Donor-Advised Funds
Legal Structure and the Language of Philanthropic Capital

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Introduction

Donor-advised funds ("DAFs") have become one of the fastest-growing charitable vehicles in the United States, holding hundreds of billions of dollars in philanthropic assets. Their popularity stems largely from the combination of immediate tax advantages, administrative simplicity, and the ability for donors to retain an advisory role regarding future charitable distributions.

At the same time, donor-advised funds increasingly occupy space within broader conversations about "impact investing," "community investing," and mission-driven capital deployment. These concepts frequently appear alongside one another in public discourse, marketing materials, and philanthropic strategy conversations, particularly as philanthropic, investment, and community development practices increasingly overlap. However, important legal and economic distinctions remain among charitable giving, donor advisory rights, and investment activity, and imprecision in the language surrounding these concepts may obscure the practical and legal realities of donor-advised funds.

This memo distinguishes charitable giving from impact investing and examines the legal framework governing donor-advised funds, including the rights retained by donors, the authority exercised by sponsoring organizations, and emerging policy debates regarding fund distribution, donor control, and mission-driven capital deployment. At the center of this discussion is a tension embedded within DAF structures: although donors often maintain ongoing advisory privileges over donated assets, donors relinquish legal ownership and enforceable control over those assets once the contribution is made.

Understanding this distinction is increasingly important as policymakers, philanthropic institutions, and community economic development practitioners explore ways to mobilize private capital for public benefit. While donor-advised funds may facilitate charitable giving and, in some cases, support mission-oriented investment strategies, DAFs remain charitable vehicles governed by nonprofit ownership and donor advisory privileges rather than investor control rights. These distinctions carry implications not only for donor rights and nonprofit governance, but also for how practitioners evaluate risk, capital formation, and the appropriate role of charitable and investment capital within community economic development initiatives.

As interest grows in mobilizing private capital for community economic development and mission-oriented investment strategies, distinguishing charitable vehicles from actual investment mechanisms becomes increasingly important. Clear distinctions between charitable giving and investment activity may help donors and practitioners more effectively evaluate the full range of tools available for community and economic development.

Questions Presented

1. What are the practical and legal considerations associated with the use of donor-advised funds?
2. To what extent may donors influence or compel sponsoring organizations to distribute or deploy assets held within donor-advised funds?
3. How should donor-advised funds be distinguished from impact investing and other forms of mission-driven capital deployment?

Short Answers

Donor-advised funds provide donors with significant tax advantages, administrative flexibility, and the ability to retain limited advisory privileges regarding charitable distributions. However, once assets are contributed to a donor-advised fund, legal ownership and ultimate control transfer to the sponsoring organization. Donors retain advisory privileges only and generally lack legal authority to compel distributions or direct investment activity.

Although donor-advised funds are frequently discussed alongside "impact investing" and related mission-oriented financial strategies, DAFs are charitable giving vehicles rather than investment instruments. Unlike impact investments, charitable contributions to DAFs do not involve an expectation of financial return to the donor. Confusion between these concepts may obscure the legal realities of donor control, ownership, and capital deployment within DAF structures.

Current federal law provides limited mechanisms for compelling sponsoring organizations to distribute dormant DAF assets. Existing case law largely affirms the sponsoring organization's exclusive legal authority over donated funds, although ongoing litigation and proposed federal reforms may shape future interpretations of donor rights and payout obligations.

Key Terms and Concepts

Donor-Advised Fund (DAF)

A donor-advised fund is a charitable giving vehicle defined under Section 4966 of the Internal Revenue Code as a fund or account separately identified by donor contributions, owned and controlled by a sponsoring organization, and subject to donor advisory privileges regarding distribution or investment decisions.[1]

Sponsoring Organization

A sponsoring organization is typically a tax-exempt public charity that administers donor-advised funds. The sponsoring organization retains legal ownership and final decision-making authority over all contributed assets.[2]

Charitable Giving

Charitable giving generally involves the irrevocable transfer of assets for public benefit without expectation of personal financial return to the donor, even where charitable assets may later be deployed through recoverable or investment-oriented structures by the sponsoring organization.

Impact Investing

Impact investing refers to the deployment of capital with the intention of generating measurable social and/or environmental impact alongside a financial return. Unlike charitable giving, impact investments generally involve expectations of repayment, appreciation, income generation, or capital preservation.[3]

Community Investing

Community investing generally refers to place-led, place-based or community-centered investment activity designed to support economic opportunity, affordable housing, small business development, or related community development objectives.

Positive and Negative Screening

Positive screening refers to intentionally selecting investments aligned with certain environmental, social, or governance values. Negative screening refers to excluding investments that conflict with specified values or priorities.

1 Under 26 U.S.C.S. § 4966(d)(2), a DAF is a "fund or account that is separately identified by reference to contributions of a donor or donors, owned and controlled by a sponsoring organization, and, with respect to which a donor has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in such a fund or account by reason of the donor's status as a donor."

2 Sponsoring organizations are typically organized as tax-exempt public charities. 26 USCS § 509(a).

3 Global Impact Investing Network (GIIN), *What You Need to Know About Impact Investing* (Jan. 24, 2025), https://thegiin.org/publication/post/about-impact-investing/.

I. Legal Structure of Donor-Advised Funds

Under Section 4966(d)(2) of the Internal Revenue Code, a donor-advised fund is defined as a fund or account:

- separately identified by donor contributions;
- owned and controlled by a sponsoring organization; and
- subject to advisory privileges retained by the donor regarding distributions or investments.

The legal distinction between advisory privileges and ownership rights is central to understanding donor-advised funds. Once assets are contributed to a DAF, the donor receives an immediate charitable tax deduction and relinquishes legal ownership of the donated assets. The sponsoring organization thereafter maintains exclusive legal control over the funds, subject to applicable charitable and tax regulations.

Although sponsoring organizations frequently solicit donor recommendations regarding grants or investment strategies, those recommendations are generally nonbinding. Courts reviewing DAF disputes have repeatedly emphasized that donors exchange legal control for the tax advantages and administrative benefits associated with charitable contributions.

II. Practical Benefits of Donor-Advised Funds[4]

Donor-advised funds offer several practical advantages that contribute to their rapid growth within the philanthropic sector.

A. Immediate Tax Benefits

Donors generally receive an immediate tax deduction upon contribution to a DAF, regardless of when charitable distributions ultimately occur. Appreciated assets, including publicly traded securities, may often be donated without triggering capital gains tax liability.[5]

B. Administrative Simplicity

DAFs allow donors to consolidate charitable planning without independently establishing and administering a private foundation. Sponsoring organizations typically manage recordkeeping, compliance, and administrative functions.

C. Flexibility in Timing of Charitable Distributions

DAFs allow donors to separate the timing of tax events from the timing of charitable giving. For example, a donor experiencing a liquidity event, business sale, inheritance, or unusually high-income year may contribute assets to a DAF while recommending charitable distributions over an extended period.

D. Ongoing Advisory Participation

Unlike one-time charitable donations, donor-advised funds permit donors to maintain ongoing advisory involvement regarding charitable distributions. However, this advisory role should not be confused with legal ownership or enforceable control.

4 James Andreoni, *The Benefits and Costs of Donor-Advised Funds, Tax Policy and the Economy*, Vol. 32, No. 1 (2018), https://www.journals.uchicago.edu/doi/full/10.1086/697137

5 *Donor-advised funds guide sheet explanation*, IRS, (July 31, 2008), https://www.irs.gov/pub/irs-tege/donor_advised_explanation_073108.pdf.

III. Distinguishing Donor-Advised Funds from Impact Investing

Distinctions between charitable giving, impact investing, and other forms of mission-driven capital deployment are not always clearly articulated in public discourse or philanthropic practice, particularly as nonprofit, investment, and community development frameworks increasingly overlap. While a variety of approaches may seek positive outcomes for people and planet, they operate through materially different legal and financial structures.

Charitable giving generally involves the irrevocable transfer of assets for public benefit without expectation of personal financial return to the donor. By contrast, impact investing generally involves deployment of recoverable capital intended to generate both measurable social and/or environmental outcomes and some level of financial return.

These distinctions are particularly important in community economic development contexts, where practitioners increasingly seek to mobilize private investment capital alongside traditional philanthropic resources. Imprecision regarding the differences between charitable grants, recoverable capital, and investment activity may create misunderstanding concerning risk allocation, liquidity expectations, fiduciary obligations, governance authority, and the appropriate role of private investment within community development initiatives. As philanthropic and investment frameworks increasingly intersect, clearer articulation of these distinctions may become important not only for legal compliance, but also for effective capital formation, institutional accountability, and public understanding.

In some cases, sponsoring organizations may deploy donor-advised fund assets through recoverable grants, program-related investments ("PRIs"), mission-related investments ("MRIs"), or other forms of catalytic capital deployment intended to recycle charitable capital while advancing charitable purposes. Although these structures may resemble investment activity in economic substance, any financial return generally remains within the charitable vehicle itself rather than accruing to the donor personally.[6]

Accordingly, the donor's role remains advisory rather than proprietary, even where DAF assets are deployed through recoverable or investment-oriented mechanisms. While DAF assets may in some circumstances support mission-oriented investment strategies, the underlying legal structure of the DAF remains charitable rather than investor-controlled.

IV. Donor Control and Legal Limitations

The principal legal limitation of donor-advised funds is that donors generally cannot compel sponsoring organizations to follow donor recommendations.

In Pinkert v. Schwab Charitable Fund, the Ninth Circuit emphasized that donors "irrevocably disclaim" rights to donated assets in exchange for tax benefits and limited advisory privileges.[7] Similarly, courts reviewing bankruptcy and ownership disputes involving DAFs have held that sponsoring organizations retain exclusive legal ownership over contributed funds.[8] [9]

As a result, donors who believe they retain continuing control over DAF assets may misunderstand the legal consequences of their contributions. Although many sponsoring organizations routinely honor donor recommendations, those recommendations remain discretionary unless otherwise constrained by contractual obligations or organizational policy. This distinction between practical influence and legal authority remains one of the most important — and frequently misunderstood — features of donor-advised funds.

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6 Roger Macpherson, Sean Kearney & Eric Kulow, *How to Use Donor-Advised Funds to Make Impact Investments, Stanford Social Innovation Review*, (Oct. 25, 2018), https://ssir.org/articles/entry/how_to_use_donor_advised_funds_to_make_impact_investments.

7 *Pinkert v. Schwab Charitable Fund*, 48 F.4th 1051, 1053, 1057 (9th Cir. 2022).

8 Further, the relinquishment is tied to the tax benefits characteristic of DAFs. Ibid., *Pinkert v. Schwab Charitable Fund*.

9 The 4th Circuit has established that donors "relinquish all rights and interests in the donated assets." *Behrmann v. Nat'l Heritage Found., Inc. (In re Nat'l Heritage Found., Inc.)*, 510 B.R. 526, 540 (E.D. Va. 2014).

V. Emerging Policy Debates and Litigation

Growing concern regarding the accumulation of undistributed charitable assets within donor-advised funds has prompted calls for regulatory reform and increased payout requirements. Critics argue that some donor-advised funds experience prolonged retention of charitable assets following receipt of immediate tax benefits, raising questions regarding payout timing, transparency, and public benefit. Reform proposals have included mandatory payout timelines, enhanced disclosure requirements, and tax penalties for prolonged asset retention. The proposed Accelerating Charitable Efforts ("ACE") Act S.1981, 117th Cong. (2021) represents one example of federal reform efforts intended to encourage more timely distribution of DAF assets.[10] However, significant legislative reform has not yet been enacted.

Recent public disputes involving grant recommendation decisions have further highlighted tensions between donor expectations and sponsoring organization discretion.[11] These disputes underscore the extent to which donor-advised fund arrangements ultimately depend upon the sponsoring organization's independent legal authority, institutional policies, and interpretation of charitable mission and reputational considerations.

At the same time, ongoing litigation may further shape the boundaries of donor rights within DAF structures. In Peterson v. Christian Community Foundation, pending litigation in Colorado raises questions regarding whether sponsoring organizations may incur contractual or good-faith obligations when refusing to consider donor recommendations or restricting donor access to DAF information.[12]

Although existing case law strongly favors sponsoring organization control, ongoing litigation may test existing judicial assumptions regarding sponsoring organization discretion and donor expectations and, if the Colorado courts rule in favor of the donor, could alter prevailing interpretations of the scope of donor rights within donor-advised fund structures. Moreover, future litigation may test the extent to which donor communications, marketing representations, or fund agreements create enforceable expectations.

Conclusion

Donor-advised funds remain an increasingly influential component of the modern philanthropic landscape. Their popularity reflects significant tax advantages, administrative convenience, and the opportunity for ongoing donor participation in charitable strategy.

At the same time, the legal structure of donor-advised funds requires careful understanding. Once assets are contributed to a DAF, donors relinquish legal ownership and retain advisory privileges only. Sponsoring organizations maintain ultimate authority over distributions and investment decisions, even where donors reasonably expect continued influence.

As conversations surrounding impact investing, community capital deployment, and philanthropic reform continue to evolve, maintaining clear distinctions between charitable giving and investment activity will become increasingly important. As philanthropic, investment, and community development frameworks continue to intersect, clearer articulation of the legal, financial, and governance distinctions among these approaches may help donors, policymakers, and practitioners more effectively evaluate the opportunities and limitations associated with donor-advised funds and mission-driven capital strategies. Greater precision in the language surrounding donor-advised funds and mission-driven capital may help reduce misunderstanding regarding donor rights, charitable purpose, and the practical operation of modern philanthropic vehicles.

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10 The Accelerating Charitable Efforts Act (ACE Act) attempts to compel distribution of DAF funds by imposing a 50% tax on any qualified contributions and their accrued interest if the sponsoring organization has not disbursed those funds within six months of the last day of the tax year. ACE Act, S.1981, 117th Cong. § 4967A(a) (2021), https://www.congress.gov/bill/117th-congress/senate-bill/1981.

11 Rasheeda Childress, *DAFs in Spotlight Again for Ignoring Donor Wishes*, Chronicle of Philanthropy, (May 11, 2026), https://www.philanthropy.com/news/dafs-in-spotlight-again-for-ignoring-donor-wishes/; *Peterson v. Christian Community Foundation, Inc.*, No. 1:26-cv-00179 (D. Colo. filed Jan. 15, 2026).

12 Ibid., *Peterson v. Christian Community Foundation*.