



***POLICY ON THE ACCEPTANCE OF GIFTS***

## *OUR MISSION*

The Maine Humanities Council engages the people of Maine in the power and pleasure of ideas, encouraging a deeper understanding of ourselves and others, fostering wisdom in an age of information, and providing context in a time of change. The Council uses the humanities to provide cultural enrichment for all Mainers and as a tool for social change, bringing people together in conversation that crosses social, economic and cultural barriers.

The Council's Board of Directors is charged with maximizing the Council's ability to perform its mission. Toward that end, the Council's Directors have a fiduciary duty to the Maine people served by the Council's programs and the many generous donors who have supported the Council in the past to ensure that the Council's assets are employed efficiently and protected from potential liabilities and diversion to purposes other than those that will further the Council's goals. In an effort to discharge that fiduciary duty, the Council's Board of Directors has approved this Policy on the Acceptance of Gifts (the "Policy"), which is intended both to keep the Council financially secure and to assure donors that their contributions to the Council are used in accordance with their wishes and the Council's fundamental mission. We hope this explicit statement of the Policy can serve as a guide to the responsibilities of both donors and the Council in planning and completing charitable gifts.

This Policy describes the circumstances under which the Council can accept present and future interest gifts of different kinds. General considerations affecting gifts of all kinds are described in Part One of the Policy. The different sorts of property the Council can accept are described in Part Two of the Policy. The various means in which gifts may be made are described in Part Three.

We appreciate donors' consideration of any gift to the Council. We would be happy to provide a copy of this Policy to anyone with whom a donor consults in the course of considering a gift and to answer any questions this Policy may raise for any potential donor or those with whom a donor is consulting. Please call the Council's Executive Director, Erik Jorgensen, at (207) 773-5051 if you have any questions or if you wish to discuss any aspect of this Policy.

### *PART ONE: GENERAL POLICIES RELEVANT TO ALL GIFTS*

1. *Employment of Counsel.* In some circumstances, it is prudent for the Council to work with legal counsel in structuring significant gifts. When those circumstances arise, the Council employs, at its own expense, counsel who are independent of both the Council and the person making the gift. The instances in which the Council expects to work with counsel are identified below. We encourage donors to consult their own legal and tax counsel as their needs may require, and we ask that all potential contributors to the Council understand that counsel working with the Council to structure a gift cannot also work with or represent the person making the gift. The Council and its employees and agents are prohibited from advising donors about the tax

consequences of their donations, so donors should seek advice on the tax ramifications of any gift to the Council from independent legal or tax advisors.

2. Acceptance Process. Some gifts to the Council are more complex than others. In the cases of certain kinds of gifts, the Council requires that the Council's acceptance of the gift be approved by the Gift Acceptance Committee of the Council's Board of Directors (the "Committee"). The sorts of gifts that can only be accepted with the approval of the Committee are identified below. In any case where acceptance by the Committee is required, if the Committee is in doubt about whether the particular gift should be accepted, the matter may be referred to the full Board for its consideration. Gifts that do not need to be accepted by the Committee may be accepted by the Executive Director or Development Director of the Council on the Council's behalf.

3. Restricted Gifts. Like all charitable organizations, the Council prefers gifts in general support of our goals to gifts for more limited purposes. Unrestricted support helps assure that the Council will be able to respond to the needs and desires of the people it serves as those needs and desires change over time, in ways we cannot now foresee. If a supporter of the Council desires to devote a gift to a particular purpose, the size of the gift should warrant the effort necessary to see that the donor's wishes are fulfilled. The Council is therefore pleased to accept gifts restricted to a current particular use if they are in excess of \$500 or such lesser amount as the Executive Director may approve. Gifts to endow a particular program or function can be accepted and held as separate, identified funds in the Council's endowment if they exceed \$50,000 or may reasonably be expected to exceed that amount when the Council comes into possession of them in the future. Gifts for purposes that are not consistent with the Council's mission or consonant with its current or anticipated future programs cannot be accepted. Gifts made for current use for a restricted purpose may be accepted by the Executive Director or Development Director. Gifts to create endowment funds for particular purposes are subject to review and approval by the Committee.

4. Fees and Commissions. We do not pay "finder's fees" or commissions to third parties in connection with any kind of gift to the Council. No officer, employee or agent of the Council is or will be compensated in a manner that is dependent on the size or nature of gifts made to the Council by any person. When the Council engages legal counsel, accounting professionals, appraisers or environmental consultants, their fees and expenses will be determined by the time they spend engaged in the Council's work and not by reference to any particular gift in connection with which they are retained. Their fees will be paid by the Council. Any such professional engaged by the Council will be clearly identified to the donor or potential donor as working on behalf of the Council and not on behalf of the donor. The fees and expenses of legal counsel, accountants or appraisers engaged by donors may be wholly or partly paid by the Council, at the request and with the consent of the donor, with the approval of the Committee. In any case in which a donor's professional fees are paid in whole or in part by the Council, representatives of the Council will inform the donor that the payment constitutes taxable income to the donor.

5. Establishing the Value of Donated Property. It is the policy of the Council to comply fully with the valuation rules set out in Publication 561 of the Internal Revenue Service and the

relevant income, gift and estate tax laws and regulations. Copies of Publication 561 are available at [www.irs.gov](http://www.irs.gov) or at the Council's office. Property contributed to the Council that has a value in excess of \$5,000 must be accompanied by an appraisal unless it consists of (i) cash, (ii) marketable securities, (iii) closely held securities with a value of \$10,000 or less, (iv) a vehicle, the value of which will be determined by its sale, (v) intellectual property such as a copyright or patent, (vi) stock-in-trade, inventory or other property that would otherwise be held by the donor for sale to customers in the ordinary course of the donor's business or (vii) property contributed by a corporation that constitutes a "qualified contribution," as described in Section 170(e)(3)(A) of the Internal Revenue Code of 1986, that will be used for the care of the ill, needy or infants.

The fee for the appraisal may not be based on the value of the appraised property, and the appraiser must be "qualified," as that term is used in IRS Publication 561. A "qualified appraiser" is one who is ordinarily in the business of appraising similar property, has appropriate educational and experiential background, who performs appraisals for many different people and purposes (and not primarily either for the Council or for the donor) and who is not employed by the Council, the donor, any relative of the donor or any entity controlled by the donor or members of the donor's family. Duplicate originals of each appraisal should be prepared, one for the Council and one for the donor.

The Council reserves the right to alter the value of property contributed to it on the books and records of the Council for accounting, tax-reporting, annual fund record-keeping or any other purpose if developments after the completion of the gift or information that comes to the attention of the Council after the gift is completed are determined, in the discretion of the Committee or the Council's auditors, to merit such an alteration.

6. *Tax Compliance.* Donors of property other than cash and marketable securities which has a value of \$500 or more are required to file IRS Form 8283 with their individual tax returns for the year in which such a gift is made, if they intend to take an income-tax deduction for the gift. In each instance of the Council's receiving a gift to which this rule is applicable, the Council will use its best efforts to call the attention of the donor to the applicability of this rule. The Internal Revenue Code also requires that if the Council sells property that it has received by gift within two years after the property is received, the Council report the fact of the sale and the amount of the proceeds to the Internal Revenue Service on Form 8282. It is the policy of the Council to comply fully with this reporting requirement and all other applicable aspects of state and federal tax law.

## *PART TWO: PROPERTY THAT MAY BE DONATED TO THE COUNCIL*

1. *Gifts of Cash.* The most frequent, and also the simplest, means of supporting the work of the Council is by cash or check. Checks should be made payable to "the Maine Humanities Council," and checks payable to any employee, officer or agent of the Council cannot be accepted. Funds may also be wired to the Council's bank account, if a donor desires to do so, and wiring arrangements can be made through the Council's Development Director. Funds will be treated as having been received by the Council when a check arrives at the Council's office or funds wired to an account maintained by the Council are credited to that account.

2. Publicly Traded Securities. Any unrestricted stocks or American Depository Receipts that are traded on the New York or American Stock Exchange or through the NASDAQ system or any other recognized domestic stock exchange and corporate and government bonds and for which there is an established market (“marketable securities”) are welcome as contributions to the Council and may be accepted by the Executive Director or Development Director. Securities accompanied by appropriate transfer instructions may be delivered to the Council’s office or wired to an investment account maintained by the Council, and will be treated as having been delivered when the Council or its investment agent has received all the documentation necessary to complete the transfer of ownership without any further involvement on the part of the donor. Securities traded exclusively in markets outside the United States can only be accepted with the approval of the Committee. Marketable securities may be sold by the Council promptly upon receipt so that their proceeds may be invested in a manner consistent with the Council’s overall investment policies.

3. Closely Held and Restricted Securities. Corporate stock for which there is no established market that is readily accessible to the Council, including the stock of “Subchapter S Corporations,” stock which is subject to trading restrictions, partnership interests in general or limited partnerships or in limited liability partnerships and memberships in limited liability companies that are not traded on an established domestic securities exchange (“closely held securities”) can be accepted by the Council only with the approval of the Committee. The Council is willing to consider any proposed gift of closely held securities, but gifts of closely held securities frequently cause tax and other problems for both the donor and the Council, so each such gift must be carefully examined on a case-by-case basis. The Council will ordinarily expect to retain legal counsel to advise it in connection with any proposed gift of closely held securities. Because of the complexity involved in the Council’s accepting gifts of closely held securities, a prospective donor should allow ample time between the proposal of the gift and its completion. At least three months are necessary to assure that all the ramifications of such a gift for both the donor and the Council are identified.

Donors are required to file IRS Form 8283 if they contribute closely held securities with a value in excess of \$500, and the Council is required to file Form 8282 with the IRS if the securities are sold within three years after the Council receives them.

4. Real Estate. Gifts of real estate to the Council can only be accepted with the approval of the Committee. Each such gift will be the subject of at least a Level I environmental review to assure the absence of environmental contamination and, if a Level I review is considered inadequate or inconclusive by the Committee, more extensive environmental testing may be required. All necessary environmental testing is conducted at the Council’s expense. The Council ordinarily engages legal counsel when considering a gift of real estate and will require a legal opinion as to the state of the donor’s title before such a gift can be accepted. Because of the time necessary to perform the requisite environmental tests and title work, a donor should allow at least three months for a gift of real estate to the Council to be completed.

Except if real estate donated to the Council is proximate to an existing facility operated by the Council and appropriate for the Council’s use in the operation of that facility, donors

should anticipate that contributed real estate will be sold by the Council as promptly as market conditions permit after the Council takes actual possession of the property. The Council is unable to accept gifts of real estate for which there is not likely to be a market. During any period in which donated real estate is retained by the Council prior to sale, it will be subject to real estate taxes and, depending on the nature of the real estate, other maintenance expenses. Because the Council does not divert its financial resources to support maintenance of real estate held for sale by the Council, donors of real estate should also donate sufficient cash to pay the taxes and other expenses associated with the donated property for the period between its donation and its sale. In the absence of sufficient cash to permit the satisfaction of these expenses, the Council may need to decline the gift.

The Council ordinarily does not accept real estate that is encumbered by mortgages or other liens.

Except in extraordinary circumstances, the Council will decline gifts of real estate located outside the State of Maine.

Donors are required to file IRS Form 8283 if they contribute real estate with a value in excess of \$500, and the Council is required to file Form 8282 with the IRS if the real estate is sold within three years after the Council receives it.

5. *Tangible Personal Property.* The term “tangible personal property” applies to any property that is not real estate, cash or securities and has an intrinsic utility. Examples include, but are not limited to, artwork, automobiles, boats, farm equipment, stamp and coin collections, furniture and jewelry.

The Council gladly accepts contributions of tangible personal property that can be used in the performance of its work. Such property might include computer equipment, office furniture, or other items usable in its work. Gifts of tangibles that will clearly be usable immediately in the Council’s operations may be accepted by the Executive Director. When such gifts are accepted, the Executive Director will provide the donor with an appropriate acknowledgment of the gift in which the intention of the Council to retain the donated property for use in the performance of its charitable functions will be clearly stated.

Except in extraordinary circumstances, the Council does not accept automobiles, boats or aircraft that will not be used in its programs and will need to be sold.

Gifts of other kinds of tangible personal property that will not be put to use in the Council’s programs must be accepted by the Committee, and it is to be expected that the Council will sell any such property as promptly as market conditions permit. In the absence of a letter to the donor from the Committee or the Executive Director stating that contributed tangible personal property will be retained by the Council, a donor must assume that the property will be offered for sale. The Council cannot accept gifts of tangible personal property that are subject to restrictions related to the timing of their sale or for which there is no market to which the Council has relatively convenient access. If there will be costs associated with the maintenance of a donated item of personal property between the time of its contribution to the Council and the

time when it is likely to be sold, such as docking fees for a boat, hangar charges for an aircraft or rental payments for the plot on which a mobile home is located, the Council may need to decline the gift unless the donor provides the Council with sufficient funds to maintain the property pending sale.

Donors are required to file IRS Form 8283 if they contribute tangible personal property with a value in excess of \$500, and the Council is required to file Form 8282 with the IRS if the tangibles are sold within three years after the Council receives them.

6. Gifts of Life Insurance. Gifts to the Council of fully paid whole life, ordinary life or endowment policies on which no future premium payments are due may be accepted by the Executive Director. Gifts of policies having a current cash value but with respect to which future premium payments are possible or are known to be due can only be accepted by the Committee. Whether any such policy is accepted will depend on the economics of the transfer; if the policy can be converted to a paid up policy of lesser value or if the donor agrees to make future premium payments or if the policy has sufficient value to permit the payment of future premiums out of that value for as long as necessary, the policies will be accepted by the Council. In any case in which a policy is accepted, the Council will work with the insuring company to transfer ownership of the policy from the donor to the Council and will change the beneficiary designation to permit the Council to collect the insurance proceeds when the policy matures.

The Council cannot accept a gift of a term life insurance policy without cash value unless the donor of the policy agrees to maintain the policy in force by remaining responsible for payment of future premiums. Any gift of a term policy to the Council must be accepted by the Committee and, following acceptance, the Council will take steps to change the ownership of the policy from the donor to the Council and to assure that the Council is notified if any future premiums are not timely paid. The beneficiary designation will also be changed to name the Council as beneficiary.

Gifts of life insurance policies naming multiple beneficiaries will be referred to the Committee for its consideration before acceptance. The Council will not accept gifts of cash or property from a donor if the use of the gift is restricted to the purchase of a life insurance policy on the donor or any other person.

Donors are required to file IRS Form 8283 if they contribute an insurance policy with a value in excess of \$500, and the Council is required to file Form 8282 with the IRS if the policy is sold within three years after the Council receives it.

7. Miscellaneous Property Interests. Contributions of unusual property rights, such as mortgages, non-marketable notes, assignments of rent due under leases, oil and gas interests, patents, copyrights, royalties, frequent flyer miles and easements can only be accepted by the Council with the approval of the Committee.

### *PART THREE: GIVING TECHNIQUES*

1. *Outright Gifts.* Outright gifts are transfers directly to the Council for its immediate use. Such gifts maximize the value of the donation to the Council and are generally similar and quicker to conclude than other kinds of donations. Whether an outright gift is to be accepted on the Council's behalf by the Executive Director, Development Director, or the Committee depends on the nature of the property being donated.

Over the many years of its existence, the Council and those it serves have benefited from the generosity of many people who have written checks to the Council during their lives or left outright gifts to the Council in their wills or trust documents. Without this support, the Council would be much less able than it is today to operate its wide-ranging programs. Donors who wish to participate in this long tradition of direct support may write checks to "the Maine Humanities Council" or make transfers to take effect at death. In a will or a trust, a cash amount may be left to the Council using the following language: "I give and devise to the the Maine Humanities Council, Portland, Maine, the sum of \$\_\_\_\_\_ to be used for its general charitable purposes." Alternatively, a gift of a fraction of an estate's or trust's value may be made using language such as "I give and devise to the Maine Humanities Council, Portland, Maine, \_\_\_\_\_ percent of the value of my residuary estate" (or "of my trust").

If a donor or a professional advising a donor would like assistance in wording a bequest to the Council or in properly identifying and describing a restricted purpose for which any such gift is to be used, the Executive Director or Development Director can put him or her in touch with representatives of the Council who can provide that assistance. Because restricted gifts must be approved by the Committee, discussion of the restricted purpose at the time the relevant document is drafted can avoid misunderstandings that can arise if the Council first finds out about the gift after the donor has died. Gifts made to the Council under a will or trust are subject to the same acceptance procedures, described in Part Two of this Policy, as gifts made during a donor's lifetime, and it benefits both the donor and the Council to know in advance if the subject of the gift and the terms on which it is made are agreeable to both parties. Discussion of the gift at the time the operative language is drafted assures that the Council will be able to accept the gift on terms that meet the donor's expectations. The Maine Humanities Council will routinely review the accounting that accompanies the processing of these gifts.

In the event that the Council must decline a gift made in a donor's will or trust after the donor's death, the decision to renounce the gift, and a renunciation document that is in a form acceptable to both the Council and the representative of the estate or trust from which the transfer was to be made, will be delivered to the representative within three months after the Council is informed of the gift, and every effort will be made to assure that the renunciation document is delivered to the estate or trust representative within nine months after the decedent's death. In any case in which renunciation of a gift under a will or trust is contemplated, the Council will consult legal counsel.

The Council appreciates being advised by supporters that they have remembered it in their estate plans, whether the remembrance is in the form of a restricted gift or an unrestricted one.

2. Charitable Remainder Trusts. It is the policy of the Council not to serve as trustee of charitable remainder annuity trusts or charitable remainder unitrusts of which it is a beneficiary. This policy is intended to assure that such trusts receive the full-time investment management that they deserve and to eliminate any possibility of a conflict of interest in investment choices or any other subject between the current annuity or unitrust beneficiaries of such trusts and the Council as remainder beneficiary. Representatives of the Council are, however, available to cooperate with any potential donor to a charitable remainder trust in tailoring the provisions of those trusts to the donor's particular situation.

The Council reserves the right to decline remainders under trust instruments created without its knowledge if the nature of the property or the conditions on its use are not consistent with the best interests and other activities of the Council. Decisions on whether to accept trust remainders that consist of property other than cash or marketable securities or which are subject to use restrictions are made by the Committee. Unrestricted remainders consisting of cash or marketable securities may be accepted by the Executive Director or Development Director.

3. Charitable Lead Trusts. It is the policy of the Council not to serve as trustee of charitable lead trusts of which the Council is a beneficiary, for reasons similar to those outlined above in the discussion of charitable remainder trusts. As with remainder trusts, however, representatives of the Council are available cooperate in the establishment of such trusts to assure that payments to the Council from any such trust can be used by the Council in accordance with the donor's wishes and expectations.

The Council reserves the right to decline to accept distributions from charitable lead trusts in the drafting of which the Council has not been consulted if the distributions consist of property other than cash or marketable securities or if the uses to which the distributions are to be put are restricted under the terms of the trust instrument to purposes not consistent with the mission and programs of the Council.

3. Pooled Income Fund. The Council does not maintain a pooled income fund. Donors who are interested in using a pooled fund as a planned giving vehicle may discuss contributions to the pooled income fund maintained by the Maine Community Foundation (the "Foundation") with the Foundation's Vice President for Donor Relations by calling (207) 667-9735 or (877) 700-6800. The Foundation's pooled income fund can accept contributions of cash or marketable securities, with a minimum initial contribution of \$10,000, which will be invested for the life of the donor or any other person or persons. During the investment period, income earned by the donor's contribution will be paid to the donor or the donor's designees. When all the designated income beneficiaries have died or when the term of years for which the income interest has been reserved has expired, the Foundation will sever from the pooled fund the donor's pro rata share of the fund's invested assets and transfer those assets to the Council.

By not operating its own pooled income fund, the Council saves the considerable expenses entailed in establishing and operating this complex planned giving vehicle. The pooled fund operated by the Foundation was established to enable Maine charities to avoid these expenses, and the effect of a gift to the Foundation's pooled fund is the same as the effect would be of a contribution made to a pooled fund operated by the Council, if it had one. Representatives of the Council can be made available to assist donors in their consideration of a contribution to the Foundation's fund and to assure that any restrictions placed on the Council's use of the contribution after the expiration of the income interests established by the donor are satisfactory to both the Council and the donor.

4. Charitable Gift Annuities. Charitable gift annuities and deferred charitable gift annuities can be made available by the Council only with the approval of the Committee, and the Council engages legal counsel to consider each prospective annuity gift. The minimum gift in respect of which an annuity can be established is \$25,000. Payout rates for annuities offered by the Council will be at or below the maximum payout rates recommended from time to time by the National Committee on Planned Giving and the American Council on Gift Annuities, a nonprofit organization whose function is, among other things, to assure that annuity rates, while fair to donors, are also reasonable enough to assure that donee charities do not have to pay out more as annuity payments than they take in as gifts.

Once the Council issues an annuity to a donor or other beneficiary designated by the donor, the obligation to pay the annuity becomes a general charge on the income and assets of the Council. Assets contributed to purchase the annuity are immediately added to the Council's endowment, and are not preserved as a separate fund. It is the policy of the Council not to purchase private annuities to make the annuity payments that the Council, by issuing annuities, becomes obligated to make. Transferring the liability for the annuity payments to a private company would divert funds to that company and away from the charitable purposes of the Council. The ability of the Council to make annuity payments to donors is therefore only as strong as the Council's balance sheet.

The Council cannot accept gifts of tangible personal property to fund a gift annuity. Gifts of real estate to fund such annuities will be carefully considered by the Committee, and their acceptance will depend on the likelihood that the Council will be able to sell the donated real estate promptly and whether, as in the case of any other gift of real estate, the gift is accompanied by sufficient cash or other liquid assets to enable the Council to carry the real estate until it is sold without diverting other funds to the purpose. The Council is unable to accept gifts of real estate subject to mortgages or other liens to fund charitable gift annuities.

5. Gifts of Remainders in Residences or Farms. Gifts of remainder interests in personal residences or farms can be accepted only with the approval of the Committee. In the case of any such gift, as with any other gift of real estate, the Council retains legal counsel to examine the title to the donated property and requires at least a Level I environmental survey before the gift can be accepted. These basic steps are necessary to protect the Council against potential liabilities arising out of environmental contamination and a lack of salability owing to title defects. In light of these requirements, it is the strong preference of the Council to know about

gifts of remainder interests at the time they are established rather than only when the Council's interest comes to fruition. This is particularly important if the use of the proceeds of sale of the residence or farm, or the use of the real estate itself, after the Council takes possession of it, is to be restricted by the donor under the terms of the gift. It is important that the donor and the Council work together to assure that the donor's desires for the use of the property or its proceeds can be satisfied by the Council when the time comes.

Ordinarily, the Council will expect to remain in close contact with the owners of the life interest or interests in a residence or farm throughout the period of his, her or their occupancy so that it can remain confident of the absence of environmental liabilities and work with the owner or owners of the life interest to maintain the value of the property. Obviously, this important on-going acquaintance with the real estate and its uses is impossible if the Council is not informed of the gift at the time the remainder interest is established.

In light of the importance of protecting the Council's other assets from exposure to liabilities arising out of the ownership of donated real estate, the Council reserves the right to decline any gift of a remainder interest in a residence or farm even after the life interest or interests in the real estate expire, when the property would otherwise pass to the Council.

6. *Bargain Sales.* Bargain sales to the Council are possible only with the approval of the Committee. The Council will retain legal counsel to consider any such sale. Whether other steps are necessary before the consummation of any such sale will depend on the nature of the property to be sold, as described in Part Two of this Policy.

The Council cannot enter into agreements for the bargain sale of real estate subject to a mortgage or other lien or any other arrangement that would give rise to unrelated business taxable income ("UBTI"). Whether there are UBTI issues involved in any proposed bargain sale will be examined closely by counsel to the Council.