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Grateful Dead, Ungrateful Recipients  
By Frederic J. Fransen

The University of California, Santa Cruz recently landed one of the great prizes in college fundraising: a treasure trove of Grateful Dead memorabilia. The collection spans 30 years, from 1965 when the band was formed, to 1995, when Jerry Garcia, the band's lead guitarist, vocalist and spiritual leader, died.

As the Wall Street Journal noted, the collection is expected by many to turn the Silicon Valley campus into "a mecca for scholars and ... 'Deadhead' fans."

And, of course, it should generate additional contributions to UCSC, perhaps for a new building to house the collection, to design and build exhibition spaces, to hire an archivist and staff, among other things.

American colleges and universities are prodigious fundraisers. Most of the attention focuses on cash gifts and bequests, which exceeded \$29.7 billion last year. But money is not the only prize.

The Harvard University Art Museums and the Blanton Museum of Art at the University of Texas, Austin, for example, both have been designated to receive 50 works of art from the collection of New York philanthropists Dorothy and Herbert Vogel. The donations are part of a national gift program, "Fifty Works for Fifty States," in which 2,500 works from the Vogel collection will be distributed during 2008 and 2009, with 50 institutions (one in each state) each receiving 50 pieces of art.

The University of Michigan art museum also received a large donation of art this year, from the collection of retired UM professors Frances McSparran and her late husband Ernst Pulgram.

While donors may consider such gifts – everything from land and art to first edition books, historical maps, artifacts and papers – straightforward and safe, and may even

receive substantial tax benefits from donating appreciated assets, tangible gifts have special risks. One of the greatest risks some have learned is that the recipient institution and presumed steward of the gift will sell it.

Consider the case of Mattie Kelly. In 1992, Kelly bequeathed her 13-acre estate and \$500,000 to Okaloosa-Walton Community College in (I kid you not) Niceville, FL. The gift stipulated that a cultural and environmental institute and memorial garden be established on the property. Instead, the college sold the land to developers and pocketed both the proceeds and the \$500,000.

In Lynchburg, Virginia, Randolph College last year did everything but hang a “Garage Sale” sign on its Maier Museum of Art. Many paintings in the museum’s nationally acclaimed collection had been donated by faculty and alumna, or purchased with funds given for that purpose by local residents. Several of the museum’s most valuable paintings were shipped off to a New York auction house. The college, which has been under a dark legal cloud for many months, temporarily backed off because two lawsuits recently argued before the state Supreme Court could affect its right to sell the art. Despite this, college officials recently sold one of the paintings anyway – “Troubador” by Mexican master Rufino Tamayo – fetching \$7 million. The court, and the court of public opinion, be damned.

Many other colleges – including Sewanee, University of the South, in Tennessee, St. Olaf College in Minnesota, Trinity International University in Illinois, and Tulane University in New Orleans – also have been involved in controversies involving non-cash gifts.

In the end, philanthropists should be wary of giving away the family jewels. And when they do choose to donate personal or real property they need to protect themselves.

The best way to do that, for the benefit of donors and recipients alike, is to include clear language in all gift agreements spelling out the stewardship obligations of the recipient institution, circumstances under which the gift would have to be returned or repaid, and giving a third party legal standing to sue if the agreement is violated.

There is no reason to believe that UC Santa Cruz acted in anything less than good faith. Yet, commitments made today can easily be abandoned tomorrow.

By coincidence, the Grateful Dead’s first known record was the simply titled 1966 single “Stealin’.” To some of us that’s what it is when a nonprofit institution, such as a college, accepts a valuable gift and then, without the donor’s or a court’s permission, sells it.

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