

# UNDERSTANDING ARCHIVES

## A GUIDE TO DEEDS OF GIFT

Donors of historical materials are individuals or organizations that give materials to repositories, including historical societies, archives, or special collections libraries. Donated materials often include papers, records, and digital material documenting personal lives and family history or the history of organizations such as businesses, community associations, and religious groups. Repositories are administered by professional archivists, curators, or librarians, who assemble these materials, preserve them, and make them available for research. 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. You should review the materials being offered for donation with the archivist or curator and discuss the repository's policies and procedures for the care and use of donated materials. Most repositories have a collecting policy that informs their decisions about what they can accept. If both parties agree that the repository is an appropriate place for preservation of the materials, then both parties sign a deed of gift.

### **The Deed of Gift**

The deed of gift is a formal and legal agreement between the donor and the repository that transfers ownership of and legal rights to the donated materials. A legal agreement is in the best interest of both donor and repository. After discussion and review of the various elements of the deed, the donor or donor's authorized agent and a representative of the repository both sign it. 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, describes the materials, transfers legal ownership of the materials to the repository, establishes provisions for use, specifies ownership of intellectual property rights, and indicates disposition of unwanted materials. If you have any questions about the language of the deed of gift, ask for an explanation from the archivist or curator 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 about your relationship to that person or entity. You might note, for example, a sister, niece, son, or business agent. If you are not the creator of the materials, the repository may ask you for verification that you have the legal 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 Papers," or "Records of the First Baptist Church of Detroit," and is written by the repository staff in consultation with the donor. The repository may wish to be more specific in describing the materials or append a 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 when the materials become the legal property of the repository (usually upon signing the deed or upon physical transfer of the materials to the repository). The repository will manage and care for them 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 afford to do so only for materials they own. Most repositories do not accept materials on loan; those that do will generally not accept them without a legal deposit agreement outlining the terms and fixed duration of the loan. If you are donating materials that were created in digital formats, the repository may make it a condition of the gift that you not donate the same files to another repository.

After transfer of ownership, the staff of the repository will review the materials and may find that there is a reason to reformat some or all of those materials. For example, long-term preservation of fragile materials is a primary reason for microfilming, digitizing, creating multiple digital versions, or copying materials for use by researchers. The repository may also publicly present the digital versions on its website to the extent allowed under copyright law. 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 and display decisions.

The archivist or curator will discuss with you the means by which your collection can be transported to the repository. In some cases this will involve a visit by an archivist or curator to your home or office. The repository may prefer to capture digital material directly from your computer. Part of that process is discussing how you use your computer in your work or personal life, including organization, file names, and file storage, especially storage in places other than your personal computer. The archivist or curator will need to know the current location of all the digital material that you wish to donate, such as backup disks or thumb drives, other computing devices, networked or cloud storage, or on the Internet.

### **Access to the Collection**

An essential mission of repositories is to make their collections open and available for research use. They accomplish this because most donors do not limit access to donated materials. 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, financial records, medical records, or legal case files relating to third parties (individuals other than you, your immediate ancestors, or your organization), federal or state privacy laws may apply. If you know that such materials exist, bring this to the attention of the archivist or curator. You may request that the archivist or curator discuss with you any such materials that the repository discovers during cataloging.

Be aware that any digital materials that you donate, including computers, computer disks, and other digital storage media, may contain passwords, web browsing history, other users' files, and copies of seemingly deleted files. Whether or not these files are apparent to researchers will depend on the initial method of transfer and on the repository's access policies and procedures for handling digital material, which may change over time as technology evolves. Discuss any concerns about deleted content with the archivist or curator.

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

### **Transfer of Intellectual Property Rights**

When you sign the gift agreement, you transfer legal ownership of the physical and/or digital materials you 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 or music. Donors are encouraged to transfer to the repository all rights they possess in the donated materials; this assists researchers in their scholarship by making it easier to quote from or publish 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 archivist or curator should agree on a date when full rights will be transferred to the repository. A separate license for digital content, distinct from copyright ownership, may help a repository to manage the preservation and use of that content. You cannot transfer ownership of rights to the works of others, such as letters written to you by others, included in the materials you donate.

Under the terms of U.S. Copyright Law, repositories may provide copies of items in their collections for scholarly research use, regardless of who owns the copyright. Under the "fair use" exemption, the law permits that researchers may publish portions of an item under copyright. Permission to publish or quote extensively from the material must still be obtained from the copyright holder. To learn more about copyright, see [www.copyright.gov](http://www.copyright.gov) or ask your attorney.

### **Separations**

In the course of arranging and describing the materials you donate, the repository's staff will retain substantive materials of enduring historic value and separate out those materials that are duplicative or outside the collecting scope of the repository. Discuss with the archivist or curator your preferences for the disposition of separated materials and arrive at an agreement that can be stated in the deed of gift. Options include shredding out-of-scope materials, transferring them to another repository, or returning them directly to you. These options can be spelled out 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 archivist or curator have discussed and agreed on 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's representative.

**Tax Deductions**

In certain circumstances, it may be possible for a donor to take a tax deduction for the donation of a collection to a repository. Speak with your tax accountant or attorney about this possibility. Archivists cannot give tax advice, nor are they permitted to appraise the monetary value of a collection that is under consideration for donation to their repository. The archivist may be able to provide you with a list of local manuscript appraisers who can (for a fee) make monetary appraisals. It is up to you, as the donor, to arrange and pay for any such appraisal.

**Lasting Benefits**

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

*© 2013 by the Society of American Archivists. Originally prepared in the 1990s as a joint project of SAA's Manuscript Repositories Section and Acquisitions and Appraisal Section. Christine Weideman served as principal author. Revised in 2013 by SAA's Manuscript Repositories, Acquisitions and Appraisal, and Electronic Records sections.*

## Agreement (Deed of Gift)

In consideration of mutual benefits, \_\_\_\_\_, later called PERSON, and the \_\_\_\_\_ HISTORICAL SOCIETY, later called Society, enter into this agreement for access, use, disposition, and ownership of the PERSON'S PAPERS, later called PAPERS.

I.

SOCIETY shall: have ownership of PAPERS upon receipt, store PAPERS according to accepted archival standards, catalog them, and prepare finding aids to assure ease of access to PAPERS.

II.

At the time of their presentation to the SOCIETY, PERSON will designate all boxes or folders of PAPERS as either Unrestricted or Restricted.

### A. UNRESTRICTED PAPERS:

1. All PAPERS not specifically designated Restricted, shall be Unrestricted. It is specifically understood that news releases, speeches, newspaper clippings, photographs, commonly available publications, and like materials of a public nature in the donated property are Unrestricted, even if found in boxes designated by PERSON as Restricted.

2. At time of receipt PERSON transfers both property rights and all copyrights he/she may own in Unrestricted PAPERS to SOCIETY. SOCIETY will permit free public access to, quotation from, and publication of these unrestricted PAPERS.

### B. RESTRICTED PAPERS:

1. PERSON hereby reserves any copyrights he/she possesses in and the right to control access to Restricted PAPERS which have been turned over to SOCIETY by PERSON and which by their year date are less than NUMBER (-) years old provided, however, that SOCIETY shall have access to PAPERS at all times solely for the purposes of listing, cataloging, storing, and preserving them.

2. PERSON reserves to him/herself the right of access to and use of Restricted PAPERS. Except as noted in paragraph II.B.1., SOCIETY shall only allow access to and use of Restricted PAPERS by other persons approved in writing by PERSON. Persons granted such access by PERSON may quote or publish from the PAPERS under the fair use provision of the copyright law, provided that they shall signify understanding of and due regard for legal and ethical considerations including matters of copyright, invasion of privacy, libel, slander, and accurate attribution of sources. For quotation or publication beyond the fair use provision of the copyright law, written approval of PERSON or his/her designee must be secured by said persons prior to such quotation or publication.

3. PERSON may, during his/her lifetime, name one or more persons who shall have the unrestricted right of access to and use of Restricted PAPERS, and shall keep SOCIETY advised at all times of the name(s) of said person(s).

4. Restrictions as specified in Sections II. B. concerning use of said PAPERS shall cease for all PAPERS which by their year dates are more than NUMBER (-) years old—or, regardless of the age of the PAPERS, upon the death of PERSON—and SOCIETY shall acquire all rights (including all copyrights owned by PERSON, and the right to control access) in and to the same. Moreover, PERSON may at any time authorize earlier free public access to any or all of restricted PAPERS as PERSON shall in his/her judgment deem appropriate. Once restrictions lapse, PERSON, his/her heirs and assigns, shall have no further legal interest therein nor right to control their disposition or use.

5. PERSON shall save SOCIETY and hold it harmless from liability from any use of the Restricted PAPERS, or any quotation or publication based on them, without written permission of PERSON, if SOCIETY has followed procedures established according to this agreement.

III.

*(Check one based on previous conversation with donor.)*

- SOCIETY may dispose of any PAPERS not selected for permanent retention.
- or
- If SOCIETY chooses not to permanently retain some of the PAPERS which it accepts, then it shall offer to return such PAPERS to PERSON; however, if PERSON does not accept such PAPERS within 90 days of their being tendered to it, SOCIETY may dispose of them.

IV.

This agreement shall be binding upon and ensure to the benefit of the heirs, assigns, and legatees of the parties hereto.

\_\_\_\_\_  
Staff Member, Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
PERSON

\_\_\_\_\_  
Date

## Deed of Gift

Name of Institution	Address	Telephone / E-mail
Date	Accession Number(s)	
Donor	Street	City/State/ZIP
Contact Person	Telephone / E-mail	
<p>The donation has been received by the Archives as a gift, and the owner or his agent with full authority, desiring to absolutely transfer full title by signing below, hereby gives, assigns, and conveys finally and completely, and without any limitation or reservation, the property described below to the Archives and its successors and assigns permanently and forever, together with (when applicable) any copyrights therein and the right to copyright the same.</p>		
Description of Donation		
Credit Line		
<b>Signatures</b> Donor _____ Date _____ Printed Name _____ Director _____ Date _____		
<b>Conditions Governing Gifts</b> 1. It is understood that all gifts are outright and unconditional unless otherwise noted upon this gift agreement. 2. Gifts to the Archives may be deductible in accordance with provisions of federal income tax laws. 3. The donor name on this form has not received any goods or services from the Archives in return for this gift. 4. The staff of the Archives is not permitted to furnish appraisals. 5. The Archives gratefully acknowledges your gift. 6. Please indicate on the form beside "CREDIT LINE" how you would like to be acknowledged in any news releases, exhibit labels, or other publicity regarding this donation. <i>(This form may be a multipart form.)</i>		

