

GIFT AND BEQUEST ACCEPTANCE POLICIES OF THE ORTHODOX CHURCH IN AMERICA

Adopted at the Spring 2018 Metropolitan Council meeting and Blessed by the Holy Synod at the Spring, 2018 meeting



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The Orthodox Church in America, (hereinafter referred to as the “Church”), a religious corporation incorporated in the State of New York and a not-for-profit entity recognized by the IRS as a tax exempt organization, encourages the solicitation and acceptance of *inter vivos* gifts and testamentary bequests (“gifts”) to the Church for purposes that will help the Church to further and fulfill its mission. The following policies describe the process and standards by which proposed *inter vivos* gifts and testamentary bequests to the Church or for the benefit of any of its programs, congregations and special ministries, are to be evaluated prior to their acceptance.

I. Purpose of Policies

The Church may solicit *inter vivos* gifts and testamentary bequests (“gifts”) from individuals, corporations, and foundations to secure the future growth and mission of the Church. These policies govern the process and define the standards for the review of such prospective gifts prior to their acceptance by the Church. The kind and character of the asset proposed as a gift and the form of the proposed gift will affect the review process undertaken by the Church. These policies are also intended to guide prospective donors and their advisors when considering an *inter vivos* gift or testamentary bequest to the Church. The provisions of these policies shall apply to all such gifts to the Church for any of its programs or services. It is also recommended that all individual dioceses, parishes and institutions adopt a similar policy in order to protect the status and integrity of the Orthodox Church in America or OCA and its clergy and the tax exempt status of the Church, diocese and parish. These policies shall be posted on the OCA website for transparency and for guidance for any potential donors.

II. Advice of Legal Counsel and Avoiding Conflicts of Interest

A. The Church shall initially seek the advice of the General Counsel of the Church in matters relating to the acceptance of proposed *inter vivos* gifts or testamentary bequests, when appropriate. There also should be a general review by the Finance Committee of the Metropolitan Council, when appropriate. Review by the General Counsel is recommended for:

Gifts of closely held stock that is subject to transfer restrictions or a buy-sell agreement;

Gifts involving contracts, such as bargain sales or other stipulations requiring the Church to assume an obligation;

Transactions with potential conflicts of interest that may invoke IRS sanctions;
and

Other instances in which the advice of counsel is deemed appropriate

B. The Church shall encourage potential donors of *inter vivos* gifts or testamentary bequests to seek independent professional counsel to represent the donor's interests and to explore the alternatives, costs, tax benefits and obligations of potential gifts. The Church shall have no responsibility to provide, and shall not provide, any technical, legal or tax advice or opinions to the potential donor or any opinion as to the resulting tax and estate planning consequences to the potential donor.

C. The Church must determine and confirm, in all instances, that any proposed gift does not violate the legal, financial, ethical and moral teachings of the Church. No gift shall put the Church in an adverse or potentially embarrassing situation and should consistently reflect the teachings and moral obligations of the Church.

III. Unrestricted and Restricted Gifts

The Church will accept unrestricted *inter vivos* gifts and testamentary bequests, and such gifts for specific programs and purposes, provided that such gifts are not inconsistent with its stated mission, purposes, policies and priorities. The Church will not accept such gifts that are overly restrictive in purpose and intent. Gifts that are overly restrictive are those that are inordinately difficult or costly to administer or evaluate, or gifts that are for purposes outside the scope of the mission of the Church. Members of the Metropolitan Council's Finance Committee and General Counsel will review all such restricted *inter vivos* gifts or testamentary bequests and make appropriate recommendations to the Church in this respect.

IV. The Finance Committee

A. The Finance Committee shall collaborate with the General Counsel of the Church to ensure the availability of appropriate expertise, requisite knowledge, and good judgment in the evaluation of *inter vivos* gifts or testamentary bequests.

B. The Finance Committee is charged with the responsibility of reviewing all major *inter vivos* gifts and testamentary bequests except personal gifts to the Holy Synod and Chancery staff. The purpose of the review by the Finance Committee is to properly screen such gifts for compliance with these policies and to make recommendations in this respect to the Metropolitan Council.

C. The Finance Committee will not have authority to bind the Church contractually without express prior written authority from the Metropolitan Council on the advice of the General Counsel of the Church.

V. Types of Gifts

A. The Church will generally accept unconditional gifts of cash and unencumbered publicly traded securities.

B. *Inter vivos* gifts or testamentary bequests of real or personal property other than cash and publicly traded securities or gifts in a form other than unconditional are subject to the review of the Finance Committee of the Metropolitan Council.

C. The following criteria guide the acceptance of each gift:

(1) *Cash and Publicly Traded Securities.* Cash and publicly traded securities are acceptable in any form. As a general rule, all marketable securities shall be sold upon receipt unless otherwise directed by the Finance Committee and deposited in the general account until

such time that the Metropolitan Council decides on the use of those funds or they are placed in a restricted fund if it is the desire of the donor. In some instances marketable securities may be restricted as to transfer by applicable securities laws; in such instance the Finance Committee will make recommendations on the acceptance of the restricted securities.

(2) *Tangible Personal Property*. *Inter vivos* gifts or testamentary bequests of tangible personal property shall be examined in light of the following criteria:

- a. Does the property fulfill the mission of the Church?
- b. Is the property marketable?
- c. Are there any undue restrictions on the use, display, or sale of the property?
- d. Are there any carrying costs or other liabilities for the property?
- e. Is the property's value ascertainable?

The Finance Committee shall make recommendations as to the acceptance by the Church of tangible personal property gifts or bequests.

(3) *Closely Held Securities*. Closely held securities, which include not only debt and equity positions in non-publicly traded companies but also equitable interests in limited partnerships and limited liability companies or other ownership forms, may not be accepted by the Church without the review of the Finance Committee.

The Finance Committee shall review the facts and circumstances of each individual proposed gift or bequest to determine the following:

- a. Are there any restrictions on the security that would prevent the Church from converting the security to cash?
- b. Is the security marketable?
- c. Will the security generate an undesirable tax consequence for the Church?

If potential problems are identified on the initial review of the security, further review and recommendation by an outside professional may be sought before making a final decision on the acceptance of the closely held stock as a gift or bequest to the Church as recommended by the Finance Committee. The Finance Committee, if appropriate, shall make a recommendation on the acceptance of closely held securities as a gift or bequest to the Church. Every effort will be made to sell non-marketable securities as quickly as possible.

(4) *Real Estate*. *Inter vivos* gifts or testamentary bequests of real estate may include developed property and undeveloped property. All gifts or bequests of real estate interests may be evaluated and inspected by an authorized representative of the Finance Committee prior to acceptance. Such inspection is to ensure there are no unexpected costs, issues or ramifications in accepting the property. The Finance Committee shall make a recommendation as to how what to do with the property and the time frame.

Prior to acceptance by the Church of real property as an *inter vivos* gift or testamentary bequest, the following information should be provided by the donor:

- a. A map showing the location of the property

- b. A legal description of the property
- c. Proof of marketable title and ownership
- d. A registered land surveyor's survey of the property
- e. A list of improvements
- f. Copies of current leases and persons in possession, if any
- g. A list of encumbrances, including deed restrictions or covenants, liens/*lis pendens* and current expenses, if any
- h. A copy of current year's tax bill
- i. A notice of pending assessments
- j. Proof of payment of taxes, assessments, and association fees, if any
- k. A copy of title insurance policy or a recent title insurance commitment, including copies of all documents shown as exceptions to title on the report
- l. A recent appraisal or other acceptable valuation, which will be attached to the donor's IRS Form 8283
- m. A written statement from the donor identifying any known waste disposal sites or spills of hazardous waste material on the property, or a statement to the contrary
- n. A written statement from the donor outlining the purposes of gift, including gift restrictions, if any
- o. An pertinent insurance documents
- p. A Phase 1 environmental assessment or audit as relevant

Prior to acceptance of the real property as a gift or bequest, the gift or bequest must be recommended by the Finance Committee and the Church's General Counsel. Criteria for acceptance of the property shall include satisfactory answers to the following questions:

- a. Is the property useful for the purposes of the Church?
- b. Is the property marketable?
- c. Are there any restrictions, covenants, reservations, easements, or other limitations on use associated with the property?
- d. Are there carrying costs, which may include insurance, property taxes, mortgages, or notes, associated with the property?
- e. Does the environmental audit reflect that the property has liability issues?

(5) *Remainder Interests in Property.* The Church may accept as a gift or bequest a remainder interest in a personal residence, farm, ranch, vacation property or other real property subject to the provisions concerning real estate in paragraph (4) above. Other typical requirements of this type of gift or bequest may include the following:

- a. a stipulation that the donor or other occupants may continue to occupy the real property for the duration of the stated life or lives;
- b. insurance by life tenant will be required;
- c. upon the death of the life tenant or life tenants, the Church may use or sell the property as it deems appropriate; and
- d. during the life tenancy, expenses, including maintenance, real estate taxes, liability insurance, and indebtedness, shall be paid by the donor or life tenant, as the case may be.

(6) *Oil, Gas, and Mineral Interests.* The Church may accept oil and gas property interests, when appropriate. Prior to acceptance of an oil and gas interest the gift or bequest shall be recommended by the Finance Committee, and if necessary, by the Church's General Counsel. Criteria for acceptance of the property shall include satisfactory answers to the following questions:

- a. do the surface rights have an acceptable and reasonable value?
- b. Does the oil, gas, or mineral interest generate acceptable and reasonable income in royalties or other income?
- c. Are there any extended liabilities or other considerations that make receipt of the gift or bequest inappropriate?

An oil, gas, or mineral interest may only be accepted where there is an acceptable and reasonable plan to minimize potential liability and tax consequences as to the Church.

(7) *Life Insurance.*

- a. *Gift or bequest of Policy.* The Church must be named as both primary beneficiary and irrevocable owner of an insurance policy before a life insurance policy can be recorded as a gift or bequest. A gift of a policy is valued at the interpolated terminal reserve value, or cash surrender value on the date of the transfer of ownership. If the donor contributes future premium payments, the Church will treat the amount of the additional premium as a gift in the year in which it is made. If the donor does not elect to continue to make gifts to cover premium payments on the life insurance policy, the Church may continue to pay the premiums, convert the policy to paid-up insurance or surrender the policy for its current cash value, as the Church in its sole discretion deems appropriate.
- b. *Designation as Beneficiary of Policy.* Donors and supporters of the Church may name the Church as a primary beneficiary or a contingent beneficiary of life insurance policies. Such designations shall not be recorded as gifts to the Church until such time as the gift is irrevocable. Where the gift is irrevocable, but is not due until a future date, the present value of that gift may be recorded at the time the gift becomes irrevocable.

(8) *Retirement Plan Beneficiary Designations.* Donors and supporters of the Church may name the Church as a beneficiary of an individual retirement account, a 401(k) account, a 403(b) account or other retirement plan. Such designations will not be recorded as gifts to the Church until such time as the gift is irrevocable. When the gift is irrevocable, but is not due until a future date, the present value of that gift may be recorded at the time the gift becomes irrevocable.

(9) *Bequests.* Donors and supporters of the Church may make testamentary bequests to the Church under wills and trust instruments. Such bequests will not be recorded as gifts to the Church until such time as the gift is irrevocable. When the gift or bequest is irrevocable, but is not due until a future date, the present value of that gift may be recorded at the time the gift becomes by contractual provision or by operation of law irrevocable.

VI. Miscellaneous Provisions

A. Securing appraisals and legal fees for gifts or bequests to the Church. Generally, it will be the responsibility of the donor to secure an appraisal (where required), provide an environmental review (as appropriate) and retain independent legal counsel for all gifts or bequests made to the Church. Such measures shall be undertaken at the sole expense of the donor.

B. Acknowledgment.

(1) Valuation of gifts. The Church will acknowledge an *inter vivos* gift on the date the gift is completed at the fair market value for federal gift tax purposes. The Church will sign IRS Form 8283 as the recipient of a charitable gift as is required for a gift having a value in excess of \$5,000.

(2) Responsibility for IRS Filings upon sale of *inter vivos* gift items. The Church will file IRS Form 8282 upon the sale or disposition of any asset sold within two years of receipt by the Church when the value of the gift is more than \$5,000. The Church must file this form within 125 days of the date of sale or disposition of the asset.

(3) Adherence to U.S. Treasury Regulations. The Church will acknowledge all *inter vivos* gifts or testamentary bequests made to the Church for charitable purposes in accordance with the regulations issued by the United States Treasury Department.

C. Review of Pertinent IRS Publications. IRS Publication 561 *Determining the Value of Donated Property* and IRS Publication 526 *Charitable Contributions* shall be reviewed by the Finance and Legal Committees on a regular basis.

VII. Diocesan, Parish and Institutional *Inter Vivos* Gift or Testamentary Bequest Acceptance Policies

A. As it is commonplace for dioceses, parishes and institutions to receive *inter vivos* gifts as testamentary bequests, it is incumbent on each of these to adopt a similar gift and bequest policy which ensures that all gift and bequest reception is transparent and ethical. The diocesan, parish, and institutional policies may not be in contradiction to these adopted policies, the Statute of the Orthodox Church in America and all legal and financial requirements of the IRS. It is recommended that such policies are posted on the website of the organization for transparency and for guidance for any potential donors.

B. The gift and bequest policy should be adopted by the appropriate governing authority such as a diocesan council, parish council, etc. It should be periodically reviewed and updated with current IRS and OCA Gift and Bequest Policy regulations.

C. As a minimum, the policy should include the following

- a. Scope and purpose of the policy
- b. Governing authority and review process of the policy
- c. Guidelines for each category of gifts
- d. Guidelines for donors
- e. Any specific policy for the organization
- f. An acceptance paragraph stating when and who adopted the policy

D. In some cases, the organization may desire to set up a special committee for the review of gifts and bequests which may include persons with special and specific expertise in the area such as finance and legal.

E. All policies should be reviewed and approved by the hierarchical authority before it takes effect.

XIII. Changes to Gift and Bequest Acceptance Policies

Changes to, or deviations from, these Gift and Bequest Acceptance Policies may be made with the approval of the Metropolitan Council and the blessing of the Holy Synod of the Orthodox Church in America. All such changes shall be in writing.