

MASSACHUSETTS COLLEGE OF ART AND DESIGN

REQUEST FOR TRUSTEE ACTION

To: Board of Trustees **Date:** February 23, 2015
From: Dr. Richard Marshall, Chair
Log: 15-15
Subject: Approval of the MassArt Foundation Gift Policy

To approve the Massachusetts College of Art and Design Foundation Gift Policy as revised.

Background Statement:

The Gift Policy was last reviewed in 2005. The updated version has been reviewed and approved by legal counsel.

Committee Assigned: Development Committee
Committee Action: February 23, 2015
Date of Action: Approved

Trustee Action: Approved
Trustee Approval Date: February 23, 2015
Effective Date: Effective upon approval of the Foundation Board

Massachusetts College of Art and Design Foundation Gift Policy

Reviewed and Approved by Board of Trustees 2/23/15

1. OVERVIEW STATEMENTS

A. *Board Commitment*

It is the policy of the Board of the Massachusetts College of Art and Design Foundation, Inc. (the Foundation) to offer the donor the opportunity to make gifts to the Foundation, both of cash and non-cash assets in a manner beneficial to the donor while protecting the fiscal and legal integrity of the institution. It is also the policy of the Board to give the opportunity to the donor to make gifts reserving life income for the donor and other beneficiaries through their wills or through current giving.

B. *Ethics in Receiving Gifts*

The Foundation authorizes the acceptance of gifts to the Foundation only where there is genuine donative intent, where there has been full disclosure between the donor and the Foundation including, to the best of MassArt's ability, full disclosure of any tax ramifications to the donor, where the donor has been encouraged to seek her/his own counsel on legal and financial matters, and where the gift is in the best interest of both parties. This Board does not authorize the acceptance of gifts that would jeopardize the financial, legal or moral integrity or reputation of the institution, or where the gift would cause embarrassment to the donor or her/his family.

C. *Valuing Gifts*

The Foundation authorizes the Office of Institutional Advancement to value gifts (other than cash, which should be valued at dollar face value) in an appropriate manner for the campaign or fund drive, and in consonance with sound accounting principles.

For planned gifts, the Office of Institutional Advancement will value irrevocable planned gifts at market value within the Campaign, as is consistent with CASE standards. Revocable gifts will only receive campaign credit for documented bequest intentions of known amounts to donors 75 years or older. MassArt will require written documentation of a bequest intention; and must be able to place a dollar value on a bequest intention.

Full disclosure must be made to the donor when the gift is valued higher than the value placed on the gift by the Internal Revenue Code in determining the amount of deduction for the donor's income gift or estate taxes. When necessary, the Foundation authorizes the Office of Institutional Advancement or other appropriate office to adjust the value given to a gift in case of revaluation by the IRS.

Full responsibility rests on the donor for claiming any deductions including filing form 8283, and any appraisals or other documentation. Full responsibility also rests on the donor for the value given to tangible personal property or services, and donors will be expected to give the Foundation a written statement of value for these types of gifts.

D. Pledges

A pledge to the Foundation is an written unconditional promise by a donor to contribute cash or other assets to the Foundation. The Foundation will accept and record written pledges in accordance with generally accepted accounting standards (GAAP) and Financial Accounting Standards Board (FASB) rules. The Foundation will not record a multi-year pledge on advancement or general accounting records unless it is substantiated in writing via a Foundation-approved gift agreement signed by both the College and the donor. The agreement must include the gift amount and schedule of pledge payments. The agreement will also state the designation of the gift within the College, such as an indication of preferences or restrictions on the use of the funds. Single year pledges will be recorded in accordance with Office of Institutional Advancement practices.

Conditional pledges, such as those received in emails from the donor reflecting the gift amount and schedule of pledge payment(s), will be accepted after approval by the Senior Vice President of Administration and Finance. Such pledges will be recorded in Institutional Advancement fundraising totals only and not be recorded within general accounting ledgers.

The Foundation, under no circumstances, will book a verbal pledge.

II. ASSETS ACCEPTABLE AS GIFTS

The following assets are acceptable as described, as outright gifts, as bequests or devises (estate gifts), or when appropriate, as funding for a charitable remainder trust, gift annuity, pooled income fund gift or lead trust as determined by the Internal Revenue Code.

A. Cash

Cash is acceptable.

B. Securities

Listed securities, or securities actively traded over-the-counter are acceptable. Securities in closely held corporations, S corporations, or otherwise privately held securities are acceptable upon the approval of the Foundation's legal counsel.

C. Real Estate

Real property that is mortgage free is acceptable with a minimum value of \$50,000. Full interests, partial interests and remainder interests in real property are all acceptable. Remainder interests are contracts. In the case of such gifts, the donor will be expected to agree to pay all property taxes, maintain the property, and provide adequate insurance on the property.

Conditions for acceptance shall include salability and annual maintenance costs including evaluation of any liens against property and any real estate taxes. Donor may also be asked to sign a statement regarding liability for previous and current environmental or other conditions if the Foundation deems it appropriate.

D. Bargain Sales

Definition: A bargain sale is one in which the Foundation is provided the opportunity to purchase property at less than its fair market value. The gift is usually the difference between the sale price and the market value.

Bargain sales are not acceptable unless submitted by the Foundation Executive Committee and passed by the Trustee Development Committee before acceptance.

E. *Tangible Personal Property*

Gifts of tangible personal property are acceptable. Conditions for accepting gifts include salability or as-is usability and current College needs for the type of property offered, physical condition of the property, cost of any storage or insurance needed and any other unusual feature or condition involved in the transfer. For gifts of art, the College's Director of Exhibitions will review the prospective gift before acceptance.

F. *Insurance*

Gifts by contract, particularly life insurance, through which the Foundation will receive a future benefit, are acceptable with a minimum face value of \$10,000, so long as the Foundation is not required to expend funds from sources other than the donor to maintain the contract. The Foundation may be named as a percentage or contingent beneficiary of any life insurance policy.

G. Services and Volunteer Expenses

Gifts of professional or volunteer services as requested by the College are acceptable. Donors are expected to discuss with the recipient department the nature and value of the service in advance of giving it.

Volunteers may receive gift credit for expense reimbursements donated to the Foundation.

H. Other Assets and Forms Gift May Take

Other types of gifts not mentioned in this policy may be acceptable within reason for the purpose given and in an amount appropriate for the gift type. The Foundation Executive Committee is expected to use fiscally and legally sound rationales for acceptance. This policy should serve as a general guideline under such circumstances.

I. Donor Advised Funds

A donor-advised fund (DAF) is a charitable giving vehicle administered by a public charity and created for the purpose of managing charitable donations on behalf of an organization, family, or individual. Receiving a contribution through a DAF requires the following: hard credit for the gift is given to the legal Donor (the DAF) and a soft credit given to the individual/organization/family which established the DAF. When a development department receives a gift, they credit a donor. "Hard credit" refers to the person, organization, company, foundation, trust, donor advised fund, or other entity whose name appears on the check. "Soft credit" is noted in the development record of the person who caused the gift to be made. For example, if a gift is received from a family trust, development records note the family member who recommended the gift so they can be appropriately recognized. If a gift is made by a company, the company owner may be "soft credited" while the company itself receives "hard" credit. The distinction between hard and soft credit ensures development offices do not count the same gift twice, once by counting the entity whose name appears on the check and simultaneously counting the person who caused the gift happen. Hard and soft credit allows development offices to keep consistent records.

Using a DAF to Fulfill a Personal Pledge - Prohibited

Assets from a DAF cannot be used to fulfill a Donor's personal pledge to the third party charity. Because the assets held in the DAF no longer belong to Donor, but are assets of the private foundation and subject to the DAF agreement, the Donor cannot make a personal pledge to a third-party charitable organization with the expectation of paying the pledge through their DAF.

III. LIFE INCOME VEHICLES

The following life income agreements are acceptable when in compliance with the Internal Revenue Code at the time the gift is established and are subject to reformation as tax laws change. The Foundation willingly acts as a trustee and/or gift manager for these life income vehicles where the Foundation is to receive no less than 50% percent of the remainder interest.

A. *Gift Annuity*

A gift annuity contract may be established for a minimum gift of \$10,000. Annuitants must be 60 years of age or older when payments begin. Annuities may have no more than two annuitants.

B. *Charitable Remainder Trusts*

Both charitable remainder annuity trusts and charitable remainder unitrusts are acceptable. A minimum funding amount of \$50,000 is required to establish these gifts. The number of life income beneficiaries and the generations across which beneficiaries may span are negotiable based on meeting the Internal Revenue Code for remainder values, generation skipping tax implications for the donor and the funding amount. Minimally funded trusts are limited to two income beneficiaries of the same generation.

IV. ENDOWED FUNDS

A. *General Guidelines*

The Foundation encourages donors to establish permanent endowed funds and allows donors to name these. The Foundation accepts unrestricted endowed funds, preferred use endowed funds and restricted endowed funds. Funds must be \$25,000 or more at the time of establishment to be held and invested separately from the Foundation's endowment portfolio. (Donations of any size for endowed funds or life income gifts may be held and invested separately from the endowment portfolio on a temporary basis without conflicting with this policy.)

Restricted endowments must contain the following language: "Should the provisions for the use of the income from this endowment cease to be effective or practicable in the sole determination of the Foundation, the Foundation is authorized to use such income in a manner consistent with the general intent of such provisions."

Establishing a term-of-years endowed fund is permitted when recommended by the Office of Institutional Advancement and approved by the Gift Acceptance Committee.

All endowment agreements with funding of \$100,000 or more must be reviewed and approved by the Foundation Executive Committee. Agreements funded with less than \$100,000 may be reviewed by counsel as deemed appropriate by the Foundation.

B. Types of Endowed Funds

1. Scholarships

Endowed scholarships may be established with a minimum gift of \$25,000. (Cash and cash equivalent gifts below the minimum, which are designated for scholarships, will be placed in the general scholarship endowment, unless a pre-existing scholarship is designated.)

Donors may accumulate gifts toward minimum funding of an endowed scholarship with a gift of one-fourth the required minimum and a signed scholarship agreement. Accumulations toward the minimum must be completed within five (5) years from the date of agreement. When accumulation is not completed, the agreement will be considered terminated, and gift amounts will be placed in the Foundation's general endowed scholarship fund.

Scholarship payments to student recipients will not be made until the minimum for the endowment has been received, the scholarship agreement is signed and approved by the Foundation Executive Committee, and sufficient income has been generated for distribution. Donors accumulating gifts toward minimums may provide for an annual stipend in the agreement when that stipend is supported by an annual gift.

Scholarships may be established with estate or planned gifts. Scholarship moneys received by the Foundation through a will or other planned gift, which is less than the required minimum funding at the time of distribution, will be placed in the Foundation's general endowed scholarship fund, unless legally impossible, in which case, the Foundation reserves the right to decline the gift.

Scholarship agreements shall be signed by the donor and by a member of the Foundation Executive Committee.

2. Endowed Academic Chairs

Endowed chairs may be established with a minimum funding of \$1,000,000 or more (with an initial gift of \$250,000 or more) to be held and invested separately from the Foundation's endowment portfolio. Donors may negotiate the following with the Foundation: the purpose of the chair, the program it will support, and the desired amount of income to be generated annually (a minimum of \$40,000 must be generated in annual interest income).

Donors may accumulate gifts toward an endowed chair with a gift of one-fourth the required minimum and a signed agreement. The agreement must specify the date within which minimum funding must be completed. Unless otherwise specified, where accumulation is not completed, the agreement will be considered terminated, and gift amounts received will be placed in the Foundation's general endowment fund and be used for the program named in the endowed chair agreement while that program is extant.

Distribution of income from the endowed chair may be made before minimum funding has been reached if the agreement so provides.

Endowed chairs may be established with estate or planned gifts. The Foundation reserves the right to negotiate, through the probate process, the use of any moneys received through a will or other planned gift that have been designated for use as an endowed chair and that will not generate sufficient income to support the purpose of the academic chair named in the agreement.

Endowed chair agreements shall be signed by the donor and by the president, and show the date on which the gift was approved by the Foundation Executive Committee. The Foundation Executive Committee shall note in its record approval as well as comments by the Vice President for Academic and Student Affairs.

3. Other Endowed Funds

Unrestricted endowed funds may be established with a minimum gift of \$10,000. Restricted endowed funds (other than scholarships) may be established with minimum gifts of \$25,000.

Donors may accumulate gifts toward minimum funding of an endowed fund with a gift of one-half the required minimum and a signed agreement. When accumulation is not completed the agreement will be considered terminated, and gift amounts received will be placed in the Foundation's general endowment fund.

Payments to the recipient purpose/program will not be made until the minimum for the endowment has been received, the endowment agreement is signed and approved by the Foundation Executive Committee, and sufficient income has been generated for distribution.

Endowed funds may be established with estate or planned gifts. Endowment fund moneys received by the Foundation through a will or other planned gift, which is less than the required minimum funding at the time of distribution, will be placed in the Foundation's general endowment fund, unless legally impossible.

Endowed fund agreements shall be signed by the donor and by a member of the Foundation Executive Committee.

V. DESIGNATING GIFTS

A. *Restricted Current Gifts*

1. Gifts Under \$1,000

Cash and Securities

The Foundation will accept restricted gifts when the restriction already exists in the form of a gift fund at the time the gift is made. The fund may be an endowed fund, an annual fund or a campaign fund. Restricted gifts will also be accepted where the gift is usable by the Foundation at the time the gift is made, even though a fund does not exist.

Non-Cash Gifts

Once accepted under this policy, non-cash gifts may be restricted under the same guidelines as cash and securities. Donors must be advised before making the gift whether the gift will be sold, held for eventual use or put to a “related use” as defined by the Internal Revenue Code.

2. Gifts of \$1,000 or Greater

Cash and Securities

Donors may make restricted gifts to the Foundation where the restricted fund exists or where the Foundation Executive Committee agrees to the restriction.

Non-Cash Gifts

Restricted gifts are acceptable as above. Donors must be advised before making the gift whether the gift will be sold, held for eventual use or put to a “related use” as defined by the Internal Revenue Code.

B. Restricted Deferred Gifts

1. Estate Gifts (wills, trusts, life insurance, other instruments)

The College will encourage unrestricted estate gifts to the Foundation or unrestricted estate gifts to the endowment fund, since specific designations become inactive or non-existent over time. The Foundation reserves the right to decline restricted estate gifts.

Upon the donor’s request, the Foundation will provide language to assist in establishing a restricted estate gift. The sample language will include the following: “If, in the opinion of the President and the Directors of the Massachusetts College of Art and Design Foundation, all or part of this fund cannot be usefully applied to the above purpose, they may use the same for any purpose that in their opinion will most nearly accomplish my wishes and purposes.”

Gifts received where the Foundation had no prior knowledge of the amount or nature of the gift will be treated as if the language above had been included, unless legally impossible. Gifts of \$10,000 or less will be placed in the General Endowment Fund when the restriction no longer exists.

2. Other Planned Gifts (charitable remainder trusts, gift annuities, pooled income fund gifts, etc.)

Gifts established through the planned giving program at the Office of Institutional Advancement may be restricted with the approval of the Foundation Executive Committee. Acceptance will rely in part on inclusion of the language in the instrument, which reads: "This designation represents a preferred use for these funds and is not an absolute restriction. Should the exact designation cease to be effective or practicable in the sole determination of the Foundation before or after the gift is received by the Foundation, the Board is authorized to use this gift in an alternative way consistent with the general intent of this designation."

Gifts distributed to MassArt where the Foundation had no prior knowledge of the gift instrument or its restriction will be handled on a case-by-case basis. The Foundation reserves the right to decline restricted gifts from planned giving instruments.

VI. NAMING OPPORTUNITIES

All proposals for naming must be approved by the Trustee Development Committee (naming policy attached).

A. *Naming New Construction*

Negotiations may be initiated with donors who wish to name the building(s) of new construction or of existing buildings under renovation with a current gift of 50% of the construction cost announced at the beginning of a campaign, construction or renovation project. The Foundation encourages donors naming buildings to consider endowing the maintenance of the building to prevent the need for renovation and possible renaming.

B. *Naming Through Planned Gifts*

1. General Policy

The Foundation reserves naming opportunities for current gifts and living donors. Use of an estate or planned gift to name campus property is not preferred but will be considered on a case-by-case basis.

Unless legally impossible, the Foundation will treat estate and planned gifts with naming elements as a request. The Foundation will honor the request at the final distribution of the gift when the name is appropriate and where the gift meets minimum funding for the naming opportunity at the time of distribution. The Foundation reserves the right to decline gifts with naming restrictions.

2. Campaign Policy

Donors wishing to name an item during a campaign may use the present value of a planned gift only if a) the gift is established during the campaign in which planned gifts are counted, b) the Foundation is given a copy of the gift instrument, c) the present value of the gift equals the minimum funding amount or the naming opportunity, and d) the naming proposal is approved by the Foundation Executive Committee.

C. *Honorary Naming*

The Foundation reserves the right to honor, through appropriate naming opportunities, any individual or family irrespective of the individual or family's giving record. Such honors will generally be made posthumously.

D. *Donor Recognition Policy*

The Office of Institutional Advancement donor recognition policy, including any current campaign guidelines, will govern naming opportunities in all instances not covered by this policy. The donor recognition policy and all campaign guidelines shall conform to this policy and may not supersede it without Trustee Development Committee approval.

VII. POLICY EXCEPTIONS

A. *General Exceptions*

Exceptions to this policy must receive the recommendation of the Foundation Executive Committee and the approval of the Trustee Development Committee. The Foundation shall be asked to ratify the Foundation Executive Committee's action at regular board meetings.

B. *Exceptions for Completed Gifts and Gifts Under Negotiation*

Gifts made through estate plans that have been properly executed prior to the date of this policy, and gifts already received by the Foundation are grandfathered under this policy. Gifts under negotiation at the time this policy is adopted need not conform to the policy but will be accepted based upon the spirit of this policy and the specific terms negotiated with the donor.

C. *Renewing Gifts for Conformity*

Gifts established with a written agreement shall be reviewed periodically, and action taken to conform the gift agreement to current law and the Foundation policy when necessary or appropriate for the well being of the Foundation. Donors are responsible for conforming gifts where the Foundation is not the trustee or gift manager.

VIII. GIFT ACCEPTANCE PROCEDURE

A. *Authority to Negotiate*

The Foundation authorizes the President or any presidential delegate working through the planned giving program, and any advisor or outside counsel deemed necessary, to negotiate life income gifts – charitable remainders trusts, charitable lead trusts, pooled income fund gifts, gift annuities – both *inter vivos* and through estate planning.

B. *The Gift Acceptance Committee*

(Currently, the Foundation Executive Committee may serve as the Gift Acceptance Committee. In most organizations with a ratified gift policy, there is a separate Gift Acceptance Committee. The establishment of such a committee can be useful to the organization as it deals with donors, and potential issues with gift acceptance.)

Negotiated gifts shall be submitted to the Gift Acceptance Committee for approval. The committee shall consist of the Vice President of Advancement, the Senior Vice President of Administration, and at least one senior officer of the Foundation. The committee shall converse as needed, to formally accept or reject negotiated gifts. They may seek the advice or input of any party they deem appropriate to make a fiscally, legally, and morally sound decision. The committee shall report its actions to the president and the Foundation Executive Committee of this Board. The Gift Acceptance Committee may request that the Foundation Board, in regular session, ratify its committee decisions when appropriate.

Potentially controversial gifts are to receive a recommendation for action by the Gift Acceptance Committee, to be reviewed by legal counsel, and to be deferred to the Foundation Executive Committee of this Board for acceptance or rejection.

Examples of potentially controversial or problematic gifts are: offers to endow courses that are not academic priorities, to create new institutes or centers that are not academic priorities, to establish new programs that are not academic priorities, or to build or change facilities that are not academic or administrative priorities. Gifts may be problematic if they are offered with unacceptable restrictions. A gift of a scholarship could be restricted to individuals from a small geographic area and therefore problematic, for example, making it unlikely to be awarded on a regular basis.

- The President of the College is ultimately responsible to approve the acceptance of all gifts to the College.
- No general or group solicitation of funds may be undertaken by any school, department, or individual without the approval of the Vice President for Advancement (VPA). In cases where the level of priority for a project is not clear, the VPA will consult the Provost of the College and the Senior Vice President for Administration and Finance.

- No agent of the College or the Foundation will a donor , whether an individual, foundation, corporation, federation, association, other donative entity, or to nonfederal grant-making entities, outside of approved funding priorities without approval from the VPA or his/her designated representative.
- The VPA in consultation with the Provost and Senior Vice President, is responsible for development of gift acceptance policies. Recommended policies will be referred to the President for approval by the MassArt Board of Trustees.
- The VPA, in consultation with the Provost and Senior Vice President, is responsible for the implementation of Board approved gift acceptance policies.
- No fundraising consultants, individuals or firms will be hired to work on behalf of MassArt or any school, center, institute, program, or division of the College without the prior approval of the Vice President for Advancement or his/her designee, and the approval of the Senior Vice President for Administration and Finance or his/her designee.

Definitions

- **Gift:** a gift is a voluntary, irrevocable transfer of cash or other assets to MassArt without consideration of compensation at the time of transfer or any time in the future.
- **Unrestricted Gift:** an unrestricted gift is made with no conditions imposed by the donor and may be used for the general educational purposes of the College.
- **Restricted Gift:** a gift made with conditions imposed by the donor; such a gift may be for current, endowment, or capital use. Undue conditions may require that the College decline a restricted gift.
- **Discretionary Gift:** a gift made to the College to be used at “the discretion” of a specified individual such as a member of the faculty, a dean, or the President. This is counted as an unrestricted gift to the College.
- **Gift-in-Kind:** a gift-in-kind is an irrevocable non-cash contribution of tangible property. It may consist of, but is not limited to, equipment, art, books, collectibles, antiques, or other tangible property.
- **Grant:** a grant is an allocation of assets to MassArt from a foundation, corporation, or non-federal government agency. Usually, a grant is made for a specific purpose, for a defined period of time, and delineated by a formal agreement between the College and the donor. It is usually subject to reporting requirements.
- **Pledge:** a pledge is a signed and dated commitment to make a gift over a specified period, generally two or more years, payable according to terms set by the donor and accepted by the College. *During a campaign for MassArt pledge payments will not exceed five years; exceptions to this for very large or other unusual gifts must be granted by the Gift Committee.*
- **Endowment:** a permanent fund established in response to an irrevocable contribution of assets to MassArt. The minimum required to establish an endowed fund is \$50,000. The fund principal is invested “in perpetuity” and a portion of the earnings, based on the spending policy approved by the MassArt Board of Trustees, is available for support of College programs or projects. Endowments may take several forms:
unrestricted endowment: a permanent fund from which earnings may be applied at the discretion of the College
restricted endowment: a permanent fund from which earnings may be applied only for a specific purpose such as faculty salaries or undergraduate scholarships
- **Quasi-Endowment:** a fund sequestered and invested with other College endowments, but whose principal may be invaded at the discretion of the College. Although usually unrestricted, quasi-endowment may be restricted or unrestricted.
- **MassArt Annual Fund:** the organized effort by MassArt to obtain gifts (primarily unrestricted) on a yearly basis in support of the annual scholarship support.

- **Matching Gift:** matching gifts are usually provided by corporations. They are most frequently dollar for dollar, but may be other ratios that match an employee's gift to a nonprofit organization. Matches are most commonly found within the Annual Fund but may follow donor intentions should corporate guidelines permit. At MassArt, matches may be counted toward gift society memberships if received within the fiscal year in which the individual's qualifying gift is received.
- **Budget Relief:** a term used at MassArt, (and other institutions, including Harvard, Dartmouth, etc.), to describe gifts for "current operations" or "approved regular items" from a given year's board-approved operating budget. A gift of current use scholarships, for example, is fungible and budget relieving.
- **Budget Augmentation:** a term used at MassArt to describe current operating funds (whether gifts or grants) received for purposes outside a given fiscal year's board-authorized operating budget. Usually such funds are expended in the year in which they are received.
- **Designation Pending:** a term used to describe a gift that is held in a temporary fund while discussions continue with the donor to determine the purpose for which the gift may be used. Designation pending may also be used to hold a gift prior to a College decision as to usage. A gift in designation pending for more than two years will revert to general institutional purposes unless specific arrangements have been made with the donor and the Gift Committee has approved.
- **Bequest:** a bequest is a gift through an estate or trust.
- **Planned Gift:** a planned or deferred gift is a commitment established legally during the donor's lifetime, but whose principal benefits usually do not accrue to the charitable recipient until some future time. Annuities, gifts of insurance, trusts, and commitments through estate plans are all usually referred to as planned gifts.
- **Major Gift:** a major gift at MassArt is a gift of \$25,000 or more from an individual, organization, foundation, or corporation.