



## **PROCEDURES & GUIDELINES**

### ***FOR THE ESTABLISHMENT AND OPERATIONS OF DONOR ADVISED FUNDS***

The following policies and procedures have been established for Donor Advised Funds in a manner consistent with the mission of the Foundation and in keeping with applicable federal legislation and IRS regulations. We share them with you.

1. Donor Advised Funds are component funds of the Foundation. They are the property of the Foundation and are subject to the terms and conditions of its governing instruments. New funds must be accepted by the Foundation's Board of Directors and grants recommended from Donor Advised Funds must be ratified by the Board of Directors.
2. A donor-advisor may submit grant recommendations for a fund. Such recommendations will be given careful attention. They must be advisory, however, and may not bind the Foundation's Board which, by law, has final authority to determine the use and distribution of all of the Foundation's funds and assets. Recommendations will be evaluated by Foundation staff to determine if they are consistent with the broad charitable purposes of the Foundation and if recommended grantees are eligible to receive charitable distributions. From time to time, the Foundation may call advisors' attention to special community needs and programs and invite participation in special program initiatives. A recommendation must be made from a Donor Advised Fund at least once every three years.
3. The Foundation is intended to be the source of permanent charitable capital for the community. A Donor Advised Fund may be created as 1) endowment (spending only the income based on the Foundation's spending policy); 2) as a quasi-endowment in which case the donor-advisor designates a portion of the fund as spendable, provided the fund minimum, as determined from time to time by the Foundation's board, is always maintained; or 3) as an expendable fund in which no minimum balance is required. Currently \$10,000 is the required minimum to start and maintain in the fund.

### **(GRANTS)**

1. Grants from Donor Advised Funds are to be made only to nonprofit organizations exempt from Federal taxation under section 501(c)(3) and 509(a)(1) or (2) of the Internal Revenue Code for a charitable purpose and may not be made to, or for the benefit of, an individual.
2. Donor Advised grants are to be made primarily to agencies and institutions located within the United States of America. Grants cannot be made to foreign charities unless they have an IRS determination letter or a domestic partner.
3. Grants may not be used to satisfy a personal or pre-existing pledge made to a charity by the donor, advisor or other disqualified person. (*By law, a "disqualified person" includes a relative, employee, business partner, attorney or designee of the donor.*)
4. Recommendations to not grant from the fund for greater than 3 years must be approved by the Board of Directors.
5. Federal legislation prohibits a Donor Advised Fund from making grants, loans, compensation or similar payments (including expense reimbursements) to donors, advisors or other disqualified

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persons. Nor shall any disqualified person receive more than “incidental benefit” from a fund or from any grant recipient receiving a distribution from the fund. Thus, grants from Donor Advised Funds may not be used to pay for anything that might be perceived as a material benefit to the donor, advisor or other disqualified person – including dinner tickets, membership fees, golf fees, admission tickets or other gifts. If sponsorship of a fundraising event includes a material benefit, a grant from a Donor Advised Fund cannot be used for this purpose. Further, the IRS has taken the position that the charitable and non-charitable portion of a ticket are inseparable and the donor-advisor cannot correct the private benefit problem by offering to pick up the “non-charitable” portion of the ticket. Community foundation grants must be entirely for charitable purposes.

6. Unless the donor wishes to remain anonymous, the Foundation identifies to the grantee (recipient organization) the name of the fund from which grant is made and the donor who made the recommendation.
7. Advisors are requested to make recommendations of grants in the amount of \$250 or more.

### **(ADVISOR)**

1. The Donor/s has the right to serve as advisor to the fund or appoint a designee. In the event the donor advisor cannot or does not wish to continue acting as advisor, he/she may appoint a substitute or successor advisor – from children, family members, or a trusted friend, not to exceed one generation. Upon the death of the successor advisor, the fund becomes a permanent endowment of the same name which will be unrestricted, unless the Donor has applied a use restriction in the original fund agreement.
2. Grant recommendations shall be submitted in writing by the donor advisor via a personal letter or through a Grant Recommendation Form. Upon review and approval, a grant will be made to the recipient (s). Checks are sent acknowledging the fund and Donor.

### **(OTHER TERMS)**

1. The fund will be subject to an administrative fee as established from time to time by the Board of Directors. A copy is available upon request.
2. All funds are subject to the terms and conditions of the Foundation’s governing instruments, as amended. The governing instruments provide that the Foundation has the power to modify and vary any donor restriction in the event the restriction becomes unnecessary, incapable of fulfillment or inconsistent with the charitable needs of the community.

### **Donor Advised Fund Guidelines**

Definition under the [Pension Protection Act of 2006](#), a DAF is defined as a fund or account:

- (i) which is separately identified by reference to contributions of a donor or donors,*
- (ii) which is owned and controlled by a sponsoring organization, and*
- (iii) with respect to which a donor (or any person appointed or designated by such donor) has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in such fund or account*

### **EXCESS BUSINESS HOLDINGS**

The Pension Protection Act of 2006 amended section 4943 of the Internal Revenue Code to limit

ownership of closely-held business interests in a donor advised fund. A fund's holdings, together with the holdings of disqualified persons (donor, advisor, members of their families and businesses they control) may not exceed any of the following:

- 20% of the voting stock of an incorporated business;
- 20% of the profits interest of a partnership, joint venture, or the beneficial interest in a trust or similar entity;
- Any interest in a sole proprietorship.

These limitations do not apply if the donor-advised fund holds an interest that does not exceed two percent of the voting stock and two percent of the value of the business.

Donor-advised funds receiving gifts of interests in a business enterprise have five years from the receipt of the interest to divest holdings that are above the permitted amount, with the possibility of an additional five years if approved by the Secretary of the Treasury. To prevent a violation of these rules, it is the Foundation's policy is to divest itself of such holdings within five years from the date the Foundation acquired the asset. If that is not possible, the asset will be transferred to a new or existing fund that is not an advised fund.

Because they are not "business enterprises," the rule will not apply to most gifts of real property, although undeveloped land may become a business enterprise under some circumstances. Interests in investment partnerships and LLCs—including family partnerships, hedge funds, REITs, and so forth—are excluded from the definition of business enterprise as long as 95 percent or more of the entity's income is from passive sources. Examples of other property gifts that are excluded because they are not business enterprises include: oil and gas interests (non-working); life insurance; tangible personal property (as long as it is not inventory); and remainder interests in personal residences and farms.

### **General Information & Benefits**

- Donor Advised Funds at a community foundation, such as the Central Kansas Community Foundation, enable charitably inclined individuals to play an active role in grant-making without incurring the paperwork, taxes and administrative expense of maintaining a private foundation.
- Donor Advised Funds can be established by an individual or couple, a family, a business or any other group of people with shared charitable interests.
- Donor Advised Funds allow Donors to personally receive a tax deduction, and at the same time benefit their community by advising the Foundation of their charitable intentions in perpetuity. Worthy of noting is **the exception** to receiving a receipt for a tax-deductible contribution:

**Required Minimum Distribution.** A Required Minimum Distribution (RMD) is the minimum amount one must withdraw from their account each year. They generally have to start taking withdrawals from your IRA, SEP IRA,

SIMPLE IRA, or retirement plan account when you reach age 70½. *Roth IRAs do not require withdrawals until after the death of the owner.*

Presently, retirees can give up to \$100,000 to charity tax-free from an IRA and have it count as their required minimum distribution (RMD) for the year. However, this has not been allowed for Donor Advised Funds. Please consult your tax advisor and investment manager regarding the current rulings from IRS.

- Donor Advised Funds give Donors the opportunity to work with the Foundation's professional program staff in making grant decisions. Staff members are knowledgeable about the needs and resources of our area and can help you request and evaluate proposals or explore new areas of grant making.
- The names of Donor Advised Funds are identified to grantees, unless request to remain anonymous.
- As is true of all funds of the Central Kansas Community Foundation, Donor Advised Funds are considered component funds of the Foundation. They are subject to the terms and conditions of its Articles of Incorporation. Donor Advised Fund guidelines are subject to change from time to time by approval of the Foundation Board of Directors and regulations of IRS.

### **Establishing a Fund**

A Donor Advised Fund at Central Kansas Community Foundation is established in three steps:

1. The Donor/s and a representative of the Foundation review terms and sign a fund agreement
2. The Foundation's Board or Executive Committee approve the creation of the Fund.
3. Assets are transferred to the newly created Fund.

It is advised that a Donor Advised Fund is established with no less than \$10,000. The donation to establish a Fund can be made with a gift of cash, stock or other assets.

### **Fund Name**

Donors may determine the name of their Fund. Donor Advised Funds can carry the name of the Donor, family, company, or someone the Donor wishes to honor. All grants from the Fund are made in the name of the fund for the terms of its life. Generally, one additional generation of successor advisors. Donors who prefer anonymity can choose names that reflect their Funds' charitable purposes.

### **Endowments**

When establishing a Fund, you may choose whether to make it endowed or non-endowed. If it is endowed, only a fixed percentage as established by the Foundation Spending may be used for grants to charities or board-approved charitable initiatives. If it is non-endowed, the entire corpus may be used for grants. Endowments are designed to last in perpetuity while non-endowed funds may be completely depleted.

The original idea behind the creation of Central Kansas Community Foundation was to establish an endowment for the community to help future generations meet unforeseen community needs. It is in this spirit that Central Kansas Community Foundation encourages that Donor Advised Funds be endowed. However, it is important that you establish the fund that works best for you. For some donors,

that is a quasi-endowed or non-endowed fund.

### **Investments**

Donor Advised Funds are component funds of Central Kansas Community Foundation. As such, the Foundation's Finance/Investment Committee and Board determine how the funds are invested. Under the Foundation's unitized accounting system, each Donor Advised Fund is attributed a percentage share of a specific Central Kansas Community Foundation investment portfolio. This allows Donor Advised Funds to take advantage of lower money management fees, investment diversity, and investment vehicles that are available only to larger investors or foundations.

### **Grants and Distributions**

Grants from Donor Advised Funds must be recommended in writing, according to the process established and approved through the Fund agreement. The Central Kansas Community Foundation provides a grant recommendation form. Grants can be recommended at any time and are almost always acted upon within one week or less. Upon request, the Foundation will research prospective grantees.

Under applicable tax rules, all grants must be approved by Central Kansas Community Foundation. Grant recommendations by donors will, in each case, be evaluated independently by the Foundation staff to determine if they are consistent with the purposes of the Foundation and of the particular Fund and whether they meet the needs of the community as identified by the Board of Directors. The staff and Board of Directors will give the Donor's recommendations careful and thoughtful consideration. Donors should understand that their recommendations are advisory in nature and will not be binding on the Board of Directors, which legally must retain final responsibility for all distributions made from the Foundation.

No distributions may be made from the Fund to private non-operating foundations, nor will distributions be made to satisfy a legally enforceable pledge or obligation of any person, including the Donor. No Donor, Donor-Advisor, or related party may receive more than an incidental benefit from a Fund distribution including, but not limited to, a grant, loan, compensation, expense reimbursement, or similar payment. The IRS prohibits Donor Advised Funds from making distributions to individuals or distributions to entities for the benefit of a specified individual.

Donors may recommend a grant to any **qualified** charity, regardless of its location. For the purposes of distribution, a **qualified** public charity is any tax-exempt charitable organization that meets the qualifications set forth by sections 170(c) or 501(c)(3) and 170(b)(1)(a) of the Internal Revenue Code.

The Central Kansas Community Foundation strongly recommends that the minimum amount for a grant from a Donor Advised Fund shall be \$250. The Foundation's grants made from unrestricted funds over the previous five years shall be evidence of the needs and the organizations the Foundation has found most deserving of support.

If a Donor-Advisor or Designee-Advisor has not submitted recommendations for three years, the Foundation may deem that the Donor or Designee-Advisor has no further interest in advising with respect to the Fund. At that time, the Board of Directors will use its own discretion in allocating such funds in a manner that is consistent with the mission of the Foundation and with the intent of the particular Fund.

The Foundation staff will attempt to have director contact at least annually with Donor-Advisors in order to review the recommended annual grant distribution amount from the Donor Advised Fund. In addition, the Foundation staff will collect information on nonprofit organizations of interest, the

programs they offer, opportunities for support, and provide suggested uses for Donor grant recommendations.

### **Additional Contributions**

Contributions to the Fund can be made at any time, in any amount, by anyone.

### **Fund Raising**

Donors sometimes want to raise money to add to their advised funds. The Foundation's policies on fundraising are in the Event/Fundraising Policy and Procedures document. Available upon request. Fundraising, if permitted, must strictly adhere to the guidelines in the policy and to any additional restrictions imposed as a condition of the Foundation's consent.

### **Reports**

Donors will be provided online capability to Donor Central which allows them access to fund balance and quarterly financial statements once a fund agreement is in place. Donor Central provides details of fund activity including market values of their Fund, gifts and grants made to the Fund during that quarter, and any administrative charges. The Foundation provides for all accounting, auditing, and tax returns regarding the Fund.

### **Publicity and Acknowledgments**

Funds can be as public or as anonymous as the Donor desires. Some Donors want complete anonymity. Typically, the Foundation's Annual Report lists each Donor Advised Fund and the agencies (with or without specific dollar amounts) that received grants. When a grant is awarded, all grantees are notified of the Donor unless the Foundation is requested to keep the Donor's identity confidential.

### **Fees**

The Foundation assumes a fee for Donor Advised Funds for the administrative services it provides. A fee schedule is available upon request to the foundation as they are subject to change.

### **Termination**

The Foundation recommends that all Donor Advised Funds terminate at some point. We recommend that the duration of the Advised Fund be no longer than 30 years or, if shorter, the lifetimes of the donor and spouse. In any event, no Fund may continue as an Advised Fund past the lifetime of the last survivor of the youngest generation of the Donor's family that has members now living.

### **Private Foundations vs. Donor Advised Funds**

Many donors who previously gave through their own private foundations are now closing their foundations and contributing to their causes through Donor Advised Funds, according to Wall Street Journal article published in November 2009.

The number of Donor Advised Funds --- charitable giving vehicles administered by a third party and created for the purpose of managing charitable donations on behalf of an organization, family, or individual --- has increased significantly the past decade. The increase popularity of Donor Advised Funds is due to their significant advantages to donors over private foundations, such as the following:

1. **Lower Cost.** Running a private foundation can be expensive because it involves paying lawyers, accountants, office supplies and sometimes even a staff. Donor Advised Funds avoid having to pay for such overhead costs. Also, because Donor Advised Funds are part of a large pool of money, they incur lower investment fees than small private foundations, which have few assets. Cost can be an important

factor for donors.

2. **Less Hassle.** A related upside of giving through a Donor Advised Fund is that the donor can avoid the significant amount of work involved in running a private foundation. Tasks such as filing paperwork, researching potential recipients, conducting due diligence of donations and managing staff are taken care of by the administrators of Donor Advised Funds.

3. **Tax Advantages.** While donors to both a Donor Advised Fund and a private foundation get an immediate tax deduction when they make a charitable contribution, deductions to donor- advised funds are more substantial because donors can deduct cash contributions to a fund totaling up to half of their adjusted gross income each year while the limit for donations to a private foundation is 30%. Similarly, donors to a Donor Advised Fund can deduct up to 30% of their annual gross income for donations of securities that have appreciated in value since acquired by the donor, but for a donor to a private foundation, the limit for such donations is only 20%. Finally, investment gains in an account at a Donor Advised Fund are generally free of tax whereas a private foundation's investment gains are subject to an excise tax. Tax Code consideration have become heightened in our current Administration. These deductions presented herein may change and it is the responsibility of the Foundation to adhere to current laws and regulations, as implemented.

4. **Flexibility.** Private foundations are required by the IRS to make annual distributions totaling 5% of their total assets. Donor Advised Funds are under no such obligation. This flexibility can be important to donors when the value of their assets has decreased. Similarly, once a private foundations' founder passes away, surviving family members may disagree on the direction of foundation should take. By dividing the private foundation's assets among several accounts at a Donor Advised Fund, money may be used to accomplish difference goals.

5. **Privacy.** Information about Donor Advised Funds is not made public and donations to such funds can be made anonymously. Private foundation's tax forms, on the other hand, are public documents and the details of the foundation's operations and some personal information may be available to the public.

## **Comparison of Private Foundations to Donor Advised Funds**

| <b>COMPARISON</b>  | <b>DONOR ADVISED</b>  | <b>PRIVATE FOUNDATION</b>   |
|--|---|---|
| <i>Creating the foundation</i>   | Established through the Central Kansas Community Foundation   | Non-profit corporation or trust organized as a private foundation   |
| <i>Tax-exempt status</i>   | Shares the public charity tax-exempt status of CKCF   | Must apply for tax-exempt status from the IRS   |
| <i>Start-up costs</i>  | No cost to the donor  | Similar to corporate start-up requiring substantial legal, accounting and operational start-up costs  |
| <i>Recommended size</i>  | \$25,000 - \$10,000,000   | Substantial assets required   |
| <i>Charitable deductions – cash gifts and appreciated stocks</i>                 | Tax deduction of up to 50% of adjusted gross income. Stock is deducted at its fair market value as of the date it is received by CKCF | Tax deduction is limited to 30% of adjusted gross income  |
| <i>Charitable deductions – appreciated real property</i>                         | Tax deduction available for full market value. Tax deduction available up to 30% of adjusted gross income                             | Tax deduction may be taken for fair market value of marketable securities. Tax deduction for other property is limited to the lower of cost or fair market value and is limited to 20% of adjusted gross income |
| <i>Donor Control</i>   | Donor makes grant recommendations to protect tax deductibility, final oversight rests with CKCF                                       | Donor retains complete control over investments and grant-making subject to IRS requirements  |
| <i>Public Disclosure</i>   | No required public disclosure, anonymity available  | Annual tax returns and filings must be open for public inspection   |
| <i>Self-dealing rules</i>  | Private foundation self-dealing rules to not apply  | Strict regulations prohibit most transactions between a private foundation and its donors (including related persons or corporations)   |
| <i>Pay-out requirements</i>  | Do not apply  | Must pay out for charitable purposes at least 5% of its asset value regardless of annual income   |
| <i>Administrative Concerns (personnel, facility, gift and grants management)</i> | Services provided by Central Kansas Community Foundation  | Must establish and/or obtain these services   |
| <i>Annual costs</i>  | Depends on type of fund established. Endowment funds typically pay 1-2% of the fair market value of the fund each year for admin fees | Administration can be costly  |

For further information, please contact Angie Tatro, Executive Director at 316.283.5474.

***The Central Kansas Community Foundation does not provide legal or financial advice. You are encouraged to contact your legal and financial advisors when considering establishing a fund or making a planned gift to The Central Kansas Community Foundation.***