period of years (either situation would normally cause a charity to be a private foundation).

b. Technical Requirements Under The Tax Laws

In order to be a supporting organization of the Community Foundation under Section 509(a)(3) of the Internal Revenue Code, the establishing Donor seeking supporting organization status must prove to the IRS that it:

1. Is organized to support the Community Foundation,
2. Is not controlled by "disqualified persons",

Disqualified persons include substantial contributors to the supporting organization (donors who gave more than 2% of the organization's total contributions), members of that person's family and businesses controlled by the person. By law, they cannot have 50% or more of the voting power of the governing body or a veto power over the actions of the organization since that would constitute "control."

3. Is operated, supervised, or controlled "by" or "in connection with" the Community Foundation.
 - (a) "by" means that the Community Foundation appoints a majority of the governing body of the supporting organization,
-or-
 - (b) "in connection with" is a much more complicated procedure by which the supporting organization must show that:
 - i. The Community Foundation appoints at least one member of the governing body of the supporting organization, and
 - ii. Through its operations, the supporting organization does either one of the following:
 1. Engages in activities that the Community Foundation would otherwise do itself but for the supporting organization, or
 2. Distributes 85% or more of its income to or for the use of the Community Foundation in such a way that the Community Foundation is "attentive" to the supporting organization.

c. Tax Advantages of Supporting Organization

1. Avoid Private Foundation Taxes and Administrative Requirements

A supporting organization is treated as a public charity and is free from private foundation excise taxes and administrative requirements of a private non-operating foundation.

2. Greater Tax Benefits for Donors

A donor to a supporting organization can frequently claim greater tax benefits than if the same property was given to a private non-operating foundation:

- a. A larger tax deduction for gifts of real estate or closely held stock (fair market value vs. cost basis).
- b. A larger deduction can be claimed each year, if the donor is subject to the annual charitable deduction limitation.

Section 2. Policies Applicable to a Supporting Organization

The terms of the relationship to become a supporting organization of the Community Foundation and the benefits and services that one organization may provide to the other shall be mutually agreed upon by the governing bodies of both organizations. In general, this relationship requires the active oversight and involvement of the Community Foundation. Consequently, the following information must be obtained from the supporting organization:

1. Copies of the organization's articles of incorporation and bylaws, if in corporate form, or trust instrument, if in trust form, and tax exemption letter from the Internal Revenue Service.

2. Copies of all board meeting notices and minutes of the board meetings;
3. Notification when any board member appointed by the Community Foundation finishes his or her term, resigns or otherwise ceases to serve;
4. Financial reports at least quarterly (unless all of the supporting organization's assets are already held at the Community Foundation);
5. Copies of all account statements upon request of the Community Foundation (if the supporting organization's assets are not all held at the Community Foundation);
6. Copies of the annual 990 reports to the Internal Revenue Service; and
7. Information concerning all grants so that the grants can be processed through the Community Foundation.

In return, the Community Foundation's role is to provide the supporting organization with the following primary services (additional services may be separately negotiated):

1. Appointment of the requisite number of members to the supporting organization's board as required by the organization's governing document(s);
2. Periodic financial statements;
3. Access to on-line tools provided to donors by the Community Foundation;
4. Information upon request regarding grant-making opportunities; and
5. The processing of all grants.

The tax laws require that organizational documents (articles of incorporation or trust instrument) of the supporting organization must (1) specify that the Community Foundation will be the supported organization and (2) specify charitable purposes that are supportive of, and not broader than, those of the Community Foundation. In addition, the supporting organization's activities must support the Community Foundation. This does not mean that the supporting organization must pay all (or any) of its income to the Community Foundation. It may, instead, make grants to other charities and for charitable programs that are in furtherance of the Community Foundation's charitable purposes. However, as discussed above, the Community Foundation generally requires a supporting organization to process all grants through the Community Foundation.

Section 3. *Termination of Relationship*

Either the Board of Trustees or the Governing Body of the supporting organization may terminate the relationship upon such notice as is prescribed in the agreement between the Community Foundation and the supporting organization. Termination may cause the supporting organization to lose its public charity tax status and be reclassified as a private non-operating foundation.

PART D. SPLIT-INTEREST ARRANGEMENTS

Section 1. *Definitions*

Split-interest arrangements are sometimes referred to as "deferred gifts". They generally pay income to a Donor (or someone else who is named by the Donor) over the person's life and then distribute the assets to a charity upon death.

- a. **Charitable Gift Annuity** (Immediate or Deferred) - A contract with the Community Foundation to receive a fixed dollar amount each year over a person's life; the annuity contract must meet the tax requirements of Section 514(c)(5) of the Internal Revenue Code. Payments are generally based upon the American Council on Gift Annuities approved tables in effect at the time that the gift is made.

The rate of return the Donor(s) receives depends upon the age (and, if applicable, the age of the spouse) at the time of the gift. The older the Donor, the higher the rate of return will be. Payments may be made annually or in more frequent intervals. The remaining proceeds are distributed to a

named charitable Fund established by the Donor at the Community Foundation, excluding an Organization Fund. (See Part B, Section 1)

- b. Charitable Remainder Annuity Trust - A trust that pays a fixed dollar amount (at least 5% of the value of the property contributed to the trust). Payments are made annually (or more frequently) to one or more income beneficiaries for life (or for a fixed term of years -- maximum 20). The remaining proceeds are distributed to a named charitable Fund established by the Donor at the Community Foundation, excluding an Organization Fund. (See Part B, Section 1)
- c. Charitable Remainder Unitrust - A trust that pays a fixed percentage (at least 5%) of the value of the trust's assets each year (as valued at the beginning of each year) to one or more income beneficiaries for life (or for a fixed term of years -- maximum 20). The remaining proceeds are distributed to a named charitable Fund established by the Donor at the Community Foundation, excluding an Organization Fund. (See Part B, Section 1)
- d. Charitable Lead Trust - This is the inverse of a charitable remainder annuity trust or unitrust. Income is distributed to the Community Foundation, into a named charitable Fund established by the Donor, (over a period of years or the lifetime of the Donor) and the remainder is usually distributed to members of the Donor's family. Such a trust can be a useful part of an estate plan to keep a rapidly appreciating asset (such as real estate or stock) within a family.

Currently, the Community Foundation does not trustee charitable lead trusts. However, the Community Foundation will be pleased to work with the Donor to help find an appropriate trustee.

- e. Retained Life Estate - Donors may leave their principal residence, vacation home or farm to a named charitable Fund established by the Donor or to an existing Fund at the Community Foundation and retain the right to live in the house or farm for the Donor's lifetime (the life of a surviving spouse can also be added). The Donor receives a sizable charitable income tax deduction the year the property is donated through the Retained Life Estate. The amount of the tax deduction is dependent on the age(s) of the Donor and the value of the home or farm. A gift of a personal residence now, with retained life residency for the Donor and/or spouse, gives the Donor the same estate tax benefits as a gift by will plus an immediate income tax deduction.

Section 2. *Community Foundation as Trustee; Minimum Contributions; Other Conditions*

a. Community Foundation as Trustee of Split-Interest Gifts

The Community Foundation offers Charitable Gift Annuities to Donors. The Community Foundation can also serve as trustee for charitable remainder annuity trusts and charitable remainder unitrusts. The Community Foundation will not trustee Charitable Lead Trusts. However, Donors may designate a named charitable Fund at the Community Foundation as the income beneficiary of the lead interest.

b. Minimum Contributions

| | |
|---------------------------------------|-----------|
| 1. Charitable Gift Annuity | \$100,000 |
| 2. Charitable Remainder Annuity Trust | \$250,000 |
| 3. Charitable Remainder Unitrust | \$250,000 |

c. Other Conditions

1. Charitable Gift Annuities

Under the tax laws, the entire remainder interest of a charitable gift annuity must be distributed to the Community Foundation. A Donor may recommend that the proceeds be used to establish a Donor-

Advised, Designated, Field-of-Interest, Scholarship or Unrestricted Fund or be added to any existing Fund. In the absence of such a recommendation, the proceeds will generally be used to establish (or be added to) a named Unrestricted Fund.

2. Charitable Remainder Trusts

In order for it to serve as the trustee, the Community Foundation must be named as the beneficiary of the remainder interest of a charitable remainder annuity trust or a charitable remainder unitrust. A Donor may establish or add to an Unrestricted, Designated, Field-of-Interest, Scholarship or Donor-Advised Fund with the remainder proceeds of the charitable remainder trust. In the absence of such a designation, the proceeds will generally be used to establish (or be added to) a named Unrestricted Fund.

3. Policies Concerning Contributions

The general rules described in Part A (concerning contributions to the Community Foundation) generally apply to contributions to split-interest arrangements (particularly Section A.2 which gives the Community Foundation the authority to reject assets that are hard to sell or carry potential liabilities).

4. Independent Review by Legal Counsel

A Donor is advised to consult independent legal counsel concerning contributions to Split-Interest Arrangements including the drafting and review of all documents establishing the split-interest gifts.

APPENDIX

TAX LAWS THAT GOVERN INCOME TAX CHARITABLE CONTRIBUTIONS

Section 1. *Timing of Income Tax Deductions*

The tax laws generally provide that a contribution is deductible in the year that the property is delivered to the Community Foundation. Delivery is considered made under the following circumstances:

- (1) Unconditional delivery or mailing of a check to the Community Foundation which subsequently clears in due course will constitute an effective contribution on the date of delivery or, if the check is received in the ordinary course of the mails, on the date of mailing.
- (2) Unconditional delivery or mailing of a properly endorsed stock or bond certificate will constitute an effective contribution on the date of delivery or, if such certificate is received in the ordinary course of the mails, on the date of mailing.
- (3) If a contribution is made subject to compliance with certain conditions, then the contribution is not effective until the Community Foundation agrees to comply with such conditions.
- (4) Except as provided in paragraph (5), if a Donor delivers a stock certificate to his bank, broker, other agent or the issuing corporation for transfer to the Community Foundation, or instructs his bank, broker, other agent or the issuing corporation to transfer stock to the Community Foundation, then the gift is effective on the date the stock is transferred on the books of the issuing corporation.
- (5) If stock is registered in a nominee name by a bank, broker or other agent and such bank, broker or other agent agrees to hold the stock in such nominee name on behalf of the Community Foundation, so that the stock will not be transferred on the books of the issuing corporation, then the gift of such stock is effective on the earlier of the date on which such bank, broker or other agent (i) acknowledges in writing that it holds the stock on behalf of the Community Foundation, or (ii) makes the appropriate entry in its books and records to reflect that it holds the stock on behalf of the Community Foundation.
- (6) Delivery to the Community Foundation will be effective upon receipt by a senior management officer of the Community Foundation, or the employee or agent authorized by any such officer to accept the contributions.

Section 2. *Evidence of Deduction Required*

a. Any Contribution of \$250 or More

Donors will not be able to claim a charitable deduction for any gift of cash or property of \$250 or more to any charity unless a "contemporaneous written acknowledgement" from the charity can be produced; cancelled checks will not suffice. To meet the requirements, the receipt (1) must contain certain information and (2) must be received within certain time limits.

1. Contents of Acknowledgment

The acknowledgment must state (a) the amount of cash and a description (but not value) of any property contributed and (b) whether the charity had provided any goods or services in exchange for the property described in clause (if so, then it must state the value of the goods and services).

2. Time Limits

An acknowledgment will generally be considered to be "contemporaneous" if you obtain it before you file your tax return for that year.

b. Appraisals Required for Gifts of Property Over \$5,000; Exceptions for Cash and Publicly Traded Securities

Donors who contribute property (other than publicly traded securities) valued at more than \$5,000 in any year must substantiate the value with "qualified appraisals" from "qualified appraisers". The \$5,000 threshold is increased to \$10,000 in the case of non-publicly traded stock. The requirement does NOT apply to contributions of cash or publicly traded stock. By law, the cost of the appraisal must be borne by the Donor.

The Donor must attach a copy of IRS Form 8283 ("Non-cash Charitable Contributions") to the tax return in the year of the contribution. A charitable organization (including a community foundation) that receives such property must sign a copy of the appraisal report (IRS Form 8283), which should then be attached to the Donor's income tax return.

If the Community Foundation sells the property listed on IRS Form 8283 within three years of receipt, it is required by law to disclose the sale price to the IRS and to the Donor on IRS Form 8282.

Section 3. Amount of Income Tax Deduction

Generally the Donor can deduct the amount of cash or the fair market value of the long-term capital gain property contributed to the Community Foundation. Usually the best results are for gifts of appreciated long-term capital gain stock and real estate because a Donor can generally deduct the entire fair market value for gifts of such property to the Community Foundation.

Section 4. Annual Deduction Limitations

a. Individuals

The maximum amount of the deduction depends on (1) the type of property contributed (cash, ordinary income property, short-term capital gain property or long-term capital gain property), (2) the nature of the charitable organization (public charity or private foundation), and (3) the amount of adjusted gross income ("AGI") shown on the IRS Form 1040. Deductions for amounts in excess of these annual limitations can usually be carried forward for five additional years.

The annual deduction limitations for INDIVIDUALS for cash and long-term capital gain property, the most common types of gifts to the Community Foundation, are:

| Type of Charity | <i>Cash</i> | <i>Long-term Capital Gain Property (Stock & Real Estate)</i> |
|---|-------------|--|
| Public Charity (including a Fund in the Community Foundation) | 60% of AGI | 30% of AGI |
| Private Foundation | 30% of AGI | 20% of AGI |

Amounts that exceed the deduction percentage limitation may be carried forward for five additional years.

b. Business Entities

C Corporations may generally deduct up to 10% of their taxable income. However, the charitable deduction for entities such as S Corporations, Limited Liability Companies and Partnerships generally passes through to its shareholders, members or partners.

c. Trusts and Estates

Estates and trusts are eligible for an unlimited income tax charitable deduction, provided that the contribution came from income rather than corpus and was made pursuant to the governing instrument.

Section 5. Treatment of Excess Business Holdings

Under the Pension Protection Act of 2006 (PPA), the private foundation excess business holdings rules now apply to donor advised funds as if they were private foundations¹. That is, the holdings of a donor advised fund in a business enterprise, **together with the holdings of persons who are disqualified persons with respect to that fund**, may not exceed any of the following:

- Twenty percent² of the voting stock³ of an incorporated business
- Twenty percent of the profits interest of a partnership or joint venture or the beneficial interest of a trust or similar entity.

Ownership of unincorporated businesses that are not substantially related to the fund's purposes is also prohibited.

Donor advised funds receiving gifts of interests in a business enterprise after the date of the PPA's enactment (August 17, 2006) will have five years to divest holdings that are above the permitted amount, with the possibility of an additional five years if approved by the Secretary of the Treasury. Funds that held such assets on August 17, 2006 will have a much longer period to divest under the same complicated transition relief given to private foundations in 1969⁴.

What is a business enterprise?

A "business enterprise" is the active conduct of a trade or business, including any activity which is regularly carried on for the production of income from the sale of goods or the performance of services. Specifically excluded from the definition are:

- Holdings that take the form of bonds or other debt instruments unless they are a disguised form of equity
- Income from dividends, interest, royalties and from the sale of capital assets
- Income from leases unless the income would be taxed as unrelated business income
- "Functionally-related" businesses and program-related investments
- Businesses that derive at least 95 percent of their income from passive sources (dividends, interest, rent, royalties, capital gains). This will have the effect of excluding gifts of interests in most family limited partnerships, and other types of holding company arrangements.

What is a disqualified person?

Donors and persons appointed or designated by donors are disqualified persons if they have—or reasonably expect to have—advisory privileges with respect to the donor-advised fund by virtue of their status as

donors. Members of donors' and advisors' families are also disqualified, but the section does not define "family" and does not cross-reference either section 4958 or 4946 for the definition. Finally, the term includes 35-percent-controlled entities as defined in section 4958(f)(3).

Community Foundation Policy with regard to assets categorized under the PPA as "excess business holdings"

The Community Foundation will identify and monitor any new gift to a donor advised fund of any interest qualifying as an "excess business holding" under the PPA. The Community Foundation will exercise its best effort to dispose of the contributed interest at the best possible price within five years of the date of the gift, as required under the PPA. In any event, the Community Foundation will dispose of any excess business holding prior to the five-year time limit, except in the event that the Treasury Department grants an additional five year holding period. The Community Foundation will notify potential donors of such interests of this requirement prior to the contribution of such interest.

¹ The language is clear that it is only the donor advised fund—not the sponsoring charity—that is to be treated as a private foundation. Accordingly, it appears that this section does not apply to assets held by the sponsoring charity's investment pools, or assets held by funds that are not donor advised.

² Thirty-five percent if it can be shown that persons who are not disqualified persons have effective control of the business.

³ Additionally, the donor advised fund will be barred from holding non-voting stock of an incorporated business unless the disqualified persons collectively own less than 20 percent of the voting stock. Under the *de minimis* rule, the donor-advised fund could continue to hold an interest that did not exceed two percent of the voting stock and two percent of the value. Additional rules apply to cover situations such as mergers, redemptions, and acquisitions.

⁴ Excess holdings acquired by purchase must be disposed of immediately. If purchases by disqualified persons cause the donor advised fund to have excess holdings, the donor advised fund will have 90 days to dispose of the excess.

The above Appendix is intended to provide a general overview of charitable tax law. The above does not constitute tax or legal advice. Donors should consult their professional tax advisor and/or legal counsel before making a charitable gift to the Greater Kansas City Community