

Guide to Deeds of Gift

Donors of historical materials are individuals or organizations that give materials to manuscript repositories, archives, historical societies, or special collections libraries. Donated materials often include papers and records documenting personal lives and family history, or the history of organizations, such as businesses and religious groups. Repositories are administered by professional archivists, curators, or librarians, who are responsible for assembling these materials, preserving them, and making them available for study. The relationship between you, as a donor, and a repository must be based on a common understanding of your wishes and the ability of the repository to carry out its mission and responsibilities. Potential donors and repository representatives should review the materials being offered for donation and discuss repository policies and procedures for the care and use of donated materials. If both parties agree that the repository is an appropriate place for preservation of the materials, they complete and sign a deed of gift.

The Deed of Gift

The deed of gift is a formal, legal, agreement that transfers ownership of, and legal rights in, the materials to be donated. Executing a deed is in the best interests of both donor and repository. After discussion and review of the various elements of the deed, it is signed by both the donor or donor's authorized agent, and an authorized representative of the repository. The signed deed of gift establishes and governs the legal relationship between donor and repository and the legal status of the materials.

The Elements of a Deed of Gift

Various elements are essential to a deed of gift; others may be specific to the repository to which the materials are donated. The typical deed of gift identifies the donor, transfers legal ownership of the materials to the repository, establishes provisions for their use, specifies ownership of intellectual property rights in the materials, and indicates what the repository should do with unwanted materials. If you have any questions about the language of the deed of gift, ask for an explanation from the repository representative or from your

attorney.

Name of the Donor and the Recipient

If you created and/or collected the materials you are donating, all that is needed in this section is your full legal name. If you are acting on behalf of someone else who created and/or collected the materials, include information on your relationship to that person or entity. You might note, for example, sister, niece, son, or business agent. If you are not the creator of the materials, the repository may ask you to explain how you have the authority to donate them. The repository will provide its full name as the recipient.

Title and Description of the Materials Donated

This is generally a summary, such as "John Doe Personal Papers," or "Records of the First Baptist Church of Detroit," and is written by the repository staff in consultation with you. The repository may wish to be more specific in describing the materials, or append a more detailed listing of the materials to the agreement.

Transfer of Ownership

In this section, the donor formally agrees to transfer legal ownership and physical custody of the materials, including future donations, to the repository. The deed will specify a point in time (usually upon signing the deed or upon physical transfer of the material to the repository) when the materials become the legal property of the repository. It will manage and care for them, employing the best professional judgment of its staff and according to accepted professional standards and its mission and objectives.

Repositories prefer to accept materials through transfer of ownership. The cost of storing, preserving, and making collections available for research is so high that repositories generally can only afford to do so for materials they own.

As the professional staff of the repository reviews the materials you donated, there may be reason to reformat some or all of them. Long-term preservation of fragile materials, for instance, is a primary reason for microfilming or copying

papers for use by researchers. Unless you note to the contrary in the gift agreement, when you transfer legal ownership of your materials to the repository, you agree that the staff may make reformatting decisions. The repository representative will discuss with you the means by which your collection can be transported to the repository.

Access to the Collection

An essential mission of repositories is to make their collections open and available for research use. They are able to do this because most donors do not limit access to the materials they donate. There may be instances, however, when a donor or repository feels it is appropriate to restrict access to all or a portion of the materials for a limited and clearly stated period of time.

If the materials you donate contain student records, income tax records, medical records or legal case files relating to third parties (that is, to individuals other than you or your immediate ancestors, or to organizations other than the one whose records are being donated), federal or state privacy laws may apply. If you know that such materials exist, bring this to the attention of the repository representative. If such materials are discovered by the repository during cataloging, the repository representative will discuss them with you.

If your concerns go beyond these types of materials, explain them to the representative, and be as specific as possible when you discuss the papers or records you want to restrict. If needed, the representative will work with you to arrive at language regarding the restriction that is acceptable to you and which can be enforced by the repository.

Transfer of Copyright

When you sign the gift agreement, you transfer legal ownership of the actual materials you want to donate. Ownership of intellectual property rights (primarily copyright, but including trademarks and patent rights) may also be legally transferred by the deed of gift. Copyright generally belongs to the creator of writings or other original material (such as photographs and music). Donors are encouraged to transfer all rights they possess in and to the materials donated to the

repository; this assists researchers in their scholarship by making it easier to quote from documents. If you wish to retain all or a portion of the intellectual property rights you own, you may include such a provision in the deed of gift, but you and the representative should agree upon a date after which the rights will be transferred to the repository. You are not able to transfer ownership of rights to the works of others found in the materials you donate. These works might include such items as letters written to you by others.

Separations

In the course of arranging and describing the materials you donate, the repository's staff will retain substantive materials of permanent historic value and separate out those materials that are routine, duplicative, or outside the collecting scope of the repository. The repository needs guidance in dealing with these separated materials. You may choose to have the repository dispose of them in the manner they deem appropriate. This usually includes shredding or disposing of duplicates or materials of no historical significance, and transferring out-of-scope materials to another unit within the repository or to another repository. You may, however, prefer to have the separations returned directly to you. You should discuss your options with the repository's representative and arrive at an agreement that can be stated in the deed of gift.

Other Elements

Repositories vary widely in the kinds of materials they collect, the users they serve, and the facilities in which they preserve materials and make them available for research. As a result, a repository may require or permit the deed of gift to contain language related to a wide range of other issues. If you have any questions or concerns about what is or is not included in a deed of gift, it is important that you raise these with the repository representative prior to signing the agreement. Although it is possible that a repository may not be able to accommodate a specific request, it is best to ensure that all relevant issues are discussed.

Signing the Deed

It is important to sign the deed of gift as soon as you and the representative have discussed and agreed upon its provisions. Few repositories will accept a collection without a signed deed of gift. If necessary, the deed of gift can be amended if both sides concur. Amendments should be signed and dated by both the donor and the repository representative.

Lasting Benefits

The deed of gift confirms a legal relationship between the donor and repository that is based on trust and common understanding. This relationship ensures that the materials you have donated, which help illuminate our past and its influence upon us, are preserved and made available to future generations.

This brochure was prepared as a joint project of the Manuscript Repositories and Appraisal and Acquisitions Sections of the Society of American Archivists. Christine Weideman served as principal author.

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