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LAKE-SUMTER STATE COLLEGE  
ADMINISTRATIVE PROCEDURE

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TITLE: REAL ESTATE GIFTS

NUMBER: 1-04

REFERENCE: Rule 1.09

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The Foundation will seek legal advice prior to accepting a gift of property. The Foundation will recommend that prospective donors also seek independent legal counsel prior to entering into any transaction described herein.

**I. FINANCIAL CONSIDERATIONS**

The tax ramifications of the acceptance or sale of real estate by the Foundation will be considered from the standpoint of the Foundation and its nonprofit status and with respect to the position of the donor and/or beneficiary. The donor is responsible for obtaining advice on the tax ramifications for the donor.

- a. The Foundation will not accept gifts of real estate valued at less than \$5,000.
- b. An analysis of anticipated cash flows in any planned real estate acquisition will be conducted by the Foundation staff (with the assistance of such real estate professionals as necessary) and reviewed by the College. The cash flow calculations will be analyzed to determine the maximum exposure that the Foundation may incur and the level of risk that will be associated with the receipt, ownership, and eventual sale of the property. Only after an analysis by the College of the cash flow will the transaction be presented to the Executive Committee for consideration.
- c. The Foundation will make every effort to secure all property free of debt obligation. However, the Executive Committee will consider transactions involving property in which a debt remains if there is income sufficient and available to be used under the terms of the transaction to service the debt in question. When a debt remains on non-income-producing property, the Foundation will not, as a rule, accept property with a debt greater than 50 percent of its fair market value, unless the Foundation enters into an agreement with a donor that would obligate the donor to retain the responsibility for all of such a debt. The Foundation may consider accepting non-income-producing property with a debt for which the donor does not agree to continue to be responsible for, if the property is immediately marketable. In either case such a decision will be made only after the Executive Committee has reached an understanding with the holder of the debt regarding debt service that is in every respect acceptable to the Foundation.
- d. All taxes owed, assessments due, and other financial obligations on property, or that accrue between the time the property is donated and the donor as a contribution will pay the date it is liquidated.

- e. All transactions will be structured to provide the Foundation with the maximum flexibility regarding the disposition of the property. If the Foundation decides to retain ownership for a fixed period of time and to assume responsibility for such ownership, this decision will be the result of a complete and thorough analysis of the transaction and will be made only when retaining ownership of the property is in the best interest of the Foundation.

## II. INSPECTIONS AND APPRAISALS

- a. Any purchase contract will include a section on "Representations, Warranties, and Indemnity Concerning Hazardous Substances," in substantial conformity with the sample section on file with the Foundation and the College.
- b. The donor/seller will complete a "Hazardous Waste Affidavit", in substantial conformity with the sample section on file with the Foundation.
- c. An individual, with the appropriate expertise, will complete an "Environmental Site Inspection Checklist", form available on file with the Foundation.
- d. A purchase or gift of real estate will be declined if environmental contamination exists within the property, unless the contamination is corrected prior to the donation of the property.
- e. A Foundation Board member or staff member will physically inspect proposed acquisitions of property before recommending consideration of the gift to the Executive Committee. The Executive Committee may require such other physical inspections that include, but are not limited to, hazardous waste, flood plain and flood ways, wetlands, surveys, and/or engineering considerations. A Phase 1 and/or Phase 2 Environmental Study will be required prior to acceptance of the property, regardless of who pays for the study.
- f. The Foundation will encourage the prospective donor to secure an independent appraisal of the property proposed for donation. A qualified appraiser who has recognized experience and has regularly engaged in the business of real estate appraisals within the jurisdiction where the property is located should complete this appraisal.
- g. The donor will provide the Foundation with essential information about the property, including survey, title searches, and the like.
- h. The Executive Committee may, at its sole discretion, elect to accept the valuation of the donor's appraisal or, in the alternative, determine that it is in the best interest of the Foundation to secure its own independent appraisal(s) of the property. In such cases, the appraisal(s) made on behalf of the Foundation will, whenever possible, be performed by a qualified appraiser who has at least two years of appraisal experience within the jurisdiction where the property is located.

- i. The Executive Committee will, if appropriate, conduct an investigation of the property and property values in the area through discussion with knowledgeable professionals such as other appraisers, attorneys, bankers, and real estate brokers before making the final recommendation on the proposed acquisition.
- j. Before recommending the acceptance of a gift of real estate, the Executive Committee may require background information about the conditions for its sale on the open market. This requirement will be particularly important in the case of commercial or development real estate. Questions relating to zoning, sewer and water acquisitions, access, easements, freedom from toxic waste, wetlands, and other considerations that may influence or limit the development potential of the real estate will be answered as fully as possible through professional inspections and studies prior to the Foundation's acceptance of the gift.

#### **VII. TRUSTS, ANNUITIES, LIFE ESTATES, AND TESTAMENTARY**

- a. Payout rates for unitrusts and annuities will be based upon fair market competition and will, in general, be tied to a reasonable percentage of the net proceeds from the sale of the property. In any event, the transaction will be based upon the conservative assessment of historically reasonable investment returns, the nature and size of the transaction, and any restraints of management that may be applicable.
- b. Where lifetime annuities or trust payments will be made, deriving from a gift of real estate, these agreements will not, in general, be written with beneficiaries younger than 55. In cases involving younger beneficiaries, all efforts will be made to limit the payout to a fixed term of years with a 20- year maximum.
- c. Whenever possible, unitrusts with an income-only limitation on payout will be preferable to annuities or annuity trusts, unless the immediate marketability of the real estate is fairly certain. However, if the donor requests a fixed guaranteed return, the Foundation staff can take the donor's priorities into account in accessing the merits of a given transaction, pending approval of the Executive Committee.
- d. The Foundation may accept property for which the donor retains a life estate for one or more beneficiaries. In such case, expenses for maintenance, real estate taxes, or indebtedness related to the property will normally be borne by the donor or the primary life estate beneficiary. Prior to accepting the property the Foundation shall state in a written agreement the terms under which the property will be accepted, including the obligation on the part of the donor to maintain the property at a mutually agreed upon level.
- e. A gift of real estate may be accepted by the Foundation as a result of a testamentary disposition. However, the Foundation reserves the right to decline such a bequest if acceptance of the property is not in the best interest of the Foundation or the College.

**XII. INSURANCE**

- a. The Foundation will obtain title insurance on the full amount of the gift value of real estate.
- b. The Foundation will obtain property insurance that is reasonably sufficient to cover casualty losses usually the subject of insurance. It will be determined if any improvements are located in H.U.D. designed flood areas, and flood insurance will be obtained when indicated.

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