I. CHECKLIST FOR EVALUATING GIFTS OF COMPLEX ASSETS

Charities today are offered a wide variety of complex assets to fund both outright and life income gifts, including real estate, closely-held business interests and tangible personal property. While gifts of complex assets are often of significant size, they can be difficult to analyze and present risks that must be understood and effectively managed. This checklist provides a framework for completing an initial assessment of a complex asset.

Understand Your Donor

a) Does the donor own the asset individually or is the asset held inside an entity the donor controls (e.g., a partnership or corporation)?

b) Are there co-owners of the asset (e.g., a spouse, joint tenant, or business partner)? What rights do they have in the property?

c) What is the level of donative intent, and the quality of your charity’s relationship with the donor?

d) Are there other motivations for making the gift?
   o Tax problem the donor needs to solve
   o Need to generate liquidity
   o Desire to shed the administrative burden of managing the property
   o Desire to get rid of a problem asset

Understand the Gift Asset

a) How and when did the donor acquire the asset (e.g., purchase, inheritance, or employment)?

b) Does the donor have clear title to the property, free of all potential claims and liabilities?

c) If the asset is shares in a corporation, what type is it?
   o C corporation
   o S corporation
   o Limited liability company (LLC)
   o Personal/Professional corporation (PC)

d) If the asset is units in a partnership, what type of partnership is it and what type of interest does the donor own?
   o General partnership
   o Limited partnership (is it a general or a limited partnership interest?)

e) Are there restrictions on ownership of the asset?
   o A charitable remainder trust (CRT) cannot own S corporation shares without voiding the S corporation election
   o Many states have restrictions on who can own professional practices (e.g., physicians)
o Are there restrictions on the transfer of the ownership of the asset (e.g., a buy/sell agreement for closely-held stock)?

do Does anyone hold an option or right of first refusal to buy the asset from the donor?

f) Is it a long-term capital asset?

o Simple test: How would the proceeds be taxed today if the donor sold the asset?

o Clues that it is ordinary income property:
  ▪ The donor has held the property less than a year
  ▪ It is part of business inventory (e.g., real estate held for development by a developer)
  ▪ It is tangible property created by the donor
  ▪ It is income due to the donor for work performed (e.g., income due from a consulting contract)

g) Are there UBTI issues associated with the asset?

o Does the asset produce regular business income (e.g., an operating farm or vending machines in an apartment building)?

o If the asset produces rents or royalties, are the payments based on gross revenue or a fixed amount (no UBTI) or net profits (UBTI)?

o Is there debt within the entity (e.g., a partnership) or on the asset itself that could render income as UBTI?

o Does the gift involve more than a 50% interest in a corporation or partnership, which would trigger “controlled entity” status and potentially create UBTI?

**Carefully Evaluate the Risks**

**Risks of Accepting the Asset**

a) Environmental liability

o Under federal and state law, liability can attach to owners or operators of contaminated property, so it can be important to stay out of the chain of title

o Risk can be lessened through a Phase I environmental assessment

b) Excessive gift valuation

o Donors sometimes overvalue their property out of emotional attachment or a desire for a higher tax deduction.

o Obtain a preliminary indication of value from a reliable source other than the donor. Consider recent appraisals obtained by the donor or secure your own independent appraisal.

o Gift value for tax purposes might be influenced by the lack of marketability, transfer restrictions, or minority interest discounts

o Excessive staff time and resources required
- Damage to reputation due to the condition or use of the property
- Tax on UBTI
- What is the liability (cost) if UBTI applies?

With gifts to CRTs, some of these risks can be lessened or eliminated by asking the donor to serve as the initial trustee of the trust until the property is sold.

**Risks Associated with Disposal of the Gift Asset**

a) Marketability

b) If this is a gift to a CRT, are there potential self-dealing issues? Are the potential purchasers disqualified persons? Do any disqualified persons lease the property?

c) Assignment of income issues—Has the donor already committed to a sale of the property?

**Risks of Ongoing Management of the Gift Asset**

a) Difficult to value

b) Future assessments (especially with partnerships)

c) Below average performance of the asset

d) Lack of liquidity for payments and expenses

e) Potential delays in trust valuation information and tax reporting

f) Excessive ongoing staff time and resources

*Finding Solutions to Problems:*  
With gifts of complex assets, it is important not to give up when a potential roadblock is encountered. Sometimes there are creative solutions that will enable a gift to go forward, but perhaps in a different form. Here are three strategies that might prove useful:

**Convert a complex asset into a simpler asset.** It may be possible to restructure an asset in such a way as to eliminate the problem. For example, to avoid UBTI from a coin-operated laundry in an apartment building that will be placed in a CRT, try to structure a lease arrangement with the property management company so that they will operate the laundry and pay the trust a set monthly lease payment (not based on net income).

**Transfer the asset from one type of ownership structure to another.** For example, assuming all parties agree, in some circumstances it may be possible to convert an S corporation into a C corporation, thus permitting the shares to be contributed to a CRT.

**Give the asset at death instead of during life.** If it does not make sense for the donor to contribute an asset during his lifetime because of negative tax or other considerations, a gift of the asset at death may be a good alternative. A common example is a gift of retirement assets, such as an IRA.
II. Procedures for Gifts of Complex Assets

These procedures apply to gifts of atypical, illiquid assets (excluding gifts of publicly traded securities and real property).

I. The Development Office shall assist with facilitating all gifts of complex assets. A member from the Development Office will take the lead in completing each of the steps below, as appropriate.

II. Obtain pertinent information from donor and/or donor’s advisors
   A. Current status of donor’s planning
   B. Legal documents
   C. Identify donor’s objectives (financial and philanthropic)
   D. Manage donor’s and advisor’s expectations about review process

III. Identify and involve appropriate internal stakeholders
   A. Development Office staff member
   B. General Counsel
   C. SVP Finance/Treasurer
   D. SVP – Institutional Advancement
   E. Faculty/staff

IV. Input from General Counsel and outside counsel
   F. Forward information to General Counsel and Outside Counsel
   G. Obtain their written opinions and recommendations
   H. Facilitate internal conference as necessary
   I. Facilitate conference with donor’s advisors

III. Input from SVP Finance/Treasurer
   A. Forward information
   B. Obtain their written opinions and recommendations
   C. Facilitate internal conference as necessary
   D. Facilitate conference with donor’s advisors

IV. Determine Acceptance or Rejection of Gift
   A. Facilitate meeting of internal stakeholders, if necessary
   B. Understand possible conditions to acceptance
   C. Draft memorandum from VP IA to internal stakeholders with Gift Agreement, if applicable
   D. Obtain feedback from internal stakeholders
   E. Review Gift Agreement with donor and donor’s advisors
   F. Obtain signatures on Gift Agreements
   G. Distribute executed Gift Agreements and all other pertinent documents
III. DONOR CULTIVATION CHECKLIST

<table>
<thead>
<tr>
<th>Name</th>
<th>Established Gift Officer Relationship</th>
<th>3+ Visits by Charity Leadership</th>
<th>On-Site Visit</th>
<th>Long-term Engagement</th>
<th>$25K+ Annual Gifts/Payments</th>
<th>High-level Board involvement</th>
<th>Stakeholder involvement</th>
<th>Gift of $250K+</th>
<th>Gift expectations met</th>
<th>Creative stewardship</th>
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Rate each category on a scale of 0-3.
Total points available: 33

Credit: “Donor Cultivation Checklist: A path to principal gift success”
By Ben Porter, Executive Director of Principal Gifts, Northwestern University
May/June 2018 CASE Currents
Learning Objective:

- Types of complex assets that qualify as charitable gifts
- Essential considerations when conducting an evaluation of a potential complex gift
- Importance of development office staff’s partnership with other areas of the institution - such as the treasurer’s office, tax office and general counsel’s office - before, during and after the gift negotiation
- Value of external collaboration with the donor’s legal and financial advisors
- Identifying the crucial factors that determine a donor’s readiness to make complex gift
ABC Company is a corporate donor to Drexel, supporting various initiatives in math, design, computer science related to their software development; also recruits students for co-op and full-time employment. CEO (Donor), is impressed by the industriousness and capabilities of Drexel co-ops.

Parties Involved

Donor:
- ABC Company Executives:
  - Executive Vice President
  - Chief Product Officer
  - Chief Talent Officer

Drexel:
- Prof. Computer Sciences
- Prof. Architecture
- Director, CiDA Design Center
- Prof. Civil/Architectural Engineering
- IA Development Officers
- Interim President
- Students

Pre-2011
ABC Company is a corporate donor to Drexel, supporting.

Pre-2011 Donor joins College Advisory Board

October 2011 Donor appointed to Board of Trustees/Joins Academic Affairs Committee

May 2012 Donor, via ABC Company, commits $230,000

October 2013 President and Dean make initial solicitation for

February 2016 Donor affirms his interest in the project,

December 2016 Illustration exhibition sponsored by

Late Fall 2017 President meets with Donor and shares new plan to convert another building into

April 2018 Donor verbally commits to the project after resolving concerns that Drexel would not be able to accept privately

June 2018 Donor calls SVP IA and shares that while he is personally inclined to make the $10M commitment,

July 2018 Donor emails SVP to share that he & Spouse will commit $10M to the project

September 2018 Donor informs SVP that his attorneys are reviewing agreement and that he will shortly review with them

October 2018 Legal Counsel for both parties reviewing

November 2018 Donors sign final Gift Agreement

January 2019

May 2012 Donor appointed to Board of Trustees/joins Academic Affairs Committee

Parties Involved

Donor

Drexel

President

Dean of College

SVP IA

Multiple IA Development Officers

May 2012

Donor appointed to Board of Trustees/joins Academic Affairs Committee

May 2012

Donor appointed to Board of Trustees/joins Academic Affairs Committee

Parties Involved

Donor

Drexel

President

Dean of College

SVP IA

Multiple IA Development Officers

May 2012
Donor, via ABC Company, commits $230,000 to establish student research lab to encourage students to develop and test new digital apps.

**October 2013**

**Parties Involved**
- **Donor:**
  - CEO (Donor)
  - Technical recruiter
- **Drexel:**
  - Dean of College
  - Interim Senior Vice President IA
  - Vice President IA
  - Professors
  - Students
President and Dean make initial solicitation for $10M to support construction of proposed new college facility, for which Donor has been a primary advocate. Donor is surprised but agrees to meet with SVP IA and SAVP Planned Giving to discuss potential funding options.

Background: Donor corporation is considering possible IPO which has important timing implications for gift decision.

Parties Involved:
- Donor
- President
- Dean of College
- Senior Vice President, IA
- Director of Development
- SAVP Gift Planning
What is a Complex Asset?

Anything other than cash or marketable securities

- Private Company Stock
- S-Corp
- C-Corp
- Restricted Stock
- LLC and Limited Partnership Interests
- Real Estate
- Pre-IPO Shares
- Personal Property (Artwork, Collectibles)

- Other Miscellaneous Capital Assets
- Certain Alternative Investments
  - Life Insurance Policies
  - Retirement Plans
  - Negotiable Instruments
  - Oil and Gas Interests
  - Private Equity
  - Bitcoin
  - Patents

Framework for Evaluating Complex Asset Gifts

Who owns the asset? > Understand the gift asset > Evaluate the risk > Find solutions to problems
Who is your donor?
• Individual
• Married couple
• Business entity
• Trust

Who owns the asset?

Tell me more about your business (real estate, patent, etc.)
• What does the company do?
• How is it organized?
• How long have you owned it?
• Has it been valued (appraised) recently?

Is there debt on the business or any of the assets?
Are there other owners besides you (and your spouse)?
What are the plans for the future of the business?
• Plans to sell?
• Plans to transfer to other partners?
• Leave it to your children?

Understand the gift asset

Evaluate the Risks

Accepting the asset
Valuing the asset
Managing the asset
Disposing of the asset
Evaluate the Risks

- Reputational
- Environmental
- Carrying Costs
- Legal – Securities and Exchange Commission 144
- UBIT
- Exit Strategy

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**ABC Company** is a corporate donor to Drexel, supporting.

- Pre-2011 Donor joins College Advisory Board
- October 2011 Donor appointed to Board of Trustees/Joins
- May 2012 Donor, via ABC Company, commits $230,000
- October 2013 President and Dean make initial solicitation for
- February 2016 Donor affirms his interest in the project,
- December 2016 Illustration exhibition sponsored by Late Fall 2017
- President meets with Donor and shares new plan to convert another building into
- April 2018 Donor verbally commits to the project after resolving concerns that Drexel would not be able to accept privately
- June 2018 Donor calls SVP IA and shares that while he is personally inclined to make the $10M commitment,
- July 2018 Donor emails SVP to share that he & Spouse will commit $10M to the project
- September 2018 Donor informs SVP that his attorneys are reviewing agreement and that he will shortly review with them
- October 2018 Legal Counsel for both parties reviewing
- November 2018 Donors sign final Gift Agreement
- January 2019

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**Note:** Donor is made aware that without his lead gift, the project is unlikely to proceed. He is the only potential naming donor. Donor shares that he & his wife participated in programs similar to what he wants to support at Drexel at other colleges and value the experience, but states clearly that Drexel is not a top 3 philanthropic priority for his family—in fact, Higher Ed in general has not been a focus. Drexel attempts to engage Spouse continue, but with little success.

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**December 2016**
Donor affirms his interest in the PHC project, but not ready to personally commit due to decision not to proceed with IPO and new arrangement that allows for bi-annual liquidation of ABC Company shares.

Note: Donor is made aware that without his lead gift, the project is unlikely to proceed. He is the only potential naming donor. Donor shares that he & his wife participated in programs similar to what he wants to support at Drexel at other colleges and value the honors experience, but states clearly that Drexel is not a top 3 philanthropic priority for his family—in fact, Higher Ed in general has not been a focus. Drexel attempts to engage Spouse continue, but with little success.

Illustration exhibition sponsored by College; Donor & Spouse attend opening night dinner.

Note: one of their daughters is an illustrator and the family resides in Chester County, home of the famed Wyeth Family.

Late Fall 2017

December 2016

Parties Involved

Donor

Drexel

SVP, IA

Director of Development

Dean of College
Late Fall 2017

Illustration exhibition sponsored by College; Donor & Spouse attend opening night dinner.

Note: one of their daughters is an illustrator and the family resides in Chester County, home of the famed Wyeth Family

Parties Involved

Donor: Donor and Spouse
Drexel: Director of Development
SVP, IA
Dean of College
College Advisory Board members

April 2018

President meets with Donor and shares new plan to convert closed existing building to support project; resolicits for $10M lead gift. Donor indicates willingness to seriously consider.
President meets with Donor and shares new plan to convert closed existing building to support project; resolicits for $10M lead gift. Donor indicates willingness to seriously consider.

Total (corporate + personal) Giving to Drexel to this point:

$383,000
Donor verbally commits to the project after resolving concerns that Drexel would not be able to accept privately held ABC Company shares; final decision rests on approval by Spouse, who has not yet been personally solicited. Payment terms are left TBD.

June 6, 2018

Parties Involved

Donor:

Drexel:

SVP, IA

ABC Company is a corporate donor to Drexel, supporting.

Pre-2011

Donor joins College Advisory Board

October 2011

Donor appointed to Board of Trustees/Joins

May 2012

Donor, via ABC Company, commits $230,000

October 2013

President and Dean make initial solicitation for

February 2016

Donor affirms his interest in the project,

December 2016

Illustration exhibition sponsored by

Late Fall 2017

President meets with Donor and shares new plan to convert another building into

April 2018

Donor verbally commits to the project after resolving concerns that Drexel would not be able to accept privately held ABC Company shares; final decision rests on approval by Spouse, who has not yet been personally solicited. Payments terms are left TBD.

June 6, 2018

Donor calls SVP IA and shares that while he is personally inclined to make the $10M commitment,

July 2018

Donor emails SVP to share that he & Spouse will commit $10M to the project

September 2018

Donor informs SVP that his attorneys are reviewing agreement and that he will shortly review with them

October 2018

Legal Counsel for both parties reviewing

November 2018

Donors sign final Gift Agreement

January 2019
July 16, 2018

Donor calls SVP IA and shares that while he is personally inclined to make the $10M commitment, he has not yet discussed with his wife and is hesitant to "spring it on her" after he has spent so much time considering. He asks if we can send a "new proposal, as if it is a brand new idea" to the both of them, to arrive at their home in early August for when they return from traveling to meet their new grandchildren. We prepare new proposal and Fed Ex for Aug 1.

Parties Involved
Donor: Donor and Spouse
Drexel: SVP, IA
Proposal Writers

ABC Company is a corporate donor to Drexel, supporting.

Donor joins College Advisory Board October 2011
Donor appointed to Board of Trustees/Joins May 2012
Donor, via ABC Company, commits $230,000 October 2013
President and Dean make initial solicitation for February 2016
Donor affirms his interest in the project, December 2016
Illustration exhibition sponsored by Late Fall 2017
President meets with Donor and shares new plan to convert another building into April 2018
Donor verbally commits to the project after resolving concerns that Drexel would not be able to accept privately June 2018
Donor calls SVP IA and shares that while he is personally inclined to make the $10M commitment, he has not yet discussed with his wife and is hesitant to "spring it on her" after he has spent so much time considering. He asks if we can send a "new proposal, as if it is a brand new idea" to the both of them, to arrive at their home in early August for when they return from traveling to meet their new grandchildren. We prepare new proposal and Fed Ex for Aug 1.

Donor emails SVP to share that he & Spouse will commit $10M to the project September 2018
Donor informs SVP that his attorneys are reviewing agreement and that he will shortly review with them October 2018
Legal Counsel for both parties reviewing November 2018

Donors sign final Gift Agreement January 2019
Donor emails SVP to share that he & Spouse will commit $10M to the project, pending confirmation of a mutually agreeable payment schedule. He asks for draft MOU to review with goal of finalizing by end of September.

**Parties Involved**

**Donor:**
- Donor

**Drexel:**
- SVP, IA
- SAVP Gift Planning

**Gift Agreement**

**ISSUES to Resolve**

**Drexel:**
- Adequate cash flow to support project
- Recognition rights – how long
- Reputation

**Donors:**
- Payment Schedule
- Recognition – how long
- Making sure funds are used appropriately
ABC Company is a corporate donor to Drexel, supporting.

Pre-2011 Donor joins College Advisory Board

October 2011 Donor Appointed to Board of Trustees/Joins

May 2012 Donor, via ABC Company, commits $230,000

October 2013 President and Dean make initial solicitation for

February 2016 Donor affirms his interest in the project,

December 2016 Illustration exhibition sponsored by

Late Fall 2017 President meets with Donor and shares new plan to convert another building into

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September 2018 Donor informs SVP that his attorneys are reviewing agreement and that he will shortly review with them

October 2018 Legal Counsel for both parties reviewing

November 2018 Donors sign final Gift Agreement

January 2019

Parties Involved

Donor: Donor
Donor’s Attorneys

Organ: Senior Vice President IA
Staff: Gift Planning

October 8, 2018
ABC Company is a corporate donor to Drexel, supporting Pre-2011 Donor joins College Advisory Board October 2011 Donor appointed to Board of Trustees/Joins May 2012 Donor, via ABC Company, commits $230,000 October 2013 President and Dean make initial solicitation for February 2016 Donor affirms his interest in the project, December 2016 Illustration exhibition sponsored by Late Fall 2017 President meets with Donor and shares new plan to convert another building into April 2018 Donor verbally commits to the project after resolving concerns that Drexel would not be able to accept privately June 2018 Donor calls SVP IA and shares that while he is personally inclined to make the $10M commitment, July 2018 Donor emails SVP to share that he & Spouse will commit $10M to the project September 2018 Donor informs SVP that his attorneys are reviewing agreement and that he will shortly review with them October 2018 Legal Counsel for both parties reviewing November 2018 Donors sign final Gift Agreement January 2019 October 2018 – January 2019

- Legal counsel for both parties reviewing
- Negotiating stock transfer agreement
- ABC Company had to update stock transfer agreement to allow for gifting of shares to charity
- Requires redrafting and signature by all relevant Company Shareholders
- Payment terms negotiated – only worked due to Drexel self-financing arrangement
- Donor attorneys very specific re: gift agreement language re: Drexel naming and signage policies
- Holidays and Donor’s travel further delays final decision

Parties Involved

- Donor:
- Donor’s Attorneys
- Donor’s Family & primary shareholders
- Drexel:
  - EVP, IA
  - SAVP, Gift Planning
  - EVP & CDO
  - CFO
  - OGC
- Outside Attorneys
ISSUES TO CONSIDER

• Use of Restricted Stock
  • What are the restrictions?
  • Review of Shareholder Agreement (We had to sign Non Disclosure Agreement)
  • What is our exit strategy?
  • What consequences are there to sign a Joinder?

• What is the impact the cash-flow needed to perform the renovations?
  • Payments don’t start until after project scheduled to be completed
  • Part of commitment is a planned gift
  • Stock can only be liquidated during specific bi-annual windows. What happens if value drops between date given and date liquidated? Will Donor make up the difference?

• The naming terms
  • Limited to 39 years
  • (at least not in perpetuity)
  • Limits any naming opportunity for new building
  • What happens if we have to build a new building due to obsolescence?
Donors sign final Gift Agreement

January 21, 2019

The Village To Achieve A Complex Gift

Donor:
- Corporation
- Corporate Personnel
- Donors
- Legal Counsel
- Financial Counsel

Drexel:
- Presidents
- Deans
- Professors
- Students
- Treasurer’s Office
- IA Senior Vice Presidents
- Gift Planning Office
- General Counsel’s Office
- Outside Legal Counsel
- Multiple IA Staff
- Proposal Writers
- Facilities Staff
- Outside Architects

Number of Years from First Contact to Major Gifts:
- $210,000 – 10 years
- $230,000 – 17 years
- Naming Gift - 22 years

Number of Contact Reports:
- 461

Donor Cultivation Checklist

Credit: Ben Porter

Established Gift Officer Relationship
3rd Party Involvement
University Leadership
On-Campus Visit
Long-term Relationship
High-level Board Involvement
Stakeholder Involvement
Gift of $250,000+
Gift Expectations Met
Mtg w/Pres within past 24 months
Total Points

55
56
57
### Donor Cultivation Checklist

**Credit:** Ben Porter

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<th>Established Relationship</th>
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**TOTAL POINTS:** 33

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**Questions?**