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COFFEE TALK - DIRECTORS SERIES

FUNDRAISING AND NAME RECOGNITION

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AGENDA

1. What is Donor Recognition?
2. The Hospital Naming Directive
3. Donor Risks
4. Risk Management Tools
5. Working with your Foundation

What is Donor Recognition?

- Donor acknowledgement
- Ranges from activities that are automatic organizational responses to giving to those undertaken with the involvement of donors
- Examples of recognition:
 - Honor roll – categorize donors according to level of giving
 - Publication of donor profile – newsletters, annual reports, press releases
 - Name recognition – physical recognition of gift

What is Donor Recognition?

- Name recognition conferred in relation to an asset (buildings, departments, rooms, equipment) requires the approval of the owner of the asset
- Consider regulatory requirements

The Hospital Naming Directive

- Hospital Naming Directive issued by MOHLTC in 2017
- Directive governs new names (including business names registered under the *Business Names Act* and corporate names filed under the *Corporations Act*) of:
 - Hospital corporations
 - Hospital sites
 - Individual hospital buildings in cases where the building comprises all or substantially all of a hospital site
 - Alliances, partnerships, and other associations between or among hospital corporations

The Hospital Naming Directive

- Directive does not apply to:
 - Hospital wings
 - Individual hospital buildings, unless the building comprises all or substantially all of a hospital site
 - Research or treatment centres, which are a part of a hospital site dedicated to providing services in relation to a particular disease or condition or grouping thereof
 - Programs or services

The Hospital Naming Directive

- Directive sets out naming criteria including:
 - The name must not include the corporate or business name of a corporate donor or the name of an individual or family, irrespective of whether the donation is from an individual, family or corporation
 - The hospital board has considered whether the name would risk a public perception that a donor will unduly influence the operations or practices of the hospital or undermine public confidence in the province's hospitals or health care system
 - The name must be consistent with the mission, vision and values of the hospital, the public interest, and reflect one or more of the geographic area where the hospital is located, its service or clinical mandate, the patient population served, the culture or heritage of the persons served by the hospital or the hospital's history

The Hospital Naming Directive

- Directive sets out submission and approval process
- Consultation with public and LHIN
- LHIN endorsement and MOHLTC approval
- No review or approval timelines specified

The Hospital Naming Directive

- Must ensure that donor recognition and fundraising policies and practices align and comply with the Directive

Donor Risks

- Examples:
 - Disputes arising from donor expectations for recognition
 - Donor fails to complete gift
 - Future conduct of donor may be contrary to the mission, vision or values of your organization
 - Donor may in future be the subject of criminal charges, investigations or convictions
 - e.g., Queens' University and David Radler gift

Donor Risks

- No Canadian case law that specifically provides legal options for an organization if a donor becomes tainted
- If donor becomes tainted, will need to consider ability to:
 - Remove naming recognition
 - Return donation
 - Do nothing

Donor Risks

- Donor due diligence essential to mitigate risk:
 - Financial capacity of donor
 - Donor track record and reputation
 - Potential risk of association with donor
- Engage in risk assessment of donor/donation prior to acceptance

Risk Management Tools

- Naming/Donor Recognition Policy
- Naming Agreement with the Donor
- Both should address:
 - Naming Directive requirements/process as applicable
 - When will the naming right be conferred?
 - Duration of naming right
 - Ability to address future circumstances and conduct of the donor

Risk Management Tools

- Naming Agreement
 - Set expectations of the donor at the time of the donation
 - Naming Agreement is the document through which the donor agrees with the terms and conditions of the gift
 - Ensure that the Naming Agreement dovetails and incorporates by reference the terms of the Naming Policy

Risk Management Tools

- When will the Naming Right be conferred?
 - Consider financial terms
 - Will the donation be a lump sum or given gradually over a period of time?
 - Consider whether donor should deliver the full or a substantial portion of the gift prior to receiving recognition
 - What happens if donor does not complete full pledged gift?
- Ensure conditions of governance and statutory approval

Risk Management Tools

- Time limited, in perpetuity, permanent
- Importance of defining “in perpetuity”
 - “In perpetuity” not legally defined
 - Reasonable interpretation is that it refers to life of the facility or structure, though this is somewhat unclear
 - Consider situations where programs/services impact use of space, changes to facility, redevelopment/ construction
 - Clarify duration of recognition with donor so there is no ambiguity

Risk Management Tools

- Naming Agreement should include details on:
 - Authority to terminate the naming in the event of future circumstances that are adverse to the interests of the organization, for example, criminal charges, investigation or conviction of donor
 - Terms relating to any obligations relating to a gift if naming is revoked (un-naming)
- Absent the retention of “un-naming” rights, removal of donor’s name may not be simple

Risk Management Tools

- Naming Policy used to:
 - Ensure consistency and efficiency in managing gifts
 - Manage donor expectations
 - Protocols for dealing with “good money gone bad” situations

Risk Management Tools

- Naming Policy should include details on:
 - Levels of gifts and recognition attributable to each level
 - Authority for approval of naming recognition – ultimate approval rests with organization whose physical space is being named
 - What level of donor input on details of naming recognition will be permitted?
 - Eligible gifts and timing of payment
 - Protocol for agreeing to/conferring the naming recognition, including the specific name to be used, nature of signage and location
 - Duration of naming right, including a specific definition for “in perpetuity” if it applies

Risk Management Tools

- Naming Policy should address (or flag) the tax implications of naming rights
 - Consider whether naming rights constitute an advantage under the *Income Tax Act* that affects the value of a charitable tax receipt issued to the donor
 - In general, CRA takes position that individual naming rights do not constitute an advantage that must be subtracted from FMV of gift
 - Corporate naming rights generally do constitute advantage because economic benefit to corporation
 - Consider whether corporation can treat as sponsorship and deduct gift as marketing expense rather than taking official donation receipt

Working with your Foundation

- If running a fundraising campaign together with your Foundation or another third party:
 - Need to achieve clarity on roles and responsibilities
 - Establish consistency in donor communication and recognition
 - Specify authority and approval required to accept gifts and confer recognition
 - Consider Memorandum of Understanding (MOU), joint policy and/or joint fundraising protocols for specific campaigns

WRAP-UP

- Granting a naming opportunity to a donor is seen as an honor and can bring great publicity and momentum to a fundraising campaign
- All donor recognition activity must be in compliance with the Naming Directive
- Essential to complete donor due diligence
- Ensure that Naming Policy addresses the relevant risk considerations for the organization, such as removal of naming rights due to future circumstances or conduct of the donor
- Consistently apply legally binding Naming Agreement with donors of major gifts that incorporates Naming Policy terms
- Establish joint policies/protocol for donor recognition when engaging in fundraising with third parties

Questions?

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