

# FOUNDATION FOR SCALIA LAW

## 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 Trustees, officers, and staff, if any, who may be involved in the acceptance of gifts to Foundation for Scalia Law (the “Foundation”) as well as its affiliates, prospective donors, and their professional advisors in completing gifts to the Foundation. This policy is intended to protect donors and the Foundation, further the Foundation’s mission to support the Antonin Scalia Law School at George Mason University (“Scalia Law”), and serve as a resource and guide for Foundation Trustees, officers, staff, if any, and donors.

### General

The Foundation is a tax-exempt organization under Internal Revenue Code section 501(c)(3) and classified as a public charity under Internal Revenue Code sections 509(a)(1) and 170(b)(1)(A)(iv). Under federal tax laws, gifts to the Foundation are generally tax deductible if the donor does not retain control over the gift or receive personal benefit.

### Professional Advice

The Foundation 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 Foundation shall seek qualified professional advice and counsel advice to assist with gifts as appropriate.

### Guiding Principles

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

**Principle 2:** The Foundation reserves the right to refuse a gift if (a) such acceptance imposes overly burdensome administrative, financial, or other risk, including reputational risk, on the Foundation or, if applicable, Scalia Law, (b) the gift does not further the Foundation’s mission or purposes or is contrary to Foundation policy, or (c) the gift would cause the Foundation to lose its tax-exempt status.

**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. Foundation Trustees, officers, or staff, if any, 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 Foundation Trustee, officer, or staff, if any, 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 Foundation may have a Gift Acceptance Committee or, in the absence of a separate Gift Acceptance Committee, the Foundation's Board of Trustees shall act as the Foundation's Gift Acceptance Committee. The Gift Acceptance Committee shall review gifts of certain types of property or subject to certain types of restrictions before acceptance of such gifts. The Gift Acceptance Committee is responsible for the implementation of this policy as authorized by the Foundation's Board of Trustees. The Gift Acceptance Committee will convene periodically to review for acceptance certain non-standard gifts and gifts of real estate or tangible personal property requiring its approval under this policy and not otherwise delegated to the Foundation's officers or staff, if any, under its procedures as set forth above.

### **Anonymous Gifts**

Donors may request their gift to be noted as anonymous on donor lists and reports and may also decline any publicity regarding their gifts or pledges committed. The Foundation shall honor such requests to the extent they are not in conflict with federal, state or local laws and/or regulatory obligations. Totally anonymous gifts are not accepted. Notwithstanding the foregoing, the Foundation will report all gifts on its Form 990 as required by federal tax laws, which reporting will include the names of donors; provided, however, that such information shall be redacted from any public disclosure of the Foundation's Form 990 as permitted by federal tax laws.

### **Types of Gifts**

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

**Cash and cash equivalents.** The Foundation accepts cash and cash equivalents in any form. Any officer, Trustee, or staff member is authorized to accept on behalf of the Foundation an unrestricted gift of cash. **Checks shall be made payable to Foundation for Scalia Law.** In no event shall a check be made payable to an individual who represents the Foundation. 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 Foundation'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 Foundation may accept certain types of gifts-in-kind if the contributed property or its proceeds can be used to complement the core mission of Scalia Law 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. A Foundation officer or staff member, if any, and, where appropriate, the Foundation's Gift Acceptance Committee shall give appropriate consideration to the maintenance, storage, and other costs associated with a gift-in-kind. It is the Foundation's policy that donors shall pay any transportation costs associated with delivery of the property to the Foundation.

It is the policy of the Foundation to transfer to Scalia Law ownership of all gifts of tangible personal property designated for Scalia Law use. The Foundation does not accept gifts of marine vessels, aircraft, fixtures, or equipment where the insurance costs of operation may be prohibitively expensive. The Foundation will not accept books or related materials on behalf of Scalia Law or artwork or related materials on behalf of Scalia Law. The Foundation 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 Foundation; 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 Foundation for the donation; however, no stated dollar value will be included in the acknowledgement/receipt for any gifts of personal property. It is against Foundation policy to accept personal property on an on-loan basis.

The Foundation reserves the right to sell or otherwise dispose of any gift of tangible property. If the Foundation 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 to the donor Form 8282 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 Foundation's tax-exempt purpose. In the case of gifts of tangible personal property unrelated to the Foundation's tax-exempt purpose, the Foundation's normal practice shall be to sell such tangible personal property as promptly as possible. The Foundation will inform every donor of these rules and the Foundation'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 Foundation may accept gifts of intellectual property that can be used in furtherance of the Scalia Law's purposes or provide a source of funds to the Foundation 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 Foundation will determine if the property would be retained for use by Scalia Law, sold, or otherwise monetized through a shared licensing or other arrangement for the benefit of the Foundation. The Foundation'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, if any, of the Foundation may accept gifts of marketable securities, such as publicly traded stock, on behalf of the Foundation. Gifts of marketable securities may be made by electronic transfer to the Foundation 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 Foundation that all readily marketable securities are sold immediately upon receipt. For the Foundation'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 Foundation. 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 Foundation 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 Foundation 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 Foundation to unrelated business income tax. The Gift Acceptance Committee must approve a gift of securities that makes the Foundation a principal in a joint venture or other business activity where the Foundation 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 Foundation; however, it is the responsibility of the donor to obtain the appraisal and the Form 8283. If the Foundation 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 approved by the Gift Acceptance Committee 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 Foundation does not accept gifts of time share interests.

Where appropriate, a title binder shall be obtained by the Foundation 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 Foundation. 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 Foundation 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 Foundation or Scalia Law?
- Is the property marketable?
- Should a second appraisal be required? Should it be paid for by the Foundation?
- 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?
- Will a new LLC be set up for the property or in which current LLC will it be placed?

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 Gift Acceptance Committee agrees to accept the real estate, for the Foundation's 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 Foundation; however, it is the responsibility of the donor to obtain the appraisal and the Form 8283. In general, the Foundation'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 Foundation receives notice of the donor's intent to contribute real property to the Foundation. If the Foundation sells or otherwise disposes of the donated property within three years of the date of the contribution, the Foundation must file the required Form 8282 with the IRS and send a copy to the donor.

**Remainder Interests in Property.** The Foundation will 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 Foundation may use the property or reduce it to cash. Where the Foundation 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 Foundation does not normally accept oil, gas, and mineral interests, the Foundation may accept such, where appropriate and in accordance with Foundation policies. Before acceptance of an oil, gas, or mineral interest, the gift must be approved by the Gift Acceptance Committee, and if necessary, by the Foundation's legal 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 Board of Trustees should determine the impact on the Foundation so that it may develop a plan to minimize that impact if accepted.
- The property should undergo an environmental review to ensure that the Foundation has no current or potential exposure to environmental liability.

**Bargain Sales.** The Foundation may enter into a bargain sale arrangement in instances in which the bargain sale furthers the mission and purposes of the Foundation. All bargain sales must be reviewed and recommended by the Gift Acceptance Committee and approved by the Board of Trustees. 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 Foundation 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 Foundation assumes debt with the property, the debt ratio must be less than 50 percent of the appraised market value.
- The Foundation 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 Foundation must calculate the costs to safeguard, insure, and expense the property (including property tax, if applicable) during the holding period.

**Life Insurance.** The Foundation will accept gifts of life insurance in appropriate circumstances. The Foundation accepts gifts of life insurance policies in cases where the Foundation is named as both the owner and beneficiary, and donor designations are for unrestricted use or to support an established Scalia Law program. Currently, to be considered, a policy must have a minimum face value of an amount as determined by the Foundation's Gift Acceptance Committee from time to time; a payment schedule not to exceed one percent (1%) below the prevailing prime interest rate as reported in the Wall Street Journal (for existing policies an "in force" illustration will be required); and a written pledge of a charitable contribution from the donor to the Foundation in an amount that equals or exceeds the total premiums on the policy. The Foundation as the owner of a policy reserves the right to surrender a policy at any time and forego the potential death benefit. The Foundation does not accept life insurance policies that involve premium financing. Exceptions to this policy must be approved by the Gift Acceptance Committee.

**Charitable Gift Annuities.** The Foundation may offer charitable gift annuities. The minimum contribution and age(s) of the annuitant(s) to establish an immediate gift annuity contract or a deferred payment gift annuity contract will be established by the Gift Acceptance Committee, in consultation with the Foundation's Audit Committee, and may be adjusted at its discretion. The annuity rates will conform to the published rates of the American Council of Gift Annuities (ACGA), and the Gift Acceptance Committee may cap rates at its discretion. Any further deviation from the ACGA rates must be approved by the Gift Acceptance Committee, in consultation with the Foundation's Audit Committee.

Gift annuity agreements shall be limited to one or two lives at the time of the gift to avoid adverse tax consequences to the Foundation under the federal unrelated business income tax laws. The Foundation will not accept real estate, tangible personal property, or any other illiquid asset in exchange for current charitable gift annuities, except in unusual circumstances and only upon approval of the Gift Acceptance Committee.

**Charitable Remainder Trusts.** The Foundation will not accept appointment as Trustee of a charitable remainder trust (CRT). Exceptions to this policy must be approved by the Gift

Acceptance Committee. The minimum contribution and age to establish such a CRT will be determined by the Gift Acceptance Committee and may be adjusted at its discretion. The Gift Acceptance Committee is authorized to establish CRT payout rates for such trusts, which must conform to applicable federal tax and state laws. Contributions of real estate to such a CRT must be approved by the Gift Acceptance Committee. Any costs associated with the sale of real estate within a CRT will be charged to the trust's principal.

**Charitable Lead Trusts.** Income produced by a charitable lead trust (CLT) for the benefit of the Foundation may be restricted by the donor and designated in accordance with policies established for any other contribution. The Foundation 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 Foundation 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 Scalia Law and do not violate Foundation policy or federal, state, or local laws. If the intended use falls outside of the law, the Foundation 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 Foundation or can be readily liquidated are encouraged. If the Foundation receives books, manuscripts, or related materials through a testamentary transfer, these items may be transferred from the Foundation to Scalia Law or sold. If the Foundation receives artwork or related materials through a testamentary transfer, these items may be transferred to Scalia Law or sold. Gifts that appear to require more cost than benefit shall be discouraged or declined. The Foundation will not accept appointment as executor for an estate. Donors and supporters of the Foundation shall be encouraged to name the Foundation 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 foundations, charitable gift annuity agreements, etc., must be signed by an authorized officer of the Foundation. The authorized individuals to execute documents evidencing gift acceptance including, but not limited to, endowment agreements, grant agreements from foundations, charitable gift annuity agreements, etc. for the Foundation, include the Foundation's Chair and Treasurer.

### **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 Foundation to support one or more priorities of Scalia Law 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 Foundation 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 Foundation. LOCs are signed by the donor but do not require a Foundation signature.

### **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 Foundation's Board of Trustees under procedures and standards approved by the Gift Acceptance Committee. The Foundation 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 Foundation to act within a specified time or use a gift for a specific purpose. 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 Foundation shall ensure that conditional gifts that are not completed gifts for federal tax purposes are appropriately documented in the Foundation'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 Restricted Gifts.** The Foundation shall not accept any gift that is restricted in any manner that would:

- Interfere with or influence that Scalia Law'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, color, religion, ethnic national origin (including shared ancestry and/or ethnic characteristics), sex, disability,

- military status (including veteran status), sexual orientation, gender identity, gender expression, age, marital status, pregnancy status, genetic information, or any other characteristic protected by law;
- 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 Scalia Law'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 continued employment of specific personnel; or
  - Impair Scalia Law's ability to define and pursue its mission, require illegal or unethical acts, or hinder governance or administration.

**Group Gifts.** Donors 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 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 Foundation has final approval for the establishment of endowments. Expendable accounts do not require Gift Acceptance Committee approval.

### **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 sponsoring organization of 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 Foundation as a result of receiving a grant from a DAF. Examples of permissible benefits include benefits that are not more than

- incidental, such as free or discounted admission, free or discounted parking, 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 Foundation.

### **Confidentiality**

All financial information obtained from or about donors and prospective donors shall be held in the strictest confidence by the Foundation and its Trustees, officers, staff, if any, and volunteers. Neither the name of the donor, the amount, nor the condition of any gift shall be published without the express approval of the donor.

### **Receipts and Substantiation**

The Foundation 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 Foundation's auditors.