



## Deferred Giving Policy

Responsible Official: Vice President for University Advancement	Responsible Office: University Advancement
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### Policy Purpose

This policy serves as a guideline to assist with information regarding solicitation and acceptance of deferred gifts in accordance with the Foundation's mission and, as a subpart thereof, the mission of deferred giving, which is to promote and facilitate meaningful philanthropic support of ETSU through deferred gifts to encourage maximum impact of said gifts.

### Policy Statement

Deferred Giving is a critically important element in obtaining philanthropic gifts for the university. This policy provides guidance and procedures for the coordinated management of soliciting, securing, and stewarding deferred gifts for East Tennessee State University.

### Definitions

Deferred Gifts – gifts structured by the donor to provide support for ETSU at some time in the future.

### History

Effective Date: 02/07/2017

Revision Date: 02/21/2019

Revision Date: 07/06/2020

Revision Notes: The 2/21/2019 revision clarifies qualifications for bequests; removes all references to Charitable Gift Annuities; adds language stating all deviations from policy must be approved by the ETSU Foundation Board; and eliminates life insurance policies from the gifts recognized on the Walls of Honor. This revision adds a section regarding charitable gift annuities (CGA), changes the term (and title) "planned gift" to "deferred gift," makes changes to CRT processing, removes the life insurance section (covered in a separate policy), and updates language throughout.

### Attachments:

- A. Retained Life Estate Agreement
- B. Legacy Circle

## Procedure (s)

### 1. Process/Procedures:

- a. Memoranda of Understanding. All donors of deferred gifts established by the donor with prior notice will be encouraged to sign a Memorandum of Understanding (MOU). Please refer to the policy on MOUs and proper procedure for drafting to ensure the bequest and intended donor purpose of the bequest can be accommodated. If it becomes known that a donor has established a deferred gift to the Foundation, or ETSU, without prior notice, please encourage the donor to allow a Director of Development to draft an MOU to ensure the donor's wishes will be carried out (if possible) at the time their deferred gift is fully realized.
- b. Gift Types:
  - 1) **Bequests.** Any amount or percentage is accepted. If requested, the Executive Director of Planned Giving will work with the donor or the donor's attorney to ensure the proper legal language is included in the bequest. The ETSU Foundation, at its discretion can refuse a bequest if such bequest would create a potential liability or does not fall within the mission of the University.
  - 2) **Charitable Remainder Trusts.** These are established by an irrevocable gift to a trust made during the donor's lifetime or following his/her death. In general, the trust is required to pay a fixed percentage of the value of the trust assets to at least one non-charitable beneficiary for the life or lives of the named beneficiary(ies), a term not to exceed 20 years, or a combination of the two. At the end of the trust term, the remaining assets pass to one or more charitable beneficiaries, such as the Foundation. The Foundation will not serve as Trustee or co-Trustee of a charitable remainder trust.
  - 3) **Life Estate.** Also see the Acceptance of Gifts of Real Estate Policy. The Board of Directors of the Foundation must approve gifts of real estate, whether the disposition intention will be to liquidate or to utilize for a distinguished and designated benefit of ETSU. Life Estate gifts will be accomplished by the execution of a deed to the Foundation, in which the retained life interest in the real estate is expressly reserved for the donor. In addition, the donor must enter into a Retained Life Estate Agreement (RLEA) (Attachment A) which provides that the donor and/or the life tenant shall remain responsible for maintenance, taxes, utilities, insurance, and other costs associated with the property, unless other arrangements, approved by the President/CEO of the Foundation, are made for the payment of these expenses. The value of the gift is the fair market value of the Foundation's remainder interest in the property at the time of the contribution, determined actuarially, after making any appropriate adjustment for depreciation or depletion. Gifts of real estate encumbered by mortgages, deeds of trust, liens, etc. may only be accepted after review and approval by the President/CEO of the Foundation. A marketable title will be needed along with an appraisal. Appraisal value will need to be a minimum of \$50,000. Note the distinction between a deferred gift of real estate and an outright gift of real estate.
  - 4) **Retirement Accounts.** Any amount is accepted as designation on an existing account. An immediate rollover is not a deferred gift and will not qualify a donor for recognition in the Legacy Circle.

- 5) ***Life Insurance.*** Life Insurance is covered under a separate Advancement policy, available at <https://www.etsu.edu/advancement/policies.php>.
- c. Acceptable Gifts. No gift will be accepted or disposed of that could lead to self-dealing, such as donated property which is sold to employees, to other contributors, or to other related entities and/or interested parties. All gifts will only be accepted in accordance with federal and IRS guidelines.
  - d. NOTE: any deviation from these terms will be at the discretion of the Foundation Board of Directors.
1. **Legal Disclaimer.** University Advancement does not provide legal or tax advice. Due to the complex tax and legal issues related to the creation and implementation of a deferred gift, the donor should always be encouraged to obtain independent professional advice prior to execution of the appropriate gift instrument.
  2. **Recognition Levels:**
    - a. All deferred gifts will be recognized in the Legacy Circle (see Attachment B).
    - b. Dual recognition to the ETSU Foundation Wall of Honor will be made accordingly for irrevocable deferred gifts.

#### Related Form(s)

N/A

#### Scope and Applicability

	Governance	
	Academic	
	Students	
	Employment	
	Information Technology	
	Health and Safety	
	Business and Finance	
	Operations and Facilities	
	Communications & Marketing	
X	Advancement	

## **Attachment A – Retained Life Estate Agreement**

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This Life Estate Agreement (hereafter referred to as “**Agreement**”) is effective this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between \_\_\_\_\_ (whether one or more, the “**Donor**”) and the East Tennessee State University Foundation (the “**Foundation**”).

Concurrently with this Agreement, the Donor has executed a deed conveying to the Foundation a remainder interest in the real property, including all improvements thereon, legally described as \_\_\_\_\_ (the “**Property**”), and reserving a life estate in the Property for the Donor. The life estate terminates on the death of the Donor, or, if there is more than one Donor, on the death of the last surviving Donor. (*Note: This Agreement, as drafted, contemplates that the Donor is the one retaining a life estate, but the life estate may be held by someone other than the Donor, in which case modifications to this Agreement will be necessary. This Agreement should define the measuring term of the life estate. If the term is measured by the lives of one or more individuals, the Agreement must identify those individuals and the order in which they will receive their interests. If the term is a set number of years, the Agreement should so state and should also identify the primary occupant of the Property and provide direction regarding successor occupants if the primary occupant dies prior to the expiration of the stated number of years.)*)

The Donor and the Foundation desire to enter into this Agreement to establish the rights and responsibilities of each with respect to the Property.

1. During the term of the life estate, the Donor, at its sole expense, shall:
  - a. Maintain the Property in good condition, including (1) the upkeep and repair of improvements to protect the Property from loss of value and damage, (2) routine maintenance such as mowing and landscaping maintenance, snow removal where applicable, painting, termite and other pest prevention, and all other types of routine maintenance, (3) all minor and major repairs and capital improvements, such as roof replacement and mechanical systems repairs and replacements, and (4) all other actions in order to maintain the Property in compliance with all applicable codes, laws, regulations, and ordinances. If the Property is damaged from any cause, the Donor, at its sole expense, shall repair the damage unless the Donor and the Foundation agree that it is impractical to do so, in which case any insurance proceeds from insurance carried by the Donor or the Donor’s tenant shall be divided between the Donor and the Foundation in accordance with the percentages corresponding to each parties’ interest in the Property as of the date of the damage. For purposes of determining the interest of each party, the methodology used to value a remainder interest in U. S. Treasury Regulations § 1.170A-7, or the successor regulation, shall be used;
  - b. Pay before delinquency all real estate taxes, owners or condominium association assessment, and any and all other assessments or impositions against the Property. The Donor shall deliver to the Foundation at the address stated below copies of paid tax and assessments receipts within 45 days after the due date. Without the prior written consent of the Foundation, which may be given or withheld in its sole discretion, the Donor shall not voluntarily or involuntarily defer the payment of taxes or assessments, notwithstanding any

statutory or contractual right of the Donor to do so. If the expiration of the Donor's life estate is on a date other than the last day of any tax fiscal year, the taxes for such year shall be apportioned between the Donor and the Foundation;

- c. Pay water and sewer charges, utilities, and all other charges assessed against the Property;
  - d. Insure the Property against fire, vandalism, flood, windstorm, and other hazards and risks through all risk property insurance in accordance with terms to be determined and agreed upon from time to time by the Donor and the Foundation, but no less than 80% of the actual replacement cost of the Property, unless the parties otherwise agree in writing. The Donor shall provide the Foundation with an annual certification that the insurance described above is in effect and that the premiums have been paid. All insurance shall be secured and maintained in a company or companies reasonably satisfactory to the Foundation and shall be primary and not contributory to that carried by the Foundation. The 'all risk' property insurance policy shall name the Foundation as "an insured as its interest may appear." The Donor shall secure an appropriate clause in, or an endorsement upon, each policy of insurance, pursuant to which the insurance company waives subrogation and rights of recovery or permits the insured to agree to waive any claim it might have against the Foundation.
2. The Donor shall not, without the prior written consent of the Foundation, permit any lien, encumbrance, or mortgage to be placed on the Property and shall not, without the prior written consent of the Foundation, permit the amount of any mortgage, encumbrance, or lien now existing to increase. The Donor shall, on or before each due date, make all payments on any existing mortgage, lien, or encumbrance. By February 15 of each year, the Donor shall deliver to the Foundation a copy of the status of the mortgage, lien, or encumbrance, if any, through December 31 of the prior year.
3. The Donor has the sole right, during his/her/their lifetime(s), to occupy the Property and to lease the Property. The Donor shall consult with the Foundation before leasing the Property, and, unless the Foundation also signs the lease, the lease term shall automatically end, notwithstanding anything to the contrary in the lease, no later than the end of the month in which the date of the termination of the life estate occurs. The Donor shall receive all rent from the Property during the Donor's lifetime(s); the Foundation shall receive all rent from the Property from and after the date of death of the Donor.
4. The Donor shall consult with the Foundation before making material changes to the use of the Property. If the Property is currently occupied by the Donor, the rental of the Property constitutes a material change in the use of the Property.
5. If the Donor is no longer able to maintain the Property as required by this Agreement, whether due to age, health issues, financial ability, or other reason, or if the Donor wishes to end its occupancy of the Property and does not wish lease out the Property in accordance with the preceding section, then the Donor and the Foundation will jointly market the Property for sale and the parties will divide the net sale proceeds, after all expenses of the sale have been deducted, in accordance with their respective interests in the Property. In the alternative, the Donor may elect to contribute to the Foundation the balance of the Donor's life estate as an

additional charitable gift to the Foundation. For purposes of determining the interest of each party, the methodology used to value a remainder interest in U. S. Treasury Regulations § 1.170A-7, or the successor regulation, shall be used.

6. The Donor, jointly and severally, agrees to indemnify and hold the Foundation harmless from all loss, costs, damages, claims, and liabilities that are caused by any act or omission of the Donor. The Donor's tenants, agents, representatives, or contractors (including, without limitation, any such loss, costs, damages, claims or liabilities that arise out of the presence or release on the Property of hazardous or toxic materials in violation of applicable local, state or federal law) to the extent that such claims arise during the term of the life estate, except to the extent caused by any act or omission of the Foundation or any of its agents, employees or contractors.
7. The Foundation, its authorized employees, representatives, and contractors have the right to:
  - a. Enter the Property from time to time with at least ten days prior written notice to the Donor to inspect the Property; provided, however, that in the case of an emergency, no notice or only such notice as is appropriate under the circumstances shall be required; and
  - b. Make any reasonable repairs that are reasonably necessary to protect its interest in the Property in the event that the Donor has not made such repairs within a reasonable time after written notice from the Foundation to the Donor of the need for same. In such case, and if the repairs are the responsibility of the Donor under this Agreement, the Donor shall reimburse the Foundation for the full cost of such repairs within 30 days after the Foundation delivers to the Donor copies of invoices for the repairs.
8. The Donor shall consult with the Foundation before making major structural changes or improvements to the Property. The Donor has the right, after such consultation and at the Donor's sole cost and expense, to make improvements and alterations to the Property, provided that such improvements do not reduce the value of the Property.
9. The Donor shall not permit to be foreclosed any mechanic's or materialman's lien or other statutory lien against the Property by reason of work, labor, services, or materials supplied to or at the request of the Donor. The Donor shall pay and discharge any such mechanic's or materialman's lien filed against the Property within twenty (20) days after the filing thereof. In no event shall the Donor have the right, authority, or power to bind the Foundation or any interest of the Foundation in the Property for any claim for labor or material or for any other charge or expense incurred in the repair, maintenance, construction, or alteration of the Property or the improvements thereon.
10. Whenever any notice is required or permitted hereunder, such notice shall be in writing and shall be deemed to be delivered when actually received or three days after deposit in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the persons shown below, or at such other addresses as the parties have hereafter specified by written notice.

**If to the Donor:**

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**If to the Foundation:**

University Advancement  
East Tennessee State University  
P.O. Box 70721  
Johnson City, TN 37614  
Attention: Executive Director of Planned Giving

11. This Agreement may be amended only by an instrument in writing executed by both parties, and it shall be binding upon and inure to the benefit of the parties hereto and their respective successors, distributees, heirs, legal representatives, and assigns.

In witness whereof, the parties have duly executed this Agreement to be effective for all purposes as of the date stated in the introductory paragraph.

**DONOR:**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

**DONEE:**

East Tennessee State University Foundation

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
President/CEO

Date: \_\_\_\_\_

## **Attachment B – ETSU Legacy Circle**

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The Legacy Circle is comprised of alumni and friends who have shown their support for the university and its students by making a deferred gift to the ETSU Foundation. If you have included the ETSU Foundation in your estate plans through a deferred gift, then you qualify for Legacy Circle membership. Legacy Circle membership at ETSU does not require any continued obligations or dues, but simply allows ETSU to thank you and recognize you, if desired, for the plans you have made. Supporting ETSU in this manner may be an excellent way of benefiting your personal financial, estate, and tax planning while simultaneously advancing the vision of ETSU.

***Joining the Legacy Circle.*** Any of the following deferred gifts will confer Legacy Circle membership:

- Bequest in a last will and testament or trust
- Charitable remainder trust (unitrust or annuity trust)
- Naming ETSU Foundation as a beneficiary of a life insurance policy or retirement account
- Deeding real estate while retaining a life estate