

THE MUSEUM OF MODERN ART
GIFT ACCEPTANCE POLICIES AND GUIDELINES

The Museum of Modern Art, a not-for-profit educational institution organized under the laws of the State of New York, encourages and accepts gifts for purposes that will help further its mission. The purpose of the policies and guidelines set forth below (the “Policy”) is to govern the acceptance of charitable gifts by The Museum of Modern Art and its affiliated entities (the “Museum”), and to provide guidance to prospective donors and their advisors when they are contemplating making gifts to the Museum. The Policy will apply to gifts offered to the Museum to support any of its programs or services.

I. THE GIFT ACCEPTANCE COMMITTEE

The Gift Acceptance Committee shall consist of a designee from the offices of the General Counsel, External Affairs and the Chief Operating Officer.

The Gift Acceptance Committee is charged with reviewing inter vivos gifts, pledges and bequests offered to the Museum where and as appropriate, in accordance with this Policy and with such laws, rules and regulations as may become effective from time to time. The Museum reserves the right to refuse or return gifts containing restrictions that are inconsistent with the Museum’s purpose or that otherwise may be deemed inappropriate by the Gift Acceptance Committee. No less frequently than semi-annually, the Gift Acceptance Committee shall report to the Finance Committee of the Museum’s Board of Trustees regarding gifts that have been accepted by the Museum.

II. APPRAISALS; INDEPENDENT ADVISORS

It is generally the donor’s responsibility to determine whether it is necessary to obtain an appraisal of a proposed gift and, if so, to secure such appraisal. It is also the donor’s responsibility to secure independent legal, tax, financial and estate advice for all gifts to the Museum. The Museum will not act as advisor to any donor in any of these respects, though the Museum will work with a donor’s advisors in furtherance of approved gifts.

III. RESTRICTIONS ON GIFTS

The Museum will accept gifts with restrictions in accordance with this Policy, as reviewed and approved by the Gift Acceptance Committee. Where the gift is a work of art, it will be reviewed by the relevant Trustee acquisition committee, in accordance with the Museum’s Collections Management Policy. All final decisions on the restrictive nature of a gift and its acceptance or refusal, other than a gift of art governed by the Collections Management Policy, shall be made by the Gift Acceptance Committee. All restricted gifts, including restricted gifts in the form of endowment funds, must be governed by a written agreement executed by the donor and the Museum. The minimum amount necessary to establish an endowment is \$50,000.

Endowments may be funded with outright contributions, including contributions pledged over a maximum period of 5 years, which term may be extended by agreement between the

donor and the Museum, at the recommendation of the Gift Acceptance Committee. Endowments may also be funded with deferred contributions from bequests, life insurance policies, retirement plan designations, charitable remainder trusts and similar instruments and arrangements.

Unless otherwise stated by the donor, endowment contributions will be utilized for their intended purpose only when they are funded with cash (or cash equivalents) equaling 50% of the actual anticipated total gift commitment, or total contributions otherwise reach the required minimum for an endowed fund.

Endowments created by testamentary transfer shall be administered in accordance with the donor's wishes as set forth in the relevant testamentary document, provided that the donor clearly establishes an endowment and the intended use is not prohibited by law or Museum policy and is otherwise acceptable to the Museum.

Endowment principals will be pooled and invested, and the income expended, in accordance with the prevailing investment and spending policies of the Museum and applicable laws and regulations.

IV. GIFTS

A. Gift vehicles include inter vivos gifts, pledges and bequests. A donor may pledge an amount for a specific purpose or designation to be satisfied with periodic scheduled payments acceptable to the Museum not to exceed 5 years, absent special circumstances approved by the Museum. Donors are encouraged to make bequests to the Museum under their wills and trusts. Such bequests will be recorded as gifts, at their present value, when the gift becomes irrevocable.

B. The following forms of gifts, among others, are acceptable when otherwise in accord with this Policy:

- a.** Cash
- b.** Tangible Personal Property
- c.** Securities
- d.** Real Estate
- e.** Remainder Interests in Real Property
- f.** Life Insurance
- g.** Charitable Remainder Trusts
- h.** Charitable Lead Trusts
- i.** Retirement Plan Beneficiary Designations

C. The following general criteria will be considered by the Gift Acceptance Committee when deciding whether to accept each form of gift:

- a. Cash** – Cash is acceptable in any form. Checks should be made payable to “The Museum of Modern Art.” Credit card payments and funds transfers (including wire and ACH transfers) are also acceptable.

- b. Tangible Personal Property** – Tangible personal property may be accepted as long as the property fulfills the mission of the Museum or can readily be liquidated to produce cash. Gifts of works of art that fulfill the mission of the Museum will be considered according to the Collections Management Policy. The Gift Acceptance Committee will consider the following criteria when deciding whether to accept a gift of other tangible personal property:
- Is the property marketable?
 - Are there any undue restrictions on the sale, use or display of the property?
 - Are there any carrying costs for the property?
- c. Securities** - The Museum may accept both publicly traded securities and closely held securities.
- Publicly Traded Securities – The Museum may accept gifts of marketable securities. As a general rule, all marketable securities will be sold upon receipt unless otherwise decided by the Museum. Where otherwise marketable securities are restricted by applicable law, final determination of the acceptability of a gift of such securities shall rest with the Gift Acceptance Committee.
 - Closely Held Securities – Closely held securities, including debt and equity positions in non-publicly traded companies as well as interests in LLPs, LLCs or other ownership forms, can be accepted upon approval of the Gift Acceptance Committee. Every effort will be made to sell closely held securities as soon as possible, unless otherwise decided by the Museum. The Gift Acceptance Committee will consider the following non-exclusive list of factors in deciding whether or not to accept such a gift:
 - Legal and/or contractual restrictions on resale and company policy on resale (*e.g.* window periods);
 - Expectations for marketability;
 - Tax consequences for the Museum that would arise from acceptance of the gift; and
 - The nature of the company’s business.
- d. Real Estate** – In rare instances, the Museum may accept gifts of developed or undeveloped real estate. In deciding whether to accept such property, the Museum will consider whether the property is useful for the purposes of the Museum, whether it is marketable, and whether the donor agrees that the property can be sold at the Museum’s discretion. In addition, prior to any acceptance of real property, the donor shall do the following, the results of which shall be shared with the Museum and shall also be considered by the Museum in its decision:
- For all real estate, allow for a visual environmental site inspection by an approved representative of the Museum, which must result in at least a satisfactory evaluation;
 - For non-residential real estate, perform, at the donor’s expense, a Phase 1 Environmental Audit;
 - Provide the Museum, at the donor’s expense, with a qualified appraisal;
 - Provide the Museum, at the donor’s expense, with the results of a title search, recent tax statements, and a tax map;
 - Disclose and satisfy any mortgage or encumbrance on the property; and
 - Disclose any carrying costs (including maintenance, insurance, condo or coop fees).

Under special circumstances, as determined by the Gift Acceptance Committee, the expenses allocated to the donor above may be borne by the Museum.

- e. **Remainder Interests In Real Property** – The Museum may accept a remainder interest in real property, subject to the preceding paragraph. The donor or other occupants may continue to occupy the real property for the duration of the stated life. At the death of the donor or stated life, the Museum may use the real property or reduce it to cash. Where the Museum receives a gift of a remainder interest, expenses for maintenance, real estate taxes, and any property indebtedness are to be paid by the donor or beneficiary prior to transfer to the Museum.
- f. **Life Insurance** – The Museum accepts gifts of new and existing whole life insurance policies. Generally, the Museum will not accept gifts of term policies. Donors are encouraged to name the Museum as beneficiary of their existing whole life insurance policies of which they are owners. Such designations will be recorded as gifts, at their present value, when the gift becomes irrevocable. Alternatively, where the Museum is named as both beneficiary and irrevocable owner of a whole life insurance policy, it can be recorded as a gift. If the donor of a whole life policy contributes future premium payments, the Museum will include the entire amount of the additional premium payment as a gift in the year that it is made. If the donor does not continue to make gifts to cover premium payments, the Museum may, at its discretion, continue to pay the premiums, convert the policy to paid up insurance, or surrender the policy for its current cash value. At all times, the Museum reserves the right to cash in any insurance policy or retain it as an investment, at its option.
- g. **Charitable Remainder Trusts** – The Museum may accept designation as remainder beneficiary of a charitable remainder trust. The Museum will not serve as the trustee of a Charitable Remainder Trust.
- h. **Charitable Lead Trusts** – The Museum may accept designation as income beneficiary of a charitable lead trust. The Museum will not serve as a trustee of a Charitable Lead Trust.
- i. **Retirement Plan Beneficiary Designations** - Donors are encouraged to name the Museum as beneficiary of their retirement plans. Such designations will be recorded as gifts, at their present value, when the gift becomes irrevocable.

V. **BARGAIN SALES**

The Museum may enter into bargain sales of works of art that are consistent with its mission and purposes. In a bargain sale, the Museum purchases property from a seller/donor at a discounted price and simultaneously accepts as a gift from the seller/donor the amount of the discount. Prior to any bargain sale, the Museum will obtain an independent appraisal substantiating the value of the property.

The Museum may also enter into bargain sales of other property, where the bargain sale would further the mission of the Museum. Factors considered in determining the appropriateness of a proposed transaction include, among others:

- The results of an independent appraisal obtained by the Museum;
- The utility or salability of the property;
- Carrying costs of the property.

VI. DONOR-ADVISED FUNDS AND PRIVATE FOUNDATIONS

The Museum accepts gifts from donor-advised funds (“DAF”) and private foundations. However, where benefits (including membership) are provided in return for a contribution from a DAF or private foundation and the donor does not waive the benefits, the Museum cannot sign an acknowledgement representing that no goods or services were provided in return for the contribution, even if the individual pays separately for the non-deductible portions. In such circumstances, the Museum will issue a receipt stating that goods and/or services were received and indicating both the tax-deductible and non-deductible portion of the gift. Similarly, the Museum will not accept contributions from a DAF or private foundation to satisfy an individual’s legally-binding pledge obligation to the Museum.

VII. RECEIPTS

All charitable gifts to the Museum are recorded by name of donor and include gift date, gift purpose, and value. Acknowledgements are sent to donors by the Department of External Affairs and receipts are issued to donors for gifts that qualify for income tax charitable deductions as allowed by the Internal Revenue Service. Receipts for gifts that provide goods and services include a description of such goods and services and list both the deductible and non-deductible portions of the gift. No receipts are issued for gifts that, while greatly appreciated, do not qualify for income tax charitable deductions, such as legal or other professional services donated to the Museum, loans of property to the Museum, free advertising, or discounts on rents or purchases.