Policy 3.9
Gift Agreements and Related Documentation

Responsible Official: VP for Development & University Relations
Administering Division/Department: Gifts
Effective Date: February 15, 2012
Last Revision: July 06, 2017

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Overview

Preparing a gift agreement will be an iterative process involving the development office, leadership of the unit receiving the gift, the appropriate Executive Vice President, and the donor. It shall be the responsibility of each Vice President for Development to work with development officers, academic leadership, and appropriate cabinet members to ensure that this process is undertaken in an open and well-communicated manner. In certain cases, the Office of General Counsel may be consulted as needed. The following policies and procedures shall guide this process.

Applicability

This policy governs the creation and execution of formal Gift Agreements, which document the mutual understanding between a donor and Emory.

The policy also describes the use of internal memoranda to clarify gift designation, use, and reporting requirements when donors are unable or unwilling to sign formal agreements. It also describes the use of an award letter when a gift is from an organization.

Any Emory unit benefiting from a gift is obligated to use that gift according to the wishes of the donor as documented in formal gift agreements and/or other documentation clearly stating donor intent.

Policy Details

GIFT DOCUMENTATION

All Gift Agreements, Memoranda, and all other applicable documentation (e.g., subsequent revisions and addenda) are created by the Development and Alumni Relations (DAR) Gift Administration Office in consultation with the soliciting development officer. All documentation created by the DAR Gift Administration Office must be in the format approved by DAR leadership and the Office of the General Counsel. These documents must be maintained in the DAR constituent database (AWA).

Gift Agreement

A Gift Agreement must be created for:
• Any gift to create an endowment
• Any gift to name any physical space (building, facility or portion thereof) or fund
• Any gift to name an academic unit or program
• Any (endowed or expendable) gift of $50,000 or more [1]

Exceptions

In certain situations, other documentation such as Memoranda, Letters of Intent, and testamentary documents may be acceptable in lieu of Gift Agreements, as follows.

A. Gifts from Individual Donors:

If a donor is unable or unwilling to sign a Gift Agreement, yet commits to make a charitable gift to Emory, a Memorandum should be created that documents the donor’s intent, which includes donor restrictions on the gift’s designation, use, reporting requirements, giving vehicle, contribution schedule, recognition, and any other obligations agreed upon by the donor and Emory. The Memorandum must be supported by a Letter of Intent and/or alternate documentation (e.g., internal memos, emails, letters). See Section 4: Definitions for information on Letter of Intent, Alternate Documentation, and Memoranda.

B. Gifts from Organizations:

An Award Letter from a Foundation or Corporation is an acceptable form of documentation if it accepts the terms of the original proposal in total and/or documents restrictions on the Gift’s designation, use, reporting requirements, giving vehicle, contribution schedule, recognition, and/or other obligations agreed upon by the foundation or corporation and Emory. The award proposal and other documentation submitted to the foundation or corporation clarifying the use of the Gift should also be attached to the Gift record in AWA if it is directly referenced in the Award Letter.

However, a Memorandum, supported by appropriate alternate documentation, should be created in the following situations and maintained as part of the Gift’s document of record if:
• the Award Letter does not contain enough details to substantiate appropriate designation, use, or other obligations necessary to accurately book the Gift;
• the Award Letter accepts some but not all of the terms of the original proposal; and/or
• the restrictions on the Gift, as defined by the donor, have changed since the original Award letter (see Section 4: Definitions for information on alternate documentation and memoranda).

C. Gifts received through Bequests

Emory will look to written testamentary documentation, including the donor’s will, beneficiary designation form, or other dispositive documents in lieu of a signed Gift Agreement in determining donor intent. Testamentary documents are an acceptable form of documentation and do not require further documentation such as a Gift Agreement or internal memo. Emory may also rely on written or electronic correspondence with the donor. In general, the most recent expression of intent by the donor will be controlling. Please refer to the DAR Unrestricted Planned Gift Designation Policy for additional information.

D. In kind gifts

In kind gifts are defined as non-cash donations of assets such as tangible personal property and materials or of unreimbursed expenses for travel, event hosting, etc. [2] Examples include but are not limited to equipment, food, art, and printed materials. Unless otherwise agreed to with the donor, Emory does not convert these gifts to liquid assets but rather holds them for their direct purpose (display of art, long-term use of laboratory equipment, etc.). Since these gifts are neither expendable nor endowed, they may not need to be documented with a Gift Agreements. Standard documentation such as deeds of gift and in kind gift transmittal forms are sufficient to support donor intent and any purpose and use requirements. Internal memos to file will be created in the absence of any of the above documentation.

Additional Considerations

• Indirect Fees - Per Emory’s spending and distribution policy, the benefiting unit may be assessed any indirect fees. If a donor stipulates that indirect fees (i.e., the infrastructure charge or any unit based fees) may not be charged against an endowment or expendable gift, the development officer must secure the approval of the dean/director of the unit and the Gift Acceptance Committee prior to accepting the gift. If the gift is accepted, language reflecting the donor’s restriction on fees must be documented in the Gift Agreement.

• Grants - Grants administered by the Office of Sponsored Programs (OSP) that may require DAR’s involvement and/or stewardship in order to manage donor relations should be documented with a memorandum. The Gift
Administration Office may draft a memorandum in consultation with other development staff and/or OSP, as appropriate, after being made aware of the grant. The memorandum should outline roles and responsibilities for DAR and OSP, including reporting and grant administration responsibilities.

**PROCEDURE**

**REVIEW AND SIGNATURE AUTHORITY**

The Gift Administration Office will confirm that all Gift Agreements, Award Letters, Memoranda, and all other applicable documentation have been reviewed by relevant stakeholders before obtaining signatures or adding documentation to the official record. The review should include the chief development officer of the unit securing the gift, the appropriate DAR VP, and the unit's senior leader.

**Gift Agreements:**

Signatures are obtained after the draft document has been thoroughly reviewed by appropriate internal parties and the donor(s). After the document has been reviewed and approved, the final Gift Agreement should be signed by all internal parties prior to obtaining the signature of the donor(s). In rare cases the donor(s) may be the first signer, but only upon approval of the appropriate vice president for development.

The Gift Administration Office will obtain signatures on agreements as outlined in the Gift Agreement Procedure policy.

**Revisions:**

At no time may the purpose of a gift as directed by the donor in any documentation be revised or amended without the express consent of the donor or his/her legal designate. Non-DAR staff must direct all requests to amend and/or revise the purpose of a gift to the DAR office. DAR staff will work directly with the donor or his/her designate, as appropriate, to discuss amendments and/or revisions. Any revisions to the original Gift Agreement require either a) an addendum to the agreement that details the change and is signed by the appropriate parties, or b) a memorandum with appropriate approvals as noted in ‘Memoranda’ below. In some cases a new gift agreement may be warranted. Documentation related to revisions to gift purpose should be requested from the Gift Administration Office.

**Memoranda:**

Memoranda in lieu of Gift Agreements must be supported by Letters of Intent or Alternate Documentation if available. Letters of Intent and/or Alternate Documentation must be approved in writing by the appropriate VP for development. The process of creation and routing of Memoranda is managed by the Gift Administration Office.

**Other Approvals:**

In certain cases the Gift Administration Office will seek the approval and/or review of other offices including:

- **Office of the General Counsel:** The Gift Administration Office is required to consult the Office of the General Counsel when preparing agreements for gifts of real estate and/or those having a high degree of complexity.
- **Office of the Vice President for Finance and/or the Office of the Controller:** Documentation for gifts given that use the terminology of “grant” or “endowment” in the language should be reviewed by the Office of the Controller prior to Emory’s acceptance.
- **Relevant DAR offices such as Donor Relations and Donor Fund Reporting:**
- **Naming & Inscriptions Committee & other naming oversight:** Naming of any physical space, school, unit, and other major centers within Emory in recognition of a major gift must meet the criteria outlined in the DAR Naming Policy and may require approval by the Naming and Inscriptions sub-committee of the Board of Trustees. The office of the Sr. Vice President for Development will provide the President’s Office with the requisite information for Board approval. See the DAR Naming Policy for more information.

**ADDITIONAL RESTRICTING POLICIES**
· Clauses in proposals, Gift Agreements, or solicitations that discriminate in favor of or against any race, color, religion, nationality, sexual orientation, gender, or national origin are generally prohibited.

· The terms of any gift should be as flexible as possible to permit the most productive use of the funds, while clearly stating the intent of the donor. For example, scholarships should indicate there is a preference and not a requirement of relevant criteria.

· Gifts that restrict or impede the work or scholarly activity of a faculty member, fellowship holder, or student will not be accepted.

· No fellowship or scholarship gift will be accepted if the terms of the gift in any way include a commitment for the future acceptance, employment, or provision of funds to or for any specific student recipient.

· The donor of a gift may not serve on any committee involved in the final selection or evaluation of students or faculty members who will receive funds related to the gift.

· Preferences for relatives or descendants in the awarding of scholarships or in the use of donated funds are unacceptable.

· Gifts from any donor for a fellowship or scholarship made on the condition or with the understanding that the award will be made to a student of the donor’s choice will not be accepted. Money received subject to such restrictions may be credited to a depository account within the Emory Office of Student Financial Aid, but will not be recorded as a gift to Emory.

1 An expendable gift is defined as a gift made of cash or cash equivalents that are readily converted to liquid assets to be used for support of current activities. Gifts of securities are considered to be cash equivalents since Emory’s practice is to sell the securities instead of holding in Emory’s portfolio.


Definitions

Donor: A donor may be an individual or foundation or corporation (i.e., private funding agency) which gives assets to Emory.

Gift: To qualify as a gift to Emory, the following conditions must be met:

· the transfer of cash or other assets must be unconditional;

· the transfer must be in furtherance of Emory’s charitable mission; and

· the transfer must be non-reciprocal, which means there must be no implicit or explicit statement of exchange, purchase of services, or provision of exclusive information to the donor in exchange for his or her gift.

Gift Agreement: A legal document, signed by a donor and an officer of Emory, confirming donor intent, which includes donor restrictions on gift designation, use, reporting requirements, giving vehicle, contribution schedule, recognition, and any other obligations agreed upon by a donor and Emory.

Award Letter: A letter from an organization indicating that a proposal has been funded and which documents the restrictions on the gift’s designation, use, reporting requirements, giving vehicle, contribution schedule, recognition, and any other obligations agreed upon by the donor and Emory.

Memorandum: Internal document, either in lieu of a formal gift agreement or as additional documentation, noting donor intent, restrictions on gift designation, use, reporting requirements, giving vehicle, contribution schedule, recognition, and any other obligations agreed upon by a donor and Emory. These internal memoranda must be signed by the relevant VP of Development.

Letter of Intent: A document from a donor that documents a donor’s intent, which includes donor restrictions on the gift’s designation, use, reporting requirements, giving vehicle, contribution schedule, recognition, and
any other obligations agreed upon by the donor and Emory.

**Alternate Documentation:** Documentation from a donor (such as email, letters, wills, trust documents, etc.) and/or Emory internal documents (e.g., internal memos, proposals) that provide details about the gift, and that note donor intent and any donor imposed restrictions on the gift’s use, designation, and reporting requirements.

**Related Links**

- Current Version of This Policy: [http://policies.emory.edu/3.9](http://policies.emory.edu/3.9)

**Contact Information**

<table>
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<th>Subject</th>
<th>Contact</th>
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<td>Clarification of Policy</td>
<td>Office of Development &amp; Alumni Services</td>
<td>404-712-2020</td>
<td><a href="mailto:dar-giftadministration@listserv.cc.emory.edu">dar-giftadministration@listserv.cc.emory.edu</a></td>
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**Revision History**

- Version Published on: Jul 17, 2014
- Version Published on: Jul 17, 2014
- Version Published on: Feb 02, 2009
- Version Published on: Jul 14, 2008
- Version Published on: Mar 29, 2007 *(Original Publication)*

*Emory University policies are subject to change at any time. If you are reading this policy in paper or PDF format, you are strongly encouraged to visit policies.emory.edu to ensure that you are relying on the current version.*