

# Family Foundation Handbook

2010 Edition

Jerry J. McCoy  
Kathryn W. Miree



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# **FAMILY FOUNDATION HANDBOOK**

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**Jerry J. McCoy**

**Kathryn W. Miree**



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# Family Foundation Handbook

**2010 Edition**

*by Jerry J. McCoy and Kathryn W. Miree*

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The *Family Foundation Handbook* provides ongoing practical advice on how to operate a family foundation. It helps the foundation director set and meet personal goals, learn how to avoid liability, and make the most effective grants. This book provides forms, checklists, questionnaires, training forms, and other items to help provide the professional assistance every foundation needs.

## Highlights

This 2010 Edition of the *Family Foundation Handbook* incorporates the changes in tax law and practice that have occurred in this complex and constantly changing field. Highlights include:

- A checklist for analyzing family foundation options, including cost parameters for each form
- An "Owner's Manual" for the operation of a family foundation
- A discussion of the effect upon foundations of losses realized from the Bernard Madoff Ponzi scheme and insight into alternative investments
- New analysis of how the expenses incurred in creating a family foundation should be treated for tax purposes
- A discussion of how a family foundation may qualify for nonprofit mailing privileges
- The most recent statistics of family foundation trends and profiles from The Foundation Center, the Council on Foundations, the Association of Small Foundations, the Giving USA Foundation, and the Internal Revenue Service
- New and expanded developments from the IRS concerning private foundation issues
- News stories focusing on private foundation litigation and cautionary tales of foundation manager liability

- The latest data on staff salaries and guidelines
- Updated lists of foundation resources including charitable trade groups, online research sites, international grantmaking entities, socially responsible investment firms, administrative software, and more
- A review of the new Uniform Prudent Management of Institutional Funds Act (UPMIFA) and progress in adopting UPMIFA across the country

**8/09**

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To Alex, Maddy, Alli, and Jon  
—JJM

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To my family—Ben, Kyser, and Harry—  
the most patient people on the planet

I greatly appreciate the help of my colleagues and clients in this field who continue to teach me more about the world of family foundations. This book contains the results of many collaborative efforts over the years.

I would also like to thank Marty Carter of Baton Consulting and David Hobbs of Hilb, Rogal & Hamilton Company of Alabama for their review of and input on segments of the manuscript.

—KWM

## ABOUT THE AUTHORS

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**Jerry J. McCoy, Esq.** is an independent attorney in Washington, D.C., specializing in charitable tax planning, tax-exempt organizations, and estate planning. He holds law degrees from Duke University and New York University.

A member of the American Law Institute and a fellow of both the American College of Trust and Estate Counsel (ACTEC) and the American College of Tax Counsel, Mr. McCoy is listed in *Who's Who in America*, *Who's Who in American Law*, and *The Best Lawyers in America*. A frequent presenter at planned giving, tax, and estate planning seminars, he serves on the adjunct faculties at the Georgetown University Law Center and the University of Miami Law School. He is chairman of the Charitable Planning and Exempt Organizations Committee of ACTEC.

Mr. McCoy is co-founder and co-editor of *Charitable Gift Planning News*, a monthly newsletter.

**Kathryn W. Miree, Esq.** is president of Kathryn W. Miree & Associates, Inc., a consulting firm that works with nonprofits to develop planned giving programs. She received her undergraduate degree from Emory University and her law degree from The University of Alabama School of Law. She spent 15 years in various positions, including manager of the Personal Trust Department, in the Trust Division of a large southeastern bank. During her tenure with the bank, Ms. Miree handled the foundation administration and grant administration for more than 40 foundations. She joined a regional brokerage firm in 1994 to start its trust company. She established Kathryn W. Miree & Associates, Inc. in 1997.

Ms. Miree is a past president of the National Committee on Planned Giving, the founding president of the Alabama Planned Giving Council, a past president of the Estate Planning Council of Birmingham, Inc., and a past member of the Board of the National Association of Estate Planners & Councils. In addition to those professional associations, she currently serves on a number of foundation and nonprofit boards. She is a graduate of both Leadership Birmingham and Leadership Alabama.

Ms. Miree is a frequent lecturer on nonprofit management and fundraising. Her clients include a variety of nonprofit organizations across the nation.

## PREFACE

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Like most children, neither of us grew up hoping to work with foundations. We both ended up there by accident, following different routes to a similar destination. Here are our stories and how we hope this book may make the reader's journey a bit easier.

### Kathryn's Story:

*I became a foundation administrator by accident—like so many of us find our roles in life. I was an attorney, involved in estate and trust administration, and was asked to take a management role administering charitable trusts and foundations. It seemed like a great idea (because it was a step up), but I had no idea of how to define, much less manage, a charitable foundation. So I asked a simple question: What books can I read to help me learn how to make grants, manage finances, invest money, and keep the foundations on track? I was referred to the Internal Revenue Code and the regulations.*

*I spent weeks reading the Code and regulations and was as lost at the end of the exercise as when I began. I felt that there must be better resources, so I called my friends who practiced in this area and asked them to refer me to an English version of the rules. They also referred me to the Code and the regulations. I kept reading the Code, and still do so today. But the best advice I received came through talking with other foundation administrators and combining their wisdom with resources found in the for profit sector.*

### Jerry's Story:

*Like Kathryn, I likewise became involved in foundation matters by accident, even involuntarily. Congress began work on the Tax Reform Act of 1969 in February of that year and, as the newest attorney in a Washington tax boutique law firm, I was sent off to Capitol Hill to watch the proceedings. The firm had a number of charitably inclined clients, including a number of private foundations, and my assignment was to let them know through overnight bulletins just what was going on in the hearings. This turned out to be a historic time for private foundations, as Congress put together what remains almost unchanged as our federal law on this subject over the course of that year. A few years later I was privileged to serve on the staff of the Commission on Private Philanthropy and Public Needs, named the "Filer Commission" after its chairman, John H. Filer. This landmark study of the nonprofit sector included a detailed review of the law governing private foundations.*

*With these two experiences under my belt, my fate was sealed. Like it or not, I was a specialist in charitable tax planning, with a subspecialty in private*



*foundations. My practice in this area brought me into contact with a number of lawyers around the country who sought assistance in this increasingly specialized field. Along the way I was surprised over and over to see how many people, lawyers and clients alike, got so caught up in the many complications and complexities in this area that they missed the bigger and more important part of the picture—how useful a family foundation can be and how those complications often don't matter at all. In many cases, these complications discouraged the advisers so much that they in turn discouraged their clients from creating foundations.*

*Family Foundation Handbook* is designed to save you from some of the struggles we encountered by giving you answers to the most frequently asked questions and practical solutions for both common and uncommon problems. It will be a valuable tool for advisors and clients and will help them harness the tremendous potential that the family foundation offers. While the Code and regulations are available, there are few practical resources that provide quick, understandable answers to these questions. This book is designed to bring practical, understandable answers and solutions to these commonly asked questions. We have taken our 45 (plus) years of hands-on experience, combined it with the technical directives of the Internal Revenue Code, and reduced it to practical guide for the professional.

The questions are practical but require precise answers:

- Should I create a family foundation, or is there a more effective way to involve my family in charitable giving?
- How does creation of the foundation impact my estate plan?
- How do I handle grant administration? Do you have a sample form?
- What are the administrative obligations of a family foundation?
- Am I required to file tax returns?
- Can I pay myself or a member of my family a salary for foundation work?
- Can I lease my property to the foundation?
- How do I manage foundation investments?

Foundation boards may answer these questions in different ways. Founders establish foundations with different goals, varying levels of assets, and diverse objectives. This book provides the tools to help the professional coach the foundation board through the steps to find the answers.

Moreover, as our experience has too often shown us, the creator of the family foundation is left at the starting line with a new foundation and little direction about how to move forward. The accountant analyzes the tax impact of creating the foundation and gives the go-ahead. The financial planner helps fit the foundation into the family's overall financial picture. The attorney prepares the documents and qualifies the foundation with the Internal Revenue Service. But no one is there to provide ongoing, practical advice on how to operate the new entity. The new foundation director needs help to set and meet personal goals and to learn how to avoid liability, how to make the most effective grants,

## PREFACE

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and how and when to hire an executive director. This book provides forms, checklists, questionnaires, training forms, and other items to help you provide the professional assistance that the foundation needs.

July 2009

Kathryn Miree  
Jerry McCoy

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