



## A Guide to the Deed of Gift

*(This guide is adapted from the Society of American Archivist's "Guide to Deeds of Gift", 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.. Full version available online at [http://www.archivists.org/publications/deed\\_of\\_gift.asp](http://www.archivists.org/publications/deed_of_gift.asp))*

**Donors of historical materials** are individuals or organizations that give materials to manuscript repositories, archives, historical societies, or special collections libraries. In the case of Lambda Archives of San Diego (LASD), donated materials often include papers and records documenting personal lives of local activists or community members, or the history of local LGBT organizations, such as businesses, social, and religious groups. LASD's repository is administered by professional archivists as well as a host of volunteers, who are responsible for assembling these materials, preserving them, and making them available for study. Potential donors and LASD 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 this is an appropriate place for preservation of the materials, they complete and sign a Deed of Gift.

### **The Deed of Gift form**

The Deed of Gift is a formal, legal, agreement that transfers ownership of, and legal rights in, the materials to be donated. A Deed of Gift exists to protect the rights and 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**

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 LASD representative or from your attorney.

### **Title and Description of the Materials Donated**

The "Title" is generally a summary, such as "John Doe Personal Papers," or "Records of the Imperial Court de San Diego," and is written by the LASD staff in consultation with you. In the "Description" section, please be as specific as possible in describing the materials, or append a more detailed listing of the materials to the agreement. Be sure to include date ranges, and the subject(s), types and quantity of materials included in the donation. Recording context of the materials is crucial to their future usefulness and historical relevance.

### **Transfer of Ownership**

By signing the Deed the donor formally agrees to transfer legal ownership and physical custody of the materials to LASD. The deed specifies a point in time (upon signing the deed or upon physical transfer of the material to the repository) when the materials become the legal property LASD. We 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 staff of LASD 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 LASD, you agree that the staff may make reformatting decisions. The LASD representative will discuss with you the means by which your collection can be transported to 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. If a researcher comes to the Archives and wishes to quote from your writings or use a visual or audio recording, they must first obtain permission from the copyright holder. 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 LASD; 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.

### **Items Removed From the Collection**

In the course of arranging and describing the materials you donate, LASD'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. 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 repository. You may, however, prefer to have the separations returned directly to you.

### **Access for Research and Use**

An essential mission of LASD is to make their collections open and available for research use. We 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 LASD 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 LASD representative. If such materials are discovered by the repository during cataloging, the repository representative may 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.

### **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, LASD may ask you to explain how you have the authority to donate them. The LASD will provide their full name as the recipient.

### **Signing the Deed**

It is important to sign the Deed of Gift as soon as you and the LASD 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.

### **What happens to your materials?**

When a Donor transfers materials to Lambda Archives of San Diego, we organize and preserve the donation and make it available to researchers. The following is a list of services Lambda Archives will provide regarding donations.

- The donation will be organized and, if appropriate, a bibliographic record and/or finding aid will be created to describe the content and the arrangement.
- The donation will be made available to researchers after it is organized, physically stabilized, and prepared for use.
- Lambda Archives will provide reference services for the donation and, if appropriate, will have the materials listed in national and international bibliographic sources.