

**DELAWARE COMMUNITY FOUNDATION
PROCEDURES FOR ESTABLISHMENT AND OPERATION
OF FUNDS AND SUPPORTING ORGANIZATIONS**

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PART A. FUNDS

Section 1. *Types of Funds*

Funds are categorized by their charitable purpose.

a. Categorization by Charitable Purpose

1. *Donor-Advised Funds*: the Donor, Donor Advisor(s) or Advisory Committee may recommend charitable grant recipients from time to time.
2. *Designated Funds*: this type of fund is created to ensure that support will be provided to one or more specific charitable organizations named by the Donor(s).
3. *Nonprofit Endowment Funds*: this type of fund is established by nonprofit organizations to help manage endowment assets and/or special project funds.
4. *Field-of-Interest Funds*: this type of fund allows the Donor to support an area of charitable interest, defined broadly (such as education) or narrowly (such as advanced vocal music training). A Donor can also select a defined geographic area or specific community to benefit from grant distributions.
5. *Scholarship Funds*: Donors can support worthy students at an institution (high school, college, technical), students in a particular field of study, or students from a particular geographic, or students who have attended a specific high school or school district.
6. *Unrestricted Funds*: Donors may choose an unrestricted fund that allows the Community Foundation to determine where grant distributions will do the most good.

Section 2. *General Policies*

Each Fund shall be considered part of the Community Foundation and shall be governed by its Articles of Incorporation, Bylaws and by these Procedures. The Community Foundation is vested with ultimate authority and control over the principal and income of each Fund.

Section 3. *Donor May Select Name of Fund*

Each Fund will be named as the Donor wishes. However, the Community Foundation reserves the right to reject names that it finds objectionable.

Section 4. Distributions

a. Grants Shall Follow Donor's Intent

Grants will be made from each Fund consistent with the instructions given by the Donor at the time that the Fund was established. If, however, (1) the Donor's instructions are contrary to the Articles of Incorporation, Bylaws or Procedures, or (2) the "variance power" (described below in Sections B.5; B.8(b); B.9(b); B.10(b); and B.11(b)) is exercised, then the Donor's instructions shall be modified to a degree that is necessary for compliance with these Procedures. To the extent practicable or feasible, the Board of Directors shall distribute amounts for purposes that are consistent with the Donor's charitable interests. The Community Foundation is vested with ultimate authority and control over the principal and income of each Fund.

b. Grants Will Normally Identify the Name of the Fund

Unless otherwise requested by the Donor, any distribution shall identify the name of the Fund from which it is made.

c. Grants Must Not Provide a Financial Benefit to Donor

The Community Foundation will not make a grant that provides a financial benefit to a Donor, Donor Advisor or Advisory Committee member. Distributions from the Community Foundation may not be used in whole or in part for any pre-existing legally binding pledge or for any private benefit such as dues, membership fees, benefit tickets and the non-charitable portion of fund-raising dinners, or goods and services bought at charitable auctions.

The Community Foundation may make grants that provide a Donor, Donor Advisor(s) or Advisory Committee member with name recognition and such other benefits that the Internal Revenue Service has recognized as not providing the donor with a financial benefit.

d. Donor Generally Cannot Control Timing of Grants

The ultimate right to direct the timing and amount of all distributions of income or principal from any Component Fund is vested in the Board of Directors. As is required by federal tax regulations, a Donor may not reserve the right to direct the timing of distributions from the Fund. However, a Donor can specify in the instrument of transfer:

1. That some or all of the principal (as opposed to income or specific assets) may not be distributed for a specified period of time.
2. That distributions are limited to income only.
3. That distributions should be made annually (or more frequently). If distributions are limited to income, income shall be annually computed based on the current spending policy of the Community Foundation.

e. Board May Identify Specific Charitable Needs of the Community

The Board may enumerate specific charitable needs and specific organizations that it deems are most deserving of support.

Section 5. Variance Power and Monitoring Function

a. Community Foundation to Follow General Donor Intent if Variance Power is Exercised

If the Board of Directors exercises the variance power described in Section B.8(b), B.9(b), B.10(b), or B.11(b) to modify a Designated Fund, Organizational Fund, Field-of-Interest Fund, or Scholarship Fund, or if the privilege of the Donor, Donor Advisor(s) or Advisory Committee and other persons

designated to make recommendations from a Donor-Advised Fund has been terminated in accordance with Section B.7, then the Board of Directors shall convert the Fund into its choice of either an Unrestricted Fund or a Field-of-Interest Fund. To the extent practicable or feasible, the Board of Directors shall distribute charitable grants from the converted Fund for purposes that are consistent with the original Donor's charitable interests.

b. Fund To Keep Donor's Name If Variance Power Exercised

Generally the Fund shall retain the name given by the Donor. If the Fund contains less than the minimum amount to establish a named Fund at the time it is converted, the Board of Directors may, in its discretion, deposit all of the Fund's assets into the General Fund.

c. Community Foundation to Monitor Beneficiary's Performance of Terms of Grant.

In addition to the Monitoring Functions hereinafter stated, the Board of Directors through the Board Committees and the Staff may periodically review the effectiveness with which agencies that receive grants from Funds and Affiliated Organizations are performing their responsibilities in the utilization of these grants toward attainment of the Community Foundation's and the Donor's objectives. Where necessary, the Board shall initiate corrective action.

Section 6. Advisory Committees of Funds

a. General Rules

A Donor or the Board of Directors may appoint an Advisory Committee for a Donor-Advised, Designated, Nonprofit Organizational, Field-of-Interest, Scholarship or Unrestricted Fund. The Advisory Committee may make recommendations to the Board of Directors concerning grants from the Fund and any other matters that it deems of importance. Generally, each Advisory Committee should select one person who will have the authority to transmit the Advisory Committee's recommendations to the Community Foundation.

b. Usually Majority Vote Is Required

Unless contrary instructions have been made by the Donor or by the Community Foundation, whenever two persons are designated to make recommendations they shall act by unanimous consent; whenever more than two persons are so designated, then a recommendation by a majority of such persons shall constitute an effective recommendation for consideration by the Community Foundation. Otherwise, each committee may operate under such procedures as it finds appropriate.

c. Authority to Act as Agent of Community Foundation Restricted

The Community Foundation generally encourages donors to solicit contributions to the Community Foundation and its funds. However, no person has the authority to act as the agent of the Community Foundation unless he or she has received express written authority from the Community Foundation. In particular, the Community Foundation does not authorize any volunteer or advisor to accept contributions on its behalf, to commit Community Foundation resources to any activity, or to engage in fund-raising activities in the name of the Community Foundation or on behalf of any of its Funds without written permission from the Board of Directors or an authorized employee.

The Community Foundation is generally supportive of charitable activities that benefit the residents of this region. The restrictions in this section are necessitated, in part, because of compliance with tax and other laws that require disclosure of benefits associated with charitable contributions as well as contemporaneous written acknowledgements to certain donors of contributions (the failure for which could subject the Community Foundation and its Funds to fines and penalties). We need to be

informed about activities being done in the name of the Community Foundation (and its Funds) and to monitor any obligations associated with those activities.

d. Fundraising

The Community Foundation will not sponsor any Fundraising or other events for any Fund, and will not be responsible for the collection of any amounts from any parties but will only be responsible for the proper disbursement of funds actually received. Any advertising, promotional or other materials must be consistent with this policy.

Donors, Donor Advisors and Advisory Committees must observe the following fundraising policies of the Community Foundation:

1. If the fundraising activity is designed to benefit a particular organization that is already incorporated with its own tax-exempt status, then all fundraising activities shall be conducted under that organization's tax- exempt status and taxpayer identification number. Any net proceeds can then be transferred from the separate tax-exempt entity to a Fund at the Community Foundation.
2. If the fundraising activity is designed to benefit an unincorporated organization or program, the Advisor(s) or Advisory Committee must contact the Community Foundation before initiating any fundraising activity to discuss potential IRS requirements and insurance liability.

Failure to follow necessary procedures could subject the Community Foundation, Donors, Donor Advisors or Advisory Committee members and the particular Fund involved, to penalties, fines and liability.

e. Divorce/Separation of Current Donor Advisors

This policy generally will only affect current Donor Advisors whereby either husband and/or wife (spouse) may request grant distributions from a Fund.

In the event a husband and wife serve as the only members of an Advisory Committee to a Donor-Advised, Designated or Field-of-Interest Fund, and a legal action for divorce, separation or annulment is pending between the husband and wife, the Community Foundation may, upon receiving notice of such action:

1. suspend processing any grant distribution recommendation for such Fund(s) unless and until the husband and wife both agree in writing to approve the grant distribution recommendation, or
2. suspend processing any grant distribution recommendations for such Fund(s) unless and until the husband and wife have jointly agreed in writing to an alternative procedure, acceptable to the Community Foundation, to provide for the future administration of such Fund(s). Subject to the approval of the Community Foundation, the husband and wife may jointly authorize the Community Foundation to bifurcate any Fund(s), designating husband or other successor advisor to serve as the advisory committee to one of the successor Fund(s) and designating wife or other successor advisor to serve as the Advisory Committee to the other successor Fund(s) created as a result of bifurcation.

In the event that husband and wife cannot jointly agree as provided above and no divorce decree, order of legal separation, order of annulment, property settlement agreement, agreement of the parties or other legal order has been entered or approved which would otherwise resolve the issue to the satisfaction of the Community Foundation, the Community Foundation may, in its sole discretion,

bifurcate any Fund(s) so affected into equal shares and designate husband to serve as the Advisory Committee to one of the successor Fund(s) and designate wife to serve as the Advisory Committee to the other successor Fund(s) created as a result of bifurcation. However, the Community Foundation shall not take such action until at least six months have transpired since the date upon which the action for divorce, separation or annulment was filed with the court of record.

Section 7. *Special Rules for Donor-Advised Funds*

a. Establishment and Purpose

A Donor may establish a Donor-Advised Fund whereby the individual Donor(s) and/or designated Advisors, retain a lifetime privilege to recommend charitable grant recipients to the Community Foundation. Corporate Donor-Advised Funds may continue to advise on charitable distributions as long as the Corporation continues to operate.

b. Distributions from Donor-Advised Funds

Donors and/or Donor Advisors may make written recommendations of grants to tax exempt charitable organizations described in Section 501(c)(3) of the Internal Revenue Code, other than private non-operating foundations. Charitable organizations must be public charities as described in Sections 509(a)(1) or 509(a)(2) of the Internal Revenue Code, supporting organizations described in Sections 509(a)(3) of the Internal Revenue Code or operating private foundations. As provided in the Internal Revenue Code and Regulations, the Board of Directors has the absolute right to direct all distributions of income and/or principal from Donor-Advised Funds.

c. Minimum Grant Amount from Donor-Advised Funds

The Board of Directors may designate a minimum grant amount for Donor-Advised Funds.

d. Eligible Advisors During a Donor(s)' Lifetime

Recommendations for distributions shall be subject to the following rules:

1. Generally a Donor(s) may designate any person(s) to have the privilege of making recommendations throughout the lifetime of the Donor or his or her spouse, unless earlier terminated by resignation or incapacity.
2. A Donor may also designate a person(s) (other than the Donor, or his or her spouse, or his or her adult children, or adult lineal descendants) to have the privilege of making recommendations throughout the life of the Donor and for such additional reasonable period as may be necessary to carry out either the express request or intent of the Donor(s) up to and including the lifetime of the designated person(s). Donor(s) may designate additional and/or alternative advisors at anytime during the Donor(s)' lifetime.
3. A Donor other than an individual, such as a corporation, partnership or trust, will not be subject to a time limit for its privilege to make recommendations.

e. Appointment of Children as Advisors

1. A Donor may designate his or her adult (i.e., over age 18) child or children as the person(s) to have the privilege of making recommendations throughout their lifetimes, unless earlier terminated by resignation or incapacity. If more than one child is named, then the successor advisors shall operate under the rules governing advisory committees described in Section B.6. In particular, the children shall select one individual who will have the authority to

deliver grant recommendations to the Community Foundation. Such selection shall be in writing to the Community Foundation and signed by all successor family Advisors.

2. Funds of \$500,000 or more may name succeeding generations as Advisors. If the Fund's balance falls below the \$500,000 minimum Fund balance at anytime, then the privilege to advise the Fund's grant distributions shall terminate with the then current Donor Advisors when such balance falls below the minimum Fund balance for successive generations.

f. Option to Split Funds for Successor Family Advisors

If a Donor has designated children or grandchildren as successor family advisors and if the charitable interests of the Donor's descendants are sufficiently diverse, then the Community Foundation may, with the consent of the advisors, divide the Donor-Advised Fund into multiple Donor-Advised Funds and limit each descendant's advisory privilege to a separate Fund.

g. Conversion of Donor-Advised Fund After Advisory Privilege Ends

Upon termination of the advisory privilege, a Donor-Advised Fund will be converted at the discretion of the Community Foundation to an Unrestricted Fund or a Field-of-Interest Fund as provided for in Part B, Section 5, unless otherwise provided for by the donor.

Section 8. Special Rules for Designated Funds

a. Establishment and Purpose

A Donor may establish a Designated Fund for one or more public charities described in Sections 509 (a) (1) or (a) (2) of the Internal Revenue Code or supporting organizations described in Sections 509 (a) (3) of the Internal Revenue Code. Examples include a school, not-for-profit hospital, social service agency, performing arts organization, or a religious organization.

b. Monitoring Function and Variance Power

The Community Foundation shall monitor the performance of the designated charitable organization to determine that it is using payments for charitable purposes consistent with the Community Foundation's purposes and the Donor's intention at the time the contribution was made. If the Board of Directors determines that continued payments for the designated organization have become unnecessary, obsolete, incapable of fulfillment, impractical or inconsistent with the community's charitable needs the Board may, in its discretion, select an alternative public charity with a similar mission and charitable purpose of the original Designated Charity as specified in the Instrument of Transfer or convert the Designated Fund to an Unrestricted Fund or Field-of-Interest Fund. The Fund shall then continue in accordance with the provisions of Section B.5.

Section 9. Special Rules for Nonprofit Endowment Funds

a. Establishment and Purpose

A Donor is a Nonprofit Charitable Organization as described in Sections 509(a) (1) or (a)(2) of the Internal Revenue Code, which specify the establishing organization as the grant recipient of the Fund.

An Organization may establish a Nonprofit Endowment Fund for one or more public charities described in Sections 509 (a) (1) or (a) (2) of the Internal Revenue Code or supporting organizations described in Sections 509 (a) (3) of the Internal Revenue Code. Examples include a school, not-for-profit hospital, social service agency, performing arts organization, or a religious organization.

b. Monitoring Function and Variance Power

The Community Foundation shall monitor the performance of the designated charitable organization to determine that it is using payments for charitable purposes consistent with the Community Foundation's purposes and the Donor's intention at the time the contribution was made. If the Board of Directors determines that continued payments for the designated organization have become unnecessary, obsolete, incapable of fulfillment, impractical or inconsistent with the community's charitable needs the Board may, in its discretion, select an alternative public charity with a similar mission and charitable purpose of the original Designated Nonprofit Charitable Organization as specified in the Instrument of Transfer or convert the Nonprofit Endowment Fund to an Unrestricted Fund or Field-of-Interest Fund. The Fund shall then continue in accordance with the provisions of Section B.5.

Section 10. *Special Rules for Field-of-Interest Funds*

a. Establishment and Purpose

A Donor or the Community Foundation may establish a Field-of-Interest Fund from which payments are made for a specific charitable purpose (Field-of-Interest). The specified purpose may be broad, such as support of education, health care or arts and humanities; or narrow, such as the prevention of child abuse. Field-of-Interest Funds may also be established for specific geographic areas such as neighborhood, section of city, county or metropolitan area.

b. Monitoring Function and Variance Power

The Board of Directors shall periodically evaluate all Field-of-Interest Funds. If the Board determines that continued payments for the specified charitable purpose have become unnecessary, obsolete, incapable of fulfillment, impractical, or inconsistent with the community's charitable needs, the Board in its discretion, may change the Field-of-Interest of the Fund or convert it to an Unrestricted Fund. The Fund shall then continue in accordance with the provisions of Section B.5.

Section 11. *Special Rules for Scholarship Funds*

a. Establishment and Purpose

A Donor or the Community Foundation may establish a Scholarship Fund from which payments are made to support one or more worthy students. Scholarships may be awarded for students to attend a specific institution (elementary through high school, college, technical); students in a particular field of study or major; students from a particular geographic area; or students who have attended a specific high school or school district.

The specified criteria may be broad, such as attending any institution of higher learning at the discretion of the student, or narrow, such as a specific major at a specified named institution. Scholarship Funds may also be established for specific geographic areas such as a neighborhood, section of city, county or metropolitan area.

b. Monitoring Function and Variance Power

The Board of Directors shall periodically evaluate all Scholarship Funds. If the Board determines that continued payments for the specified charitable purpose have become unnecessary, obsolete, incapable of fulfillment, impractical, or inconsistent with the community's charitable needs, the Board in its discretion, may change the scholarship criteria of eligibility or convert it to an Unrestricted Fund. The Fund shall then continue in accordance with the provisions of Section B.5.

c. Conflict of Interest

No scholarship award shall be made to a Donor's family member including direct ancestors and direct lineal descendants, spouse, and other relatives including brothers, sisters, nieces, nephews, aunts, uncles, cousins, and their respective spouses and children. Non-donor Advisory Committee members shall also adhere to the same policy regarding scholarship recipients awarded to Advisory Committee family members.

PART B. SUPPORTING ORGANIZATIONS

Section 1. *Establishment and Purpose*

a. Definition and Tax Status

A supporting organization is:

1. A charitable corporation or trust
2. Classified by the IRS as:
 - (a) a Section 501(c)(3) charity, and
 - (b) as a public charity (rather than a private foundation) because it supports a publicly supported charity, such as a community foundation.

The tax laws provide that a supporting organization will be a public charity, even if all contributions have come from related parties or even if it has not received any contributions over a period of years (either situation would normally cause a charity to be a private foundation).

b. Technical Requirements Under The Tax Laws

In order to be a supporting organization of the Community Foundation under Section 509(a)(3) of the Internal Revenue Code, the establishing Donor seeking supporting organization status must prove to the IRS that it:

1. Is organized to support the Community Foundation,
2. Is not controlled by "disqualified persons." Disqualified persons include substantial contributors to the supporting organization (donors who gave more than 2% of the organization's total contributions), members of that person's family and businesses controlled by the person. By law, they cannot have 50% or more of the voting power of the governing body or a veto power over the actions of the organization since that would constitute "control."
3. Is operated, supervised, or controlled "by" or "in connection with" the Community Foundation.
 - (a) "by" means that the Community Foundation appoints a majority of the governing body of the supporting organization,
 - or-
 - (b) "in connection with" is a much more complicated procedure by which the supporting organization must show that:
 - i. The Community Foundation appoints at least one member of the governing body of the supporting organization, and
 - ii. Through its operations, the supporting organization does either one of the following:

1. Engages in activities that the Community Foundation would otherwise do itself but for the supporting organization, or
2. Distributes 85% or more of its income to or for the use of the Community Foundation in such a way that the Community Foundation is "attentive" to the supporting organization.

c. Tax Advantages of Supporting Organization

1. Avoid Private Foundation Taxes and Administrative Requirements

By being rid of its private foundation status, a supporting organization is free from private foundation excise taxes and administrative requirements of a non-operating private foundation.

2. Greater Tax Benefits for Donors

A donor to a supporting organization can frequently claim greater tax benefits than if the same property was given to a private non-operating foundation:

- i. A larger tax deduction for gifts of real estate or closely held stock (fair market value vs. cost basis).
- ii. A larger deduction can be claimed each year, if the donor is subject to the annual charitable deduction limitation.

Section 2. *Process to Become a Supporting Organization*

The terms of the relationship to become a supporting organization of the Community Foundation and the benefits and services that one organization may provide to the other shall be mutually agreed upon by the governing bodies of both organizations.

The tax laws require that organizational documents (articles of incorporation or trust instrument) of the supporting organization must:

- (1) specify that the Community Foundation will be the supported organization and
- (2) specify charitable purposes that are supportive of, and not broader than, those of the Community Foundation. In addition, the supporting organization's activities must support the Community Foundation. This does not mean that the supporting organization must pay all (or any) of its income to the Community Foundation. It may, instead, make grants to other charities and for charitable programs that are in furtherance of the Community Foundation's charitable purposes.

Section 3. *Termination of Relationship*

Either the Board of Directors or the Governing Body of the supporting organization may terminate the relationship upon such notice as is prescribed in the agreement between the Community Foundation and the supporting organization. Termination may cause the supporting organization to lose its public charity tax status and be reclassified as a non-operating private foundation.