

CONTINUING LEGAL EDUCATION

The Community Foundation: Partnering to Enhance Client Experience Through a Variety of Charitable Tools, Philanthropic Expertise and Community Insight CLE

March 13, 2024, 12:00PM – 1:15PM

Live at The Delaware Contemporary



Sponsored by the Delaware Community Foundation | DCF

1.3 Hours of CLE credit for Delaware Attorneys

1.00 Hours of CLE credit for Pennsylvania Attorneys

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DELAWARE STATE BAR ASSOCIATION

Learn how the professional expertise and place-based focus of the community foundation can help you better serve your philanthropic clients. Through a donor-centric and collaborative approach, the community foundation team can work with you and your clients to explore a range of options available to help them achieve their short and long-term charitable goals and/or leave a meaningful personal or family legacy. Giving through the community foundation can also be an important strategic component of estate, life-event, business and financial planning, providing immediate or future tax benefits. Introducing our speaker, we will hear from Gregory J. Weinig, Esquire of Connolly Gallagher.

Speaker



Rebecca Elzey, CAP®

Senior Compliance & Operations Officer

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Rebecca Elzey CAP®
Senior Compliance & Operations Officer
Delaware Community Foundation
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Rebecca Elzey brings more than two decades of non-profit compliance, operations, development and marketing experience to the DCF, where she currently serves as Sr. Compliance and Operations Officer.

At the DCF for nearly 10 years, she is focused on leading critical thinking, technical and management initiatives to best steward the organization's charitable funds and maximize its knowledge-based tools for the betterment of the community.

Rebecca previously served at the DCF as a Senior Philanthropy Officer. She held similar roles in development at the American Red Cross of Delaware and the Tri-State Bird Rescue.

Rebecca is a lifelong Delawarean and a graduate of Wilmington University. She earned her Chartered Advisor in Philanthropy® designation from The American College of Financial Services.

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Acknowledgements

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The Delaware Contemporary

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Scott E. Swenson, Esq., Partner, Connolly Gallagher, LLP

Mark Vavala, Esq., Executive Director, DSBA

Caroleena Goldman, Asst. Executive Director & Dir. of Continuing Legal Education, DSBA

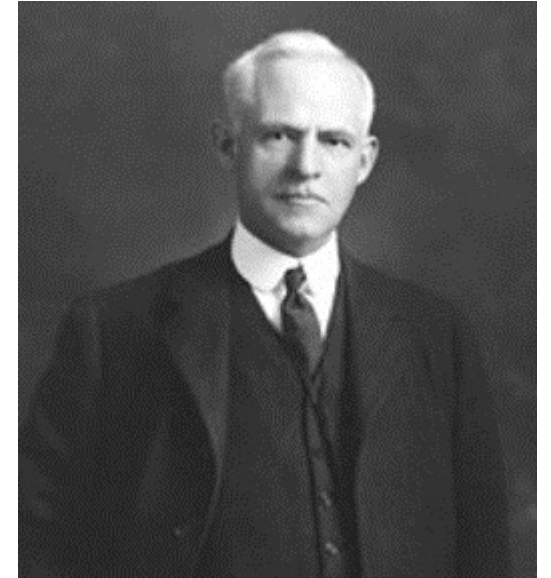
Program Agenda

- Community Foundation and DCF Overview
- Community Foundation Model and Our Sector
- Charitable Funds and Service to Donors
- Giving to the Community Foundation
- The Process

Community Foundation and DCF Overview

Community Foundation Overview

- Public charity created to support the people of and improve the quality of life for a particular geographic area
- Be a source of permanent funding for the needs of its community
- Receive gifts, manage charitable assets and make grants
- Help identify and facilitate solutions to community problems
- Partner with families, businesses & nonprofits to address community needs



*Frederick H. Goff, Founder of
the Cleveland Foundation*

DCF Overview

- Founded in 1986
- Early funding included \$2M grant from the State and the transfer of numerous small charitable trusts
- Total assets under management: \$360M in ~1,000 funds
- Annual grantmaking ~\$30M
- 19 professional staff statewide
- Expanded community leadership and partnerships

DCF Overview

Our mission:

To improve Delaware through community-based philanthropy.

We do this through three core strategies:

Helping Donors

Making Grants

Providing Leadership

Community Foundation Model & Sector

Federal Regulations and Status

- Tax-exempt under 26 USC § 501(c)(3)
- Not a “private foundation” within the meaning of § 509(a)
- A public charity which receives substantial support in the form of grants and contributions - § 509(a)(1) and § 170(b)(1)(A)(vi)
- Additional regulations defining a community foundation - 26 CFR §1.170A-9
- Description of a community foundation and how it meets requirements as a publicly supported organization - § 1.170A-9(f)(10)

Federal Regulations and Status

- Primary function is administration of charitable funds (component funds)
- Two tests applicable only to community foundations - 26 CFR §1.170A-9(f)(11)
- Component Part Test - §1.170A-9(f)(11)(ii)
 - Created (funded) by a gift, bequest, transfer, etc. to a “single entity”
 - Gifts are not subjected by the transferor to any material restriction

Federal Regulations and Status

- Single Entity Test - §1.170A-9(f)(11)(iii-vi)
 - Name conveys support of charitable activities in its geographic area
 - Common governing instrument
 - Common governing body
 - Power of modification and removal
 - Variance Power - §1.170A-9(f)(11)(v)(A)(1)

Variance Power

“To modify any restriction or condition on the distribution of funds for any specified charitable purposes or to specified organizations if in the sole judgment of the governing body (without the necessity of the approval of any participating trustee, custodian, or agent), such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served;”

26 CFR §1.170A-9(f)(11)(v)(A)(1)



Investing Community Foundation Assets

- May only invest its own assets
- Not an investment firm, broker or bank
- Not regulated by federal bodies such as SEC, FRS, FDIC
- Hire one or more investment firms to manage invested assets
- Investment Policy Statement and Investment Committee oversight

Community Foundation Landscape

- Over 900 community foundations in the US
- Assets range from \$100K to almost \$11B
- Geography may be from city, county, region or state
- Very collaborative sector with focused resources
- Community Foundations National Standards

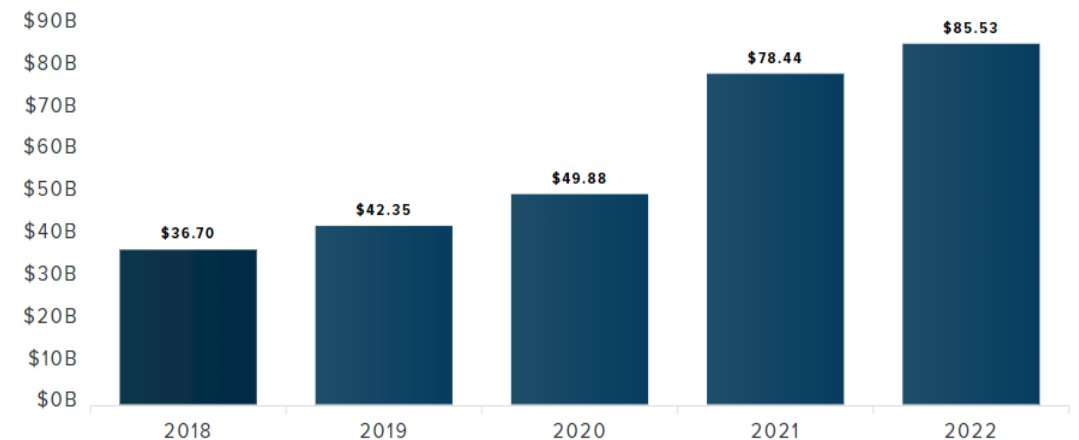


Charitable Funds and Service to Donors

Donor Advised Funds

- Fastest growing charitable vehicle
- Most flexible charitable fund for donors
- Affordable and easy alternative to private foundation
- Donor/Founder of fund retains advisory privileges, can name successors
- Grants can be made at any time to any eligible grantee

FIGURE 2: TOTAL VALUE OF CONTRIBUTIONS TO DONOR-ADVISED FUNDS
\$ IN BILLIONS



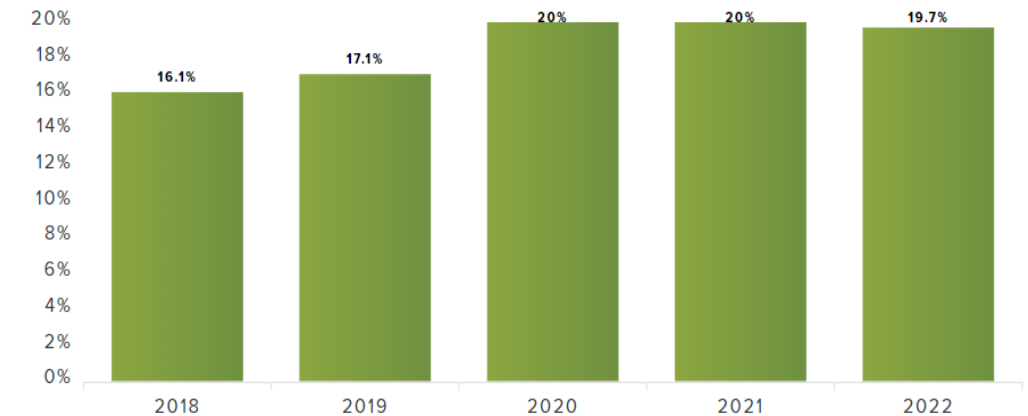
Source: National Philanthropic Trust – 2023 DAF Report

History of Donor Advised Funds

- 1930s – First donor advised funds created
- 1990s – Significant growth of donor advised funds, creation of commercial DAFs
- 2006 – First defined in IRC through the Pension Protection Act
- Continued attempts to further regulate donor advised funds

FIGURE 17: ANNUAL PAYOUT RATE FOR DAFS AT COMMUNITY FOUNDATIONS

THE PAYOUT RATE FORMULA IS: GRANTS IN THIS YEAR DIVIDED BY ASSETS FROM THE END OF THE PRIOR YEAR.



Source: National Philanthropic Trust – 2023 DAF Report

Donor Advised Funds Regulation

- Pension Protection Act of 2006
 - Defined a sponsoring organization - § 4966(d)(1)
 - Defines a donor advised fund - § 4966(d)(2)
 - Exceptions for designated and scholarship - § 4966(d)(2)(B)(i)-(ii)
 - Exclusion from Qualified Charitable Distribution - § 1201(a)(8)(B)(i)
- Nov 2023 proposed regulations

Donor Advised Fund Services

- Online portal to recommend grants and view fund activity
- Help identify potential grantees in areas of interest
- Coordinate introductions and visits to nonprofits
- Multi-generational philanthropy planning and support
- Provide competitive online application process for large funds



*Nathan and Marilyn Hayward, current DCF fundholders,
with puppies from Humane Animal Partners*

Compare to Commercial DAF

- Personalized service and local knowledge
- Fees charged to fund support the community foundation's broader mission to serve the local community
- Flexibility for succession plans
- Options for investment of funds

Compare to Private Foundation

Benefits

- Higher allowable deduction for gifts
- Administration and reporting by DCF
- No required payout
- No cost to establish
- Modest ongoing fees
- Can provide anonymity
- DCF's local knowledge and technical support

Compare to Private Foundation

Potential Challenges

- DCF makes the final decision on grant distributions
- No payments to individuals (e.g. no “staff”)
- Investment of assets is controlled by DCF



The Burton Family

Other Charitable Funds

- Designated Fund
- Field of Interest Fund
- Scholarship Fund



Courtney Streett and John Reynolds of the Native Roots Farm Foundation Fund

Other Charitable Funds

- Delaware Forever Fund
- Delaware Now & Forever Fund
- Nonprofit Fund
- Supporting Organization (not a fund)



Thomas and Mary Russo have created a generous scholarship at the DCF.

Classification of Funds

- Charitable Fund Type
- Endowment Status
 - Endowed – permanent fund limited by calculated spending amount
 - Non-endowed
- Gift Timing
 - Current – initial contribution now
 - Legacy – funded only after death

Administering Funds - The Numbers

- Minimum initial contribution
 - \$25K for most fund types
 - \$50K for scholarships
 - \$100K for field of interest
- Fees
 - Annual support fee
 - Investment fees
 - Special situation fees
- Spending policy for endowed funds



Chanta Howard-Wilkinson, DCF Board Vice-Chair, with DCF Fundholder

Giving to the Community Foundation

Why Give

- Charitable intent and desire to make an impact
- Strategic tax planning
- Life events
 - Estate planning
 - Inheritance/windfall
 - Sale of business/Business exit planning
 - Sale of property



Learn as much as you can about the DCF, because it may be a perfect solution for a lot of your clients that they might not have known about. It's just another tool in the toolbox for providing good services to clients.

Kevin Baird, Esq.
Baird Mandalas Brockstedt LLC

Ways to Give – During Life

- Cash and public securities
- Real estate
- Cryptocurrency
- Personal property
- Privately-held stock and business interests
- Qualified Charitable Distributions



Ways to Give – Estate and Legacy Planning

- Bequest
- Beneficiary designation
- Split-interest gifts
 - Charitable Gift Annuities
 - Charitable Trusts



The Process

Philosophy Regarding Donors

- Donor-centric, relationship-focused
- Committed to understanding and honoring donor intent
- No pressure



The DCF provides clients with important assurance in several ways: its permanence, its attention to Delaware, its continuing attend to the family's intentions so that they're not forgotten.

Chuck Durante, Esq.
Connolly Gallagher LLP

Philosophy Regarding Donors

- Collaborative with advisors
- Philanthropic advisors, not fundraisers



I love the DCF as a resource because I know that if I have clients who are interested in philanthropy, I've got somebody that does this all the time that I can refer them to, and they're going to be in good hands.

Michelle Porcino-Wells, Esq.
Procino-Wells & Woodland Law

Steps to Establishing a Fund

- Staff meets with potential donor and/or advisor as needed
- Staff clarifies donor goals and identifies best tool(s)
- Fund agreement between donor and DCF
- Donor makes initial contribution to fund (for current funds)
- Staff continues to communicate with and provide support to Donor



Stuart Comstock-Gay, the DCF's President & CEO, signs a fund agreement with local philanthropist Bob Martz

Drafting Gifts Through Trust or Will

- Instrument may direct gift to current or legacy fund
- Instrument should direct distribution/bequest to the Delaware Community Foundation for the [XYZ Fund]
- Ideally, estate document(s) and fund agreement(s) are drafted simultaneously
- Administrative terms should not be included in the instrument
- Flexibility to change plans for unfunded legacy funds

Donor Stories

Example #1

- Couple C, 70s, live in New Castle County
- Referred to DCF by Delaware estate planning attorney
- Plan at start of conversations with DCF:
 - Scholarship fund in memory of deceased special-needs child
 - Fund to support seven favorite charities
- Discussions with staff over several months to learn about passions/goals
- Plans after discussions
 - Designated fund to support three exotic bird/parrot rescues
 - Designated fund to support four favorite charities

Donor Story #1

[We] are glad that our estate attorney recommended DCF to handle our legacy giving. You made the process easy and gave great guidance. I will keep in touch. – husband of Couple C

Donor Story #2

- Donor A, 50s, from Sussex County, successful CEO of S-corporation
- Referred to DCF by long-time financial advisor
- Contributed S-corp stock to create a donor advised fund naming children as successor advisors

I know my clients and I will have direct contact with the DCF, and the organization is more than capable of dealing with complex issues that may arise. – Donor A's advisor

DCF Contacts

Philanthropic Services

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Questions?