

Building donor relationships



**FORMS**

Binding Estate Gift Agreement Template

PGB2-0703

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WEEK 7

Gift Agreements

|  |  |
| --- | --- |
| **BACKGROUND** | Establishing Understanding Between Your Nonprofit and Your Donor |
|  | One of the Most-Often Overlooked Program Components |
|  | Preventing Loss of Future Support |
| **PROJECTS** | Draft Your Binding, Non-Binding and Estate Gift Agreements |
| **DOCUMENTS** | **PGB2-0701 – Binding Gift Agreement Template** |
|  | **PGB2-0702 – Non-Binding Statement of Intent Template** |
|  | **PGB2-0703 – Binding Estate Gift Agreement Template** |

**Time required:** 1 hour

**What it covers:** Establishingunderstanding between your charity and your donor about the purpose and use of a gift.

**Why:** To protect the relationship between the donor and your charity; To ensure that the donor’s wishes are carried out; To set expectations and avoid surprises in the future; To provide legacy uniformity and protect the charity’s charitable status.

**How to get it:** [www.PlannedGivinginaBox.Com/PGB2-0701](http://www.plannedgivinginabox.com/PGB2-0701)

[www.PlannedGivinginaBox.Com/PGB2-0702](http://www.plannedgivinginabox.com/PGB2-0702)

[www.PlannedGivinginaBox.Com/PGB2-0703](http://www.plannedgivinginabox.com/PGB2-0703)

BACKGROUND

The need for gift agreements is one of the **most-often overlooked components** of a fundraising program for new and smaller non-profits. Gift agreements are not necessarily a planned giving function, but at most non-profits, they get lumped into planned giving because the person responsible for planned giving is also the most knowledgeable about legal issues facing the charity.

A gift agreement is an understanding between the charity and the donor which outlines the commitments each is making to the other. The agreement can be legally binding or it can simply be a statement of intent which is not binding. A good gift agreement **protects the relationship** between the charity and a donor be clearly articulating the responsibilities of each party related to the gift.

As the Baby Boomers and the generations that follow become the primary givers in the United States, they will increasingly seek to restrict their gifts. Without an effective gift agreement process and documents, your charity will risk losing future support from these donors, as well as lawsuits if you fail to comply with the terms of those gifts.

* When do I need a gift agreement?  
  + For all gifts paid over more than one year (you should consider a pledge card for multi-year commitments with no detailed restrictions)
  + For all gifts subject to restriction
  + For restricted commitments which will mature in the future but for which the donor wants certainty in how you will use the funds. These gifts include:
    - Restricted gifts from the donor’s will
    - Restricted gifts from the donor’s retirement plan (IRA, 401(k), etc.)
    - Restricted gifts from the donor’s life insurance proceeds
* Should the gift agreement be binding or non-binding (statement of intent)?  
  + Ask your legal counsel! You want to be sure to **follow competent advice** for this important issue.
  + Most charities prefer to use non-binding statements of intent because they provide maximum flexibility to change the gift with no tax implications to the donor.
  + Always use a non-binding statement of intent when
    - The donor intends to pay the gift commitment from a donor advised fund (DAF)
    - The donor may pay the gift commitment from a DAF or his/her personal assets, but is unsure
    - The donor may have the gift commitment paid by others (family members, friends, matching gift company)
  + You may want to use a binding gift agreement if:
    - You want to enforce the pledge against the donor or his/her estate
    - You want to borrow against the pledge (for larger charities, this often includes bonding)
    - You need to demonstrate the seriousness of your commitment to carry out the donor’s wishes
    - You need to ensure that the donor’s estate is able to carry out the donor’s wishes. Keep in mind that if a donor dies with an outstanding commitment to your organization, you will struggle to collect it from the estate unless you have a binding gift agreement in place.
* What is a binding estate agreement?  
  + A binding estate agreement is a contract between the charity and the donor indicating that the donor will pay off a binding commitment from his/her estate. It is usually used to ensure that both the charity and the donor will meet their obligations after the donor has died.

PROJECTS

**Project 10: Draft Your Binding, Non-Binding and Estate Gift Agreement Templates**

The gift agreement process should be as simple or as complex as is required to meet the needs of your charity. As a general rule, all charities should have at least three gift agreement templates, covering binding, non-binding and estate gifts.

We have worked with some charities that have in excess of 40 gift agreement templates. This is probably too many, unless they are going to be used on a regular basis.

Start by downloading the three gift agreement templates:

1. [www.PlannedGivinginaBox.Com/PGB2-0701](http://www.plannedgivinginabox.com/PGB2-0701) (Binding Gift Agreement)
2. [www.PlannedGivinginaBox.Com/PGB2-0702](http://www.plannedgivinginabox.com/PGB2-0702) (Non-Binding Statement of Intent)
3. [www.PlannedGivinginaBox.Com/PGB2-0703](http://www.plannedgivinginabox.com/PGB2-0703) (Binding Estate Gift Agreement)

Review the templates and customize them to meet the needs of your organization. Then:

* Share the drafts with your staff leadership for comments
* Deliver the drafts to legal counsel for review and approval
* Share the drafts with your volunteer committee for their feedback
* Add the final versions to the documents you share on Board member visits
* Review the agreement forms every other year to ensure they remain current

If in the future you determine that you are using additional forms on a regular basis (for example, for capital projects), create your own versions based on these three templates.

*Keep in mind that many donors will seek to negotiate the terms of their gift agreement with you. If you stray substantially from the form of gift agreement which has been pre-approved by your legal counsel, be sure to pass the final draft of any completed gift agreement by counsel prior to execution by your donor.*

DOCUMENT PGB2-0703

Binding Estate Gift Agreement Template

Agreement to Establish the **[NAME OF ENDOWED FUND]** at **[YOUR CHARITY]**

**[INSERT INFORMATION ABOUT YOUR CHARITY, WHEN IT WAS FOUNDED AND ITS MISSION. ALSO INCLUDE A BRIEF INTRODUCTION OF THE DONOR AND HIS/HER CONNECTION TO YOUR CHARITY.]**

**[YOUR CHARITY]** appreciates the philanthropic support of its donors, who enable it to pursue its mission. In order to ensure that donors’ gifts are used for the intended purpose, to allow **[YOUR CHARITY]** to plan effectively, and to comply with accounting and auditing requirements, **[YOUR CHARITY]** and its donors execute legally-binding gift agreements such as this one for restricted gift commitments.

**[YOUR CHARITY]** gratefully acknowledges the generosity of **[YOUR CHARITY]**, who through this Agreement commits to establish the **[NAME OF ENDOWED FUND]** (“Fund”), at **[YOUR CHARITY]**. In order to protect the interests of both the Donor and **[YOUR CHARITY]**, we agree as follows:

1. **Donor’s Commitment:** The Donor is making a charitable gift of $**[PAYMENT AMOUNT WRITTEN NUMERICALLY]** by naming **[YOUR CHARITY]** as a beneficiary of **[HIS/HER]** estate, qualified retirement plan or life insurance policy. The Donor commits that the present value of these assets is currently equal to $**[PAYMENT AMOUNT WRITTEN NUMERICALLY]**. Should the Donor make any contributions designated towards this commitment during **[HIS/HER]** lifetime, it would reduce the amount owed from the estate, retirement plan or life insurance policy.

As **[YOUR CHARITY]** is relying upon this gift for its planning purposes, the Donor acknowledges that this gift shall be a legally binding obligation of and that this Agreement will be governed by **[ORGANIZATION’S HOME STATE]** law.

1. **[YOUR CHARITY]’s Commitment:** In recognition of this generous commitment, **[YOUR CHARITY]** will create an endowed fund to be known as the **[NAME OF ENDOWED FUND]**. The purpose of the Fund is to provide financial support for **[DESCRIPTION OF PURPOSE AND ANY RESTRICTIONS ON THE USE OF THE ENDOWED FUND].**
2. **Management of the Completed Gift:** The **[NAME OF ENDOWED FUND]** will be pooled and invested with **[YOUR CHARITY]**’s other endowed funds in accordance with its regular investment and management policies. Net income from the Fund, as determined by application of **[YOUR CHARITY]**’s spending rule policy, as it may be amended from time to time, will be used according to the terms of Paragraph 2.
3. **Planning for the Future:** Endowment gifts are designed to last for all time. However, it is impossible to anticipate how changing circumstances in the future may impact **[YOUR CHARITY]**’s ability to comply with all of the provisions of this Agreement. Accordingly, in the event future developments make it impracticable for **[YOUR CHARITY]** to carry out the specific terms of this Agreement, the president of **[YOUR CHARITY]** shall have the discretion, upon approval of **[NAME OF GOVERNING BOARD]** to direct the use of the Fund for a purpose as close as possible to the Donor’s original intent.
4. **Recognition:**
   1. The Donor will be referred to as **[FORMAL NAME OF DONOR]** in connection with this gift. This contribution **[MAY or MAY NOT]** be publicized in donor recognition vehicles produced by **[YOUR CHARITY]** or other entities, including print, spoken broadcast, and/or electronic media; and
   2. **[YOUR CHARITY]** will recognize the gift with an appropriate public announcement unless directed otherwise by the Donor.

**[NAME OF DONOR]** Date

Donor

**[YOUR CHARITY]**

By: **[Name of Authorized Signator]** Date

**[Title]**