



Navigating Gift Agreements: The Good, The Bad, & The Ugly

MID-IOWA PLANNED GIVING COUNCIL
OCTOBER 9, 2023

MEG CLINE, CFA, CFP®
VP FOR GIFT PLANNING & TRUST SERVICES
UNIVERSITY OF ILLINOIS FOUNDATION



Proposal vs. Gift Agreement



"Your proposal is written with clarity and conviction. Send it up to legal for obfuscation."



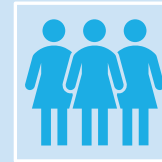
OUR ROAD MAP

- What a Gift Agreement is **NOT**!
- What **is** Gift Documentation?
- Key **Elements** of **Good** Gift Agreements
- Fund Agreement Outline
- Questions

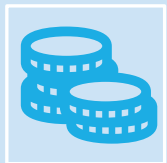
Gift Agreements are not - - - -



The Proposal



A Substitute for Donor Relations



Gift Administration



Not How You “Book” a Gift

Proposal = IMPACT	Gift Agreement = TERMS
Articulates impact	Articulates operational terms
Inspires investment	Ensures usage of funds to have desired donor impact
Matches donor passion with institutional priorities	Defines administration to ensure donor intent -- with flexibility to meet evolving circumstances

Proposal vs. Gift Agreement

Donor-Centric

- Speaks to personal passions
- Engages the donors - intellectually and emotionally

Shows how the gift leverages current resources

- Further advances the campus and unit mission
- Complements existing funds (other gifts, matching funds, etc.)

Has visual appeal

- Is clear and concise
- Effectively utilizes “white space”

Shows impact - - - not need

- Uses positive language
- Relevant to societal issues
- Compelling – drives action
- Unifies by asking donors to be partners

Mapping Out Effective Proposals

A Gift Agreement is not a substitute for Donor Relations!



A Gift Agreement is not a substitute for Donor Relations

Good donor relations includes

- Furthering the relationship at the time of the gift and beyond
- You don't want a gift agreement to be the primary way you celebrate the gift

Immediate celebration of gift

- Thank you letter from unit head
- Stewardship plan (promise of future outreach)

Promise of future outreach

- Impact report
- Thank you letter from beneficiary
- Invitation to scholarship banquet/lecture donor endowed/investiture
- Invitation to VIP events

A Gift Agreement is not.....

Gift Administration

- Is the gift being used in accordance with donor intent?
- Gift Agreement = static/permanent
 - Broader vision of how money should/must be used
 - Sets the outer limits of how the unit can spend the money; not exact procedures on how they should decide how to spend it
 - Can never be changed, except by amendment, which is only available until donor dies
 - Conveyed by gift agreement use terms
- Stewardship = dynamic/ongoing/short-term commitments
 - Showing donor exactly how money is being used
 - Can change depending on administration, priorities, needs
 - Conveyed by communication between unit and donor

A Gift Agreement is not...How to “Book” a Gift



This Photo by Unknown Author is licensed under [CC BY-NC](#)

- Outright Gifts – When the gift is received
- Deferred Gifts – with the appropriate documentation of the estate gift
- Exception - Pledges



What is Gift
Documentation?

Types of Gift Documentation



FUND AGREEMENT
(NEW FUND)



STATEMENT OF GIFT
(EXISTING FUND)



WILL OR TRUST

What is Gift Documentation?

ILLINOIS UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT (760 ILCS 51/2(3))

“. . . a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.”

IOWA UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT (540A)

“Gift instrument” means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.”

A record of mutually
agreed upon terms

Elements of Good Gift Documentation?

- Gift documentation is a tool used to:
 - Document donor intent
 - Disclose to donor key aspects of fund administration
 - Define the fund structure
 - Often records the specific gift & purpose
 - Tool to monitor use of fund in the future

“Apart from the ballot box, philanthropy presents the one opportunity the individual has to express his meaningful choice over the direction in which our society will progress.”

-George G. Kirstein

Documenting Donor Intent

CHARITABLE TRUST ACT (760 ILCS 55/)

“To utilize the trust in conformity with its purposes for the best interest of the beneficiaries”

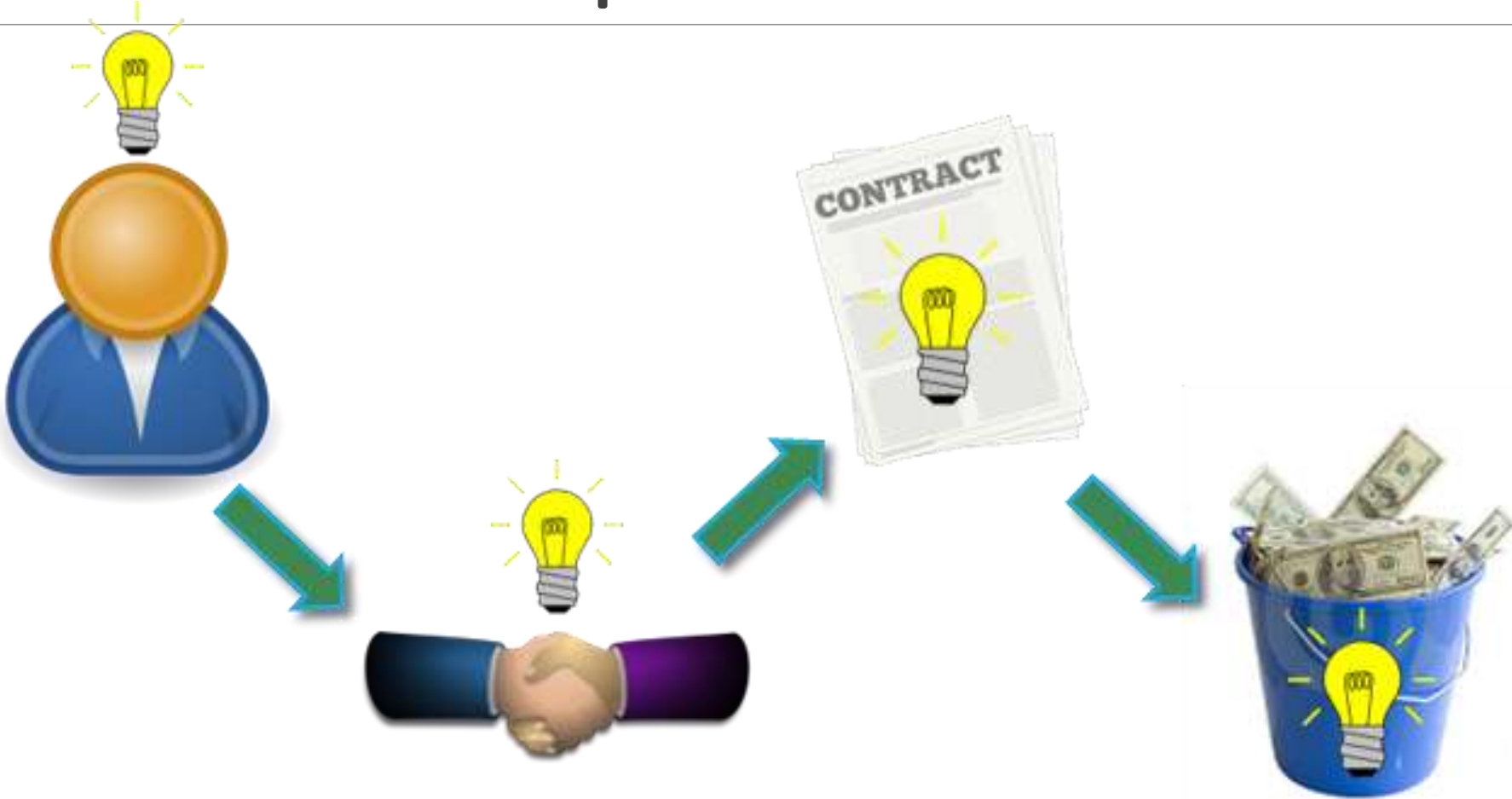
“to fulfill the general intent of the donor of the trust as expressed in the governing instrument of the trust”

Donor intent in gift documents often expressed as:

- Requirements
- Preferences

[HTTPS://WWW.LEGIS.IOWA.GOV/DOCS/CODE/540A.PDF](https://www.legis.iowa.gov/docs/code/540A.pdf)

Element #1: Captures Donor Intent



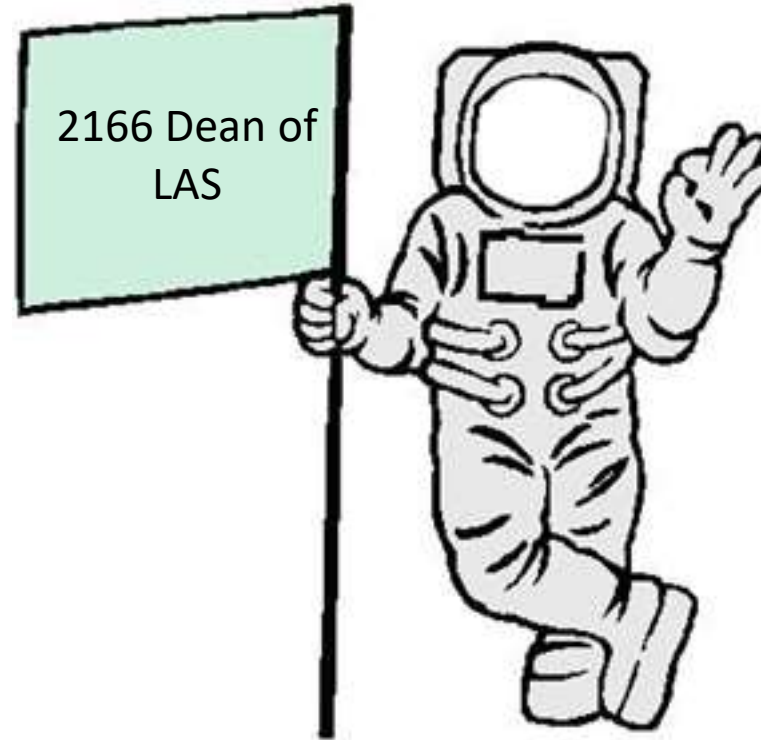
Element #2: Discloses Aspects of Fund Administration

- We want to be transparent with donors about terms at the time of the gift
- Numerous policies, procedures, and practices make administering funds possible
 - Spending Rates
 - Expenses
 - Decision Makers
 - Amendment Provisions
 - Capturing the “What Ifs”
 - Alternative Uses
 - Future Circumstances
 - Governing Law
- Referencing back to policies that may change over time

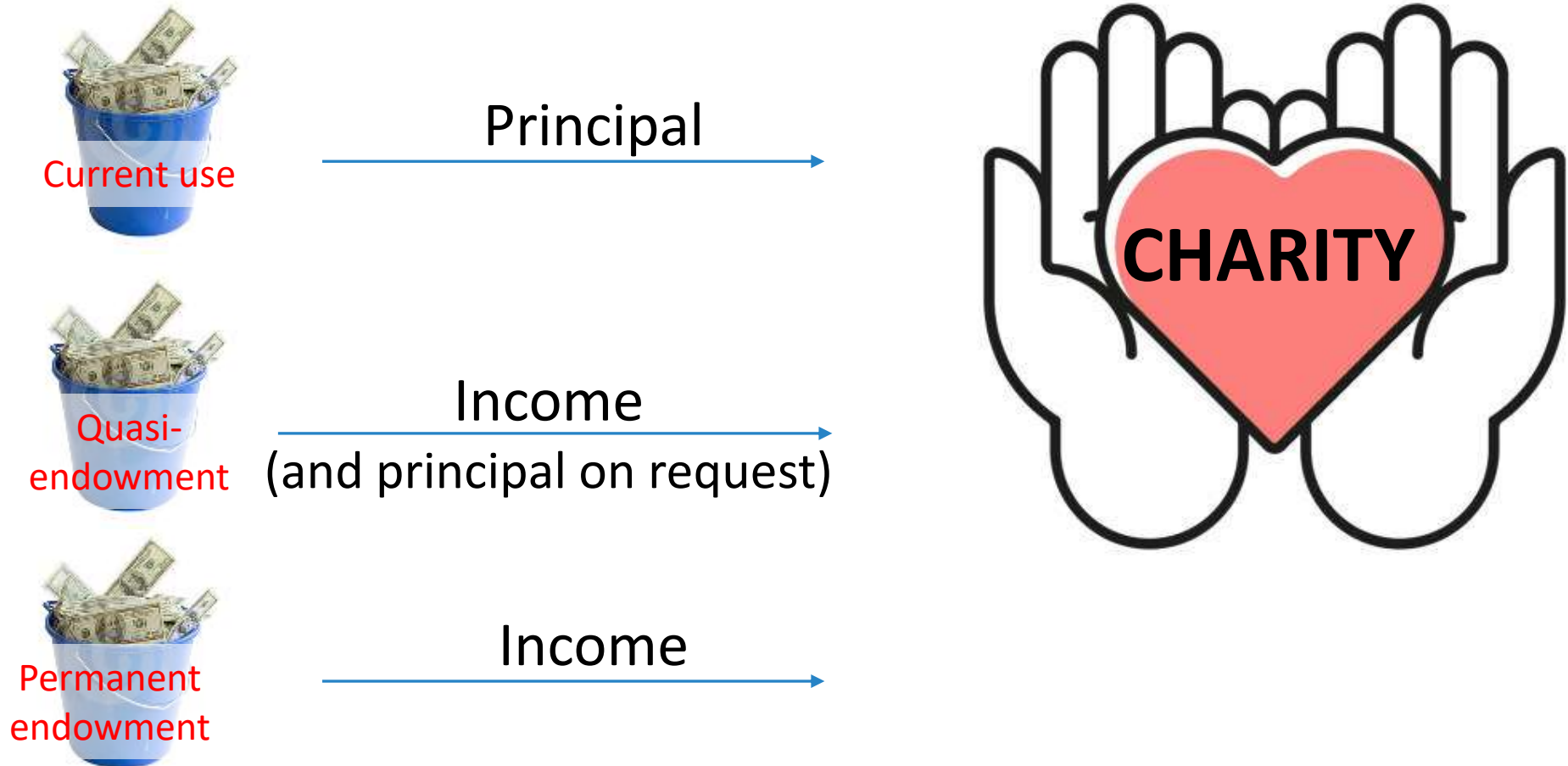


Drafting for the unforeseeable future

Draft the Agreements with
this person in mind...



Element #3: Defines Fund Structure



Element #4: Records the Gift & Purpose



- Asset being given (cash, securities, real estate, etc.)
- How it is being given (outright, pledged, deferred)
- Terms related to giving the gift (i.e. expectations on holding period of an asset)
- Benefitting Unit (i.e. University, College, Department, etc.)
- Purpose (i.e. unrestricted, programs, faculty support, student support, etc.)



Good Gift
Agreements
start with
Good Gifts!

A Note on Gift Terms - - -

- You do not have to accept a gift.
 - More complex gifts like real estate, require a thorough assessment on whether or not you want to accept
 - But even with cash gifts, some donor restrictions you may not want to accept
 - Others, you may prefer not to accept, but will make exceptions
- Must consider best practices and legal framework before accepting a gift and the terms of that gift.



Examples of Restrictions Not to Accept



Selection of recipient by donor

Restricting use to a purpose outside the Organization

Such narrow restrictions, Organization can't administer

Selection criteria that is not compliant with federal or state laws

Good Use Provisions Are - - - -

Broad and flexible

Include few, if any,
selection criterion

Defer to
organization's
policies, procedures,
and practices

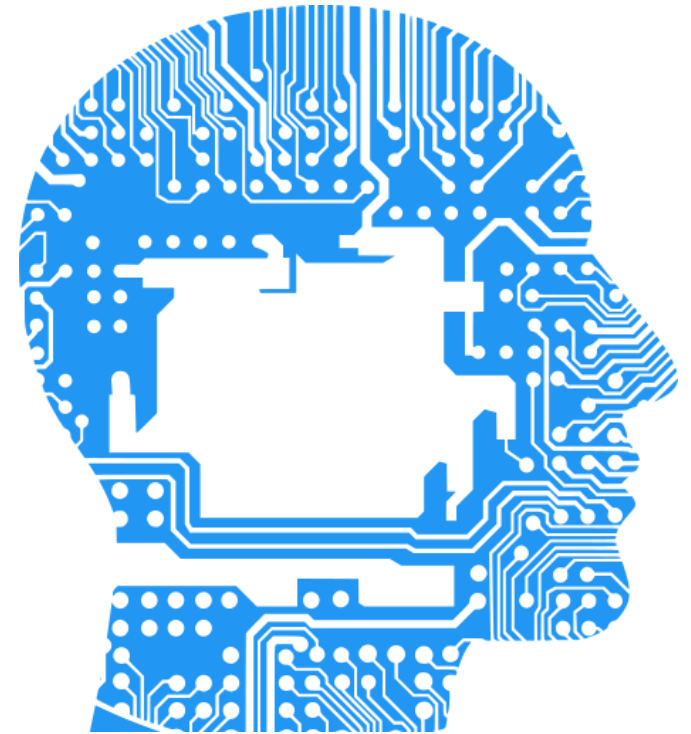
Remember to KISS...



Strategies to help get to good use provisions

Don't put thoughts into donor's mind

- “Sell” departmental priorities
- Come prepared with stories about the impact of un/loosely-restricted gifts
- When donors suggest overly restrictive use provisions, be prepared
- Move future reporting/communication to proposal or stewardship plan
- Manage expectations



Case Study: Susie Smith

Susie Smith is proud of her University education. She is forever indebted to the University for the outstanding education she received as a first-generation college student. She wants to ensure others like her get that same experience. During a visit with the charming development officer from the University, Susie is delighted that the officer asks her to fund a scholarship with an endowed gift of \$100,000. Susie eagerly accepts, but with a few conditions - -

Case Study: Susie Smith

#1 – scholarship must go to first-generation college students

#2 – scholarships must go to students from Middle of No Where City High School

#3 – scholarships must go to students who plan to study in her same field of study and who plan to teach after graduation

#4 – Susie expects the student recipients to receive exactly \$4,000 each year

#5 – Students may renew their scholarships if they maintain at least a 3.5 GPA on a 4.0 scale

#6 – She wishes for a scholarship committee chaired by the Dean to review all applications – for which she has written an application and requires an essay

#7 – Annually, she requires a personal essay from the student recipients outlining how this scholarship impacted their education

#8 – She requires them to join her for an annual pizza party that she hosts on campus with college administrators

#9 – Each May, she expects the Chancellor to travel to her high school to present the scholarship award to any incoming freshman receiving the award

FRAMING MATTERS

“It is not what you say that matters but the manner in which you say it; there lies the secret of the ages.”

- William Carlos Williams



Common Pitfalls in Gift Agreements

Resource drain

- Does not compliment priorities
- Program/Use costs more than the ask

Gets into “the weeds”

- Specified numbers of awards
- Details out how the department will administer/select
- Imposes restrictions that may not be feasible to administer or illegal to administer

Promises things we can't control

- Reporting specifics
- Requires action by others

Loses sight of the long-term

- Endowment = forever
- What will the priority be in 100 years?



Element #5: Tool to Monitor Use of the Fund in Future

- Ensuring donations are used in accordance with donor intent
- What automated checks and balances are in place to align purpose, ensure spending, etc.?
- Are you doing a periodic review with donors to ensure

Fund Agreement Outline

Article 1 – Statement of Gift

- Details about how the fund will be funded (i.e. the initial gift to establish the fund)

Article 2 – Creation of New Fund

- What type of fund should be created

Article 3 – Use of the Fund

- The purpose of the fund and restrictions on how the \$ may be used by the unit

Article 4 – Fund Administration

- Disclosure of standard UIF policies/practices related to funds



THANK YOU!

Meg Cline

mcline@uif.uillinois.edu

(217) 244-0800