

Standard of Bequest Fundraising Practice

The Standard of Bequest Fundraising Practice provides practical guidelines to FINZ members on best practice for conducting bequest fundraising activities throughout New Zealand. In particular, the standard aims to strengthen bequest fundraising by ensuring that adherence to best practice enhances the relationship between the organisation and the donor, and ensuring that bequests are made with appropriate measures for disclosure and transparency.

This Standard must be read in context with FINZ's Codes of Fundraising Practice, including the Code of Ethics and Professional Conduct, the Code of Fundraiser's Relationship with Donors and the FINZ Complaints Process.

If there is a conflict between the provisions of this standard and New Zealand legislation, the legislation prevails.

For the assistance of FINZ members, the appendices provide further information. Appendix 1 sets out a glossary of terms frequently used in bequests. Appendix 2 sets out a model bequest provision for inclusion in wills. Note that information in the appendices is included for the guidance of FINZ members and is not intended to be a substitute for FINZ members' own inquiries.

1. To whom does this Standard apply?

- 1.1 This Standard applies to FINZ members. FINZ can only monitor this standard and enforce it if necessary against a FINZ member.
- 1.2 This Standard does not replace nor override the applicable New Zealand legislation.

2. Setting up a Bequest program

- 2.1 Before a Fundraiser may seek a bequest they must ensure that the fundraiser and the organisation which they represent:
 - a) complies with FINZ's Codes of Fundraising Practice;
 - b) complies with this Standard of Bequest Fundraising Practice; and
 - c) has obtained relevant legal advice where necessary.

3. Promotional Materials

- 3.1 A Fundraiser must ensure that any promotional material used:
 - a) is factually accurate, truthful and not likely to mislead any person;
 - b) includes a clear description of programmes and activities for which a bequest is requested;
 - c) recommends that the donor seek independent legal advice;
 - d) includes a bequest section which complies with section 4 of this standard;
 - e) complies with the Fair Trading Act 1986 (in particular that statements in the promotion materials are not misleading or deceptive or likely to be misleading or deceptive to any person);
 - f) complies with New Zealand legislation relevant to conducting a fundraising activity;

- g) is approved by the organisation before any solicitation by the fundraiser on its behalf to a donor;
 - h) should ensure that any promotional material identifies the organisation in compliance with section 5 of this standard.
- 3.2 A fundraiser must make the current annual report of an organisation which they represent freely available upon a reasonable request by a donor.
- 3.3 Despite anything else in this section, promotional materials may be part of a positive campaign by a fundraiser to build public awareness, understanding and support for the objects of an organisation.

4. Bequests in wills

- 4.1 If a donor chooses to include a bequest section in their will, the bequest in the will must:
- a) state the full legal name of the organisation that will receive the bequest;
 - b) use appropriate words to indicate the type of bequest.
- 4.2 Appendix 2 sets out a model bequest for the guidance of fundraisers. Donors are not required to use the model bequest and the model bequest does not replace the need to advise donors to obtain independent legal advice before making a bequest.

5. Organisation Identification

- 5.1 Wherever identification of an organisation is required by this Standard a fundraiser must provide that organisation's:
- a) full legal name;
 - b) company registration number or other formal identifying number;
 - c) full business address;
 - d) Trade Mark (if any).

6. Professional Conduct

6.1 A fundraiser must ensure that:

- a) the fundraiser maintains an appropriate arm's length relationship with the donor in connection with any bequest or proposed bequest;
- b) a donor is not subjected to undue influence, harassment, intimidation or coercion when approached by the fundraiser or person under the direction of a fundraiser for the granting of a bequest;
- c) a donor is not prevented or discouraged by the fundraiser from seeking independent legal advice in relation to a bequest;
- d) written acknowledgement and receipt of a bequest is provided to a donor's executor or legal personal representative;
- e) where a bequest is a specific bequest, a donor's executor or legal personal representative is informed of how the organisation intends to use that bequest.

6.2 For the purposes of section 6.1b, 'undue influence' includes any improper conduct by a fundraiser which has the effect of influencing a donor to make a bequest or sign any legal document which the donor otherwise would not do.

6.3 A fundraiser must observe a donor's request to:

- a) refuse to make a bequest;
- b) limit the frequency of solicitations by the fundraiser to the donor;
- c) not be solicited by mail, telephone, facsimile, email, text messages or other technology;
- d) not receive personal visits;
- e) not receive printed material concerning an organisation;

- f) have a family member or legal personal representative present;
 - g) obtain independent legal advice;
 - h) exclude any form of public recognition for their bequest if they choose to remain anonymous.
- 6.4 A fundraiser must not agree or request to be appointed as an executor of the donor's will or trustee of the donor's estate and must not suggest to the donor that any member or officer of the organisation be appointed as an executor of the donor's will or trustee of the donor's estate.
- 6.5 A fundraiser must not allow personal or commercial interests to affect their decision to accept or refuse a bequest.
- 6.6 A fundraiser must derive no personal benefit from a bequest received by their organisation.
- 6.7 A fundraiser must decline any personal benefit offered to the fundraiser by a donor.
- 6.8 A fundraiser must not offer to financially compensate a donor for preparation of a will.
- 6.9 A fundraiser may compensate a legal practitioner for the preparation of the will of a donor provided that the fundraiser discloses this fact in writing to the donor before compensation is paid and the will is drafted. This section does not replace the need for a donor to obtain independent legal advice if they so choose.
- 6.10 A fundraiser may provide a donor with a list of legal practitioners who provide legal services in connection with wills and bequests, provided that the fundraiser does not endorse the services of a particular law firm. The fundraiser may obtain such a list from the relevant regional Law Society or other appropriate organisation. This section does not replace the need for a donor to obtain independent legal advice if they so choose.
- 6.11 A fundraiser may organise a will drafting service for potential donors or organise a fundraising activity with the purpose of encouraging potential donors to draft and sign wills which include bequests provided that the fundraiser and the organisation inform donors in writing that:

- a) donors may obtain independent legal advice;
- b) donors have no obligation to make a bequest to the organisation hosting the fundraising activity;
- c) donors have no obligation to finalise their will at the fundraising activity.

6.12 A fundraiser may provide a donor with the model bequest in Appendix 2. This section will be provided to the donor as guidance only and will not replace the need for a donor to obtain independent legal advice.

6.13 Any breach of any part of this section 6 by a fundraiser will constitute professional misconduct and will be subject to the process detailed in section 8.2 below.

7. Information disclosure

7.1 A fundraiser must not disclose to an unauthorised person in an organisation or any third party any details of the donor's will.

7.2 Section 7.1 does not prevent a fundraiser from disclosing all necessary details to a legal or financial adviser for the purpose of obtaining legal or financial advice in connection with the bequest.

7.3 A fundraiser must comply with FINZ's Codes and Standards of Fundraising Practice in connection with the bequest or disclosure of the donor's will.

8. Compliance and Management of Complaints

8.1 FINZ members must comply with FINZ's Codes & Standards of Fundraising Practice and relevant New Zealand legislation including The Fair Trading Act 1986 and the Privacy Act 1993.

8.2 Complaints concerning this Standard or the conduct of a FINZ member will be determined by the FINZ CEO and the FINZ Ethics Committee in accordance with the FINZ complaints process.

Definitions

Beneficiary	means any person or entity which receives a benefit from an organisation in pursuance of the organisation's objects.
Bequest	is the gift of any asset or right given to an organisation by a donor by the donor's will and includes a legacy, residuary bequest, pecuniary bequest, contingency bequest or specific bequest, which are defined in Appendix 1.
Child or Children	means a child under the age of 18.
Company	means an entity incorporated under the Companies Act 1993 and established for the purpose of profit.
Complaint	means a notice in writing sent by any person to FINZ, by way of a completed FINZ Complaints Form, concerning an alleged breach by a FINZ member of any part of the FINZ Codes and Standards of Fundraising Practice.
Director	means a person who is appointed or elected to the position of a director of an organisation or a company.
Donation	means a voluntary contribution by a donor of money, property, goods or services to an organisation for the purpose of furthering that organisation's objects. It does not include a sponsorship or community business partnership.
Donor	means an individual or other entity that makes a contribution of value to an organisation to further the organisation's objects. A donor includes prospective donors and an individual or entity that has previously made a donation. A donor does not include an individual or entity that engages with an organisation for the purpose of trade.
Ethics Committee	means a committee established by the FINZ Council pursuant to the constitution for the purposes of making determinations on complaints.
FINZ	means Fundraising Institute of New Zealand.
FINZ member	means a person or organisation who is registered as an FINZ member.
Fundraiser	means a person, company or organisation, who carries out activities, whether for remuneration or as a volunteer, for the purpose of raising donations for the objects of an organisation.
Fundraising Activity	means an activity carried out by a person, company or organisation, whether for remuneration or as a volunteer, for the purpose of raising funds for the object of an organisation.

Objects	means the objective, purpose or cause, however so defined in an organisation's constituent documents.
Organisation	means an entity incorporated under either the Incorporated Societies Act 1908 or the Charitable Trusts Act 1957 and established for a purpose other than profit.
Professional Misconduct	means conduct by a FINZ member that is a violation of the Codes and Standards of Fundraising Practice that has serious adverse consequences to a complainant or was committed intentionally by the Fundraiser or both.
Promotional Material	means any material in connection with a donation, fundraising activity or an organisation whether in printed, electronic or verbal form made available by a Fundraiser or organisation to any person.
Sponsor	means a third party who sponsors a fundraising activity for an agreed outcome.
Supplier	means a third party supplying goods or services for payment to a Fundraiser and/or organisation.
Tax	means all taxes payable in connection with a fundraising activity, including without limitation income tax, pay as you earn (PAYE) and goods and services tax (GST).
Trade Mark	means a word or group of words, logo, image, colour, scent or shape (whether registered or unregistered) used by an organisation to identify the organisation.
Unsatisfactory Conduct	means conduct by a FINZ member that is neglectful of the Codes and Standards of Fundraising Practice or that has minor adverse consequences to a complainant or both.
Volunteer	means a person who performs a service for an organisation without requiring compensation for performing the service.

Appendix 1 Glossary

These terms are inserted for the guidance of fundraisers when dealing with bequests. The Standard of Bequests applies to all types of bequests.

Contingency Bequest means a gift in general terms of an asset, not necessarily money, which the executor is bound to provide, either out of property of the will-maker's estate answering the description or, if there is none or not enough of this property, by purchasing the thing bequeathed out of the will-maker's personal estate. If the general legacy is of money, and there is insufficient money available in the estate but there are assets available for payment of legacies, then the executor must realise sufficient of these to pay the legacy;

Pecuniary Bequest means a bequest of a specific sum of money.

Specific Bequest means a gift of an identifiable part of a will-maker's estate. The executor's duty is to preserve the legacy as far as possible, and he or she should not sell the specific asset to pay debts unless forced to. A specific legacy may be a thing (i.e. "my blue BMW"), or a group of things (i.e. "the whole of the stock in trade in my garage business"), or even money if specifically described (i.e. "all the moneys standing to my credit at the Bank of New Zealand").

Residuary Bequest means a bequest of the residual of a donor's estate and includes all property that the will-maker has not specifically disposed of;

For the purpose of this standard, and as set out in the definitions section, an organisation is a beneficiary if it receives a bequest from a donor. In Appendix 2, the term "beneficiaries" refers to all recipients of a bequest under a will.

Appendix 2 Model Bequest

I give and bequeath to **[FULL NAME OF ORGANISATION, address and Charities Commission number (if applicable)]** for:

- a) its general purposes **OR**
 - b) the specific purpose of **[insert here]**
 - the sum of **[\$[XXXXXX]]** **OR**
 - the residue of my estate **OR**
 - a **[X]** % share of the residue of my estate **OR**
 - all my property comprised in **[CERTIFICATE OF TITLE REFERENCE]** and situated at **[ADDRESS OF PROPERTY]**
- OR**

If any of my nominated beneficiaries predecease me, the bequest shall not fail but I give the share of my deceased beneficiary to **[FULL NAME OF ORGANISATION]** and I declare that the receipt and acknowledgement in writing of the Chairman, President or Treasurer or authorised officer of **[FULL NAME OF ORGANISATION]** shall be a sufficient discharge to my Executors for my bequest.