

## 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)

- Are there restrictions on the transfer of the ownership of the asset (e.g., a buy/sell agreement for closely-held stock)?
  - 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?
- Simple test: How would the proceeds be taxed today if the donor sold the asset?
  - 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?
- Does the asset produce regular business income (e.g., an operating farm or vending machines in an apartment building)?
  - If the asset produces rents or royalties, are the payments based on gross revenue or a fixed amount (no UBTI) or net profits (UBTI)?
  - Is there debt within the entity (e.g., a partnership) or on the asset itself that could render income as UBTI?
  - 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
- 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
  - Risk can be lessened through a Phase I environmental assessment
- b) Excessive gift valuation
- Donors sometimes overvalue their property out of emotional attachment or a desire for a higher tax deduction.
  - 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.
  - Gift value for tax purposes might be influenced by the lack of marketability, transfer restrictions, or minority interest discounts
  - 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

Name	Established Gift Officer Relationship	3+ Visits by Charity Leadership	On-Site Visit	Long-term Engagement	\$25K+ Annual Gifts/Payments	High-level Board involvement	Stakeholder involvement	Gift of \$250K+	Gift expectations met	Creative stewardship	Mtg w/Pres within past 24 months	Total Points

*Rate each category on a scale of 0-3.  
Total points available: 33*

**Anatomy of a Complex Gift**

**Planned Giving Council of Greater Philadelphia**  
**2019 Planned Giving Day**  
 October 30, 2019

**DAVID UNRUH**  
 Senior Vice President,  
 Institutional Advancement,  
 Drexel University

**DAVID TOLL, JD**  
 Senior Associate Vice President,  
 Gift Planning & Major Gifts,  
 Drexel University

1

---

---

---

---

---

---

---

---

**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

2

---

---

---

---

---

---

---

---



3

---

---

---

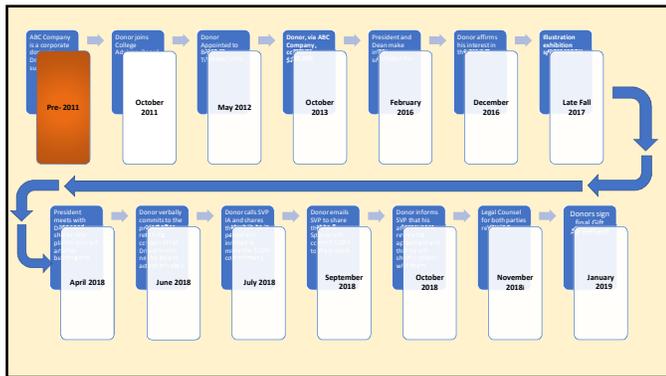
---

---

---

---

---



4

---

---

---

---

---

---

---

---

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.

Pre- 2011

5

---

---

---

---

---

---

---

---

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.

Pre-2011

**Parties Involved**

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

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

6

---

---

---

---

---

---

---

---



7

---

---

---

---

---

---

---

---



8

---

---

---

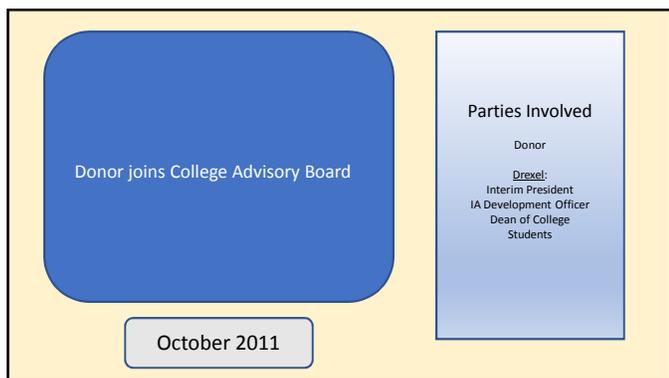
---

---

---

---

---



9

---

---

---

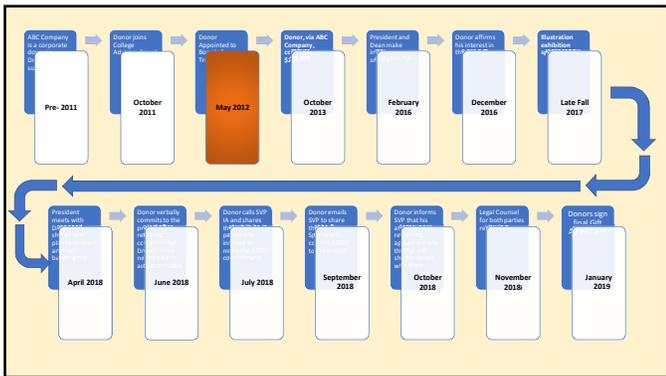
---

---

---

---

---



10

---

---

---

---

---

---

---

---



11

---

---

---

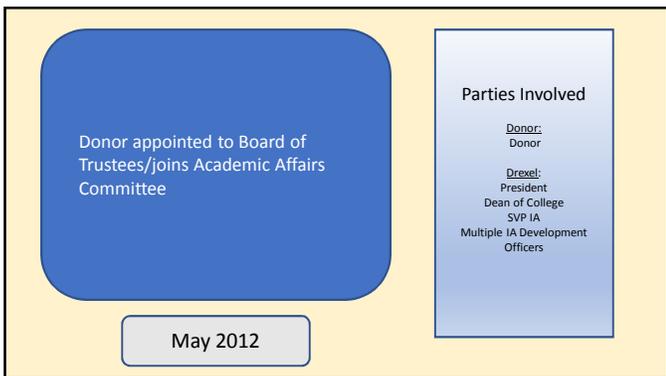
---

---

---

---

---



12

---

---

---

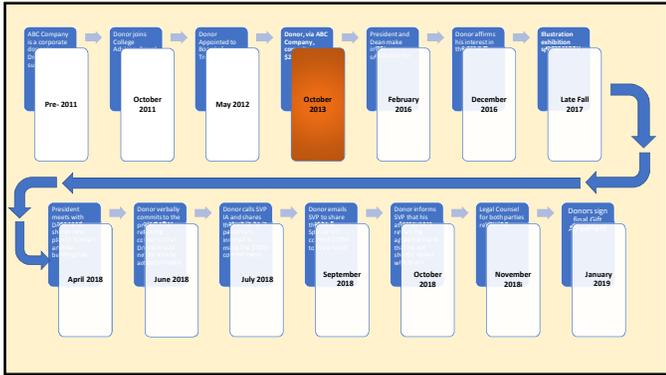
---

---

---

---

---



13

---

---

---

---

---

---

---

---



14

---

---

---

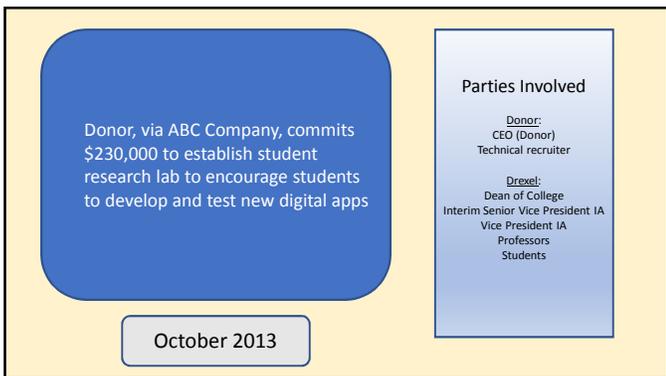
---

---

---

---

---



15

---

---

---

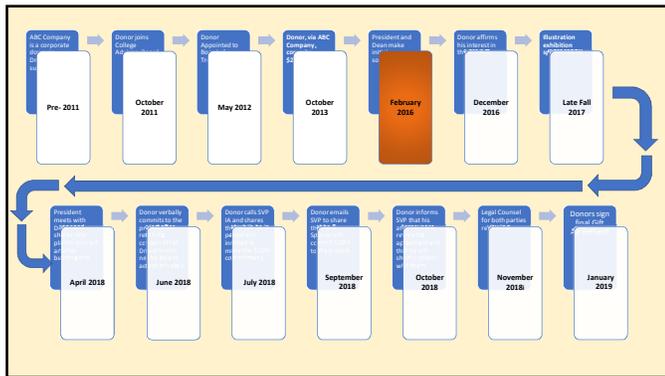
---

---

---

---

---



16

---

---

---

---

---

---

---

---

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

February 2016

17

---

---

---

---

---

---

---

---

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

February 2016

**Parties Involved**

Donor:  
Donor

Drexel:  
President  
Dean of College  
Senior Vice President, IA  
Director of Development  
SAVP Gift Planning

18

---

---

---

---

---

---

---

---

What is a Complex Asset?  
Anything other than cash or marketable securities

19

---

---

---

---

---

---

---

What is a Complex Asset?

- 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

20

---

---

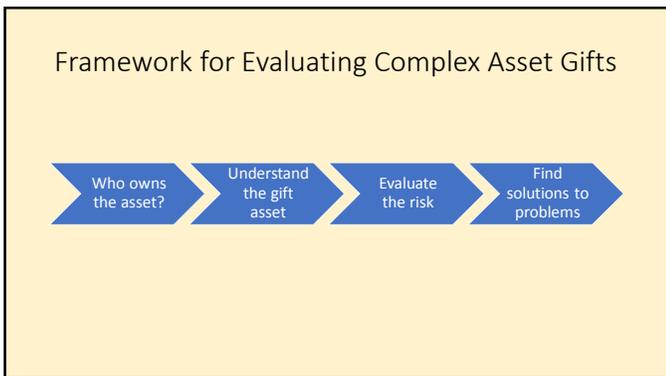
---

---

---

---

---



21

---

---

---

---

---

---

---

Who owns the asset?

Who is your donor?

- Individual
- Married couple
- Business entity
- Trust

22

---

---

---

---

---

---

---

---

Understand the gift 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 (appraise) 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?

23

---

---

---

---

---

---

---

---

Evaluate the Risks

Accepting the asset

Valuing the asset

Managing the asset

Disposing of the asset

24

---

---

---

---

---

---

---

---

### Evaluate the Risks

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

25

---

---

---

---

---

---

---

---



26

---

---

---

---

---

---

---

---

Donor affirms his interest in the 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 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

December 2016

27

---

---

---

---

---

---

---

---

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.

**December 2016**

**Parties Involved**

**Donor:**  
Donor

**Drexel:**  
SVP, IA  
Director of Development  
Dean of College

28

---

---

---

---

---

---

---

---

---

---



29

---

---

---

---

---

---

---

---

---

---

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**

30

---

---

---

---

---

---

---

---

---

---

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

Late Fall 2017

31

---

---

---

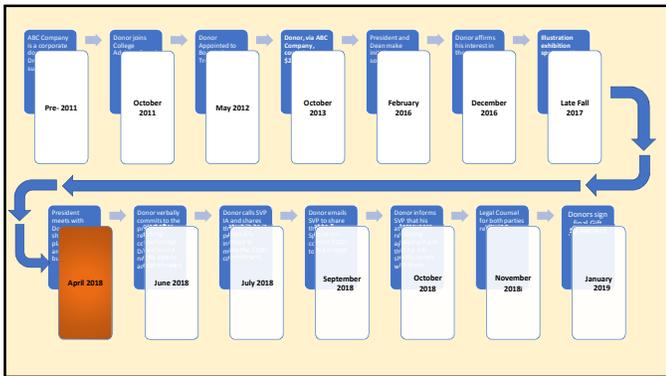
---

---

---

---

---



32

---

---

---

---

---

---

---

---

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.

April 2018

33

---

---

---

---

---

---

---

---

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.

**Parties Involved**

Donor:  
Donor

Drexel:  
President

April 2018

---

---

---

---

---

---

---

---

34

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

**\$383,000**

---

---

---

---

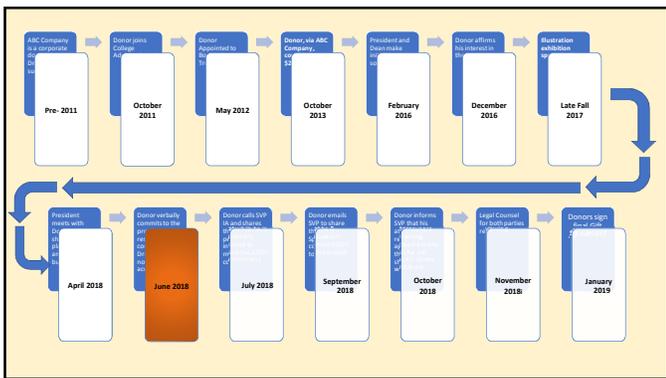
---

---

---

---

35




---

---

---

---

---

---

---

---

36

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

---

---

---

---

---

---

---

---

37

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

**Parties Involved**

Donor:  
Donor

Drexel:  
SVP, IA

---

---

---

---

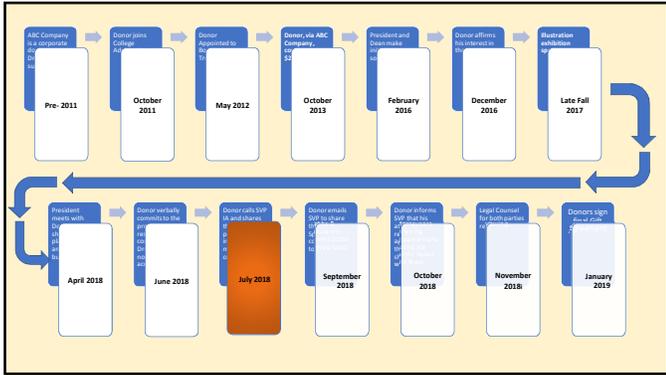
---

---

---

---

38




---

---

---

---

---

---

---

---

39

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.

July 16, 2018

40

---

---

---

---

---

---

---

---

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.

July 16, 2018

**Parties Involved**

Donor:  
Donor and Spouse

Drexel:  
SVP, IA  
Proposal Writers

41

---

---

---

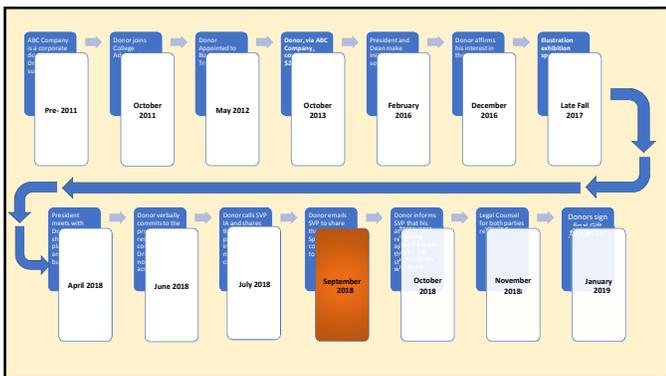
---

---

---

---

---



42

---

---

---

---

---

---

---

---

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.

September 7, 2018

43

---

---

---

---

---

---

---

---

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.

September 7, 2018

**Parties Involved**

Donor:  
Donor

Drexel:  
SVP, IA  
SAVP Gift Planning

44

---

---

---

---

---

---

---

---

**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

1. Pledge: The DONORS irrevocably pledge and agree that the UNIVERSITY will receive cash or cash equivalent gifts acceptable to the UNIVERSITY in the sum of \_\_\_\_\_ Million Dollars (\$\_\_\_\_\_,000,000) on or by (final payment date).

2. Purpose: It is the DONORS' intent that the gift will be designated toward supporting the construction of the \_\_\_\_\_ ("PURPOSE").

3. Payment: It is the specific intention of the DONORS that the balance of this pledge will be paid from personal funding sources or from \_\_\_\_\_ according to the schedule below for support of the PURPOSE:

A. On or before (1st payment date): \_\_\_\_\_ Dollars  
(5000,000) designated for the PURPOSE

B. On or before (2nd payment date): \_\_\_\_\_ Dollars  
(5000,000) designated for the PURPOSE

C. On or before (3rd payment date): \_\_\_\_\_ Dollars  
(5000,000) designated for the PURPOSE

D. On or before (4th payment date): \_\_\_\_\_ Dollars  
(5000,000) designated for the PURPOSE

E. On or before (final payment date): \_\_\_\_\_ Dollars  
(5000,000) designated for the PURPOSE

45

---

---

---

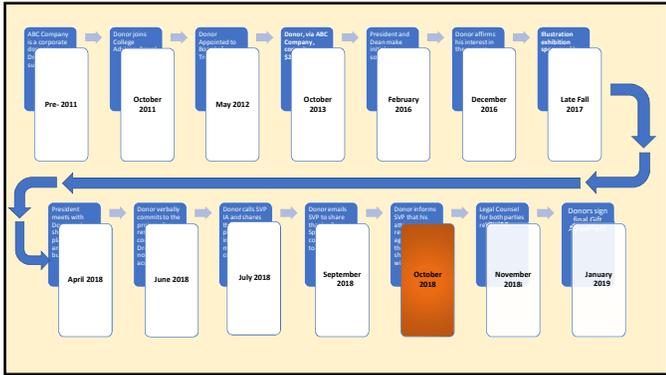
---

---

---

---

---



46

---

---

---

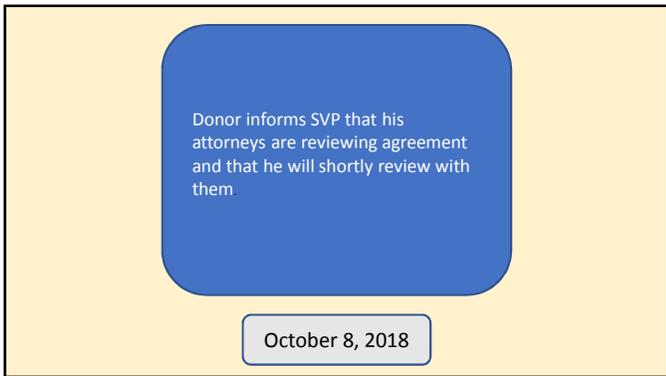
---

---

---

---

---



47

---

---

---

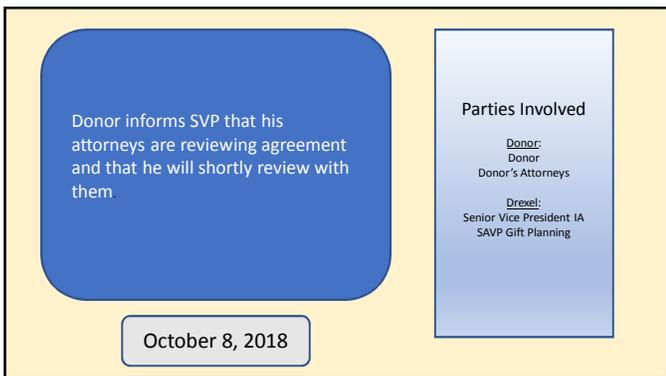
---

---

---

---

---



48

---

---

---

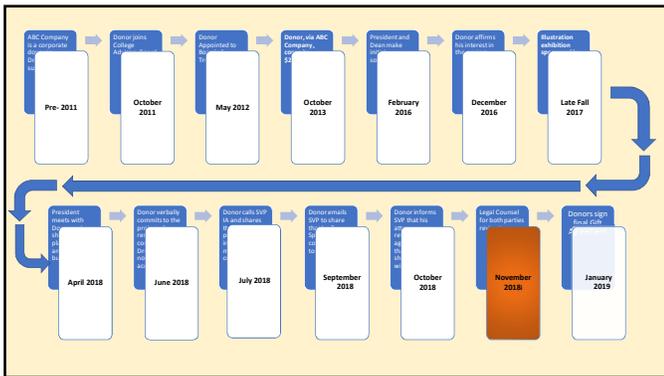
---

---

---

---

---



49

---

---

---

---

---

---

---

---

- 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

October 2018 – January 2019

50

---

---

---

---

---

---

---

---

- 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

October 2018 – January 2019

**Parties Involved**

Donor:  
Donor  
Donor’s Attorneys  
Donor’s Family & primary shareholders

Drexel:  
SVP, IA  
SAVP Gift Planning  
EVP & COO  
Co-CFO  
OGC  
Outside Attorneys

51

---

---

---

---

---

---

---

---

### 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?

52

---

---

---

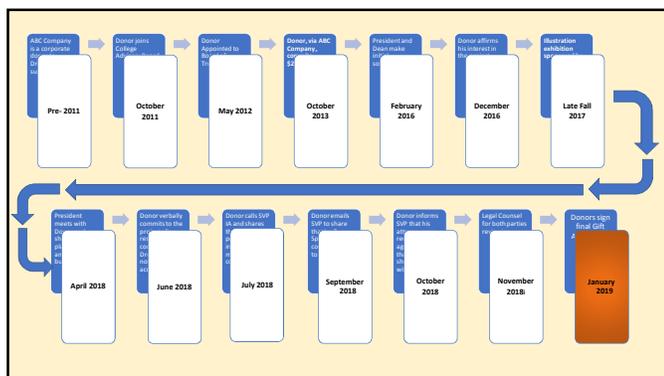
---

---

---

---

---



53

---

---

---

---

---

---

---

---



54

---

---

---

---

---

---

---

---

## Donors sign final Gift Agreement

**Parties Involved**

**Donor:**  
Donor & Spouse  
Donor's Attorneys

**Drexel:**  
President  
EVP & COO  
Dean of College  
SVP, IA  
SAVP, Planned Giving

January 21, 2019

---

---

---

---

---

---

---

---

55

### 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

---

---

---

---

---

---

---

---

56

### Donor Cultivation Checklist

Credit: Ben Porter

Established Gift Officer Relationship	3+ Visits by University Leadership	On-Campus Visit	Long-term Engagement	\$25K+ Annual Gifts/ Payments	High level Board involvement	Stakeholder involvement	Gift of \$250K+	Gift expectations met	Creative stewardship	Mtg w/Pres within past 24 months	TOTAL POINTS

---

---

---

---

---

---

---

---

57

**Donor Cultivation Checklist**  
Credit: Ben Porter

Established Gift Officer Relationship	3+ Visits by University Leadership	On-Campus Visit	Long-term Engagement	\$25K+ Annual Gifts/Payments	High level Board involvement	Stakeholder involvement	Gift of \$250K+	Gift expectations met	Creative stewardship	Mtg w/Pres within past 24 months	TOTAL POINTS
3	3	3	3	3	3	3	3	3	3	3	33

58

---

---

---

---

---

---

---

---

Questions?

59

---

---

---

---

---

---

---

---