

WILLIAM & MARY
ADOPTION OF THE GIFT ACCEPTANCE POLICY

WHEREAS, Va. Code §23.1-1304.1, enacted during the 2020 General Assembly legislative session, requires the governing board of each public institution of higher education to establish a policy for the acceptance of terms and conditions associated with any donation, gift or other private philanthropic support.

WHEREAS, the proposed gift acceptance policy satisfies the requirements of Va. Code §23.1-1304.1 and aligns with the gift policy used by the W&M Foundation.

BE IT RESOLVED, that the W&M Board of Visitors adopts the **Gift Acceptance Policy**, as attached, to govern the terms and conditions associated with any donation, gift or other philanthropic support.

William & Mary Gift Acceptance Policy

Purpose of Policy

The purpose of this policy is to provide uniform guidelines and standards governing the acceptance of gifts and guidance to staff who may be involved in the acceptance of gifts to the College of William and Mary (“William & Mary or the “university”) as well as its affiliates, prospective donors, and their professional advisors in completing gifts to the university. This policy is intended to protect donors, further the university’s mission, and serve as a resource and guide for the university’s Board of Visitors, employees, and donors.

General

The university is a tax-exempt organization under Internal Revenue Code section 170(c)(1). Under federal tax laws, gifts to the university are generally tax deductible if the donor does not retain control over the gift or receive personal benefit.

Professional Advice

The university does not provide legal, accounting, tax, or other professional service advice to prospective donors. Each prospective donor is urged to seek the advice of independent legal, financial, or tax counsel in the gift process. The university shall seek qualified professional advice and counsel advice to assist with gifts as appropriate.

Guiding Principles

Principle 1: The university shall not accept a gift unless there is a reasonable expectation that acceptance of the gift will advance the mission of the university and complies with applicable federal and state law.

Principle 2: The university reserves the right to refuse a gift if (a) such acceptance imposes overly burdensome administrative, financial, or other risk, including reputational risk, on the university or, (b) the gift does not further the university’s mission or purposes or is contrary to university policy.

Principle 3: Donors should be actively encouraged both in written proposals or financial illustrations, as well as in person, to consult their own financial and/or legal advisors when contemplating a gift. University staff should not portray themselves as financial or legal advisors to a prospective donor. A disclaimer clause to this effect shall be incorporated in proposals and illustrations as appropriate. No university staff should knowingly accept or encourage a gift if, in his or her professional opinion, the making of the gift is not in the donor's best interest.

Gift Acceptance Committee

The President shall designate a Gift Acceptance Committee, which shall review gifts of certain types of property or subject to certain types of restrictions before acceptance of such gifts. The Gift Acceptance Committee will convene periodically to review for acceptance the terms and conditions associated with any conditional gifts and gifts of real estate or tangible personal property. The Gift Acceptance Committee may develop procedures to permit acceptance of gifts by the university's Vice President for University Advancement, Chief Operating Officer, or their designees.

Anonymous Gifts

Donors may request their gift to be noted as anonymous and excluded from donor lists and reports and may also decline any publicity regarding their gifts or pledges committed. Totally anonymous gifts are not accepted. The university shall honor such requests to the extent they are not in conflict with federal, state or local laws and/or regulatory obligations. Virginia Code §2.2- 3705.4.A.7 requires that the request for anonymity be made in connection with or as a condition of making a pledge or donation and prohibits anonymity if the pledge or donation imposes terms or conditions directing academic decision-making.

Types of Gifts

The following criteria will govern the acceptance of each gift type:

Cash and cash equivalents. The university accepts cash and cash equivalents in any form. Any officer, Trustee, or staff member is authorized to accept on behalf of the university an unrestricted gift of cash. **Checks shall be made payable to William & Mary.** In no event shall a check be made payable to an individual who represents the university. For tax purposes, the date of receipt of a gift

shall be determined in accordance with applicable federal tax laws. It is a violation of the university's policy to falsify a written letter of acknowledgement in any way that would violate U.S. Generally Accepted Accounting Principles (GAAP), the Revenue Reconciliation Act of 1993, or Internal Revenue Code section 170 and the regulations underlying that section.

Tangible Personal Property. The university may accept certain types of gifts-in-kind if the contributed property or its proceeds can be used to complement the core mission of the university in the areas of teaching, research, creative endeavors, outreach programs, or a combination thereof. The use and need of the property should be clearly documented and approved by the Gift Acceptance Committee or in accordance with procedures established by the Gift Acceptance Committee. Tangible personal property includes, but is not limited to, vehicles, jewelry, artwork, furniture, equipment, and any other personal item owned by a donor. Any such contributed property shall be unencumbered and with clear and proper documentation of the donor's ownership of such property. The university staff and, where appropriate, the university's Gift Acceptance Committee shall give appropriate consideration to the maintenance, storage, and other costs associated with a gift-in-kind. It is the university's policy that donors shall pay any transportation costs associated with delivery of the property to the university.

The university does not accept gifts of marine vessels, aircraft, fixtures, or equipment where the insurance costs of operation may be prohibitively expensive. The university does not accept gifts of livestock.

In order to be tax deductible, the IRS requires the donor of a gift valued at more than \$5,000 to obtain a qualified appraisal and file an IRS Form 8283 completed by the qualified appraiser and signed by an officer of the university; however, it is the responsibility of the donor to obtain the appraisal and the Form 8283. Donors of personal property will be provided with an acknowledgement from the university for the donation; however, no stated dollar value will be included in the acknowledgement/receipt for any gifts of personal property. It is against university policy to accept personal property on an on-loan basis.

The university reserves the right to sell or otherwise dispose of any gift of tangible property. If the university sells or otherwise disposes of an item of personal property within three years of the date of receipt of the gift, it must file with the IRS and provide a copy of the Form 8282 to the donor indicating, among other things, the date of sale or other disposition of the item and the sale price if a Form 8283 was required because the value of the gift was more than \$5,000.

The Internal Revenue Code and underlying regulations limit a donor's deduction for a gift of tangible personal property to the donor's basis if the property's intended use is not related to the university's tax-exempt purpose. In the case of gifts of tangible personal property unrelated to the university's tax-exempt purpose, the university's normal practice shall be to sell such tangible personal property as promptly as possible. The university will inform every donor of these rules and the university's policy and recommend that the donor seek outside tax advice regarding the amount of the donor's income tax charitable deduction for the gift.

Intellectual Property. The university may accept gifts of intellectual property that can be used in furtherance of the university's purposes or provide a source of funds to the university to further its purposes. Intellectual property, which is not tangible, but consists of certain rights or privileges, includes, but is not limited to, inventions, patents, copyrights, and trademarks. After review of a potential gift of intellectual property, the university will determine if the property would be retained for use by the university, sold, or otherwise monetized through a shared licensing or other arrangement for the benefit of the university. The university's intention to obtain value for the property and use the proceeds to further its charitable and educational purposes shall be communicated to the donor in writing at the time of the gift.

Securities. Any officer, Trustee, or staff member of the university may accept gifts of marketable securities, such as publicly traded stock, on behalf of the university. Gifts of marketable securities may be made by electronic transfer to the university account or may be made by stock certificate, in which case the stock certificate should be either duly endorsed or accompanied by a stock power and in each circumstance accompanied by an appropriate signature guarantee. It is the policy of the university that all readily marketable securities are sold immediately upon receipt. For the university's internal gift crediting and accounting purposes, the value of the securities is the average of the high and low on the effective date of the completed transfer to the university. Gains or losses on the sale of securities, brokerage fees, or other expenses associated with the sale will not affect the reported value of the gift. Gift acknowledgements for publicly traded securities will include a description/name (type) of gift (security), the number of shares received, and the date received.

The university may accept non-publicly traded securities, including S corporation stock, sole proprietorships, closely held or restricted securities, membership interests in limited liability companies, partnership interests, or real

estate investment trusts, only after review and approval by the Gift Acceptance Committee. Before acceptance of non-publicly traded securities, the Gift Acceptance Committee shall consider methods of liquidation for the securities through redemption or sale. A representative of the university shall try to contact the entity to determine an estimate of fair market value and any restrictions on transfer. The Gift Acceptance Committee may decline a gift of such securities if it deems them to be difficult to value or not easily marketable. In evaluating a gift proposal of such assets, the Gift Acceptance Committee may consider the probability of conversion to a liquid asset within a reasonable period of time, projected income that will be available for distribution and administration fees, the nature of the business represented by the securities, and whether or not ownership of the securities will subject the university to unrelated business income tax. The Gift Acceptance Committee must approve a gift of securities that makes the University a principal in a joint venture or other business activity where the university would bear a risk of loss or have liability for the conduct of the business that exceeds its interest in the business (i.e., as a general partner, principal in a joint venture, or owner of a working interest).

Gift acknowledgements for non-publicly traded securities will include a description/name (type) of gift/securities, the number of shares received and the date received. No stated dollar value will be included on the acknowledgement letter for gifts of closely held securities. In case of non-publicly traded securities valued at more than \$5,000, the donor must obtain a qualified appraisal as required by the federal income tax laws to substantiate the amount of the federal income tax charitable deduction. The donor must complete an IRS Form 8283 completed by the qualified appraiser and signed by an officer of the university; however, it is the responsibility of the donor to obtain the appraisal and the Form 8283. If the university sells the non-publicly traded securities within three years of the date of the contribution, it must file the required Form 8282 with the IRS and send a copy to the donor.

Real Estate. Gifts of real estate may include developed property, undeveloped property, or gifts subject to a prior life interest. All outright gifts of real estate must be reviewed and recommended by the Gift Acceptance Committee and approved by the Board of Visitors before acceptance. Due to the expenses associated with gifts of real estate, only gifts valued in excess of \$25,000 will be considered. A proposed gift of real estate valued under that amount will be evaluated individually. The university does not accept gifts of time share interests.

Where appropriate, a title binder shall be obtained by the university in

advance of the acceptance of the real property gift. The cost of this title binder shall generally be an expense of the donor. The donor is responsible for obtaining the required qualified appraisal for any property valued at more than \$5,000. A copy of the donor's qualified appraisal must also be provided to the university. Before presentation to the Gift Acceptance Committee, a member of the staff must conduct a visual inspection of the property. If the property is located in an area that is deemed impracticable for inspection by staff, a local real estate broker can substitute for a member of the staff in conducting the visual inspection.

Before presentation to the Gift Acceptance Committee, the donor must provide, at least, the following documents:

- Real estate tax bill;
- Current plot or survey;
- Current owner's title policy or title commitment;
- Substantiation of zoning status;
- Appraisal;
- A Phase I Environmental Site Assessment addressed to the university reflecting the current environmental condition of the real estate; and
- A Phase II Environmental Site Assessment, if appropriate.

The Gift Acceptance Committee shall consider the following factors before acceptance of the real property:

- Is the property useful for the purposes of the university?
- Is the property marketable?
- Should a second appraisal be required? Should it be paid for by the university?
- Are there any restrictions, reservations, easements, or other limitations associated with the property?
- Are there carrying costs, which may include insurance, property taxes, mortgages, or notes, etc. associated with the property?
- Does the environmental audit reflect that the property is not damaged?

Depending on the value and desirability of the gift and other factors, the donor may be asked to pay for all or a portion of the following:

- Costs of environmental remediation;
- Maintenance costs;

- Real estate taxes;
- Insurance;
- Title insurance premiums;
- Survey costs;
- Real estate broker's commission and other costs of sale; and
- Appraisal costs.

In the event the Board of Visitors decides to accept the real estate, for the university internal gift crediting and accounting purposes, the value of the gift will be the appraised value of the real estate. In the case of gifts of real estate valued at more than \$5,000, the donor must obtain a qualified appraisal to substantiate the amount of the federal income tax charitable deduction. The donor must complete an IRS Form 8283 completed by the qualified appraiser and signed by an officer of the university; however, it is the responsibility of the donor to obtain the appraisal and the Form 8283. In general, the university's policy is to dispose of all gifts of real estate as expeditiously as possible. This policy will be communicated to the donor when the university receives notice of the donor's intent to contribute real property to the university. If the university sells or otherwise disposes of the donated property within three years of the date of the contribution, the university must file the required Form 8282 with the IRS and send a copy to the donor.

Remainder Interests in Property. The university may accept a remainder interest (with a retained life interest) in a personal residence, farm, or vacation home or property subject to the provisions of the above section on real estate. The donor or other occupants may continue to occupy the real property for the duration of the stated life. At the death of the life tenant, the university may use the property or reduce it to cash. Where the university receives a gift of the remainder interest, expenses for maintenance, real estate taxes, and any property indebtedness are to be paid by the donor or primary beneficiary and should be addressed in a separate agreement with the donor. All gifts of such remainder interests shall be made only in accordance with the acceptance procedures set forth above for gifts of real estate.

Oil, Gas, and Mineral Interests. Although the university does not normally accept oil, gas, and mineral interests, the university may accept such, where appropriate and in accordance with university policies. Prior to acceptance of an oil, gas, or mineral interest, the gift must be approved by the Gift Acceptance Committee, and if necessary, by university Counsel and in accordance with the acceptance procedures set forth above for gifts of real estate and in this section. Criteria for acceptance of the property shall include:

- Gifts of surface rights shall have a value of \$20,000 or greater.
- Gifts of oil, gas, and mineral interests should generate at least \$3,000 per year in royalties or other income (as determined by the average of the three years prior to the gift).
- The property should not have extended liabilities or other considerations that make receipt of the gift inappropriate.
- If the interest is a working interest, the Trustees should determine the impact on the university so that it may develop a plan to minimize that impact if accepted.
- The property should undergo an environmental review to ensure that the university has no current or potential exposure to environmental liability.

Bargain Sales. The university may enter into a bargain sale arrangement in instances in which the bargain sale furthers the mission and purposes of the university. All bargain sales must be reviewed and recommended by the Gift Acceptance Committee and approved by the Board of Visitors. In addition to the procedures set forth generally in the procedure for the type of property being purchased, factors used in determining the appropriateness of the transaction include:

- The university must obtain an independent appraisal substantiating the value of the property (in addition to any required appraisal that must be obtained by the donor to substantiate the donor's federal income tax charitable deduction).
- If the university assumes debt with the property, the debt ratio must be less than 50 percent of the appraised market value.
- The university must determine that it will use the property, or that there is a market for the sale of the property, allowing sale within 12 months of receipt.
- The university must calculate the costs to safeguard, insure, and expense the property (including property tax, if applicable) during the holding period.

Life Insurance. The university will accept gifts of life insurance in appropriate circumstances where the university is named as a beneficiary.

Charitable Remainder Trusts. The university will not accept appointment as trustee of a charitable remainder trust (CRT), but can be named as a beneficiary of a charitable remainder trust.

Charitable Lead Trusts. Income produced by a charitable lead trust (CLT) for the benefit of the university may be restricted by the donor and designated in

accordance with policies established for any other contribution. The university does not serve as trustee of CLTs. Any exception to this policy must be approved by the Gift Acceptance Committee.

Bequests and Retirement Plan Assets. The university accepts charitable bequests and retirement plan designations and will abide by donor designations indicated in the related documents, assuming such designations are applicable to current programs within the university do not violate university policy or federal, state or local laws. If the intended use falls outside of the law, the university will adhere to the laws and regulations of the Commonwealth of Virginia regarding such matters. Assets transferred through bequests that have immediate value to the university or can be readily liquidated are encouraged. If the university receives artwork or related materials through a testamentary transfer, these items shall be transferred to the Muscarelle Museum of Art or its affiliated Foundation. Gifts that appear to require more cost than benefit shall be discouraged or declined. The university will not accept appointment as executor for an estate. Donors and supporters of the university shall be encouraged to name the university as beneficiary of their retirement plans.

Execution of Documents Evidencing Gift Acceptance

All documents evidencing gift acceptance, such as endowment agreements, deeds of gift, grant agreements from foundation, etc., must be signed by an authorized officer of the university. The authorized individuals to execute documents evidencing gift acceptance including, but not limited to, endowment agreements, grant agreements from foundations, etc. for the university, include the university's Chief Operating Officer.

Letters of Commitment (LOC) and Letters of Designation (LOD)

A LOC outlines the details of a pledge for a donor(s) to give a specific dollar amount to the university to support one or more priorities of the university according to a fixed time schedule. If monies have already been received but documentation is needed to confirm donor intent, a LOD may be used. Generally, pledges should not exceed five years.

- Only the entity with legal control over the assets to be given can make a pledge. Therefore, an individual cannot make a pledge that includes anticipated matching contributions from an employer or some other source. Nor can an individual commit funds that may come from a donor advised fund or community foundation.
- The university must be clearly identified as the entity to whom the pledge is being

made.

- Changes to original pledges/LOCs (e.g., pledge amount, payment schedule or changes in the designation of a pledge) must be documented in writing and approved by the university.

Endowment Agreements and Gift Agreements

A fund for restricted gifts for a specific purpose will be established for commitments that meet the minimum funding thresholds and if the restriction has been vetted and approved by the university's staff under procedures and standards approved by the Gift Acceptance Committee. The university or its designee is responsible for drafting endowment and gift agreements.

Special Situations

Conditional Gifts. Conditional gifts are those gifts that, because of some qualifier or restriction, are considered non-routine. Conditional gifts may commit the university to act within a specified time or use a gift for a specific purpose. Any gift of \$1,000,000 or more that imposes a new obligation on the university shall be considered a conditional gift. The university shall document the terms and conditions governing conditional gifts in a record that is compliant with the Virginia Public Records Act and subject to the provisions of the Virginia Freedom of Information Act. Gift acceptance agreements should specify a time period for meeting the conditions for the gift and should also indicate what will happen to the gift if the conditions are not met.

The university shall ensure that conditional gifts that are not completed gifts for federal tax purposes are appropriately documented in the university's financial statements and shall not provide to the donor any written acknowledgement of the gift for federal income tax purposes until the gift is complete.

Limits on Conditional and Restricted Gifts. The university shall not accept any gift that is restricted in any manner that would:

- Interfere with or influence the university's academic freedom or its capacity to fully control the management, operations, and direction of its affairs, including admission procedures, faculty selection and promotion, and academic programs and their integrity;
- Result in unlawful discrimination on the basis of race, creed, color, citizenship, national origin, religion, sexual orientation, gender identity, gender expression,

- age, marital or partnership status, military status, or disability;
- Presume or require a particular result or conclusion from scholarly work;
- Impede the free inquiry and scholarly activity of a faculty member, fellowship holder, or student;
- Be for purposes inconsistent with the university's missions related to education, research, and service;
- Convey a benefit to the donor or other private individuals rather than serving the public benefit;
- Afford the donor influence over the hiring or continued employment of specific personnel; or
- Impair the university's ability to define and pursue its mission, require illegal or unethical acts, hinder governance or administration, or compromise the university's accreditation.

Group Gifts. Donors (graduating classes, alumni groups, friends and family of athletic programs or an academic discipline, etc.) who wish to establish a new fund collectively as a group must meet the following criteria:

- When soliciting a group of donors for new endowments the discussion and determination of the agency that will hold the account and how the monies will be used must first be established and explained and agreed upon with the donors.
- It is important that the donors are aware and agree upon the intent and use of the account at the time of solicitation.
- The university has final approval for the establishment of endowments held by the university.

Third Party Gifts

Donor Advised Funds. Generally, a donor advised fund (DAF) is a separately identified fund or account that is maintained and operated by an external section 501(c)(3) organization, which is also known as a *sponsoring organization*. Each account is composed of contributions made by individual or other donors. Once the donor makes the contribution, the DAF has legal control over it. However, the donor, or the donor's representative, retains advisory privileges with respect to the distribution of funds and the investment of assets in the account.

- When a grant is received through a DAF, the legal donor is the DAF making the contribution, and the person advising is known as the adviser.
- Advisers may not receive any impermissible benefit (e.g., tuition, membership fees with more than incidental benefits, dues, admission to charitable or other event, goods bought at auction, etc.) from the university as a result of receiving a grant from a DAF. Examples of permissible benefits include benefits that are not more than incidental, such as token logo-bearing key chains, caps, T-shirts, and calendars.
- The grant does not entitle the adviser or any other person to an income tax charitable deduction, because they were eligible to take a deduction at the time of the contribution(s) to the DAF.

Corporate Matching Gifts. Donors may only pledge their own personal monies and may not commit those of another entity. A matching gift may not fulfill all or a portion of a donor's pledge to the university.

Confidentiality

All financial information obtained from or about donors and prospective donors shall be held in the strictest confidence by the university and its Board of Visitors, employees, and volunteers.

Receipts and Substantiation

The university's staff shall see that prompt acknowledgements, thank you letters, where appropriate, and other documentation are sent to all donors in such form and containing such information as may be required or suggested from time to time under the federal income tax laws, the IRS, and the university's auditors.