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## Practice 5B: Accountability to Donors

- The land trust is accountable to its donors and provides written acknowledgement of gifts as required by law, ensures that donor funds are used as specified, keeps accurate records, honors donor privacy concerns and advises donors to seek independent legal and financial advice for substantial gifts.
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Strong relationships with donors are crucial to the land trust's fundraising success. Land trusts are accountable to their donors for how donated funds are spent. Thorough record-keeping practices are integral to donor accountability. This practice includes a reminder that federal law contains gift substantiation requirements (for gifts greater than \$250). Land trust solicitations must specify for what purpose funds are being raised, and then the funds must be used for that purpose. Likewise, donor-restricted funds must be used for the purposes indicated by the donor. Substantial gifts of cash or other assets can have significant tax and legal consequences for the donor; thus it is prudent for the land trust to advise potential donors to consult their attorney and financial advisor when considering such gifts.

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### Honoring the Donor

The land trust's relationship with its donors is critically important to the credibility and sustainability of the organization. [Independent Sector](#), in its [Statement of Values and Code of Ethics for Nonprofit Philanthropic Organizations](#), has several suggestions for respecting the donor. Its code states:

In raising funds from the public, organizations will respect the rights of donors, as follows:

- To be informed of the mission of the organization, the way the resources will be used and their capacity to use donations effectively for their intended purposes;
- To be informed of the identity of those serving on the organization's governing board and to expect the board to exercise prudent judgment in its stewardship responsibilities;
- To have access to the organization's most recent financial reports;
- To be assured their gifts will be used for the purposes for which they were given;
- To receive appropriate acknowledgement and recognition;
- To be assured that information about their donations is handled with respect and with confidentiality to the extent provided by the law;
- To expect that all relationships with individuals representing organizations of interest to the donor will be professional in nature;
- To be informed whether those seeking donations are volunteers,

- employees of the organization or hired solicitors;
- To have the opportunity for their names to be deleted from mailing lists that an organization may intend to share; and,
- To feel free to ask questions when making a donation and to receive prompt, truthful and forthright answers.

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## How Much Is Deductible?

A charitable gift can only be considered a deductible contribution when it is given with no anticipation of receiving—or commitment to receive—something of substantial value in return. It must be, in fact, a gift.

In recent years, the IRS and Congress have become concerned that 501(c)(3) organizations are not adequately informing their donors about the portion of the donation that can be legally deducted. As a result, taxpayers have taken deductions in excess of what the law allows. To remedy that problem, the IRS now requires that 501(c)(3) organizations establish the fair market value of those benefits (except those considered to be of “insubstantial value,” discussed below) and advise potential donors about the extent of a gift’s deductibility in their fundraising materials or solicitations.

Many organizations previously used phrases such as “fully deductible to the extent permitted by law”, to notify donors that the full amount of their contribution might not be deductible. The IRS no longer considers such phrases to be adequate.

If a donor makes a “quid pro quo” contribution (a payment to a charitable organization that is made partly in consideration for goods or services furnished to the donor by the organization and partly as a contribution to the organization), the donor can deduct only that portion of the contribution that exceeds the fair market value of a premium or other substantial benefit received.

### Defining “fair market value”

“Fair market value” is defined as the amount the item would be worth if it were sold to the general public; fair market value is *not* the cost to the charity to obtain that item. For example, membership dues are deductible to the extent that they exceed the fair market value of substantial membership benefits. If a land trust charged an annual \$30 membership fee—but provided members with a glossy, color nature calendar that is available to nonmembers for \$10—only \$20 of the membership fee would be deductible.

Similarly, if the trust held an annual dinner and dance for which it charged \$150—and the fair market value of the dinner and dance is determined to be \$100 based on prices for a similar evening at the same hotel—the donor may deduct \$50.

### Exceptions for insubstantial benefits

Certain benefits are considered by the IRS to be of “insubstantial value” and thus do not reduce the donor’s allowable deduction. To qualify for this exception, the contribution

must have been made in the context of a fundraising campaign in which the organization informed potential donors how much of their payment would be a deductible contribution. In addition, one of the following criteria must be met:

- **Basic maximums.** The premium's fair market value does not exceed 2 percent of the payment or \$79 (in 2003; this figure is adjusted annually by the IRS to account for inflation.), whichever is less.
- **Token items.** The payment is \$34.50 (in 1997) or more and the only benefits received in connection with it are "token items" (bookmarks, calendars, mugs, posters, t-shirts, etc.) bearing the organization's name or logo and costing less than \$8.00 (in 2003). Note that in this case the IRS allows the charity to use the *cost* to it of the item, not its fair market value.
- **Noncommercial newsletters.** The benefit is a newsletter that is not of commercial quality. "Commercial quality" is determined by such tests as whether a publication pays for articles, accepts paid advertising, appears on newsstands, etc.

In addition, certain membership benefits provided in return for an annual payment of \$75 or less are disregarded. They may include free or discounted admission to the organization's facilities or events, free or discounted parking, preferred access to goods or services, and discounts on the purchase of goods or services.

However, even when the benefits received are determined to be insubstantial, organizations must provide the following statements to donors:

Under IRS guidelines, the estimated value of [*insert the benefits received*] is not substantial; therefore, the full amount of your payment is a deductible contribution.

#### **Disclosure for "quid pro quo" contributions**

The law requires land trusts and other charitable organizations to provide a disclosure statement to donors who make a "quid pro quo" contribution in excess of \$75. To comply with this requirement, land trusts must:

- Inform the donor that the deductible amount of the contribution is limited to the amount of the payment that exceeds the value of the goods or services provided.
- Provide a good faith estimate of the value of those goods or services. This estimate should be based on an estimate of the fair market value of the goods or services, not the land trust's cost of providing them.
- Make the disclosure in a manner that is reasonably likely to come to the attention of the donor. Statements in very small print might not meet the requirement.

The statement may be provided in connection with soliciting the gift or upon its receipt.

However, for gifts of \$250 or more (discussed below), the statement must be included with the written substantiation of the gift.

A charity that fails to comply can be fined \$10 per contribution, with a cap of \$5,000 per fundraising mailing or event.

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## **Nondeductibility of Raffle Tickets, Etc.**

Many land trusts do not realize that payments that provide the donor just an *opportunity* to acquire something of value are not gifts. According to *How Much is Really Tax Deductible?*, published by the Independent Sector:

The IRS position is that no part of any payment for raffle, lottery, bingo game admission, or auction tickets, or admission tickets that make the donor eligible for a door prize is deductible, whether the donor “wins” or not. However, if the price of the individual ticket exceeds the fair market value of the item, the excess may be deductible. Donors making such contributions that carry a “chance” to acquire something of value—the opportunity to win a prize—are presumed by the IRS to have received full market value for their payments.

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## **Substantiating How Funds Are Spent**

Organizations use several approaches to help substantiate that they have spent funds for the purposes for which they were raised.

- **Financial statements.** As mentioned in standard 6, financial statements that clearly break out program expenditures are one tool for substantiating the use of funds from year to year. Land trusts should keep accurate records so that they can report to donors.
- **Thank you letters.** Land trusts should acknowledge gifts and thank the donors promptly. The acknowledgement should identify the amount received and reiterate the purpose for which it is to be used. This simple procedure documents, for both the land trust and the donor, the receipt of the funds and intention to use them as specified.

Thank you letters sent at other times of the year—for example, when a project is completed or at year’s end—provide another opportunity to communicate with donors about how their money was spent. Jerry Huntsinger, a direct mail veteran, advises:

The charity should be as objective and accurate as possible in reporting to donors exactly how it has used the money that has been raised. This kind of dialogue with the donor increases the average gift and tends to hold the donor for a longer period of time.

## Substantiating Gifts of \$250 or More

By law, donors must have written substantiation of gifts with a value of \$250 or more in order to qualify for a charitable deduction. While this is a requirement placed on the *donor*, not the donee, as a practical matter land trusts should provide donors with written documentation of their gifts and should inform them that they must retain this documentation to qualify for a deduction.

- The documentation may be provided when the gift is made or on a periodic basis (such as in an annual statement), but the donor must have the documentation before his or her tax return is filed.
- The documentation may be in the form of a letter, postcard or computer-generated receipt, but it must be written.
- The notice must include the donor's name and address. For cash gifts, it also must specify the dollar amount. For non-cash gifts, including land and conservation easements, it must describe the gift, but *no estimate of value is required*.
- The notice must include a description and good-faith estimate of the value of any goods or services provided in exchange for the contribution. If the donor received nothing in return for the contribution, the notice must say so.

The requirement applies to separate payments of \$250 or more; payments will not be aggregated for the purposes of applying the \$250 threshold unless there is evidence of an abuse. There are no legal penalties on the donee for failure to issue such a notice. However, a charitable organization that knowingly provides false written substantiation is subject to penalties for aiding and abetting an understatement of tax liability. Land trusts must also adhere to requirements for qualified appraisals and filing of [Form 8283](#) for non-cash gifts of \$5,000 or more. (See practice 10D for more on Form 8283.)

Also note that the legislative history to the substantiation requirement for gifts of \$250 or more does not expressly provide an exception allowing the charity to disregard token and insubstantial goods or services.

In the recent past, the IRS has targeted for audit those groups that have come to its attention as possibly misleading, or not properly informing, their donors about deductibility. It is important for land trusts to be sure to comply.

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## Links to Helpful Resources and Publications

- [Independent Sector](#) –committed to strengthening, empowering and partnering with nonprofit and philanthropic organizations in their work on behalf of the public good.
- [IRS Form 8283](#) – Noncash Charitable Contributions
- [Statement of Values and Code of Ethics for Nonprofit and Philanthropic Organizations](#), Independent Sector, 2004.

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