Controversial Gifts: Solutions Through Policy and/or Agreement

MODERATOR: John Sare, Patterson, Belknap, Webb & Tyler LLP, New York, NY
PANELISTS: Deborah G. Marx, Tulane University, New Orleans, LA
           Donna J. Snyder, University of Michigan, Ann Arbor, MI

I. Overview of the Federal tax backdrop
   A. Charitable deductibility (*quid pro quo* and completed gift considerations)
   B. Private foundation “self-dealing” considerations
   C. Intermediate sanctions (”excess benefit transaction”) considerations

II. What do we mean by controversial gifts?
   A. Gifts from donors with reputation issues
      1. From current donors, e.g., Jeffrey Epstein
         a) Massachusetts Institute of Technology continued to accept gifts from Epstein
            for the MIT Media Lab and a mechanical engineering professor after Epstein was
            convicted of sex offenses in 2008. Epstein’s gifts reportedly totaled about $800,000
            over 20 years.
         b) When Epstein was accused again, the director of the Media Lab apparently
            tried to conceal that the money had come from Epstein; the director resigned as
            director, professor, and employee.
         c) Once the gift and its origin were known, public outcry was immense.
         d) MIT’s president publicly apologized, hired law firm to conduct a review, and
            announced MIT would give the same amount Epstein gave MIT to charity
            benefiting sexual abuse victims.
         e) MIT announced it would examine its internal controls on accepting gifts.
      2. Another current donor: Sackler Family
         a) Sacklers and their company, Purdue Pharma, are being sued because the
            company makes and allegedly promotes the use (and abuse) of OxyContin, an
            opioid that allegedly has greatly contributed to the opioid addiction crisis.
         b) Tufts University announced Dec. 5, 2019 it was removing Sackler name from
            five areas. The removal included name of Arthur Sackler who died before
            OxyContin was launched.
         c) Tufts will establish a $3 million endowment to support programs aimed at the
            prevention and treatment of addiction and substance abuse.
         d) Other institutions have said they will no longer take money from the Sacklers,
            but have not removed the Sackler name.
3. From long dead donors, e.g., John C. Calhoun at Yale University
   a) A Yale graduate, John C. Calhoun was Vice President of the U.S., 1825-32, and held other federal offices.
   b) Yale named an undergraduate residential college after Calhoun long ago.
   c) Calhoun advocated zealously for slavery and white supremacy, including using his various federal offices to retain slavery.
   d) Yale debated about removing Calhoun’s name for decades.
   e) In 2016, Yale decided not to remove the name, which led to protests and condemnation.
   f) Yale reconsidered and examined the matter again in 2017, deciding to remove the name and rename the undergraduate residential college.

B. Gifts with restrictions on purpose that become problematic

1. Princeton University received a gift of $35 million in 1961 from Charles and Marie Robertson, A&P grocery heirs, to be used to educate graduate students for careers in government.
2. In 2002, Robertson descendants sued Princeton saying it was misusing the gift.
3. In 2008, the parties decided to settle, in part because legal expenses had cost each side over $40 million and would likely cost each side another $20 million.
4. In the settlement, Princeton paid $50 million to a new foundation to support students at various universities to prepare for careers in government service.
5. The settlement allowed Princeton to retain an unspecified endowed amount and interpret the original gift documentation as it had been, i.e., to support the graduate program at the Woodrow Wilson School of Public and International Affairs at Princeton.

III. How might institutions prevent accepting gifts that might have reputation issues?

A. Process

1. Policy on gift acceptance
   a) Most gift acceptance policies focus on the types of assets that institution is willing to accept.
   b) Policies often include statements on taking certain assets.
      (1) The policy may be general, e.g., do not accept when it’s clear to institution that donated assets were acquired by other than legal means (may include selling marijuana products), no clear title, etc.
      (2) In addition, the policy may exclude assets acquired by legal but undesirable means, e.g., producing opioids, producing tobacco, producing weapons, producing goods in a country that allows child labor, etc.
   c) Even though charities may decline gifts without having to state they have this power, institutions’ policies might specify that they may decline gifts so that gift officers and others are able to reference institutional policy as the basis for decision-making.
(1) Policies may provide for general flexibility, e.g., institution may decline when accepting the gift is not in its best interests.

(2) Policies may provide more specificity, such as for assets acquired by legal but undesirable means, or donor actions, and may even mandate rejection of the gift in certain instances.

2. Practices usually include some research on donors.
   a) Such research is at least on a prospective donor’s connections to an institution, capacity to make large gifts, relationships, and the like.
   b) Further, institutions might perform some research on donors’ backgrounds and personal history.
   c) Most institutions do not have sufficient resources to perform complete research on every donor.
   d) At a minimum, institutions should consider performing as much due diligence research as they can afford on donors of gifts over a certain size, and/or donors making gifts that will have prominent recognition such as a naming.

3. Institutions should have a method of determining how and when to apply gift acceptance policy and due diligence research practice, e.g., executive officers and/or president make these decisions.

4. Policies also might include a statement that accepting a gift does not imply endorsement or approval by the institution of the views, occupations, or activities of donors.

5. Such policies and practices may be particularly helpful when they are adopted by the institution’s board and may not be modified without board approval.

B. Written Agreements

1. Contracts in the form of gift agreements or similar titles are a common method of documenting gifts between institutions and donors.

2. Gift agreements sometimes have reliance language and are binding on the donors and the institution, particularly for gifts with a naming.

3. Gift agreements might also include a provision for the institution to disentangle itself from the donor’s name.

4. One type of provision is a reputation clause.
   a) Such clauses typically provide that the institution may change or remove the donor’s name in the event of a negative occurrence.
   b) The provision might state specific occurrences or provide that the institution will decide in its discretion, which must be done in good faith.
   c) The IRS currently considers a naming an “incidental benefit”. Consequently, reputation clauses that provide for removing a name have no tax implications: institutions can receipt the full gift; donors do not have to reduce the gift amount they report.
   d) Some institutions may be reluctant to use reputation clauses in agreements because of the potential chilling effect on donors.
e) Reputation clauses may be reciprocal on the institution and the donor.

5. An additional provision is to specify in agreements an alternative in case of reputation problems, i.e., changing the naming to a different name (such as the donor’s parents or a revered professor or mentor).

IV. How might institutions prevent accepting gifts where restrictions might become problematic?

A. Alternatives in gift agreement
   1. When the primary purpose of an endowed gift is very restricted, gift agreements (ideally) will contain flexibility that anticipates changed circumstances in the future.
   2. The agreement may include additional and/or contingent purposes.
   3. Another alternative for endowment restrictions is to include a “sunset clause”.
      a) Sunset clauses cause restrictions to lapse after a period of time or permit the institution to remove the endowment the restriction after a period of time.
      b) These may be very effective when laws or circumstances are changing such that the institution can fairly reliably predict that the current restrictions will become difficult or impossible to administer, but the institution does not know what the new laws or circumstances will be.

B. Preferences instead of restrictions
   1. Instead of the purpose containing absolute restrictions, it might be phrased as non-exclusive preferences in order to permit greater flexibility in interpretation and application.
   2. The donor might want all of the preferences or might rank them in descending order of priority.
   3. Institutions should be careful to administer preferences as just that, not administering them as absolute requirements, so if the institution cannot fulfill any of the preferences it is still able to spend the money.
   4. For example, a donor might want to award scholarships with preferences for students from a particular high school who were in the marching band but if the institution does not have applicants who fulfill these preferences, the institution should have the flexibility to award the scholarships to other applicants.

C. Variance
   1. Institutional policy can include the authority of institution to vary a gift’s purpose, or the way it is managed or invested, under certain circumstances.
      a) If the variance power is by policy, there needs to be a clear cross-reference to the policy in the gift agreement, to make it clear that the donor accepted the terms of the policy and that the gift agreement is subject to the terms of the policy.
      b) Circumstances warranting a variance may be expressed broadly (e.g., that the restriction has become inappropriate, undesirable, obsolete or wasteful) or narrowly (e.g., that the restriction has become illegal or impossible).
c) Some institutions use the same circumstances for variance that courts must apply when considering an application for cy pres or deviation relief under the Uniform Prudent Management of Institutional Funds Act (“UPMIFA”), which has been adopted in every state except Pennsylvania.

d) Under UPMIFA (unless state law has modified the uniform act), a court may modify a restriction on the use or purpose of a fund if the restriction has become unlawful, impracticable, impossible to achieve, or wasteful, and a court may modify a restriction on the management or investment of a fund if the restriction has become impracticable or wasteful or if it impairs the management or investment of the fund or if, because of circumstances not anticipated by the donor, a modification of the restriction will further the purposes of the fund.

e) Under UPMIFA, a modification of the purpose must be consistent with the charitable purposes expressed in the gift instrument, and any modification of the management or investment of the fund must ordinarily be made in accordance with the donor’s probable intention.

2. A variance provision may also be included in gift agreements.
   a) UPMIFA allows donors to give prior consent in a gift agreement to release or modify a restriction.
   b) The provision would state the institution’s authority to vary what happens.
   c) For example, the provision might provide that the institution will consult with the donor or the donor’s designee about modifications, but if consultation is not possible, the institution will use the fund as close to the original purpose as possible.
   d) Without question, before institutions modify restrictions they should have tried as much as reasonably possible to use the gift in accordance with the donor’s purposes.

V. How do institutions handle gifts after they become controversial?

A. Remove or change name
   1. If the terms of the gift agreement specify what to do, follow those.
   2. If no previous agreement, institutions may seek donor consent.
   3. If the donors cannot or will not consent or institutions do not want to ask for it, institutions may proceed according to their policy or procedure and may wish to consider seeking court approval.

B. Return gift to donors
   1. Assuming that the donor is still living or is an existing entity, returning the gift can have tax consequences for the donor, for example, the donor/taxpayer amending returns for the years the gift was paid, or reporting the returned money as income in the year received.
   2. If the donor is an individual and is not living, who does the institution return the gift to?
a) Returning to the donor’s family sounds good, but the institution may have trouble determining who family members are and getting them all to agree.
b) Returning to a family foundation is a better alternative, whether it existed at the time of the gift or is newly created.

3. Returning the gift may cause legal and financial issues for the institution.
a) A gift is typically not returnable unless the gift agreement provides for its return in the event of violation of the restrictions on the gift.
b) If the possibility of returning a gift in accordance with the gift agreement is “not so remote as to be negligible”, the institution should consider adjusting the receipt when the gift is paid.
c) Provisions requiring return are comparatively rare unless the donor is a private foundation or other charity.
d) State attorneys general may balk at the return of charitable funds and insist on some other solution in order to protect charitable assets.
e) Endowed gift
   (1) Institutions returning an endowed gift will want to return only the original gift based on the premise that the institutions earned the appreciation on the endowment, therefore, appreciation belongs to them, not the donors.
   (2) If the endowment has decreased, however, donors will likely still want the full amount of the original gift.
f) Spent gift, e.g., for construction or debt repayment
   (1) Institutions may not have enough money to pay back donors.
   (2) Repayment will adversely impact the institutional balance sheet, which may have collateral implications (e.g., with regard to bond financing).

4. Consequences of returning or not returning gift
a) Will the gift be considered tainted money if the institution keeps it?
b) Will returning the gift really solve the problem?
c) Would returning the gift constitute an “excess benefit transaction” under IRC Section 4958?
d) Would returning the gift present fiduciary issues under state law (including issues with the state Attorney General)?

5. Instead of returning the gift, some institutions have opted to spend an amount for another purpose, e.g., to support a charitable cause aimed at ameliorating or addressing behavior of the type that the donor was accused and/or convicted of.

VI. Negotiations
A. Negotiations between donors and institutions can be intense when they involve gifts involving prominent namings, specific restrictions, and the like.
B. Negotiations often start between a donor and the institution’s gift officers and executive or board leadership.
1. Frequently, donors and institutions involve their attorneys at some point in the negotiations.
2. When attorneys are involved, all parties should adhere to the ethics of communications as much as possible.
3. Ideally, the institution’s attorney and donor’s attorney communicate with each other and with their clients but not with each other’s clients without all parties’ consent.
4. This can be difficult when there are relationships between the donor and the institution’s attorney or between the donor’s attorney and non-attorneys at the institution (e.g., development staff or the executives or board leadership of the institution).
   a) An alternative is for the donor and the institution’s designated officer, e.g., its president, to negotiate the general terms of the gift and the attorneys to negotiate the wording of the gift agreement and some of the more nuanced provisions (e.g., provisions dealing with breach and cure or with reputation).
   b) However, even this alternative should respect the lines of communication between attorneys and their clients unless all parties agree otherwise.

Supplemental Materials
- Tulane University Policies: Endowed Funds – Changing or Rescinding Name, and Duration of Naming Recognition of Buildings, Rooms, and Spaces
- University of Michigan Policy for naming of Facilities, Spaces and Streets
- Brown University Gift Acceptance Policy
- Brown University Naming or Renaming University Buildings, Spaces, Programs and Positions
- The National Gallery (London) Sponsorship and Donation Acceptance Policy
TULANE UNIVERSITY
POLICIES

ENDORSED FUNDS – CHANGING OR RESCINDING NAME

Tulane may change or rescind the name of an endowed fund and the name of positions, programs, or academic units supported by the fund if, in the very unlikely event, Tulane determines in its reasonable and good faith opinion that circumstances have changed such that continuing the name of the fund and the name of positions, programs, or academic units supported by the fund would adversely impact the reputation, image, or integrity of Tulane. Upon any such termination of the naming, Tulane shall not be required to return any portion of the gift already received.

Notwithstanding this policy, the specific terms and conditions set forth in any gift agreements related to the prior naming of the fund and positions, programs, or academic units supported by the fund will apply.

DURATION OF NAMING RECOGNITION OF BUILDINGS, ROOMS, AND SPACES

The naming of a building, room, or space will be applicable for the duration of the existence of the building, room, or space in substantially the same form as it is in at the time it is named. Upon demolition, replacement, or substantial renovation of a named building, room, or space, the appropriate Tulane representative will make all reasonable efforts to inform in advance the original donors or their surviving family members that the naming period has ended. Tulane may, but is not required to, provide for the appropriate recognition of the previous name of the building, room, or space. Appropriate recognition of previous names may include, for instance, a plaque in or adjacent to new and renovated facilities or an alternate naming opportunity.

Tulane may change or rescind the name of the building, room, or space if, in the very unlikely event, Tulane determines in its reasonable and good faith opinion that circumstances have changed such that continuing the name of the building, room, or space would adversely impact the reputation, image, or integrity of Tulane. Upon any such termination of the naming, Tulane shall not be required to return any portion of the gift already received. Notwithstanding this policy, the specific terms and conditions set forth in any gift agreements related to the prior naming of the building, room, or space will apply.

January 2020
POLICY FOR NAMING OF FACILITIES, SPACES AND STREETS

INTRODUCTION

Since the University was founded, the University’s physical spaces have been named to reflect its rich history and traditions. This policy (“Policy”) and its accompanying guidelines (“Guidelines”) direct how the University’s physical properties may be named and the appropriate review and approval processes. Consult the Guidelines for Naming Facilities, Spaces and Streets (“Guidelines”) for definitions.

Namings may:

- Honor individuals by recognizing exceptional contributions shaping the University;
- Commemorate University history and traditions;
- Honor long-term and significant financial contributions to the University; or
- Honor financial contributions to support the structure(s) named.

This Policy and the Guidelines will govern naming practices of all University properties, including those located on the Flint and Dearborn campuses in instances requiring Regental approval (buildings, large additions and wings, major exterior spaces and streets). The Board of Regents shall be informed early in the process regarding potential facility namings. While naming may be initiated by the president, executive officers, and others as outlined below, the Board of Regents often initiates the naming process, particularly in cases of honorary namings of facilities for former presidents and streets for former Regents. In instances where this Policy and the Guidelines do not require Regental approval (small additions and expansions, large interior spaces, small exterior spaces, rooms, bricks, plaques and benches), each campus may adopt its own policies and guidelines that parallel this Policy and the Guidelines. This Policy and its Guidelines, however, shall control all namings on the Ann Arbor campus and of University properties situated beyond a University campus.

I. STANDARDS FOR NAMING FACILITIES

To protect the University’s interests and traditions, Regental approval is required for naming facilities. The approval process shall be as follows:

- The vice president for development shall be responsible for maintaining a master list of facility naming opportunities, both donor and honorary, and shall share this list periodically with the Board of Regents, the Facilities Naming Steering Committee, and the University Planner’s Office.
- The unit head or executive officer(s) originates the naming proposal consistent with the unit’s Fundraising Naming Opportunity Plan as described in the definitions section of the Guidelines; or, if for an honorific naming, the unit head or executive officer(s) originates the naming proposal;
- The originator recommends the name to the vice president for development, as chair of the Facilities Naming Steering Committee (as defined in the definitions section of the Guidelines);
• The Facilities Naming Steering Committee reviews and, with recommendations, forwards the proposed name for review by the president and executive officers;
• The president and/or executive officers propose the name to the Board of Regents for approval.

A. Names for Donor Contributions Toward Facilities

1. New Construction

New facilities may be named for a donor or donors for contributions of 50% or more of the fundraising goal for the facility or 33% or more of the anticipated project cost, whichever is greater. When the project cost exceeds $75 million dollars, or under other special circumstances, the Facilities Naming Steering Committee may recommend an alternative threshold for naming a specific facility, taking into consideration the capacity of the prospect pool, and setting a naming threshold that will maximize the fundraising potential for the project.

2. Existing Facilities

An existing facility may be named for a donor if a gift equals 50% of replacement value, as determined by the executive vice president and chief financial officer.

B. Facility Names to Honor Individuals

1. For individuals who have made extraordinary contributions to the University or to society

   Naming a facility to honor individuals should be extraordinary, and made if:
   a. The individual has had University-wide influence, or the individual has made exceptional contributions to the nation or world; and
   b. A year has passed from the time the honoree has died or been separated from the role with the University for which the person is to be honored; and
   c. A year has passed from the time of nomination (concurrent with year stated in item b., above).

2. For donors who have provided financial support to the University in general

   In compelling cases, for financial contributions other than that defined in Section I. A. above, a donor (whether living or deceased) may be honored through a facility name if the donor has:
   a. Provided long-term, extraordinary financial support greater than other principal donors; and
   b. No major facility bearing his or her name.
II. NAMING SPACES WITHIN OR OUTSIDE OF FACILITIES

A. Large Additions and Wings

Large additions and wings may be named for donors or to honor individuals associated with the University following the same standards and processes for naming University facilities set forth in section I., above. The Board of Regents must approve the naming.

B. Small Additions and Expansions

A unit head may propose honorific or donor namings for small additions and expansions provided the review process found in section B.1.c. of the Guidelines has been followed.

Approval process:

- The unit head or executive officer(s) originates the naming proposal consistent with the unit’s Fundraising Naming Opportunity Plan as described in the definitions section of the guidelines; or, if for an honorific naming, the unit head or executive officer(s) drafts a naming proposal.
- The originator recommends the name to the vice president for development, as chair of the Facilities Naming Steering Committee.
- The Facilities Naming Steering Committee reviews and, with recommendations, forwards the proposed name for review and approval of the president and executive officers.
- Regental approval is not required unless the naming is unusually prominent, sensitive or subject to heightened public interest.

C. Large Interior Spaces

A unit head may name large interior spaces, individual rooms and incidental items, for donors or to honor individuals, provided the review process set forth in section B.1.c. of the Guidelines has been followed.

Approval process:

- The unit head or executive officer(s) originates the naming proposal consistent with the unit’s Fundraising Naming Opportunity Plan as described in the definitions section of the Guidelines; or, if for an honorific naming, the unit head or executive officer(s) originates naming proposal.
- The originator recommends the name to the vice president for development, as chair of the Facilities Naming Steering Committee.
- The Facilities Naming Steering Committee reviews and, with recommendations, forwards the proposed name for review and approval of the president and executive officers.
- Regental approval is not required unless the naming is unusually prominent, sensitive or subject to heightened public interest.

Of particular importance, where donor namings are expected to represent a significant source of construction funding, all namings of spaces within a facility must be consistent with a Fundraising Naming Opportunity Plan developed and reviewed as set forth in section B.1.c. of the Guidelines.
D. Major Exterior Spaces Outside Facilities (e.g., Plazas, Fields, Malls)

Major exterior spaces that are accessible to all may receive donor or honorific namings under the same standards and processes as provided for University facilities set forth in section I., above. The Board of Regents must approve the naming. Major exterior spaces that are not accessible to all may receive donor or honorific namings under the same standards and processes for large interior spaces set forth in section II.C., above.

E. Small Exterior or Interior Spaces, Bricks, Plaques and Benches

Small exterior spaces (including courtyards), and small interior spaces (including rooms), bricks, plaques and benches may carry honorific or donor names as determined by the unit head, provided the review process set forth in section B.1.c. of the Guidelines has been followed. The unit head will be responsible for carrying out the intent of any honorific or donor naming at this level.

Approval process:

- The unit head selects the name consistent with unit's Fundraising Opportunity Plan; or, if for an honorific naming, the unit head selects the name.
- The unit head consults with University Planner's Office for guidelines.
- No other approval is necessary.

F. University-Owned Streets and Drives

Streets and drives may only be named by the Board of Regents, on recommendation of the president or executive officers, and are named for Regents by election (after 1852), deceased. The president or executive officers must propose the naming for approval by the Board of Regents, following the process set forth in section I. above. When the city vacates part or all of a street to the University, the former street name should be continued if it remains a street and should be carried over in some form if the vacated street section is used for other purposes, such as a pedestrian mall.

III. OTHER NAMING CONSIDERATIONS

A. Propriety of donor-designated namings

Because a naming forges a permanent link in the public mind between the University and the designated name, the University must exercise discretion and perform appropriate due diligence, based upon all the facts and circumstances associated with a proposed gift. Care should be taken that the naming is appropriate and desirable, whether the proposed name is the name of an individual donor or is a corporate name or other descriptive words. The vice president for development will undertake due diligence for all donor-designated namings. It is recognized that a donor naming is not always a personal or corporate name. For example, fundraising drives may also result in a seemingly functional name such as the Michigan League or the Michigan Union, in which case a renaming may be proposed only after considering sensitivities and after consultation by the Facilities Naming Steering Committee.
B. Dual Namings

A single facility or space may be impressed with two honorific namings, or may be named in honor of two unrelated donors, or may be named under an honorific naming and also in recognition of a donor. An existing naming may be converted to a dual naming (i) if the dual naming does not violate a contractual commitment of the University to any donor, (ii) following consultation and with sensitivity to the party whose name is currently applied to the facility or space, and (iii) with sensitivity to the history and traditions of the University. Dual namings may also be accomplished by assigning a new donor-designated name or an honorific name to either (i) an interior or exterior space situated within a larger interior or exterior space or facility that is already named, or (ii) an interior or exterior space or facility encompassing a smaller interior or exterior space that is already named. These would be considered “layered” namings.

C. Perpetuation of Name

The University is committed to retaining the name of each facility, large addition, wing, major exterior space, street, small addition or expansion and large interior space (collectively referred to within this paragraph as a “Facility”) bearing a donor-designated name or honorific name. The name is intended to remain for the life of the Facility regardless of any subsequent change in the occupying unit(s). If the Facility is razed at some future date the University will recognize the honoree in an appropriate way, as approved by the Facilities Naming Steering Committee.

IV. POLICY EXCEPTIONS

Exceptions to the policies may be made by the Facilities Naming Steering Committee, in consultation with the associate vice president for facilities and operations and with such other University officers, if any, as determined appropriate by the Facilities Naming Steering Committee. However, unless the Board of Regents affirmatively directs otherwise, no exceptions shall be made to the policy guideline that the Board of Regents must approve namings of all buildings, wings, additions, other major free-standing facilities, major exterior spaces and streets, and in all instances where the naming is unusually prominent, sensitive or subject to heightened public interest (excluding functional names).

May 2008
1.0 Policy Purpose

Brown University strives to ensure that gifts are in amounts appropriate to carry out their specified use; that donor requirements and restrictions are acceptable to the University; that gifts are accepted and administered in a manner appropriate for a tax-exempt institution; and that the gifts enhance the reputation and standing of the University and do not compromise its mission. The purpose of this policy is to define the principles by which gifts will be accepted, repurposed, returned, or redirected, and the authority to do so on behalf of the University.

2.0 To Whom the Policy Applies

This policy applies to the Corporation of Brown University (the Corporation), the President and Senior Officers, and to any member of the Brown University community who engages in acceptance, management or solicitation of gifts on behalf of the University.

3.0 Policy Statement

Philanthropy is essential to the mission of Brown University. Financial aid, student programs, faculty development, and research all rely on the generous support of donors. The authority to accept gifts in support of the University’s mission of education, research and scholarship rests with the Corporation, which may in turn delegate acceptance of some gifts (currently those valued at less than $1 million) to the President and/or Senior Officers.

3.1 Gift Acceptance

Gifts are accepted when they are found to contribute to the approved purposes of the University, in accordance with the following principles:

- A gift will not be accepted if the funds or property donated were acquired by other than legal means, or that clear title to the donated asset does not flow directly from the donor to the University.

- A gift will not be accepted if, in the judgment of the Corporation, the gift is too restrictive in purpose, requires expenditures beyond the University’s resources, or compromises the academic freedom of the university community.

- A gift will not be accepted if, in the judgment of the Corporation, the gift is not aligned with Brown’s mission of education, research and scholarship.

- A gift will not be accepted if, in the judgment of the Corporation, the intended purpose of the gift and/or being associated with the donor of the gift could inflict damage to the University’s reputation, standing or integrity or be contrary to University values.
• At the request of a donor, the University may treat a gift as anonymous. However, a gift will not be treated as anonymous with the purpose of shielding the University from damage to its reputation or disguising a gift which it would otherwise not have accepted.

• The acceptance of a gift does not imply nor mean that the University endorses or approves of the donor’s views, opinions, businesses, or activities.

• The University is committed to transparency, and will share information about the receipt of gifts in a manner that best serves the interests of the University and respects the wishes of donors.

3.2 Gift Repurposing

The University may repurpose an unspent or endowed gift to a new University use if, due to changes in University programs or applicable laws and regulations, the gift cannot be used as originally intended by the donor.

The Corporation delegates to the President the authority to direct a gift to a new use or other needs of the University that conform as closely as possible to the donor’s intent. If the terms of a gift agreement prevent a gift from being directed to a new use, the University will seek permission from the donor and prepare any necessary documentation, when possible, or from the Rhode Island Attorney General and the court if the donor is deceased or otherwise unavailable.

3.3 Return of a Gift

The University may return a gift to the donor if the Corporation determines that it could cause damage to the University’s reputation, standing or integrity to be associated with a specific donor or to use a gift for its intended purpose.

In this case, the disposition of the gift will be guided by Brown’s mission of education, research and scholarship and associated values, and will depend on the specific circumstances of the case and any legal restrictions imposed by a gift agreement.

3.4 Redirection of a Gift

The University may, with the agreement of the donor, redirect a gift to another non-profit organization if the Corporation determines that it could cause damage to the University’s reputation, standing or integrity to be associated with a specific donor or to use a gift for its intended purpose.

In this case, the disposition of the gift will be guided by Brown’s mission of education, research and scholarship and associated values, and will depend on the specific circumstances of the case and any legal restrictions imposed by a gift agreement.

4.0 Definitions

For the purpose of this policy, the terms below have the following definitions:

4.1 Gift: A voluntary, non-reciprocal charitable donation of value in exchange for which nothing in return is promised, expected, implied or forthcoming to the donor.
4.2 Senior Officers: The President, the Provost, the Executive Vice President for Finance and Administration, and the Senior Vice President for University Advancement, or similar titled positions.

5.0 Responsibilities

All individuals to whom this policy applies are responsible for becoming familiar with and following this policy. University supervisors are responsible for promoting the understanding of this policy and for taking appropriate steps to help ensure compliance with it. Senior officers are responsible for the development of appropriate practices and protocols to ensure compliance with it.

6.0 Consequences for Violating this Policy

Failure to comply with this and related policies is subject to disciplinary action, up to and including suspension without pay, or termination of employment or association with the University, in accordance with applicable disciplinary procedures or for non-employees may result in the suspension or revocation of the individual’s relationship with Brown University.

7.0 Related Information

Brown University is a community in which employees are encouraged to share workplace concerns with University leadership. Additionally, Brown’s Ethics and Compliance Reporting System allows anonymous and confidential reporting on matters of concern through the EthicsPoint platform.

The following information complements and supplements this document. The information is intended to help explain this policy and is not an all-inclusive list of policies, procedures, laws and requirements.

7.1 Related Policies:
- Naming or Renaming University Buildings Spaces, Programs and Positions

7.2 Related Procedures: N/A

7.3 Related Forms: N/A

7.4 Frequently Asked Questions (FAQs): N/A

7.5 Other Related Information: N/A

8.0 Policy Owner and Contact(s)

8.1 Policy Owners: The Corporation of Brown University

8.2 Policy Approved by: The Corporation of Brown University

8.3 Subject Matter Contact: Executive Vice President for Planning and Policy
- Telephone: 401-863-9650
- Email: russell_carey@brown.edu

9.0 Policy History

9.1 Policy Effective Date: October 26, 2019

9.2 Policy Last Reviewed: October 26, 2019

9.3 Policy Update/Review Summary: Formatted into University Policy Template.
1.0 Policy Purpose

The purpose of this policy is to define how Brown University manages and approves proposals for the naming or renaming of a University building, space, program, or position in honor of a donor, individual, organization or entity.

2.0 To Whom the Policy Applies

This policy applies to the Corporation of Brown University (the Corporation), the President, the Senior Vice President for University Advancement, and to any member of the Brown University community who engages in management or approval of proposals for the naming or renaming of University buildings, exterior and interior spaces, programs, and positions.

3.0 Policy Statement

The University may acknowledge gifts and/or honor an individual or organization by naming a building, space, program, or position. Naming is one of the ways in which the University acknowledges the generosity of donors and honors those whose service to or affiliation with Brown enhances the University. It is the responsibility of the President and the Corporation of Brown University to nurture, preserve, and protect that legacy.

In considering proposals to name a building, space, program or position, the President and the Corporation shall exercise judgment with regard to the individual or entity the proposal is intended to honor. In general, the President and the Corporation, or those to whom authority to approve naming proposals is delegated, will not approve proposals for naming where, in their judgment, doing so: is not aligned with Brown's mission of education, research and scholarship; compromises the academic freedom of the university community; and/or being associated with the proposed name could inflict damage on the University's reputation, standing or integrity or be contrary to University values.

3.1 Naming a University Building or Space

Proposals for the naming of a University building or space associated with a gift must be submitted to the Office of the Senior Vice President for University Advancement. The proposal must include a description of the building or space to be named, its current use and any relevant information regarding the history of the facility, together with a description of the name proposed and its significance to Brown, including the amount of the gift and the identity of the donor(s).

If the Senior Vice President supports the proposal and it requires approval by the Corporation, it shall be forwarded to the Office of the Corporation for review by the President and, if approved by the President, inclusion on the agenda of the next scheduled meeting of the Corporation or the Advisory and Executive Committee.
Approval by the President and the Corporation is required for naming of:
- All buildings, additions to buildings, and exterior campus spaces such as fields, terraces, greens, and courtyards.

Approval by the Senior Vice President for University Advancement is required for:
- All interior spaces, such as lobbies, auditoria, dining and function rooms, classrooms, offices and seminar rooms.

In the naming of buildings and spaces, a distinction should generally be made between the name of the facility and the name of the program housed in the facility. Since programs, centers, institutes and departments may from time-to-time change, grow, move, merge or dissolve, the University will generally distinguish between the name of the facility and the name of the program or programs it houses.

### 3.2 Naming a University Program or Position

Proposals for the naming of a University program (center, department, institute, school) or position (endowed professorship, endowed coaching position, senior academic or administrative officer position, etc.) associated with a gift must be submitted to the Office of the Senior Vice President for University Advancement. The proposal must include a description of the program or position to be named together with a description of the name proposed and its significance to Brown, including the amount of the gift and the identity of the donor(s).

If the Senior Vice President supports the proposal it shall be forwarded to the Office of the Corporation for review by the President and, if approved by the President, inclusion on the agenda of the next scheduled meeting of the Corporation or the Advisory and Executive Committee. The naming of any University program or position requires approval by the President and the Corporation.

### 3.3 Naming a Scholarship, Fellowship or Lecture

Any proposal to name a scholarship, fellowship or lecture (endowed or current-use) requires approval by the Senior Vice President for University Advancement.

### 3.4 Duration of Naming

Naming for an honoree or a donor is generally granted for the useful life of the entity. The University may deem the naming period concluded in certain circumstances, including but not limited to:
- If the purpose for which the named entity is or needs to be significantly altered, is no longer needed/ceases to exist.
- If a physical entity is replaced, significantly renovated or no longer habitable.
- The period of time of the naming specified in the gift agreement has expired.

The appropriate University representative will make all reasonable efforts to inform in advance the original donors or honorees when the naming period is deemed concluded. The University may provide alternate recognition as may be appropriate in honor of the original gift.

### 3.5 Renaming a University Building, Space, Program or Position
Under extraordinary circumstances, a proposal to rename a University building, space, program or position may be submitted to the President, and by the President for approval to the Corporation. Such a proposal must include information about the name of the entity proposed to be renamed and the rationale for changing that name, as well as a recommendation for the preservation and display of the original name on campus, where appropriate.

The renaming of any University building, space, program or position requires approval by the Corporation. In considering such proposals, the President and the Corporation shall exercise judgment with regard to the individual or entity the original naming was intended to honor and apply the same general principles in section 3.0 above.

3.6 Removal of Naming

The University reserves the right, on reasonable grounds, to revoke and terminate its obligations regarding a naming if, including, but not limited to:

- The University determines its association with the donor or the honoree could cause damage to the University reputation, standing or integrity or be contrary to University values. This determination will be guided by Brown’s mission of education, research and scholarship.
- In the case of a naming associated with a gift the donor fails to fulfill the terms of the gift that is recognized by a naming.

The appropriate University representative will make all reasonable efforts to inform in advance the original donors or honorees when the naming period is deemed concluded. The University may provide alternate recognition as appropriate in honor of the original gift.

3.7 Other Considerations

Any gift valued at $1 million or more in support of a building, space, program, position, scholarship, fellowship or lecture must be accepted by the Corporation (see Gift Acceptance Policy).

A proposal to name a building, space, program or position associated with a gift shall not be implemented – e.g., building signage not installed or a program or position name not utilized in materials and publications – until and unless the University has received an executed gift agreement and 50% of pledge payments towards the gift commitment have been received.

With regard to naming proposals associated with a gift, any special circumstances or request for exceptions to this policy must be referred to the Senior Vice President of University Advancement who will determine the course of action, which may include consultation with the President and/or the Corporation.

The University will generally not name a building, space, program or position in honor of a current faculty or staff member. Proposals for such a naming may be approved to take effect upon the retirement of the individual faculty or staff member.

3.8 Honorific Namings

From time to time the University may consider proposals to name a building, space, program or position in honor of an individual not associated with a gift. Such proposals shall be considered and approved under this policy subject to the principles in Section 3.0 and the processes
described in Sections 3.1, 3.2 and 3.3 except that the Office of the Provost shall be substituted for the Office of the Senior Vice President for University Advancement.

4.0 Definitions

For the purpose of this policy, the term below has the following definition:

4.1 Gift: A voluntary, non-reciprocal charitable donation of value in exchange for which nothing in return is promised, expected, implied or forthcoming to the donor.

5.0 Responsibilities

All individuals to whom this policy applies are responsible for becoming familiar with and following this policy. University supervisors are responsible for promoting the understanding of this policy and for taking appropriate steps to help ensure compliance. Senior officers are responsible for the development of appropriate practices and protocols to ensure compliance.

6.0 Consequences for Violating this Policy

Failure to comply with this and related policies is subject to disciplinary action, up to and including suspension without pay, or termination of employment or association with the University, in accordance with applicable disciplinary procedures or for non-employees may result in the suspension or revocation of the individual's relationship with Brown University.

7.0 Related Information

Brown University is a community in which employees are encouraged to share workplace concerns with University leadership. Additionally, Brown's Ethics and Compliance Reporting System allows anonymous and confidential reporting on matters of concern through the EthicsPoint platform.

The following information complements and supplements this document. The information is intended to help explain this policy and is not an all-inclusive list of policies, procedures, laws and requirements.

7.1 Related Policies:
- Gift Acceptance Policy

7.2 Related Procedures: N/A
7.3 Related Forms: N/A
7.4 Frequently Asked Questions (FAQs): N/A
7.5 Other Related Information: N/A

8.0 Policy Owner and Contact(s)

8.1 Policy Owners: The Corporation of Brown University
8.2 Policy Approved by: The Corporation of Brown University
8.3 Subject Matter Contact: Executive Vice President for Planning and Policy
- Telephone: 401-863-9650
- Email: russell_carey@brown.edu

9.0 Policy History
9.1 Policy Effective Date: October 26, 2019
9.2 Policy Last Reviewed: October 26, 2019
9.3 Policy Update/Review Summary: Formatted into University Policy Template.
THE NATIONAL GALLERY

SPONSORSHIP AND DONATION ACCEPTANCE POLICY

Owner: Head of Development
Approved by the National Gallery Board of Trustees on: September 2018
Date of next review by Board: September 2021
Context and objective of policy

The National Gallery exists for the public. It receives public funding and also generates income to fulfil its statutory obligations and charitable aims. Fundraising plays a central role in meeting the Gallery's objective of maximising income to support and sustain its activities and ambitions. The Gallery has a duty and desire to be sensitive to the general concerns of the public regarding ethical issues of fundraising. It recognises the need to conduct its fundraising responsibly, mitigating potential reputational, financial, or actual risk that may result from accepting gifts or sponsorship. This document outlines the Gallery's policy and process for accepting gifts and sponsorship, and managing associated risks. The policy applies to gifts and sponsorship in cash and in kind, but not to gifts of works of art to the collection which are separately covered by the Gallery's Acquisitions Procedure.

Parameters of policy

The National Gallery's Trustees must, under general principles of charity law, take decisions as to whether to accept or refuse gifts or sponsorship, in the best interest of the Gallery. Trustees must not allow individual or collective views on political or ethical issues, not directly related to the interests of the Gallery, to affect their judgement when making these decisions.

The Gallery's management and trustees are therefore prohibited from allowing their personal political or moral beliefs to influence their judgements about gifts or sponsorships and whether the Gallery should reject them. The institution limits its judgments to the potential harm caused to the Gallery and its collection by unethical sources of funding, rather than the potential harm done to society by alleged illegal or unethical activities of companies and individuals.

Risks

The National Gallery will carry out fundraising in compliance with the Fundraising Regulator’s Code of Fundraising Practice, exceeding these standards wherever possible. Risks of not managing the ethical issues of fundraising include:

- Reputational damage arising from association with organisations or individuals perceived to be engaged in unethical activities.
- Actual damage to the collection or building arising from protests against the Gallery's association with such individuals or organisations.
- Acceptance of tainted donations and consequential reputational damage arising from complicity with illegal activities.
- Financial loss arising from a failure to effectively manage relationships with potential donors or sponsors.
- Failure to carry out the Gallery's statutory obligations as a result of relationships with donors or sponsor.
Policy

The Gallery is actively engaged in fundraising and receives voluntary and corporate support from a variety of sources. The Gallery considers each gift and sponsorship on its own merits. There are occasions when it is not possible for the Gallery to accept a gift or sponsorship.

The Gallery will only refuse a gift or sponsorship if

A. It would be unlawful to accept it (e.g. the Gallery is aware that the gift or sponsorship comprises the proceeds of crime), or

B. There is a significant risk that acceptance may cause harm to the Gallery, and any such harm is likely to be disproportionate to the benefit the Gallery will derive from acceptance of the gift or sponsorship.

C. The conditions attached to accepting the gift or sponsorship outweigh its value to the Gallery.

‘Harm’ could arise:

1. Where acceptance of a gift or sponsorship interferes with or has the potential to interfere with, the Gallery’s ability to fulfil its charitable aims, statutory obligations, or other objectives, including its ability to secure the collection.

2. Where acceptance of a gift or sponsorship and any terms attached to it might lead to an undue and inappropriate third-party influence, or impression of such influence, on institutional decisions of the Gallery.

3. Where the acceptance of a gift or sponsorship would substantially damage the Gallery’s reputation among its supporters and the public at large, or incur criticism from the press, public, or any other relevant community of professionals.

4. Where by accepting a gift or sponsorship, existing and future relationships with donors and supporters will be jeopardised.

5. Where there is the risk of the donor or sponsor not being able to honour the gift or sponsorship in full or in part.

6. Where the acceptance of a gift or sponsorship could give rise to an inference of complicity with illegal activities.
Anonymous Donations

Besides low-level donations received via the Gallery’s on-site cash donation boxes, donation app or via the Gallery’s JustGiving page, the Gallery is not able to accept genuinely anonymous donations, because such donations prohibit a proper risk assessment. The identity of donors who prefer to give anonymously must be known to the Director, Head of Development, Research Manager, and the Chair, and where necessary the Audit committee.

Policy in Practice

The Development Department operates the policy under delegated authority from the Board of Trustees, who retain overall responsibility for decisions relating to the acceptance of gifts or sponsorship. The Development Department’s Operations team will carry out a risk assessment on all prospective gifts or sponsorships of £10,000 in value and above, including Corporate Memberships, exercising due diligence to seek assurance that the acceptance of gifts or sponsorship is in the best interests of the Gallery. The Operations team is not bound by fundraising targets, making their assessment independent of any potential pressure to approve or decline a gift or sponsorship. Risk assessments will also be carried out when:

- Corporate Members renew their membership
- Repeat gifts or instalment payments of existing gifts or sponsorship are greater than £50,000, in which case a risk assessment will be undertaken for each payment.

In the case of repeated gifts or sponsorships, or gifts given in instalments, the previous risk assessment shall be updated to include any significant areas of concern that may have arisen since the previous assessment was carried out.

The Development Operations team will undertake risk assessments, raising any concerns with the Head of Development, who will judge whether an unacceptable degree of risk is attached to a proposed gift or sponsorship. If the outcome of a risk assessment is considered unsatisfactory or if a gift has the potential to cause harm to the Gallery, the Head of Development will decide whether a rejection is appropriate in the first instance. Where there remains some doubt over the potential harm to the Gallery, the matter will be referred first to the Director and, if necessary, the Audit Committee. All gifts or sponsorship of a value of £100,000 or more will be considered by the Director and Audit Committee as a matter of course prior to initial acceptance or signing of contract.

In exceptional circumstances the Audit Committee may recommend to the Board that advice be sought under s110 Charities Act 2011 through the Gallery’s Principal Regulator, the Department of Culture, Media, and Sport, on the issue of whether to accept, decline, or return a gift.

Risk assessments will not be performed on funding received from statutory bodies such as the Heritage Lottery Fund and London Development Agency; Art Fund or on charities with the sole purpose of supporting the National Gallery, including the American Friends of the National Gallery, and the National Gallery Trust.
Risk Assessment

When carrying out a risk assessment, potential indicators of 'harm' will be identified by Gallery research, and recorded as part of the assessment process. Such indicators could include:

- The source of a gift or sponsorship is alleged to have participated in illegal activities, including financial crime, or has previously been found guilty of such crime.
- The source of a gift or sponsorship is found to be listed on international or legal exclusion lists.
- A donor's professional, personal or network status would incur a noteworthy conflict of interest.
- The source of a gift or sponsorship is affiliated with present or past actions that would be liable to incite protest from Gallery supporters, Gallery stakeholders, and the public.
- The financial origin of a gift or sponsorship is suspected to be illicit.

In seeking to limit its exposure to risk the Trustees of the Gallery are committed not to establish partnerships with individuals or corporate entities whose primary enterprise involves activities which may harm the Gallery or its objectives.

Research

In order to compile Risk Assessments and make informed decisions, the Gallery shall undertake its own research into the origin of potential gifts or sponsorships. The Development Operations team will pursue these assessments responsibly, taking care to present their findings without bias. In exceptional circumstances the Gallery's Head of Development may choose to commission additional, freelance or external research.

Risk assessments will consist of an overview of publicly available information supported by censure details obtained from services such as the Factiva and Dow Jones Risk Centre database. Sources of publicly available information include Companies House, 192.com (UK Electoral Roll and Directory Enquiries), and information that has been published in articles/newspapers (we use Factiva, a global news database). In order to protect subject rights, risk assessments shall clearly distinguish between allegation and fact, and shall ensure all research is corroborated across multiple sources.

Respecting the Gallery's responsibility to safeguard its prospects' data rights, risk assessments shall be produced at the earliest opportunity prior to the acceptance of a gift or sponsorship and only shared with those making decisions on the risk. Information will be stored and treated in compliance with Gallery's privacy policy.