SUBJECT: Gift Acceptance
NUMBER: 5:37

1. Purpose

The purpose of this policy and its procedures is to clarify and facilitate the process for making gifts to the University in accordance with SDBOR Policy 5:8 and applicable law.

2. Definitions

   a. Clear Title: Good, marketable, and full ownership of property without any Legal Obligations.

   b. Gift: A voluntary, irrevocable transfer of assets (e.g., cash, securities, real or personal property) made by a donor without any expectation or receipt of direct economic benefit, property, goods, or services from the recipient that are of approximately equal value to the gift.

      i. A grant, contract, or other agreement, which may include a sponsored or collaborative project, is not a gift. These are written agreements representing the transfer of time, money, or property in exchange for the specifically enumerated performance of services and/or provision of space, often including rights and access to results of this performance, and including some formal financial and/or technical reporting. Thus, by the agreement setting out the sponsor’s expectation of services and/or access by or from the University, it cannot be a gift.

   c. Legal Obligations: Include, but are not limited to, liens, easements, licenses, encroachments, covenants, rent assignments, reversionary interests, mortgages, adverse possession, donor bankruptcy, ongoing litigation, and other encumbrances on property preventing Clear Title or conditions requiring University performance in order to obtain Clear Title to property.

   d. Real Property: Land; interests in land (e.g., easements, leases, covenants, servitudes, mineral rights, grazing rights); crops not harvested; and structures, equipment, and improvements (e.g., roads, ditches, utilities) permanently affixed to the land (or affixed to the land by being permanently affixed to a structure permanently affixed to the land), or that may be physically movable or detachable but are intended to be permanently affixed.
A thing is permanently affixed to land when it is attached to land by roots, imbedded in it, permanently resting upon it, or permanently attached by means such as cement, plaster, nails, bolts, or screws.

e. Personal Property: All property not defined as Real Property, including Intellectual Property.

3. Policy

a. Gifts may only be used by the University for the specific purposes for which they are given.

b. Gifts of Real Property and of funds for building purposes may not be accepted without specific legislative approval and SDBOR approval. Gifts from the federal government of Real Property, Personal Property, or funds for building purposes may not be accepted without approval of the SDBOR and the SD Governor.

c. Gifts of Real Property, Personal Property, cash, and securities that could impose present or future legal obligations on the SDBOR or the state may not be accepted without SDBOR approval and until the attorney general certifies that the gifts are free from such obligations.

d. The University may take possession of a gift; however, the University must bear the cost to return the gift if approval is not given.

e. The South Dakota State University Foundation, Inc. (“Foundation”) is approved by the SDBOR pursuant to SDBOR Policy 5:9 as an affiliated entity of the University to deposit private gifts per the terms and conditions of applicable law, SDBOR and University policies, and the MOU and other agreements between the SDBOR, the University, and the Foundation.

   i. The University recognizes that the Foundation bears the major responsibility for fundraising. Accordingly, the University will coordinate all fundraising calls with Foundation.

f. Other entities affiliated with the University, including the SDSU Alumni Association, Inc. (“Alumni Association”), may take possession of gifts on the behalf of the University in compliance and accordance with federal, state, and local law, SDBOR and University policies, and their MOUs or other agreements with the University.

g. Except as set forth in SDBOR policies, this policy, or by South Dakota law, no employee of the University has the authority to individually accept gifts. All gifts must be made properly in the name of the “State of South Dakota or the South Dakota Board of Regents for the benefit of South Dakota State University,” “South Dakota State University,” or “[Insert Full Legal Name of Affiliated Entity] for the benefit of South Dakota State University.” Gifts made payable to individuals are not deductible as a charitable contribution and benefit the employee personally, not the University. Gifts to an individual employee are subject to SDBOR and University policies concerning gifts, honoraria, and conflicts of interest and commitment as well as applicable state and federal law.
h. The President of the University and the President of the Foundation may appoint a designated receipt executive to assume day-to-day responsibility for receipting accepted gifts and for signing any tax documentation and donee acknowledgements requested by the donor in accordance with their entity’s internal controls protocols.

i. Any gift agreement or other gift documentation to be signed by a representative of the University shall be signed by an individual with properly delegated contract signature authority, after review of the gift as provided in this policy and its procedures and any applicable SDBOR policy and applicable law.

j. Responsibility to Donors

   i. Donor’s Expectations: University staff should make reasonable efforts to be aware of and sensitive to donors’ expectations.

   ii. Legal and Professional Advice: University representatives shall not provide legal and/or tax advice to donors or prospective donors, and will advise all donors and prospective donors in writing to seek such advice from their own independent counsel and professional advisors.

   iii. Appraisals and Valuations: The University will not furnish property appraisals or valuations to donors for tax purposes or for any other purpose. The University will not knowingly participate in a transaction in which the value of the gift is inflated above its true fair market value to obtain a tax advantage for a donor. The University may estimate a property value for internal administrative purposes only, such as to meet its obligation to inventory property valued at $5,000 or more per University Policy 5:21.

   iv. Tax Filing: In accordance with the provisions of federal tax and records law, state records laws, SDBOR and University policies, and SDBOR record retention requirements, University Finance and Administration will maintain records for the University and the Foundation or other authorized affiliated entity will maintain its records. Each entity is responsible for appropriate accounting and tax reporting as applicable under the law.

   v. Confidentiality: The Foundation or other authorized affiliated entity staff will adhere to confidentiality with regard to any information, records, and personal documents pertaining to donors and gifts. All gift records will be released only when authorized by the donor or as required by law. The University’s records are subject to the provisions of SDCL Ch. 1-27 regarding public records and exceptions to the same.

   vi. Anonymity: The University and Foundation or other authorized affiliated entity shall respect the wishes of donors wishing to support the University anonymously and will take reasonable steps to safeguard those donors' identities.

k. Reporting on Donated Property

   i. If the University sells, trades, or otherwise disposes of donated Real Property, Personal Property, or non-publicly traded securities for which it signed an IRS
Form 8283 within three (3) years of the date of acceptance by the University (hereafter, “qualifying disposition”), the University shall file an IRS Form 8282. This requirement does not apply where the University disposed of the property by consuming it or distributing it (without consideration) in fulfilling the University’s mission or purpose. If any University employee has knowledge of a qualifying disposition, they should immediately contact the Property Management Office, as the University must file the IRS Form 8282 within 125 days after the date of the qualifying disposition.

ii. The University shall notify the donor of the qualifying disposition, as the qualifying disposition may result in a recapture of a portion of the donor’s charitable contribution.

iii. Should the University become aware of a report-qualifying disposition after it is disposed, the University otherwise has sixty (60) days to file a Form 8282 from the date it becomes so aware.

l. A Qualified Appraisal depends on the completeness of the report and the consideration of all relevant factors, the qualifications and specialization of the appraiser, and the appraiser’s demonstrated knowledge of the property applied to the facts in the report. The report must contain all the facts on which to base an intelligent judgment of the value of the property. The appraisal must also have been performed reasonably contemporaneous with the date of contribution (i.e., within sixty (60) days).

m. Donors of gifts to auction and donors purchasing the gifts at auction shall have their donations treated in compliance with applicable law.

n. The University reserves the right to reject any gift of any kind at its sole discretion.

4. Procedures

a. University Processes for Acceptance of Gifts

i. Prior to acceptance by the University directly, or by the Foundation, the Alumni Association, or any other University-affiliated entity on behalf of and for the benefit of the University, gifts are subject to any combination of the following review processes based on the nature of the gift:

1. For all gifts of Real Property or cash for building; or for gifts of Personal Property, cash and securities that could impose a present or future legal obligation or are $25,000 or greater in estimated value; and for all gifts involving naming rights. A review pursuant to Section 4.a.ii. herein will occur and the recommendation will be submitted and reviewed by a Gift Acceptance Committee consisting of officials designated by the University President. At a minimum, the Gift Acceptance Committee shall include the V.P. for Finance and Administration, the President of the Foundation, or their designees. The role of the Gift Acceptance Committee is to review and recommend gifts for final approval by the President and the President’s submission to the SDBOR or other state authorities as required.
2. For gifts of Personal Property that clearly do not impose a present or future legal obligation and are less than $25,000 in estimated value. The gift shall be reviewed by:

   a. The Department Head, Director, or Dean whose department, unit, or college, respectively, is the donor’s intended beneficiary, who is in turn accountable to the University President for the Personal Property if accepted;
   b. The University officer with properly delegated contract signature authority to authorize receipt of the donation (if different);
   c. University personnel qualified to provide quality assurance regarding the gifted property and its ability to serve the University in its intended purpose, as well as personnel who are qualified to determine whether gift acceptance may have any negative impact on public or alumni relations; and
   d. University V.P. for Finance and Administration, or designee.

3. For gifts of cash not for building purposes or for gifts of securities, which clearly do not impose a present or future legal obligation and are less than $25,000 in value. The gift shall be reviewed, processed and administered by appropriate Foundation, University, or authorized affiliated entity personnel.

4. For gifts that create potential unrelated business income tax liability. The gift must be reviewed by the President’s designee for economic implications and by the University General Counsel for legal implications.

5. For gifts in kind and gifts with donor restrictions that do not rise to the level of a Legal Obligation. The gift must be reviewed by the President’s designee for implications and by the University General Counsel for legal implications.

6. For particular gifts of artwork. If the gift is intended for the Public Art Collection, it must be reviewed by the Public Art Subcommittee in accordance with University Policy 2:29. If the gift is intended as a holding of the South Dakota Art Museum, it must be reviewed according to South Dakota Art Museum policies authorized by University Policy 11:1. If a legal obligation or financial threshold is inherent in the gift, the reviews required by the applicable section of this Policy shall also be obtained.

   b. Finalized Acceptance of Gifts

      i. No employee or agent of the University is authorized to accept a gift until all approvals required by state law and SDBOR and University policy for the particular gift have been obtained.
c. Inventoring Gifts

i. Acceptance of gifts of Personal Property is finalized when inventoried with the Property Management Office in compliance with University Policy 5:21.

ii. Acceptance of gifts of Real Property is finalized when inventoried by the Commissioner of School and Public Lands per SDCL 5-1-8.

d. Acknowledging Gifts

i. The University shall, contemporaneous with the finalized acceptance of the gift, issue a gift receipt or acknowledgement to the donor containing the following information: the name of the donor and the University college/department/unit benefitted by the gift, the date and location of the contribution, a statement of whether the University provided goods or services in return for the contribution, and a detailed description of the donated property.

ii. The detailed description of an acknowledgement of a gift of property shall only contain a fair market value if the donor provides a Qualified Appraisal with the gift. Whatever the Qualified Appraisal sets as the fair market value shall be the value input in the acknowledgement as the tax deductible contribution.

iii. Where the donor’s payment is in part a donation to the University and in part a payment for goods or services provided by the University, such as a ticket to a University event, the University shall set a good faith estimate of the fair market value for the good or service and denote that value on the gift receipt or acknowledgment. The University shall also provide a disclosure statement on the acknowledgment that the amount of the donor’s contribution that is deductible for federal income tax purposes is offset by the fair market value of the good or service provided by the University. The fair market value and disclosure statement are not required where the University good or service is de minimis.

iv. The lead University personnel for the college, department, or unit that benefitted from the accepted gift should thank the donor.

e. Disposing of Gifts

i. Gifts of personal property, subject to any restrictions on sale or subsequent use, shall be disposed of pursuant to the procedures provided in University Policy 5:21, SDBOR policies, and state law.

ii. Gifts of real property, subject to any restrictions on sale or subsequent use, may be sold, transferred, or demolished with approval of the SDBOR, pursuant to SDBOR Policy 6:2, and, depending upon the nature of the transaction, the approval of other state authorities per applicable state law.

iii. If the University sells, trades, or otherwise disposes of donated Real Property, Personal Property, or non-publicly traded securities for which it signed an IRS Form 8283 within three (3) years of the date of acceptance by the University (hereafter, “qualifying disposition”), the University shall file an IRS Form 8282.
This requirement does not apply where the University disposed of the property by consuming it or distributing it (without consideration) in fulfilling the University’s mission or purpose. If any University employee has knowledge of a qualifying disposition, they should immediately contact the Property Management Office, as the University must file the IRS Form 8282 within 125 days after the date of the qualifying disposition.

5. Responsible Administrator

The Vice President for Finance and Administration or designee is responsible for the annual and ad hoc review of this policy and its procedures. The University President is responsible for approval of this policy.

SOURCE: Approved by President on 12/03/2019.