

**ETHICS IN PLANNED GIVING TODAY
RESOURCE MATERIALS**

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PARTNERSHIP FOR PHILANTHROPIC PLANNING (PPP)

**MODEL STANDARDS OF PRACTICE FOR THE CHARITABLE GIFT PLANNER
*[Reprinted in their entirety]***

PREAMBLE

The purpose of this statement is to encourage responsible gift planning by urging the adoption of the following Standards of Practice by all individuals who work in the charitable gift planning process, gift planning officers, fund raising consultants, attorneys, accountants, financial planners, life insurance agents and other financial services professionals (collectively referred to hereafter as "Gift Planners"), and by the institutions that these persons represent. This statement recognizes that the solicitation, planning and administration of a charitable gift is a complex process involving philanthropic, personal, financial, and tax considerations, and as such often involves professions from various disciplines whose goals should include working together to structure a gift that achieves a fair and proper balance between the interests of the donor and the purposes of the charitable institution.

I. PRIMACY OF PHILANTHROPIC MOTIVATION

The principal basis for making a charitable gift should be a desire on the part of the donor to support the work of charitable institutions.

II. EXPLANATION OF TAX IMPLICATIONS

Congress has provided tax incentives for charitable giving, and the emphasis in this statement on philanthropic motivation in no way minimizes the necessity and appropriateness of a full and accurate explanation by the Gift Planner of those incentives and their implications.

III. FULL DISCLOSURE

It is essential to the gift planning process that the role and relationships of all parties involved, including how and by whom each is compensated, be fully disclosed to the donor. A Gift Planner shall not act or purport to act as a representative of any charity without the express knowledge and approval of the charity, and shall not, while employed by the charity, act or purport to act as a representative of the donor, without the express consent of both the charity and the donor.

IV. COMPENSATION

Compensation paid to Gift Planners shall be reasonable and proportionate to the services provided. Payment of finders fees, commissions or other fees by a donee organization to an independent Gift Planner as a condition for the delivery of a gift are never appropriate. Such payments lead to abusive practices and may violate certain state and federal regulations. Likewise, commission-based compensation for Gift Planners who are employed by a charitable institution is never appropriate.

V. COMPETENCE AND PROFESSIONALISM

The Gift Planner should strive to achieve and maintain a high degree of competence in his or her chosen area, and shall advise donors only in areas in which he or she is professionally qualified. It is a hallmark of professionalism for Gift Planners that they realize when they have reached the limits of their knowledge and expertise, and as a result, should include other professionals in the process. Such relationships should be characterized by courtesy, tact and mutual respect.

VI. CONSULTATION WITH INDEPENDENT ADVISORS

A Gift Planner acting on behalf of a charity shall in all cases strongly encourage the donor to discuss the proposed gift with competent independent legal and tax advisors of the donor's choice.

VII. CONSULTATION WITH CHARITIES

Although Gift Planners frequently and properly counsel donors concerning specific charitable gifts without the prior knowledge or approval of the donee organization, the Gift Planners, in order to insure that the gift will accomplish the donor's objectives, should encourage the donor, early in the gift planning process, to discuss the proposed gift with the charity to whom the gift is to be made. In cases where the donor desires anonymity, the Gift Planners shall endeavor, on behalf of the undisclosed donor, to obtain the charity's input in the gift planning process.

VIII. DESCRIPTION AND REPRESENTATION OF GIFT

The Gift Planner shall make every effort to assure that the donor receives a full description and an accurate representation of all aspects of any proposed charitable gift plan. The consequences for the charity, the donor and, where applicable, the donor's family, should be apparent, and the assumptions underlying any financial illustrations should be realistic.

IX. FULL COMPLIANCE

A Gift Planner shall fully comply with and shall encourage other parties in the gift planning process to fully comply with both the letter and spirit of all applicable federal and state laws and regulations.

X. PUBLIC TRUST

Gift Planners shall, in all dealings with donors, institutions and other professionals, act with fairness, honesty, integrity and openness. Except for compensation received for services, the terms of which have been disclosed to the donor, they shall have no vested interest that could result in personal gain.

(PPP) CHARITABLE LIFE INSURANCE EVALUATION GUIDELINES

[Abstract--the full standards are on the website of the PPP]

These guidelines were released by the National Committee on Planned Giving and are designed to help evaluate the ethics, legality and charitable intent of insurance gifting plans. The guidelines are intended to supplement the model standards of practice for the charitable gift planner. The reader is referred to the website of the PPP (www.pppnet.org) for a complete recitation of these guidelines.

(PPP) VALUATION STANDARDS FOR CHARITABLE PLANNED GIFTS

[Abstract--the full standards are on the website of the PPP]

The purpose of these standards is to establish a uniform method of valuing charitable gifts in a myriad of circumstances, for example giving guidance on how revocable gifts can be valued.

Charitable organizations and the donors who support them ask a common question: what is the real value of planned gifts in accomplishing charitable missions that enrich our communities and serve people in need?

The Financial Accounting Standards Board (FASB) provides rules for the *accounting* of planned gifts; the Council for Advancement and Support of Education (CASE) provides standards for *counting* gifts in campaigns; and U.S. Treasury Regulations dictate the methodology for determining the charitable *deduction* for tax purposes. But accounting, counting and tax deduction measurements do not truly reflect

the *value* a planned gift will provide to a charitable organization when the gift is finally available to accomplish its charitable purpose.

While some organizations have created their own methodologies for valuing planned gifts, no widely accepted standard is consistently used within the charitable community. The Partnership for Philanthropic Planning believes that the time has come for gift planners to serve the needs of donors and the profession by adhering to a set of uniform standards for *valuing* planned gifts.

These standards are intended to provide the charitable gift planning community with a comprehensive and consistent methodology for valuing planned gifts. For the first time, charitable gift planners will be able to estimate the real value of funds raised through a planned gift program and to compare the relative value of alternate planned gift approaches to the charitable organization.

These Standards are based on the premise that donors make gifts to support charitable programs. The recommended valuation methodologies are designed to reflect the present value of the ultimate purchasing power of the gift. These methodologies are not intended to provide any comparison of a planned gift with an equivalent outright gift.

Uniform valuation standards will permit easy and accurate tracking of gift planning results within each charitable organization. Widespread use of these valuation standards throughout the charitable community will also make it possible to conduct research on the effectiveness of planned giving in charitable resource development.

The valuation methodology for planned gifts is a two-step process. In the first step, payout rates, life expectancy or term and assumed investment returns are used to determine the value of the gifts at its projected termination. In the second step, that total future value is discounted backward to the present using a separate, unique discount rate, which is based on expected cost rise rates.

The Partnership provides default factors for the investment return rate and the discount rate. These factors will be periodically updated based on historical data and/or more recent experience. Charitable organizations may choose to use these default factors in calculating gift values, but they are encouraged to develop customized factors based on their own actual data and experience. For example, projected investment return rates can be developed through a review of the charitable organization's gift asset investment approach and history. Alternative, discount factors could be based on industry-specific historical inflation data.

The methodology used is sensible, sound, and completely reliable for the purpose intended: providing a present value for the future purchasing power of any planned charitable gift. As would be expected, the present value of the future purchasing power of any gift is almost always less than the original face amount of the gift. However, using customized factors for certain gift types may occasionally produce a present value of the future purchasing power that exceeds the original face amount of the gift. For example, using a very high projected net return factor in conjunction with a very low inflation factor on a low payout charitable remainder trust may produce a present value that exceeds face value. While this may seem counterintuitive, the methodology is still correct. The results are as sound as the factors used. If the factors are sound, then this gift may indeed provide future purchasing power for the charity that would exceed a current outright gift of the same amount. Of course, with any planned gift, the charity will experience an opportunity cost for not having the immediate use of the funds. Again, these methodologies are not intended to provide any comparison of a planned gift with an equivalent outright gift.

It should be noted that the valuation formulas have been devised to obtain values for both irrevocable and revocable gifts. The Partnership recognizes that because revocable gifts are a large component of most planned gift programs, a realistic assessment of any planned giving program must include these commitments. However, the Partnership urges that any report of these gift values should include a full disclosure of the revocable nature of such commitments and report them separately from the value of irrevocable gifts.

COMPETENCE AND PROFESSIONALISM IN GIFT PLANNING COMPENSATION
[The following summary is reprinted in its entirety from the PPP website, to which the reader is referred for a thorough discussion of the compensation methodology.]

The PPP also has its own lengthy standards concerning methods of compensation and the ethics of same.

Summary

The foregoing analysis of Article IV of the Model Standards pertaining to compensation of gift planners can be distilled into the following guidelines.

1. A charity should not pay a finder's fee as a condition for the delivery of a gift.
2. A charity should not pay a commission computed as a percentage of a completed gift.
3. Commissions and fees paid to professional advisors who manage trust assets for a donor/trustee, or who sell a wealth-replacement life insurance policy, are appropriate provided these fees and commissions are never allowed to cloud objectivity.
4. Commissions earned on reinsured gift annuities are appropriate provided that the charity is under no obligation to reinsure any gift annuity through the professional advisor who may have suggested the gift to a client.
5. Investment management fees paid to a professional advisor involved in the investment of donated assets are appropriate, provided the charity maintains total control of the assets and faithfully fulfills its fiduciary duties.
6. A charity should not pay staff or consultants a commission that is a percentage of the funds that person is instrumental in raising.
7. A charity may pay bonuses and award merit increases to staff provided that they are fairly distributed and are based on overall performance, and provided they are not calculated as a percentage of funds raised.
8. Compensation paid to all gift planners, including staff of charities and professional advisors should be reasonable and determined with reference to the mission and image of the charity, and with regard to its fiduciary accountability.

**ASSOCIATION OF FUNDRAISING PROFESSIONALS (AFP) CODE OF ETHICAL
PRINCIPLES AND STANDARDS**
(Abstract of October 2008 Reprint)

A. MEMBER OBLIGATIONS

1. Standard No. 1

Members shall not engage in activities that harm the members' organization, clients or profession.

- a) Guidelines: Members shall be advocates of their organization's mission and goals.
- b) Example of Ethical Practice: Providing accurate and complete information to constituents regarding projects, programs, or other activities they might support or endorse; maintaining one's education of philanthropy and fundraising best practices.
- c) Examples of Unethical Practice: Conveying exaggerated information, or neglecting to complete a transaction involving a contribution or a pledge.

2. Standard No. 2

Members shall not engage in activities that conflict with their fiduciary, ethical, and legal obligations to their organizations and their clients.

- a) Guidelines: All legally binding gift obligations proposed should be prepared or approved by qualified legal counsel; and members shall urge their clients to seek independent, qualified counsel in regard to any legal or fiduciary obligations that a member proposes.
- b) Example of Ethical Practice: Developing internal contribution acceptance and stewardship procedures that address the legal and fiduciary obligations of a members' organization.
- c) Examples of Unethical Practice: Failing to urge others to seek independent counsel and/or professional tax counsel in regard to plan giving arrangements; failing to seek legal counsel in the drafting of legal contracts such as pledges, charitable trusts, etc. that are proposed to others.

3. Standard No. 3

Members shall effectively disclose all potential and actual conflicts of interest; such disclosure does not preclude or imply ethical impropriety.

- a) Guidelines: These include a clear understanding regarding outside consulting; disclosure of family having a material interest in a vendor; disclosing a formal relationship with a donor; members understand the provision of the IRS "intermediate sanctions."
- b) Examples of ethical practice: Refusing to engage a consulting firm seeking to direct the members' organizational capital campaign after a fundraising staff member reports an offer from that firm of a position once the campaign ends; refusing to accept appointment as an executor or personal representative of a donor's estate.
- c) Examples of Unethical Practice: Failing to report to the employer knowledge of a donor's estate plan.

4. Standard No. 4

Members shall not exploit any relationship with a donor, prospect, volunteer, or employee for the benefit of the member or the members' organization.

- a) Guidelines: Members must not take advantage of another person or encourage the person to take action that is to his or her disadvantage; assuring the wishes of the donor are carried out.
- b) Examples of Ethical Practice: Encouraging a donor to seek independent professional advice; encouraging the donor to let his or her family know of their charitable intent; refusing to participate in contributions from a donor who is incapable of making an independent, informed decision.
- c) Examples of Unethical Practice: Influencing a donor to arrange their affairs so that the member may personally benefit; taking advantage of a donor's age, handicap, infirmity, illness, emotional or physical impairment so that the member *or* the member's organization becomes a beneficiary of the individual's estate or financial support plans; assuming the role of confidant in order to influence a prospective donor's decision; accepting a gift of more than token value from donor.

5. Standard No. 5

Members shall comply with all applicable local, state, provincial, and federal civil and criminal laws.

- a) Guidelines: Members should consult legal counsel regarding their contracts and practices for fundraising and remember that ignorance of the law is no excuse. (The AFP Fundraising Resource Center has publications that can be used for general guidance, but which are not substitute for an attorney's advice).
- b) Example of Ethical Practice: Undertaking a personal responsibility for keeping up with changes and applicable laws and regulations; recognizing and advising the charity that it may not be in compliance with applicable laws.
- c) Examples of Unethical Practice: Ignoring the law or having knowledge of the legal requirements required, and failing to follow them.

6. Standard No. 6

Members recognize their individual boundaries of competence and are forthcoming and truthful about their professional experience and qualifications.

- a) Guidelines: Members must state their professional qualifications in a manner that is clear and accurate; members must describe the parameters of their rolls within the larger financial development efforts of their affiliated organization.
- b) Example of Ethical Practice: Correcting any misstatement of your education or experience, even when not responsible for the error.

- c) Examples of Unethical Practices: Inflating your resume; taking credit for the work of others and exaggerating your role in fundraising results.

7. Standard No. 7

Members shall present and supply products and/or services honestly and without misrepresentation and will clearly identify the details of those products, such as availability of the products and/or services and other factors that may affect the suitability of the products and/or services for donors, clients or non-profit organizations.

- a) Guidelines: Members shall supply products and services which are consistent with the representation made to donors.
- b) Examples of Ethical Practice: Omitting information that may be confusing, inaccurate or incapable of being documented in charitable promotion materials; disclosing factors such as limitations which might affect the suitability of the proposed products and/or services.
- c) Examples of Unethical Practice: Knowingly overstating the performance capability of a member's product; misrepresenting the ability of the charity to deliver products and/or services; misrepresenting facts regarding the donor's clients or non-profit organizations.

8. Standard No. 8

Members shall establish the nature and purpose of any contractual relationship at the outset and will be responsive and available to organizations and their employing organizations before, during and after any sale or materials and/or services; members will comply with all fair and reasonable obligations created by the contract.

- a) Guidelines: Members shall enter negotiations ultimately and transparently.
- b) Examples of Ethical Practice: Taking responsibility for delivering whatever is specified under the contract with the donor; responding promptly, clearly and accurately to request for information.
- c) Examples of Unethical Practice: Exaggerating or falsifying information concerning liabilities under the contract; imposing obligations that go beyond the scope of the agreed contract.

9. Standard No. 9

Members shall refrain from knowingly infringing the intellectual property rights of other parties at all times. Members shall address and rectify any inadvertent infringement that may occur.

- a) Guidelines: Members respect all copyrights.
- b) Examples of Ethical Practice: Attributing illustrations graphs and other presentations to the owners of the copyright; upon discovery of inadvertent infringement, immediately discontinuing the use.

- c) Examples of Unethical Practice: Failing to use due diligence to learn of the true owner of intellectual property before utilizing it; claiming material to be the member's own when that is not accurate.

10. Standard No. 10

Members shall protect the confidentiality of all privileged information relating to the provider client relationships.

- a) Guidelines: Ensuring that all legal requirements concerning privacy of donors and the organization are followed; urging the charitable organization to adopt and operate within written policies governing confidentiality of privileged information.
- b) Examples of Ethical Practice: Developing policies for non-disclosure of privileged information; providing and signing confidentiality agreements where appropriated.
- c) Examples of Unethical Practice: Failing to take reasonable steps to protect privileged information from unauthorized disclosure.

11. Standard No. 11

Members shall refrain from any activity designed to disparage competitors untruthfully.

- a) Guidelines: Disparaging competitors is unprofessional and unethical, and reflects badly on both parties.
- b) Example of Ethical Practice: Acknowledging competitors and their services and portraying them in a manner which is honest and truthful.
- c) Examples of Unethical Practice: Disparaging a competitor's reputation and capabilities untruthfully.

B. SOLICITATION AND USE OF PHILANTHROPIC FUNDS

1. Standard No. 12

Members shall take care to ensure that all solicitation materials are accurate and correctly reflect their organization's mission and use of solicited funds.

- a) Guidelines: Members shall ensure to the best of their ability that the materials given to donors are direct and truthful.
- b) Example of Ethical Practice: Omitting from solicitation materials information that may be confusing or inaccurate.
- c) Examples of Unethical Practice: Misrepresenting anticipated results in order to elicit an emotional response; manipulating children, animals, the ill, elderly, etc.; creating mailings or other materials that mimic official government mailings or billing notices.

2. Standard No. 13

Members shall take care to ensure that donors receive informed, accurate and ethical advice about the value and tax implication of contributions.

- a) Guidelines: Members with knowledge of the tax or ethical implications of a potential contribution should realize the limit of their expertise; members always advise donors to seek the advice of their own independent counsel regarding tax and financial implications; members do not draft legal instruments obligating donors and non-profit organizations unless legally authorized to do so.
- b) Examples of Ethical Practice: Refusing to attest to the value of non-cash contributions except when the values are readily and publicly available; including on all solicitations a statement as to the fair market value of services or goods to be received.
- c) Examples of Unethical Practice: Telling a donor the amount of taxes he or she may avoid without adequate knowledge of tax laws and the donor's financial capabilities; failing to tell donors that their contributions will not be fully tax deductible when they receive goods or services in return.

3. Standard No. 14

Members shall take care to ensure that contributions are used in accordance with donor's intentions.

- a) Guidelines: Members ensure that contributions are used as specified by the donor. If a donor indicates a use that is not appropriate, the member should confer with the donor to determine the appropriate use in keeping with the donor's wishes.
- b) Examples of Ethical Practice: Treating the terms of a document that describes the donor restrictions as a contract, subject to applicable law; conducting a meeting held annually or more frequently, of representatives of all appropriate organizational units to review the status and use of contributed funds and related accounts.
- c) Examples of Unethical Practice: Accepting a contribution for a specific use, then subsequently eliminating that program and using those funds for another program without obtaining the consent of the donor; diverting into the general operating budget funds intended to cover administrative costs of the program covered by a restricted contribution.

4. Standard No. 15

Members shall take care to ensure proper stewardship of all revenue sources, including timely reports on the use and management of such funds.

- a) Guidelines: Members provide an annual report to donors. Members urge that organizations to adopt and operate written policies governing planned gifts.
- b) Example of Ethical Practice: Developing policies that avoid placement of donated funds mostly in high risk investments.

- c) Examples of Unethical Practice: Misrepresenting use of restricted funds.

5. Standard No. 16

Members shall obtain explicit consent by donors before altering the conditions of financial transactions.

- a) Guidelines: Members meet with the donor's surviving family or representatives to discuss any potential alteration in the original conditions of a contribution; should changing circumstances on the part of the recipient organization require a change in the prescribed use of a gift, the process to be followed in making the change should be captured within the original gift agreement.
- b) Examples of Ethical Practice: Meeting with the family or official representative donor to inform them of program changes, and in some cases requiring permission of the court to deviate from the intent of the original donation.
- c) Examples of Unethical Practice: Using endowment principal outside the written terms of the endowment agreement.

C. PRESENTATION OF INFORMATION

1. Standard No. 17

Members shall not disclose privileged or confidential information to unauthorized parties.

- a) Guidelines: There are 12 separate statements under the guidelines. These numerous guidelines are all geared toward any leaks which might occur in an organization that would reveal confidential information.
- b) Example of Ethical Practice: Personally retrieving files pertinent to the day's work and personally returning them to the protected site at which they are kept.
- c) Examples of Unethical Practice: Sharing donor information in a collegial setting with those not directly involved in the solicitation of the donor; treating confidential information casually, such as taking files to a restaurant at lunch time.

2. Standard No. 18

Members shall adhere to the principle that all donor and prospect information created by, or on behalf of, an organizational client is the property of that organization or client and shall not be transferred or utilized except on behalf of that organization or client.

- a) Guidelines: Members whose organizations lease or sell their donor lists encourage the authorization of specific agents or employees to negotiate and sign appropriate contracts; members respect the wishes of the donors as to anonymity and remove donors from lists, if requested.
- b) Example of Ethical Practice: Clearly stating when interviewing for new employment that donors with whom the member has been previously involved are not portable.

- c) Examples of Unethical Practice: Approaching a non-profit or potential or current client with another organization's donor files; revealing identity of an anonymous donor to others without the authorization of the donor.

3. Standard No. 19

Members shall give donors and clients the opportunity to have their names removed from lists that are sold to, rented to, or exchanged with other organizations.

- a) Guidelines: The members encourage the development of written policies and practices regarding the use of donor names.
- b) Example of Ethical Practice: Providing an annual written communication asking donors if they wish to have their names removed from lists that are sold.
- c) Example of Unethical Practice: Providing a vehicle for donors and clients to have their names removed when, in reality, no action is taken to remove the names.

4. Standard No. 20

Members shall, when stating fundraising results, use accurate and consistent accounting methods that conform to the appropriate guidelines adopted by the appropriate regulatory body for the type of organization involved.

- a) Guidelines: Recording for external audit financial purposes must be in accordance with the appropriate AICPA guidelines, or the requirements of the local legal framework. There are then listed five different rules for valuing bequests, insurance policies, pledges and timing of realization of the gift. There are five rules set out as to how various gifts should be reported and used for donor recognition purposes in evaluation, such as allowing the face value of an insurance policy to be listed as the amount of the gift, and reporting expectancies from bequests at a certain value.
- b) Example of Ethical Practice: Developing organizational procedures to ensure that the accounting for contributions is consistent from year to year.
- c) Example of Unethical Practice: Reporting as contributions the estimated value of the bequest prior to distribution of the donor's estate.

D. COMPENSATION AND CONTRACTS

1. Standard No. 21

Members shall not accept compensation or enter into a contract that is based on a percentage of contributions; nor shall members accept finder's fees or contingent fees. Business members must refrain from receiving compensation from third parties derived from products or services for a client without disclosing that third party compensation to the client (for example, volume rebates from vendors to business members).

- a) Guidelines: There are nine different guidelines under this standard. An example is the finder's fee paid for bringing a donor contribution to a non-profit organization, whether or not the fee is based on a percentage of funds raised.
- b) Examples of Ethical Practice: Recognizing the difference between percentage based compensation and a bonus plan, accepting only the bonus plan as part of compensation; urging the organization to avoid paying a third party (such as an attorney) a fee for services that is a percentage of value or related contribution or trust.
- c) Examples of Unethical Practice: Accepting percentage-based compensation because an organization lacks sufficient budget to pay a salary; disguising compensation as a salary, fee or bonus.

2. Standard No. 22

Members may accept performance-based compensation, such as bonuses, provided such bonuses are in accord with prevailing practice within the members' own organizations and are not based on a percentage of contributions.

- a) Guidelines: There are five criteria listed that set out conditions under which performance-based compensation can be received; members understand the provisions of the IRS "Intermediate Sanctions" regulations that apply to the executive compensation.
- b) Examples of Ethical Practice: Including in the bonus plan's criteria non-financial indicators such as quality improvement and management of human resources; including in the criteria cost effectiveness and an increase in the number of contributors, an increase in the number of volunteers or an increase of the number of contribution renewals.
- c) Examples of Unethical Practice: Accepting performance-based compensation developed and approved after the fact (e.g., after the end of the fiscal period).

3. Standard No. 23

Members shall neither offer nor accept payments or special considerations for the purpose of influencing the selection of products or services.

- a) Guidelines: So-called "client's loyalty programs" (such as hotel points or airline miles) are exempt from this standard, provided that they are widely and transparently available to all customers of an organization.
- b) Examples of Ethical Practice: Helping a vendor, marketer or other seller understand that all transactions with a non-profit organization are to benefit the organization and its beneficiaries, and not to benefit individuals employed or volunteering for the non-profit organization.
- c) Examples of Unethical Practice: Paying a gratuity to someone for identifying or choosing a particular service or product; stating either directly or indirectly that

selection of your services or products will benefit the client with a monetary or non-monetary fringe benefit.

4. Standard No. 24

Members shall not pay finder's fees, commissions or percentage compensation based on contributions, and shall take care to discourage their organizations from making such payments.

- a) Guidelines: Members recognize that there are three primary principles underlying the standard. The first is that philanthropic giving is a voluntary action for the public benefit; second is the seeking or acceptance of philanthropic contributions should not provide personal gain; and third, donors and potential donors must be protected from pressure or coercion.
- b) Examples of Ethical Practice: Refusing a contribution if it involves the payment of a finder's fee, or could be perceived as such; helping a donor, estate planner, or counselor understand that a contribution or bequest is given to benefit the organization receiving the contribution, and not to benefit specific individuals.
- c) Examples of Unethical Practice: Suggesting to someone that he or she might ask for a fee for making a match; paying a finder's fee for obtaining a corporate sponsorship.

5. Standard No. 25

Any member receiving funds on behalf of a donor or client must meet the legal requirements for the disbursement of those funds. Any interest or income earned on the funds should be fully disclosed.

- a) Guidelines: Members shall establish beyond all doubt the legal requirements, under the jurisdictions in which they operate, for the handling, disbursement and reporting of funds. Ignorance of the law is no defense.
- b) Examples of Ethical Practice: Developing policies that promote the handling and disbursement of donor funds in line with all legal requirements; clearly reporting to donors and clients the interest or income expected to be received by the organization on account of the donation.
- c) Examples of Unethical Practice: Using donor and client funds held by a member of the member's organization for purposes other than those intended by the donor or the client; for a non-profit organization, retaining interest or income owned on the donor and client funds without first fully revealing such amounts to the client.
- d)

AFP ETHICS ENFORCEMENT POWERS AND PROCEDURES
(Abstract of October 2008 Reprint)

Anyone may file an ethics complaint alleging violations of the AFP Code by a member of AFP whether or not the person lodging the complaint is a member of AFP. Before filing a complaint, an individual may call and have a conversation with the appropriate person at AFP International Headquarters. Once a complaint is filed, it is reviewed by the Ethics Committee for "probable cause". Penalties for a violation

can include a letter of reprimand, suspension of membership in AFP or permanent expulsion. It should be noted that if in the AFP's judgment, an allegation entails a violation of law or breach of contract, the AFP Ethics Committee may refer the matter to the appropriate legal channels. Various procedures are set out about how to register a query and there is a form for filing a complaint.

DONOR BILL OF RIGHTS

The bill of rights was developed by the Association for Fundraising Professionals, Association for Health Care Philanthropy, the Counsel for Advancement and Support of Education and the Giving Institute. It is enforced by Independent Sector, the National Catholic Development Conference, National Committee on Planned Giving, the Counsel for Resource Development and United Way of America. Good practice would be to provide each donor a copy of the bill, which is reprinted in its entirety and attached.

<p><i>PHILANTHROPY</i> is based on voluntary action for the common good. It is a tradition of giving and sharing that is primary to the quality of life. To assure that philanthropy merits the respect and trust of the general public, and that donors and prospective donors can have full confidence in the not-for-profit organizations and causes they are asked to support, we declare that all donors have these rights:</p>	
<p style="text-align: center;">I.</p> <p style="text-align: center;"><i>To be informed of the organization's mission, of the way the organization intends to use donated resources, and of its capacity to use donations effectively for their intended purposes.</i></p> <p style="text-align: center;">II.</p> <p style="text-align: center;"><i>To be informed of the identity of those serving on the organization's governing board, and to expect the board to exercise prudent judgment in its stewardship responsibilities.</i></p> <p style="text-align: center;">III.</p> <p style="text-align: center;"><i>To have access to the organization's most recent financial statements.</i></p> <p style="text-align: center;">IV.</p> <p style="text-align: center;"><i>To be assured their gifts will be used for the purposes for which they were given.</i></p> <p style="text-align: center;">V.</p> <p style="text-align: center;"><i>To receive appropriate acknowledgment and recognition.</i></p>	<p style="text-align: center;">VI.</p> <p style="text-align: center;"><i>To be assured that information about their donations is handled with respect and with confidentiality to the extent provided by law.</i></p> <p style="text-align: center;">VII.</p> <p style="text-align: center;"><i>To expect that all relationships with individuals representing organizations of interest to the donor will be professional in nature.</i></p> <p style="text-align: center;">VIII.</p> <p style="text-align: center;"><i>To be informed whether those seeking donations are volunteers, employees of the organization or hired solicitors.</i></p> <p style="text-align: center;">IX.</p> <p style="text-align: center;"><i>To have the opportunity for their names to be deleted from mailing lists that an organization may intend to share.</i></p> <p style="text-align: center;">X.</p> <p style="text-align: center;"><i>To feel free to ask questions when making a donation and to receive prompt, truthful and forthright answers.</i></p>

FEDERAL AND STATE SECURITIES LAW EXEMPTIONS

The Charitable Gift Annuity Antitrust Relief Act of 1995 provides that it is not a federal antitrust violation for charities to use a uniform annuity rate when issuing charitable gift annuities. It also frees the use of such rates from state antitrust prohibitions, except where a state affirmatively acts within three years to make that an antitrust violation. Florida has not done so.

The Charitable Donation Antitrust Immunity Act of 1997 amended the 1995 act's antitrust exemption for Section 501(c)(3) organizations using common or recommended annuity rates. The 1997 act makes clear that charitable gift annuities and charitable remainder trusts are exempt from antitrust laws. It also makes issuers of charitable gift annuities and charitable remainder trusts immune from suit under antitrust laws.

These two acts do not address the treatment of charitable gift annuities as insurance under state law.

The Philanthropy Protection Act creates an exemption from many federal securities laws (except anti-fraud provisions) for charities offering gift annuities, pooled income funds, charitable remainder trusts, and charitable lead trusts. It exempts charities from the Securities Act of 1933 and the Securities Exchange Act of 1934 (regulating disclosure and registration of securities), and the Investment Company Act of 1940 (regulating funds). The exemption from broker-dealer registration applies only to employees or volunteers soliciting charitable gift annuities who do not receive any special compensation based on the volume or value of annuities. The act also creates an exemption from most state securities laws (again, except anti-fraud provisions), except where a state affirmatively passes legislation to the contrary. [Florida enacted FS 517.051(9) (attached) which exempts from state registration charitable gift annuities issued by 501(c)(3) organizations.] The act also requires charities to provide to each donor to a fund, at the time of the donation, written information describing "the material terms of the operation of such fund."

FLORIDA STATUTE 517.051

517.051 Exempt securities.--The exemptions provided herein from the registration requirements of s. 517.07 are self-executing and do not require any filing with the office prior to claiming such exemption. Any person who claims entitlement to any of these exemptions bears the burden of proving such entitlement in any proceeding brought under this chapter. The registration provisions of s. 517.07 do not apply to any of the following securities:

(1)

(9) A security issued by a corporation organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, no part of the net earnings of which corporation inures to the benefit of any private stockholder or individual, or any security of a fund that is excluded from the definition of an investment company under s. 3(c)(10)(B) of the Investment Company Act of 1940; provided that no person shall directly or indirectly offer or sell securities under this subsection except by an offering circular containing full and fair disclosure, as prescribed by the rules of the commission, of all material information, including, but not limited to, a description of the securities offered and terms of the offering, a description of the nature of the issuer's business, a statement of the purpose of the offering and the intended application by the issuer of the proceeds thereof, and financial statements of the issuer prepared in conformance with United States

generally accepted accounting principles. Section 6(c) of the Philanthropy Protection Act of 1995, Pub. L. No. 104-62 shall not preempt any provision of this chapter.