Protecting Your Legacy

*A Wise Giver’s Guide to Honoring and Preserving Donor Intent*

By Joanne Florino with David Bass
Current Wise Giver’s Guides from The Philanthropy Roundtable

Protecting Your Legacy:
A Wise Giver’s Guide to Honoring and Preserving Donor Intent
By Joanne Florino with David Bass

The Fabric of Character:
By Anne Snyder

Uniform Champions:
A Wise Giver’s Guide to Excellent Assistance for Veterans
By Thomas Meyer

Learning to Be Useful:
A Wise Giver’s Guide to Supporting Career and Technical Education
By David Bass

Catholic School Renaissance:
A Wise Giver’s Guide to Strengthening a National Asset
By Andy Smarick and Kelly Robson

Clearing Obstacles to Work:
A Wise Giver’s Guide to Fostering Self-Reliance
By David Bass

Agenda Setting: A Wise Giver’s Guide to Influencing Public Policy
By John J. Miller and Karl Zinsmeister with Ashley May

Excellent Educators:
A Wise Giver’s Guide to Cultivating Great Teachers and Principals
By Laura Vanderkam

From Promising to Proven:
A Wise Giver’s Guide to Expanding on the Success of Charter Schools
By Karl Zinsmeister

Closing America’s High-achievement Gap: A Wise Giver’s Guide to Helping Our Most Talented Students Reach Their Full Potential
By Andy Smarick

By Laura Vanderkam

Serving Those Who Served:
A Wise Giver’s Guide to Assisting Veterans and Military Families
By Thomas Meyer

Karl Zinsmeister, series editor
For all current titles, visit PhilanthropyRoundtable.org/guidebook
# TABLE OF CONTENTS

**Preface** 7

## 1. An Introduction to Donor Intent 10
- The legacy of Julius Rosenwald
- Perpetuity and donor intent at the Duke Endowment
- When donor intent is lost
- Advice on donor intent from philanthropists and their observers
- Why donor intent matters
  - Sidebar: Separating donor intent and grant compliance
- Planning ahead

## 2. Defining Your Mission 20
- The ingredients of an effective mission statement
- Identifying operating principles
- Involving people you trust
- Supplementing your mission statement
- What a great mission statement can—and cannot—do

## 3. Choosing a Timeframe for Donating Assets 31
- Giving it all away while living
- Giving while living and time-limiting what remains
- The advantages of time-limiting your philanthropy
  - Sidebar: Model donor—Raikes Foundation
- When boards decide to sunset
- A final word on sunsetting
  - Sidebar: Model donor—John M. Olin Foundation
- Creating a perpetual entity
- Codifying donor intent after the donor’s death
  - Sidebar: Model donor—Lynde and Harry Bradley Foundation
- Donor intent in family foundations: A unique challenge
  - Sidebar: Tips for involving family while protecting donor intent
- When money and family collide
4. Finding the Right Vehicle For Your Mission

Private non-operating foundations
Sidebar: Selecting a jurisdiction for charitable trusts
Private operating foundations
Philanthropic LLCs
Sidebar: Domicile considerations: Where to incorporate?
Donor-advised funds
Community foundations
Supporting organizations
Philanthropic partnerships

5. Governance

Cultivating board members
Sidebar: Questions to ask prospective board members
Considering a tiered structure for your board
Compensating your board members
Setting time limits on board service
Planning for board succession
Establishing board policies to protect your intent
Establishing external safeguards for your intent
Achieving balance with your safeguards
Sidebar: The special governance challenge of living donors

6. Hiring, Operations, and Grantmaking Consistent with Donor Intent

Hiring staff for your mission
Establishing grantmaking principles and practices

7. Giving Wisely to Colleges and Universities

Wise giving in higher education
Sidebar: When donors demand accountability
Guidance for effective grantmaking in higher education
8. Recovering Donor Intent When Things Go Wrong 128
   Building on the bedrock of a donor’s principles: Daniels Fund
   The moral authority of a living donor: Atlantic Philanthropies
   Recovering a legacy for the future: Triad Foundation
   Precautions for recovering your intent

9. Conclusion 138

Acknowledgments 141

Index 142

About The Philanthropy Roundtable 150

About the Author 154
PREFACE

This new guidebook on protecting donor intent comes at a time when philanthropists are under attack. Some critics declare that philanthropy is, by nature, anti-democratic. Others propose checks on the ability of philanthropists to choose how their gifts will be deployed. Still others attack the concept of donor intent itself, arguing that it is a “dead hand” exerting control from the grave to enforce the original donor’s self-serving or outdated wishes, preventing philanthropists from being “held to account.”

These critiques have sometimes migrated from blogs and editorials into proposed legislation and regulations that would sharply curb the rights and freedoms of donors. In the mid-2000s, the Senate Finance Committee considered requiring “independent directors” on all private foundation boards, which would have interfered with foundations steered by family members or trusted associates. In 2008, the California Assembly passed legislation imposing demographic disclosure requirements on foundations, with the goal of redirecting gifts to politically favored causes. Similar legislation has been put on the table in other states. Calls to limit the charitable deduction to gifts that provide direct assistance to poor people, or follow other prescribed criteria, have introduced notions of “charitable hierarchy”—arbitrarily asserting that some causes are more worthy than others. Legislators and attorneys general in states across the country are advancing donor disclosure requirements that violate the First Amendment right to privacy in giving. The September 2019 wealth tax proposal of Emmanuel Saez and Gabriel Zucman—both of whom advised several 2020 Presidential candidates—urged that private foundations should be taxed “until the time such funds have been spent or moved fully out of the control of the donor.”

At The Philanthropy Roundtable, we believe that private philanthropy is an essential element of American freedom, and central to our greatness as a nation. The voluntary nature of charitable giving, and the sprawling diversity of individual interests it reflects, lie at the heart of cultural innovation in America. Respecting donors’ intentions for their gifts is an essential prerequisite for continued charitable giving, and for preventing giving from becoming homogenized and manipulated. Our flourishing, community-building philanthropy is utterly dependent on
keeping the trust of voluntary donors, during and after their lifetimes. Our charitable laws, regulations, and practices should support donor intent. Those charged with carrying out donors’ wishes bear an ethical obligation to do so to the best of their ability. And in a pluralistic democracy, where citizens are free to make their own decisions about the best ways to improve the well-being of society, the voluntary actions taken within civil society must be protected.

Donor intent is a moral issue, demonstrating respect for individual differences and choices. When we speak of protecting donor intent, we are not referring to a slavish adherence to minute details, but rather to a commitment to honor a donor’s principles, to maintain the integrity of his or her philanthropy over time. Donors must make their values and intentions very clear in their mission statements and in their interactions with governing boards and grantees. And those entrusted to carry out the details should be faithful to that trust.

To people suggesting that philanthropic gifts are “public money” because they receive government “subsidies” in the form of tax deductions and exemptions, we respond that those tax provisions are, in fact, not subsidies, but rather vital civil-liberty protections that insulate private giving from government control (though not from reasonable regulation). Evelyn Brody and John Tyler recognized this in our 2012 publication How Public is Private Philanthropy?, noting that “with the charitable deduction, the donor, not the government, decides whether to give at all, in what amounts and forms, to which qualified charities, and whether any designations or restrictions accompany the contributions.” There are also vital Constitutional reasons to resist the nostrum that charitable gifts should be governmentally controlled—see “Why is Charitable Activity Tax-Protected? (Think Freedom, Not Finances)” in The Almanac of American Philanthropy.

We hope that this guidebook encourages donors to think carefully about how they deploy their gifts, and provides them with useful guidelines for making sure their philanthropy accomplishes the good they intend.

Adam Meyerson
President, The Philanthropy Roundtable