

# STUDIO MUSEUM IN HARLEM

## The Studio Museum in Harlem

### GIFT ACCEPTANCE POLICY

The Studio Museum in Harlem, a not-for-profit educational institution chartered under the laws of the State of New York, actively encourages and accepts gifts for purposes that will help the Museum achieve its mission. The Museum only accepts gifts and grants that are consistent with the laws and public policy of the State of New York and the United States, particularly the regulations of the Internal Revenue Service (IRS).

#### **I. Purpose of Gift Acceptance Policy**

The Board of Trustees of the Museum and the Museum's staff solicit current and deferred gifts from individuals, foundations, corporations and other entities in order to secure the ongoing growth and advancement of the Museum and its mission.

This Policy governs the acceptance of gifts by the Museum, other than works of art to be accessioned into the Museum's permanent collection, and is intended to ensure that (i) tax-deductible gifts are received in a manner that complies with IRS regulations and applicable law and does not jeopardize the Museum's tax-exempt status, and (ii) gifts accepted align with the Museum's mission and priorities and do not pose undue costs on or risks to the Museum. The Museum may, in its discretion, depart from or waive application of all or any portion of this Policy in its sole discretion, subject to the approval of the Board of Trustees upon recommendation of the Gift Acceptance Committee.

This Policy is also intended to provide guidance to prospective and current donors and their advisors when considering gifts to the Museum. The Museum cannot and will not, however, provide tax advice or similar advice. Donors must rely on their personal advisers for tax, legal, financial and estate planning advice concerning their gift.

#### **II. General Gift Acceptance Guidelines**

The Museum reserves the right to refuse or return any donation at any time in its sole discretion; and will refuse or return any donation that violates federal or New York state law.

Valuation of all gifts of property, other than cash or marketable securities, must be supported by an independent appraisal conducted at the expense of the donor.

### **III. The Gift Acceptance Committee**

The Gift Acceptance Committee will meet on an as-needed basis in order to formulate and make gift-related recommendations to the Board of Trustees. The members of the Gift Acceptance Committee are:

The Chair of the Board of Trustees

The Treasurer

A Trustee nominated by the Development Committee from among members of that committee and elected by the Board of Trustees

One or more Trustees-at-Large nominated by the Committee on Trustees and elected by the Board of Trustees

The Ford Foundation Director & Chief Curator

The Chief Advancement & External Affairs Officer

The General Counsel & Chief Operating Officer

### **IV. Restrictions on Gifts**

In addition to unrestricted gifts, the Museum will accept gifts that are earmarked for specific programs or purposes to the extent that such gifts are consistent with this Policy and the Museum's mission, purposes and priorities.

The Museum will not accept earmarked gifts (i) that violate the terms of its charter or any applicable law or regulation; (ii) that are difficult or burdensome to administer; (iii) that impose excessive costs, liabilities, risks or indebtedness; (iv) that subject the Museum to unusual restrictions or obligations; or (v) that are earmarked for purposes outside the scope of the Museum's mission. All decisions in this regard shall be made by the Board of Trustees based upon the recommendation of the Gift Acceptance Committee.

### **V. Endowments**

Due to the complexity, costs, and reporting requirements related to establishing and administering endowed funds, any proposal to or by a donor to establish a new, donor-restricted endowed fund requires the prior approval of the Gift Acceptance Committee and a minimum initial contribution of \$[5,000,000].

The Museum has established three endowed funds to ensure the Museum maximizes its ability to use investment returns that are generated from generous gifts that do not meet the above criteria. Donors wishing to make endowment gifts may restrict the gifts to one of these endowed funds:

- Sustainability Fund — The Sustainability Fund will be used to support the longevity of the Museum as an institution and the maintenance and operations of the new building facility, including but not limited to administration and visitor experience.
- Exhibition & Curatorial Fund — The Exhibition & Curatorial Fund will be used to support the Museum’s art exhibition and conservation functions including but not limited to exhibition production, collection management, publications, and the Artist-in-Residence program.
- Learning & Engagement Fund — The Learning & Engagement Fund will be used to support the Museum’s educational and community engagement functions, including but not limited to the Studio Museum Institute, youth, family, and senior arts workshops, school partnerships, and various public programming.

Endowments may be funded with outright gifts, including contributions to be paid in installments over time, up to a maximum of five years. Endowments may also be funded with deferred contributions from bequests, life insurance policies, retirement plan designations, charitable remainder trusts and similar instruments and arrangements. The principal of each endowment gift will be pooled and invested, and the income expended, in accordance with the Museum’s Investment Policy Statement and applicable laws and regulations.

## VI. Types of Gifts Accepted

The Museum will accept charitable gifts in a variety of forms including (but not limited to) the following:

- Cash
- Works of Art
- Tangible personal property, other than works of art
- Securities
- Real estate
- Bargain sales
- Life insurance
- Charitable remainder trusts
- Charitable lead trusts
- Charitable gift annuities
- Retirement plan beneficiary designations
- Testamentary bequests

a) **Cash.** Contributions will be accepted in cash, or by check payable to “The Studio Museum in Harlem,” credit card, wire transfer or ACH. Contributions may not be made through peer-to-peer payment platforms or cryptocurrency.

b) *Works of Art and Ephemera.* The determination of whether to accept a proposed gift of a work of art to be accessioned into the Museum's collection or a proposed gift of ephemera to be included in the Museum archives will be made by the Board of Trustees, upon recommendation of the Museum's Collection & Program Committee.

b) *Tangible Personal Property, Other Than Works of Art.* All tangible personal property offered for donation to the Museum will be examined in light of the following three criteria:

- Does the property align with the Museum's mission?
- Is the property marketable?
- Are there any carrying costs for the property?

Gifted tangible personal property that the Museum determines cannot be used to further the mission, purposes and priorities of the Museum, including works of art not suitable for inclusion in the Museum's permanent collection, will be converted into cash at the Museum's discretion. As such, gifts of tangible personal property may not contain any restrictions on the use, display or disposition of the gifted property.

c) *Securities.* The Museum will accept both publicly traded securities and closely held securities, on the following basis:

- **Marketable Securities.** Marketable securities (i.e., debt or equity positions in publicly traded companies having highly liquid markets that allow the securities to be sold at a reasonable price quickly without contractual or regulatory restrictions) may be transferred to an account of the Museum maintained at one or more brokerage firms or delivered physically with the transferor's signature or stock power attached. All marketable securities will be sold as soon as possible following receipt, and do not require approval by the Gift Acceptance Committee. For valuation and recognition purposes the Museum will account to the donor based on the average of the high and low value of the stock on the date of transfer.
- **Restricted or Closely Held Securities.** Securities that are subject to restrictions on sale, and ownership interests in non-publicly traded corporations, partnerships, or limited liability companies may be accepted subject to the approval of the Gift Acceptance Committee. Gifts of restricted or closely held securities exceeding \$10,000 will be receipted at the fair market value placed on them by a qualified independent appraiser, as required by the IRS. Gifts of less than \$10,000 may be valued at the per-unit cash purchase price of the most recent transaction. Gifts of restricted securities will be sold as soon as practicable after the restriction is lifted. Gifts of closely held securities will be held for a period determined at the discretion of the Investment Committee, at which time the funds will be used for a purpose

consistent with the gift intentions of the donor and the established policies of the Museum's Gift Acceptance Committee.

**d) *Real Estate.*** In rare instances, gifts of unencumbered real estate—which may include developed real property, undeveloped real property, or real property subject to a prior life interest—may be accepted by the Museum, subject to the approval of the Gift Acceptance Committee, which will consider the following criteria:

- Is the property useful for the purposes of the Museum?
- Is the property marketable?
- Are there any restrictions, reservations, easements, other limitations, or other unusual costs pending or anticipated litigation associated with the property?
- Are there carrying costs, which may include insurance, property taxes, special assessments, or utilities, associated with the property?
- Does the environmental audit reflect that the property is not subject to adverse environmental conditions?
- Are individual undivided interests attached to the property?
- Are the annual costs associated with carrying the property reasonable?

Prior to acceptance of real estate, the Museum may require the donor to conduct an initial Phase I environmental review of the property to ensure that the property has no adverse environmental condition or liability. If the initial inspection reveals a potential problem, the Museum will retain a qualified firm to conduct an environmental audit. The cost of the environmental audit will be charged to the donor.

When appropriate, a title binder will be obtained by the Museum at the donor's expense prior to the acceptance of the gift of real property.

The Board of Directors, upon the recommendation of the Gift Acceptance Committee, must approve the acceptance of any gift of mortgaged real property.

**e) *Bargain Sales.*** A bargain sale is a sale of property to the Museum for an amount less than the property's current fair market value, with the excess of the value over the sales price representing a contribution to the Museum. The Museum may enter into a bargain-sale arrangement, upon approval of the Gift Acceptance Committee, if the sale furthers the mission and purposes of the Museum, there is a clear intent to donate, and the gift interest represents at least \$100,000 and at least 50% of the fair market value of the property.

**f) *Life Insurance.*** The Museum may accept transfers of ownership of existing life insurance policies naming "The Studio Museum in Harlem" as the beneficiary. If premiums remain to be

paid, the donor must agree to pay the premiums directly, unless the Gift Acceptance Committee elects to waive this requirement. The Museum reserves the right to surrender a policy for a reduced cash value or to take other actions available to the owner of a policy at any time. The Museum will not accept ownership of policies subject to a loan or in connection with a “split dollar” or similar arrangement where the proceeds are to be divided between charitable and non-charitable interests.

**g) *Charitable Remainder Trusts.*** A charitable remainder trust is a separately administered trust established by the donor to provide for payments to the donor and/or one or more other named beneficiaries, either for life or a term of years, with the remaining trust assets to be distributed to one or more charities as the remaindermen. The Museum may accept a designation as remainder beneficiary of a charitable remainder trust with the approval of the Gift Acceptance Committee; *provided that* the Museum will not accept appointment as a trustee of a charitable remainder trust.

**h) *Charitable Lead Trusts.*** A charitable lead trust is a trust in which the income is paid to the charity and the remainder interest is given to one or more non-charitable beneficiaries. The Museum may accept designation as an income beneficiary of a charitable lead trust; *provided that* the trust term is subject to the approval of the Gift Acceptance Committee and that the Museum will not accept appointment as a trustee of a charitable lead trust.

**i) *Charitable Gift Annuities.*** The Museum will work on a case-by-case basis with a donor and the donor’s advisors to craft and consider annuities that meet the needs of the donor and, subject to the approval of the Gift Acceptance Committee, are acceptable to the Museum.

**j) *Retirement Plan Beneficiary Designations.*** The Museum accepts designation as a beneficiary of a retirement plan. Such designation will be recorded as a gift to the Museum at the present value of the gift, based on actuarial tables, calculated at the time it becomes irrevocable.

**k) *Testamentary Bequests.*** The Museum accepts bequests made through wills and estate plans. Such bequest will be recorded as a gift to the Museum at the present value of the gift, based on actuarial tables, calculated at the time it becomes irrevocable.

Sample bequest language for restricted and unrestricted gifts, including endowments, will be made available to donors and their attorneys to ensure that the bequest is properly implemented. However, such samples will be purely illustrative, and donors are urged to obtain the advice of a qualified attorney or other professional advisor to ensure that the bequest is structured so as to be effective and beneficial for both the Museum and the donor. Donors also will be invited to provide a confidential copy of the section of their will (or applicable testamentary instrument) naming the Museum as a beneficiary.

## VII. Donor-Advised Funds and Private Foundations

The Museum accepts gifts from donor-advised funds (DAFs) and private foundations. However, where benefits, including, but not limited to, membership, gala dinners, or other goods or services, are generally offered in return for a gift, the donor recommending a gift through a DAF or a private foundation must waive the benefits in writing. In addition, to be in compliance with IRS regulations, the Museum cannot accept bifurcated payments where one pays separately for the goods and services with a personal account. Funds from a DAF may be used to satisfy a pledge made to the Museum by a donor, provided no mention of the pledge is made in any documentation relating to the DAF grant.

## X. Receipts and Acknowledgments

All charitable gifts received by the Museum will be acknowledged in writing by the Museum, which acknowledgment will record the date, purpose and value of the gift. Acknowledgements are issued for gifts of the type that are eligible for charitable income-tax deduction under the applicable IRS regulations. Acknowledgments provided for gifts where the donor has received certain goods and services from the Museum in connection with the gift will include a description of such goods and services and will list both the deductible and non-deductible portions of the gift. No written acknowledgments are issued for gifts that fall within categories that are not eligible for charitable income-tax deductions, including, but not limited to, legal or other services donated to the Museum, loans of property to the Museum, free advertising, and discounts on rents or purchases.

## XI. Donor Recognition

Except as provided below, the Museum will publicly acknowledge each donor in all applicable circumstances in accordance with its standard practices based upon the amount and type of donation.

The Museum will assume that it has permission to publicly recognize each donor and the amount and nature of the donor's gift unless the donor requests otherwise. Donor requests for anonymity will be honored to the extent permissible under applicable law.

## XII. Naming Recognition

The Museum may from time to time, in its discretion, offer to donors in exchange for qualifying donations in an amount determined by the Museum the opportunity to name (i) physical spaces or physical features in the Museum building or another property occupied by the Museum, (ii) staff positions, or (iii) exhibitions or programs.

**a) *Qualifying Donations.*** Naming recognition will be granted only in exchange for qualifying donations. In order to qualify, a donation of cash or property having a minimum value equal to

the amount designated by the Museum must actually be received in full by the Museum or must be promised pursuant to an irrevocable, legally enforceable pledge agreement. Accordingly, donations that contemplate future payment by a donor-advised fund (DAF) will only qualify if the DAF itself enters into an irrevocable, legally enforceable pledge agreement sufficient to secure all payments in question.

The Museum may elect, in its discretion and as a courtesy, to reserve a naming opportunity in question for a donor, upon the following terms: (i) the naming obligation will become binding on the Museum only if and when the donation is completed or secured with a legally enforceable pledge agreement; (ii) if, during the reservation period, a second donor offers a qualifying donation, the Museum will provide the first donor with a period of 30 days to complete the donation or enter into an enforceable agreement; and (iii) if the first donor does so during this period, the naming opportunity will become a binding obligation (upon the Museum's standard terms); or, if the first donor fails to do so, the Museum will be free to cancel the first donor's reservation and to provide the naming opportunity to the second donor in exchange for the qualifying donation.

**b) *Naming of Physical Spaces & Features.*** Certain physical spaces and features in the Museum building or other properties occupied by the Museum may from time to time be made available to be named.

Naming recognition of physical spaces and features is subject to the following conditions:

- *DCA Approval.* The naming obligation is subject to the approval of the New York City Department of Cultural Affairs (DCA). The Museum shall promptly apply for such approval. If approval is denied, the Museum will negotiate with the donor on reasonable basis in an effort to amend the agreement so as to make it acceptable to the DCA. If this cannot be achieved within a reasonable period of time (not to exceed 90 days), the Museum will have the right to cancel the applicable pledge agreement.
- *Duration of Obligation.* The naming obligation will terminate 50 years after the date upon which the physical space or feature is first opened or occupied by the Museum.
- *Loss of Space or Feature.* If the space or feature is demolished or permanently taken out of service as a Museum facility, or if the Museum's right to occupy the space terminates without renewal, the naming obligation will be suspended. If a replacement space is constructed or occupied by the Museum, the Museum will use reasonable efforts to apply the name to a space or feature therein that is comparable to the original space or feature. The Museum will have no obligation to rebuild or replace the original space or feature.

- *Right to Alter.* The Museum will be free in its discretion to redecorate, renovate, repurpose, or otherwise alter the named space or feature. If the named space is repurposed, the Museum shall have the right to make reasonable adjustments to the name.
- *Signage.* Name-recognition signage and donor names will only be placed in locations that the Museum reasonably deems to be appropriate. Signage and other notices identifying or referencing the named space or feature will at all times be consistent with the Museum's standard styles and formats for such signage and notices. The Museum will be free to revise these styles and formats at any time.
- *Other Naming.* The Museum will be free in its discretion to grant similar naming rights to other donors with respect to other spaces or features within the same building or facility.

Donors granted naming recognition with respect to a space or feature will be publicly acknowledged as follows:

- Signage posted in reasonably prominent public location on or adjacent to the named physical space or feature.
- Credit in publications, online and collateral materials referencing programs held in the applicable named space or involving the applicable named feature.
- Oral acknowledgment as appropriate.
- Donations for which naming recognition of physical spaces or features is granted will be treated as unrestricted gifts to the Museum.

**c) Naming of Staff Positions.** Staff positions may be named, with the donated amount to be used to fund all or a portion of the applicable position. All staff, fellowship and internship positions are eligible for naming.

Naming recognition of staff positions may be granted in perpetuity, subject to the condition that, if the applicable position is eliminated or altered in the future, the Museum will have the right to select an alternate position that is not inconsistent with the donor's intent.

The donor will be acknowledged by name with respect to the applicable position as follows:

- Credit in publications, online and collateral materials when the applicable position is referenced.
- Oral acknowledgement as appropriate.
- Funds donated for named staff positions will be applied to the Museum's general endowment and will be invested as part of the overall portfolio. The income generated will be expended in conformance with the Museum's investment policy and gift-acceptance policy.

**d) *Naming of Exhibitions or Programs.*** From time to time, the Museum may offer to donors the opportunity to name exhibitions, publications, education and engagement programs, and public programs. If the donated funds are sufficient to fully fund the program, the donor will be granted exclusive naming rights. If the donated funding is not sufficient in this regard, the program may also be supported jointly with other named funders, with all supporting funders acknowledged in the manner determined by the Museum.

**e) *Grounds for Terminating Naming.*** If the donor fails to meet the donor's payment obligations under the applicable pledge agreement, or if the donor (or any person closely identified with the donor, such as a spouse, owner, founder, or chief executive) is convicted of a felony involving moral turpitude that could reasonably be expected to adversely affect the Museum's reputation, the Museum will have the right to temporarily or permanently (as the Museum determines in its discretion) suspend or terminate all naming recognition, including without limitation deleting the donor's name from applicable materials and signage.