

**PACIFIC OPERA VICTORIA FOUNDATION (Hereafter referred to as THE FOUNDATION)  
GIFT ACCEPTANCE POLICY**

**Approved by the Board: June 27, 2012**

**INTRODUCTION**

This policy includes guidelines for gift acceptance and management that are intended to help staff and volunteers develop sound processes for accepting, receipting and administering donors' gifts. The guidelines appear as pages 5 through 20 of this document.

The policy and guidelines will be reviewed and updated periodically to reflect changes to the law and the general environment of charitable giving. They have several purposes:

1. To ensure that each donor's gift makes sense for that donor in terms of his or her age, financial resources, family circumstances and estate plan.
2. To ensure that staff and volunteers respond to donors and their advisors in a timely and professional manner.
3. To ensure gift receipting practices follow the rules set out in the *Income Tax Act* and its Regulations as administered by Canada Revenue Agency.
4. To empower staff and volunteers to actively seek out donations to THE FOUNDATION.

**ELIGIBLE GIFTS**

THE FOUNDATION is authorized to accept both current and deferred gifts. Current gifts are those where ownership of the property transfers at the time the donor makes the gift. With respect to current gifts of all types, only designated Foundation staff members may receive, acknowledge, and deliver receipts to donors. Deferred gifts are those where ownership does not transfer until a certain date or when a condition has been fulfilled, such as the donor's death. In addition to cash, THE FOUNDATION may accept the following:

**Types of Property**

- Public securities
- RRSP, RRIF & pension proceeds
- Life insurance proceeds
- Real estate
- Private company shares and other business interests
- Other property as approved by the Trustees from time to time

**Types of Vehicles**

- Bequests (gifts by will)
- Life insurance policies
- Annuities
- Charitable remainder trusts
- Residual interests
- Other types of gifts as approved by the Trustees from time to time

**I. Responsibility to Donors**

**A. Professional and Ethical Standards**

1. THE FOUNDATION will inform, guide or otherwise encourage and help donors, staff and volunteers who wish to support THE FOUNDATION's activities, but it will never, under any circumstances, pressure or unduly persuade donors to make gifts.
2. Staff and volunteers will conduct themselves in accordance with codes of conduct established by professional associations to which they may belong, including the Canadian Association of Gift Planners, the Association of Fundraising Professionals and CFRE International.

## **B. Independent Legal, Financial and Tax Advice**

1. THE FOUNDATION will encourage donors to discuss proposed gifts with independent legal, financial or tax advisors of the donor's choice to ensure that the donor receives a full and accurate explanation of all aspects of the proposed gift, and to ensure that the gift is consistent with the donor's objectives.
2. If a donor asks to be referred to a legal, financial or tax advisor THE FOUNDATION may give the donor a written referral that lists at least three possible choices. THE FOUNDATION will under no circumstances otherwise influence the donor's choice of advisor.

## **C. Direction of Gifts**

1. Where a donor's gift does not contain any restrictions on its use, THE FOUNDATION Trustees, in consultation with the Executive Director, will use its discretion to determine the best use of the gift.
2. Donors may choose to direct their gifts to a specific program or an endowment in accordance with THE FOUNDATION's policies. Staff and volunteers will encourage donors to consult with THE FOUNDATION before directing their gifts to ensure that THE FOUNDATION is able to honour each donor's wishes.
3. A gift directed to a specific program will be used as specified. However, if circumstances make the specified use impractical or undesirable, then subject to any legal limitations, THE FOUNDATION Trustees may apply the gift to other purposes that conform as much as possible to the spirit and intent of the gift.

## **D. Acting as Trustee or Personal Representative (Executor or Administrator)**

1. As a general rule, THE FOUNDATION staff or volunteers will not act as a trustee or personal representative for a donor. There will be no deviation from this general rule except in extraordinary circumstances. In particular:
  - a. THE FOUNDATION staff or volunteers will not serve as a trustee of any trusts, either *inter vivos* (established during a donor's life time) or testamentary (created under a Will), which involve either donors or other individuals, except as approved by the Trustees on the advice of legal counsel.
  - b. THE FOUNDATION will not serve as a personal representative under a Will, except as approved by the Trustees on the advice of legal counsel, and only if all of the following conditions are met:
    - i. A donor is unable or unwilling to appoint someone other than THE FOUNDATION staff or volunteer;
    - ii. THE FOUNDATION is the sole residuary beneficiary under the Will;
    - iii. THE FOUNDATION is not aware of any potential legal claims that might affect the estate; and
    - iv. A professional co-executor is also named in the Will, or the Will gives THE FOUNDATION the right to appoint an agent to act on THE FOUNDATION's behalf, or as otherwise approved by the Trustees on the advice of THE FOUNDATION's legal counsel.
2. No person in his or her capacity as officer, trustee or employee of THE FOUNDATION will serve as a personal representative or trustee under a Will or as a trustee of an *inter vivos* trust except as approved by the Trustees on the advice of

legal counsel. While this policy is intended to protect staff and volunteers from taking on responsibilities outside their designated roles, this will not apply to volunteer trustees whose profession involves acting as a legal or financial advisor.

3. On the rare occasions where THE FOUNDATION staff or volunteer does serve as personal representative or trustee, before finalizing the estate or trust accounts, THE FOUNDATION staff or volunteers will present the accounts to the Trustees for approval.

#### **E. Privacy**

THE FOUNDATION is committed to protecting the privacy of people whose personal information it collects and holds. We recognize our responsibility to be transparent and accountable to donors for how we use their personal information. (See our privacy policy.)

#### **F. Donor Recognition**

Donors will be recognized for gifts according to THE FOUNDATION's policies and guidelines.

## **II. Accepting and Declining Gifts**

### **A. Review and Approval Process**

1. The following gifts may be accepted at the discretion of the Executive Director:
  - bequests consisting of cash
  - publicly traded securities
  - all outright gifts of cash made during the donor's lifetime including proceeds of RRSPs, RRIFs and life insurance proceeds
2. The following gifts must be reviewed and approved by the Trustees before THE FOUNDATION may accept them:
  - gifts of tangible property such as motor vehicles, art, stamp collections, collectibles, and the like
  - charitable remainder trusts unless contained in a Will
  - life insurance
  - gifts involving an annuity
  - any interest in real estate
  - residual interest gifts
  - shares in privately-owned companies and other business interests
  - publicly-traded securities where there are material liquidity concerns
  - any other property not readily liquidated or valued

Before accepting the gift, all relevant information about the gift will be obtained, including a copy of any appraisal secured by the donor. THE FOUNDATION reserves the right to secure its own appraisal and to seek legal and tax advice from its own advisors.

Notwithstanding paragraphs 1 and 2, the Executive Director may refer any potential gift to the Trustees for review and approval before accepting the gift, thus covering situations in which a gift is difficult to liquidate or likely to be contested, or in which the donation may reflect poorly on the public image of Pacific Opera Victoria and THE FOUNDATION.

#### **B. Authorized Signatories**

Gift agreements and estate releases will be executed according to THE FOUNDATION signing authority policies.

#### **C. Issuing Charitable Tax Receipts**

THE FOUNDATION will comply with the rules for issuing charitable tax receipts as set out in the *Income Tax Act (Canada)* and its *Regulations*.

#### **D. Declining Gifts**

1. THE FOUNDATION will decline all gifts that do not comply with the provisions for charitable donations in the *Income Tax Act (Canada)* and its *Regulations*.
2. While THE FOUNDATION is pleased to accept gifts as described in this policy, and others as decided by the Trustees, THE FOUNDATION must evaluate whether there are any hidden costs associated with accepting each gift. Therefore, it reserves the discretion to decline gifts that may be detrimental to the interests of THE FOUNDATION. THE FOUNDATION will take into account all relevant factors including the following:
  - Conditions attached to the gift by the donor are not consistent with THE FOUNDATION's mission;
  - The donor is seeking to unduly influence THE FOUNDATION;
  - Conditions attached to the gift by the donor are seeking to benefit one particular individual;
  - Property is mortgaged, or there is other potential exposure to debt;
  - There are physical or environmental hazards associated with the property;
  - The property cannot be easily liquidated and is not useful in meeting THE FOUNDATION's mission;
  - Philanthropic intent on the part of the donor is clearly missing;
  - The gift is not a free and voluntary act of the donor;
  - THE FOUNDATION is unable to honour the donor's wishes; or
  - THE FOUNDATION is unable to assign a value to the gift.
3. Any gift that might be detrimental to THE FOUNDATION may be referred by the Trustees to legal counsel for a decision on whether THE FOUNDATION will accept or decline the gift.

#### **E. Cash Gifts of \$10,000 or More**

Cash gifts of \$10,000 or more must be in the form of a cheque, money order or bank draft, except as otherwise approved by the Trustees and the Executive Director.

## GUIDELINES FOR ACCEPTING, RECEIPTING AND ADMINISTERING SPECIFIC GIFT TYPES

The following guidelines are intended to help THE FOUNDATION's staff and volunteers develop sound processes for accepting, receipting and administering gifts in an effort to ensure that they are cost-effective and appropriate for both donors and THE FOUNDATION.

### PUBLICLY TRADED SECURITIES

#### Description

Publicly traded securities ("PTS") include

- common shares
- preferred shares
- mutual fund units or shares
- units in a segregated fund trust
- bonds and debentures

that are traded on a stock exchange or in the open market but DO NOT include shares or other securities of a PRIVATE company. Also, if PTS are traded on a stock exchange that is not Canadian, it is important to ensure that the foreign exchange is 'prescribed' as a qualifying exchange in the Regulations to the *Income Tax Act* (Canada).

#### Tax Benefits

When a person sells PTS, he or she must pay tax on 50% of the capital gain. However, if a person gifts PTS to a charity in-kind (i.e. without first selling them), none of the capital gain is taxed. A donor with highly appreciated PTS is much better off financially to donate the shares rather than to sell them and then donate the equivalent value in cash.

#### Donor Profile

Donors considering a gift of PTS are attracted to it because of the preferred tax treatment offered by the *Income Tax Act*. Donors of PTS:

- are likely to have highly appreciated securities that they are reluctant to sell because they do not wish to pay tax on the capital gains;
- may want to deliberately trigger a capital loss by donating securities that have fallen in value;
- may include older donors wanting to reduce the risk and complexity of their investment portfolios by disposing of securities while they are living;
- may want to 'step up' the cost base of securities by donating them and then using the tax savings plus additional cash to repurchase the securities.

#### Guidelines for Receiving a Gift of Securities

- If the donor is planning to transfer securities electronically through his or her investment advisor, ask the donor to:
  1. complete THE FOUNDATION's "Securities Donation Form" BEFORE giving instructions to begin the transfer so that THE FOUNDATION has the following information:
    - the donor's full name
    - the name and number of the securities being transferred
    - the name of and contact information for the donor's investment advisor

- the intended purpose of the donor's gift.
- 2. fax or email a copy of the Securities Donation Form to THE FOUNDATION's investment advisor so that he/she is aware a transfer of securities will be arriving in THE FOUNDATION's account. This also gives THE FOUNDATION's investment advisor an opportunity to raise any concerns about the securities before THE FOUNDATION accepts the gift.
- If the donor is providing THE FOUNDATION with a securities certificate, the donor must sign a power of attorney (supplied by THE FOUNDATION's investment advisor or the donor's own investment advisor) to allow THE FOUNDATION to negotiate the certificate. **(N.B.** The donor should be advised **not** to sign the back of the securities certificate as this makes the certificate negotiable). The certificate and the signed power of attorney should be delivered immediately to THE FOUNDATION's investment advisor. If the documents are mailed or couriered to the investment advisor, they **must** be sent under separate cover, as together the documents make the securities negotiable, i.e., anyone in possession of both documents could convert the securities to cash.
- THE FOUNDATION should instruct its investment advisor to sell the securities immediately unless the investment advisor recommends against doing so because, for example, the securities are thinly traded, the market is experiencing unusual activity, etc.
- THE FOUNDATION, not the donor, absorbs any commissions or fees associated with selling the securities.
- For securities transferred electronically, the amount shown on the tax receipt is determined by the fair market value of the securities at the close of business on the day that the securities arrive in THE FOUNDATION's investment account.
- If the donor delivers a share certificate and power of attorney, the amount shown on the tax receipt is determined by the fair market value of the securities at the close of business on the day both documents arrive at the office of THE FOUNDATION's investment advisor. However, if the donor delivers the share certificate and power of attorney to THE FOUNDATION's office, the amount shown on the tax receipt is based on the day the documents arrive at THE FOUNDATION's office.

### **Be Aware**

- The donor must transfer the securities to THE FOUNDATION, not sell them first and then give the proceeds, in order to receive favourable tax treatment for the gift.
- The value appearing on the donor's tax receipt and the actual dollars realized from the sale of the securities likely will be different. Make donors aware of this in advance so that there are no misunderstandings.
- It is wise to sell the securities as soon as possible after transfer to avoid sudden market shifts that can cause a significant difference between the gift value on the tax receipt and the sale proceeds realized from selling the securities.

## **BEQUESTS**

### **Description**

Bequests are gifts made through a Will. They can take several forms:

- **Specific gifts:** are most often a specified dollar amount (often referred to as a 'cash legacy'), or an identified property (real estate, jewellery, car, etc.) that will usually be sold by THE FOUNDATION (if it decides to accept the gift).

- **Residuary gifts:** all or a portion (a share or percentage) of the residue of the estate. The residue is the amount left for distribution after debts and estate expenses, taxes, and specific gifts have been paid. Gifts of residue often prove to be larger than specific gifts but they require more work and due diligence on the part of THE FOUNDATION to manage. The gift usually comes in two or more stages – one or more interim distributions part way through the estate administration, and a final distribution when the estate is fully wound up.
- **Restricted gifts:** The Will wording restricts the way in which a gift can be used by THE FOUNDATION (e.g. for a particular program or project, or for endowment).
- **Unrestricted gifts:** The Will wording places no restrictions on the use of the gift. THE FOUNDATION has full discretion to use the gift for its general benefit (e.g. for general operating expenses).
- **Testamentary trusts:** a trust in the Will allowing the surviving spouse or other individual(s) to receive income from the estate assets during their lifetime. THE FOUNDATION receives the capital remaining upon the death of the income beneficiary(ies).

### **Tax Benefits**

A donor is not eligible for a tax receipt at the time he/she makes a Will. However, after the donor dies and THE FOUNDATION receives a distribution from the estate, the official tax receipt issued by THE FOUNDATION can be used to offset tax on up to 100% of the net income declared on the deceased donor's final tax return. Any excess amount from the tax receipt can be carried back and applied against taxes that were owed by the deceased in the immediately preceding year.

### **Donor Profile**

Bequests are the most common type of planned gift, and THE FOUNDATION should actively encourage them. Anyone can become a bequest donor, but the following characteristics describe people who are most likely to include charitable bequests in their Wills.

- Individuals without immediate family members or other dependents (single; married, divorced or widowed without children)
- Individuals with adult children who are financially comfortable
- People who are likely to be thinking about estate planning (e.g. age 50+)
- Grateful people who enjoy and support POV opera productions.
- Donors with a consistent giving history to POV and/or THE FOUNDATION),
- Long-standing POV volunteers
- Next-of-kin who have asked for donations to be made to POV in memory of a family member (i.e. "in lieu of flowers" donations)

### **Planning Bequests**

1. Donors will be encouraged to consult with appropriate staff to ensure their bequest intentions can be honoured by THE FOUNDATION, especially where they are intending to place restrictions on their gifts.
2. Sample bequest language may be given to donors and their lawyers or notaries to ensure that the bequest provision is properly worded.

## Guidelines for Bequest Management

THE FOUNDATION has a fiduciary and moral obligation to the charitable purposes it supports, to make certain that every bequest is maximized and not diminished or lost due to an inexperienced executor, or to unsubstantiated or unreasonable estate administration expenses. Many executors require guidance in the estate settlement process as it is a complex field. By monitoring the estate settlement process, THE FOUNDATION can maximize the monetary value of bequests and shorten the time it takes to receive estate distributions. The main steps in bequest management are:

- Receiving a copy of the Notice of Intention to Apply for Probate, which should have a copy of the Will attached. Generally, if the donor has signed a Fee Agreement for Executor's Fees with a trust company, the Agreement is part of the Will and should be disclosed to beneficiaries.
- For cash legacies, receiving a cheque, usually with a request for an official tax receipt. Cash legacies usually arrive within a few months of the grant of probate.
- For gifts of residue, receiving a copy of the Statement of Assets and Liabilities that is filed with the Probate Registry.
- For gifts of residue, receiving a copy of the Executor's Accounts for review and approval. The accounts should outline all revenues and expenses including amounts paid for legal and accounting fees, and a proposed executor's fee.
- For gifts of residue, receiving a copy of a Release for signing by THE FOUNDATION. This usually accompanies the Executor's Accounts.
- For gifts of residue, receiving one or more interim distributions (partial distributions) of residue with a request for official tax receipt(s). Interim distributions are generally made only after all residuary beneficiaries approve the Executor's Accounts and sign the Release.
- Receiving the final distribution of residue (typically a small amount relative to the interim distribution) usually after the executor has received a tax clearance certificate from Canada Revenue Agency. It is not uncommon to wait 18 months or more to receive a final distribution.

## Be Aware

- Releases are important legal documents and should be signed only after careful review. If the Release contains an indemnity, seek legal advice before signing it.
- Strictly speaking, THE FOUNDATION's official donation receipt should be for capital received from the Estate only – not income earned by the estate following the donor's death. In most cases, the difference between the two amounts will not be significant, and it is more practical to issue a receipt for the entire amount received. However, if there has been a long delay in the estate administration that has resulted in a large amount of income accruing after death, it is prudent to issue the receipt only for the capital portion.
- Whenever estate litigation is a possibility, or the Executor's Accounts may be questioned, contact other charities named in the Will to discuss the situation before signing a Release or agreeing to a course of action proposed by the executor or a party making a claim against the estate. If you need legal advice (and often you do), attempt to retain one lawyer who acts on behalf of all charitable beneficiaries to minimize legal costs.

- Specific bequests of real estate, tangible property or any unusual property must be reviewed and approved in accordance with the policies and guidelines established herein for such property when gifted during a donor's lifetime. No beneficiary, including a charity, is required to accept a gift simply because it has been named in the Will.

## **RRSPs, RRIFs & Pension Plans**

### **Description**

An individual can give all or part of his/her RRSP or RRIF to THE FOUNDATION upon death.

### **Tax Benefits**

A donor is not eligible for a tax receipt at the time he/she arranges for the gift. However, after the donor dies and THE FOUNDATION receives a payout out of proceeds from the RRSP or RRIF, it issues a tax receipt to the donor's personal representative (e.g. executor) in the name of the donor's estate for the amount received. The amount of the tax receipt will eliminate the tax otherwise triggered by an RRSP or RRIF on death. *(Note: On death, an individual can transfer an RRSP or RRIF to a surviving spouse on a tax-free basis. This is called a 'spousal rollover'. No tax is payable until the surviving spouse dies or withdraws funds from the RRSP or RRIF. There may also be some tax relief for surviving financially dependent children and grandchildren.)*

### **Donor Profile**

The profile of an RRSP or RRIF donor is similar to a bequest donor, because the donor can make a future gift to THE FOUNDATION without sacrificing retirement income. Refer to the previous section on Bequests for details.

### **Guidelines**

There are two ways of gifting an RRSP or RRIF on death:

1. The donor can name his/her estate as beneficiary on the Beneficiary Designation Form that is provided by the financial institution holding the donor's retirement plan. The donor then makes provision in his/her Will for a bequest to THE FOUNDATION that is equal in size to the amount the estate will receive from the RRSP/RRIF on death. This amount is distributed to THE FOUNDATION as part of the general estate administration.
2. The donor can name THE FOUNDATION as beneficiary on the RRSP or RRIF designation form provided by the financial institution that holds the donor's investments. Any money payable from the plan on death is paid directly to THE FOUNDATION without flowing through the donor's estate. One advantage of this is that no probate fees will be payable by the donor's estate on the amount of the RRSP or RRIF funds passing to THE FOUNDATION.

In both cases, THE FOUNDATION issues a tax receipt to the deceased donor's personal representative (e.g. executor) equal to the value of the proceeds received.

### **Be Aware**

- Some financial institutions may be reluctant to have a client designate a charity as a beneficiary on their plan designation forms because of internal policy. There is no legal reason in British Columbia for denying charitable beneficiary designations. If the financial institution will not accommodate the donor's request, the only option may be moving the

plan to a financial institution that does allow designations. Fortunately, this problem is becoming less common as requests for charitable designations become more popular.

- Designating THE FOUNDATION as the beneficiary of an RRSP or RRIF is a simple and cost effective way for a donor to make a charitable gift. However, by age 71 every annuitant is required by law to start making minimum annual withdrawals from the RRIF. If a person lives long enough, the RRIF will eventually be depleted. Therefore, if a donor wants to ensure that THE FOUNDATION receives a minimum dollar amount on death, it might be best to put a cash legacy in the Will. The donor should seek professional estate planning advice to make a proper decision.

## **LIFE INSURANCE**

### **Description**

Donors can use life insurance in several ways to make a gift to THE FOUNDATION. The most common are:

1. The donor transfers ownership of a paid-up policy to THE FOUNDATION and also names THE FOUNDATION as beneficiary of the policy.
2. The donor transfers ownership of a policy to THE FOUNDATION where the donor continues to make premium payments, and the donor also names THE FOUNDATION as beneficiary of the policy.
3. The donor does not transfer ownership to THE FOUNDATION but merely names THE FOUNDATION as the beneficiary of a policy.

Other gift possibilities involve wealth replacement insurance and combining insurance with an annuity (commonly referred to as a back-to-back or insured annuity).

### **Tax Benefits**

The tax benefits of giving life insurance depend on how the gift is made.

- If a donor transfers ownership of a policy to THE FOUNDATION, the donor should receive tax receipts for:
  - The policy's value when ownership is transferred, and
  - Premium payments made by the donor after ownership is transferred.
- If a donor names THE FOUNDATION as beneficiary of a policy but does not transfer ownership, the donor does not receive a tax receipt. Instead, after the donor dies and THE FOUNDATION receives a payout from the policy, it issues a tax receipt to the donor's personal representative (e.g. executor) in the name of the donor's estate for any amounts received under the policy.

### **Donor Profile**

Individuals of various ages and backgrounds may be suitable candidates for a gift of life insurance. One of the main issues is the donor's insurability, since this will determine the ability and cost to obtain insurance. Examples of donors who may be interested in giving through insurance include:

- Older individuals who may own a policy they no longer need.
- Younger individuals who can make a substantial future gift with relatively little cost now by purchasing a new policy specifically for the purpose of making a charitable gift.

- Individuals who are hesitant to diminish their estate by making a large gift during their lifetime can purchase wealth replacement insurance. Individuals can make a large gift now and also preserve the value of their estate for their heirs by naming the estate as beneficiary on a policy. Back to back insurance (see above) is especially useful in these situations. In a sense, the donor can have his/her cake and eat it too.

## **Guidelines**

- Insurance gifts involving a transfer of ownership to THE FOUNDATION require certain actions at the time the gift is arranged and throughout the life of the insurance policy:
  - Before accepting the gift, the policy must be reviewed by a FOUNDATION volunteer / or designate with expertise in life insurance to ensure the policy's terms are appropriate for THE FOUNDATION. See comments under "Be Aware" below.
  - All policies for which the donor continues to pay premiums after transfer to THE FOUNDATION should be diarized so that annual tax receipts are issued promptly, or situations where the donor has failed to pay the premium can be identified before the policy lapses.
  - THE FOUNDATION staff should confirm that the insurance company will notify THE FOUNDATION of any delinquent premium payments before allowing the policy to lapse. If the donor stops paying premiums before the policy is paid up, THE FOUNDATION will need to make a decision: surrender the policy for its cash value, or convert the policy for a paid up policy for less than the face amount, or pay the remainder of the premium payments to ensure it receives the full death benefit. The Trustees' decision will be made in consultation with the Executive Director.

## **Be Aware**

- Donors who transfer ownership of a policy to THE FOUNDATION are making an irrevocable gift. Staff should advise donors of this in writing before the gift is completed.
- Donors should be encouraged to obtain independent tax advice before making their gift, since some gifts of insurance can trigger a tax liability for the donor.
- Gifts of policies that are paid up, or will be paid up within five years of transfer to THE FOUNDATION, should be encouraged. This reduces both the administrative burden for THE FOUNDATION and the risk that the donor might default on premium payments.
- Gifts of a new life insurance policy (i.e. one purchased specifically for the purpose of making a gift to THE FOUNDATION) do not qualify for a tax receipt at the time of transfer. Only those premium payments made after the transfer to THE FOUNDATION qualify for a tax receipt.
- Gifts of an existing policy (i.e. an old policy that the donor no longer requires and wishes to donate) must undergo a more comprehensive and expensive valuation process. In a technical interpretation issued in February 2008, CRA indicated that several factors should be taken into account when valuing a life insurance policy. These factors include:
  - The policy's cash surrender value, loan value, face value and replacement value
  - The insured's health and life expectancy
  - Any conversion privileges contained in the policy
  - Other policy terms such as term riders and double indemnity provisions

This represents a dramatic shift from the previous practice of issuing a receipt on the basis of the cash surrender value only and creates a challenge for charities. For all policies that were purchased by the owner for another purpose and are subsequently

being transferred to THE FOUNDATION, an actuary may need to determine the policy's fair market (tax receipt) value. The donor should pay this expense; since THE FOUNDATION must ensure that it does not spend money on a valuation and end up with no financial benefit.

## ANNUITIES

### Description

An annuity is an arrangement where a person purchases a right to receive a guaranteed stream of payments for life or for a specified number of years. Depending on the person's circumstances, the annuity payments are all or partly tax-free. There are three ways to make a gift using an annuity:

1. Self-Insured Annuity: The donor contributes cash to a charity. Part of the cash forms a gift but the charity invests the remaining cash and makes payments to the donor that are backed by a guarantee on the charity's assets. **THE FOUNDATION cannot legally issue self-insured annuities.**
2. Re-insured Annuity: Instead of investing the non-gift portion of the donor's contribution, the charity purchases a commercial prescribed annuity on behalf of the donor. **THE FOUNDATION will not offer re-insured annuities to donors** because the administrative burden of managing these arrangements is too costly.
3. Gift Plus Annuity: The donor buys a commercial prescribed annuity that will pay an amount specified by the donor and uses the excess funds to make a gift to the charity. Although these two transactions are legally separate, considering them at the same time allows donors to make an informed decision regarding the size of the donation they are able to make while still obtaining the income level they wish to have. THE FOUNDATION is willing to receive cash gifts made when a donor purchases a prescribed annuity from an insurance company.

### Donor Profile

The ideal donor for a gift plus annuity is someone who:

- is over age 65,
- needs secure income and is looking for an after-tax rate of return that is better than current fixed income investments (e.g. GICs), and wants to make a gift to THE FOUNDATION.

### Guidelines

- Ensure that the donor works with a qualified financial advisor to arrange the gift and the annuity.
- Although it is permissible to facilitate the donor's annuity and gift by speaking with the donor's financial advisor, ensure that the gift is structured as a gift plus annuity and not as a re-insured annuity for the reasons noted above.
- Issue a tax receipt in the normal way after the donor has delivered a cheque to THE FOUNDATION.

### Be Aware

- Donors need to understand that an annuity contract is irrevocable and the rate of return is set for the duration of the contract. This means that:

- annuities are more attractive for donors in times of relatively high interest rates, and
- donors should be encouraged to discuss the contract and gift with a qualified financial advisor before taking any action.
- Financial advisors are compensated by a commission on the sale of the annuity. Therefore, the transaction likely needs to involve at least \$10,000 before it is worth the advisor's time to work with the client.

## CHARITABLE REMAINDER TRUSTS (CRTs)

### Description

CRTs can be created during a donor's lifetime (these are called *inter vivos* or *living* trusts) or after a donor's death through a Will (these are called *testamentary* trusts). For an *inter vivos* CRT, the donor creates the trust by irrevocably transferring assets, such as cash or securities, to a trustee. The trustee is often a trust company, although this is not a legal requirement. Usually, the donor, or one or more family members, receives the income earned on the investments held by the trustee, and the capital (the 'remainder') is paid to THE FOUNDATION when all of the income beneficiaries have died. It is also possible to create a CRT that will terminate and pay capital to THE FOUNDATION after a specific time period (e.g. 10 years). The donor receives a tax receipt for the present value of the remainder interest, which is based on a formula and may require an actuarial calculation.

### Donor Profile

CRTs appeal to donors having the following characteristics:

- They are older (often over age 70). The value of the tax receipt is influenced by the life expectancy of the donor; the older the donor the larger the tax receipt.
- They are relatively affluent and own other assets in case they need capital to cover an unforeseen future expense. To qualify for a tax receipt, the trust must be irrevocable. In other words, the donor cannot have access to any of the capital placed in the trust. Therefore, donors must be comfortable that they won't ever need the capital for their own purposes.
- Although affluent and able to afford to give up capital, they still want to retain a steady income from the capital for life.
- They may want to be freed from the responsibility of managing their investments and are happy to turn this job over to a trustee.
- They are attracted to the idea of getting a tax receipt immediately to reduce taxes while they are alive rather than getting tax relief for their estate after they have died.
- They may be concerned that a disinherited family member will challenge their Will if it contains a large charitable bequest. By using an *inter vivos* CRT to make the gift, the donor puts the gift beyond the reach of unhappy estate beneficiaries.

### Guidelines

- THE FOUNDATION will not serve as trustee for a CRT, except as approved by the Trustees on the advice of legal counsel. See "*D. Acting as Trustee or Personal Representative (Executor or Administrator)*" on pages 2 and 3 of this document.
- THE FOUNDATION staff will refer a donor to at least two institutional trustees, leaving the donor to make the final selection.

- A lawyer engaged by THE FOUNDATION may prepare the trust agreement. However, THE FOUNDATION must advise the donor to obtain independent legal advice from a lawyer specializing in estate planning before executing the document. If the donor's lawyer prepares the trust agreement, the document must be referred to THE FOUNDATION's lawyer for review before it is executed by THE FOUNDATION.
- If the CRT is irrevocable and its terms provide that no one, including the income beneficiaries, have any right to receive capital encroachments, THE FOUNDATION will issue a tax receipt to the donor at the time the CRT is established for the present value of the remainder interest. The Trustees will decide whether or not THE FOUNDATION requires a professional actuarial valuation. The donor will pay the fee for obtaining the valuation unless the Trustees agree that the fee should be borne by THE FOUNDATION.
- If the CRT is revocable or its terms allow for capital encroachments, THE FOUNDATION will not issue a tax receipt as this would contravene Canada Revenue Agency guidelines.

### **Be Aware**

- For a donor to qualify for a tax receipt from THE FOUNDATION, the CRT must be irrevocable. This means the donor cannot change his/her mind in the future and ask for the assets transferred to the trust to be returned. Also, the trust must not contain any possibility of capital encroachment for anyone.
- If a donor contributes appreciated assets (e.g. securities with accrued capital gains) to the CRT, he/she could be subject to tax. A lawyer with tax and estate planning expertise needs to address this issue before the gift is finalized.
- The assets held in an *inter vivos* CRT will not form part of the donor's estate. This means that the assets are not subject to probate fees or to challenges under the *Wills Variation Act* by estate heirs. Also, trust agreements are private documents, unlike Wills, which become public documents after they are filed in the Probate Registry.
- The fees for setting up and maintaining a CRT can be substantial and often trust companies will not act unless the capital transferred to the trust is \$250,000 or more. There may be exceptions to this general rule. (e.g. a program offered by Investors Group to its clients in which CRTs can be established for smaller sums).

## **GIFTS OF RESIDUAL INTEREST**

### **Description**

A residual interest gift refers to an arrangement under which property, other than cash or securities, is transferred to THE FOUNDATION, but the donor retains the right to use the property for life or a term of years. For example, the donor might give THE FOUNDATION a residual interest in a home and continue to live there, or in a painting and continue to have possession.

### **Donor Profile**

- Residual interests are similar to CRTs in many respects. They are best suited to older donors (ideally over age 70) and donors that own other assets in addition to the one being used to make the gift. The value of the tax receipt is influenced by the age of the donor: the older the donor the greater the tax relief.

- Because a residual interest gift is irrevocable, the donor needs other assets to draw on in case they need capital to cover an unforeseen future expense.
- The donor can give now but continue to enjoy the property or allow a loved one to live out his or her life in a property. By giving now, the donor's estate saves on probate fees, and the donor can receive a tax receipt to reduce tax on current income. Similar to a CRT, a residual interest gift is protected from claims by unhappy heirs because it passes to THE FOUNDATION outside of the donor's estate.

### **Guidelines**

- There are two steps to the valuation process. First, the property needs to be appraised by at least one professional appraiser to determine its fair market value. Secondly, the donation receipt is issued for the present value of the property. The present value calculation may need to be done by an actuary and will be based on the fair market value as determined by the appraiser in step one.
- The donor must provide, at the donor's expense and in a form acceptable to THE FOUNDATION, a current written appraisal of the property's value before THE FOUNDATION will issue a tax receipt. In some cases, THE FOUNDATION may wish to acquire its own appraisal of the property.
- A lawyer engaged by THE FOUNDATION may prepare the legal documents, but THE FOUNDATION's staff must advise the donor to obtain independent legal advice from a lawyer specializing in estate planning before executing the documents. If the donor's lawyer prepares the legal documents, the documents must be referred to THE FOUNDATION's lawyer for review before they are executed by THE FOUNDATION.
- For gifts involving real estate, legal documents transferring title subject to the donor's right to reside in the property are signed by THE FOUNDATION and the donor and then filed in the Land Title Office. In the case of a gift of tangible personal property (such as art), THE FOUNDATION and the donor sign a trust agreement. After the gift is complete (i.e. all documentation is signed and registered as appropriate), THE FOUNDATION issues a charitable tax receipt for the present value of the residual interest.
- Any real estate subject to a residual interest must be thoroughly reviewed as described in the policy and guidelines for gifts of real estate (see below).
- The donor will continue to be responsible for property taxes, insurance, utilities and maintenance costs of the property after transferring title to THE FOUNDATION unless otherwise agreed by the Trustees. The terms of the gift, including THE FOUNDATION's right to inspect the property and review insurance coverage at least annually, must be included in the gift documents.

### **Be Aware**

- For a donor to qualify for a tax receipt, the gift must be irrevocable. This means the donor cannot change his/her mind in the future and ask for the assets that have been transferred to be returned.
- If a donor contributes appreciated assets, they generally will be subject to capital gains tax. Careful planning by a lawyer with tax and estate planning expertise is needed to deal with this issue. Note that a donor's principal residence is generally exempt from capital gains tax but other real estate is not.
- The gifted property will not form part of the donor's estate. This means that the assets are not subject to probate fees or to challenges under the *Wills Variation Act* by estate heirs.

- The legal and other professional fees for creating a residual interest gift can be substantial.

## REAL ESTATE

### Description

Gifts of real estate can include a principal residence, rental or commercial property, recreational property, and agricultural property. Donors can make gifts of real estate in various ways, including an outright gift during their lifetime, granting a residual interest in the property, and by Will.

### Donor Profile

The donor's profile will differ depending on the way in which he/she chooses to make the gift. Refer to the sections on Bequests and Gifts of Residual Interest. Donors making outright gifts of real estate during their lifetime are likely to be:

- Older
- Relatively affluent (i.e. have other assets which can be used for their financial support)
- Interested in simplifying investment holdings (e.g. disposing of a rental property because they no longer wish to be a landlord)
- Interested in using a charitable tax receipt to reduce current taxable income

### Guidelines

Real estate gifts can create risks for both THE FOUNDATION and the donor. Therefore, they require considerable investigation before a decision to accept or decline is made. Ordinarily, THE FOUNDATION will consider the following factors when determining whether or not to accept a gift of real property:

- Environmental Liability  
Could THE FOUNDATION become liable for the costs involved in the cleanup of toxic wastes or addressing other environmental problems?
- Marketability and/or Suitability for Housing  
Is the property marketable? THE FOUNDATION will be less likely to accept the gift if the property will be difficult to sell or is not suitable for use by THE FOUNDATION.
- Carrying Costs (Pre-Sale and/or Conversion Expenses)  
Will there be significant expenses for taxes, maintenance, repairs and other items before sale of the property or conversion to THE FOUNDATION?

It is critical that the following procedures be adhered to so that both THE FOUNDATION and the donor are protected.

1. **Declaration of Intent:** This is the first step towards initiating a gift of real property to THE FOUNDATION. The donor must complete a signed "Declaration of Intent to Donate Real Estate" before the matter is referred to the Trustees for discussion.
2. **Inspection:** Any property that is proposed as a gift shall be visually inspected by the Executive Director or designate, unless the Trustees waive this requirement. It is recommended that photographs of the property be taken and given to the Trustees as part of any information package concerning the property. The Executive Director or

designate shall complete the Real Estate Information Sheet as part of his/her investigation of the property. It is acknowledged that some issues covered in the Information Sheet may not be relevant for all property types and locations. Generally speaking, residential properties located in residential sections of urban areas present a lower risk for THE FOUNDATION than do rural, commercial and industrial properties.

3. **Appraisal of Fair Market Value:** Canada Revenue Agency requires satisfactory evidence of fair market value of the gift. Although the term “fair market value” is not defined in the *Income Tax Act*, the generally accepted meaning is the price the property would bring in an open market transaction between a willing buyer and willing seller, acting independently of each other, and each having full knowledge of the facts. THE FOUNDATION will arrange and pay for an appraisal after the Declaration of Intent has been reviewed and preliminary approval of the gift has been granted. Appraisals must generally be dated within 60 days of the date of ownership transfer. If the appraisal is not accepted by the donor, then THE FOUNDATION will arrange for a second appraisal, and the donor is responsible for paying its cost. If the difference between the two appraisals is equal to, or less than, 5% of the higher appraisal, then the appraisal with the higher value will be accepted as representative of the property’s fair market value. If the difference is more than 5%, then the average value of the two appraisals will be used as the fair market value. Appraisals must be carried out by a person, independent of the donor and THE FOUNDATION, who is professionally qualified to evaluate the property in question and is an accredited member in good standing of the Appraisal Institute of Canada.
4. **Charitable Tax Receipt:** A qualified appraisal of the fair market value of a property or interest in a property is the basis of the charitable tax receipt. A tax receipt will be provided for the appraised value less any advantages or benefits received by the donor in accordance with the *Income Tax Act* and/or any guidelines issued by Canada Revenue Agency. See the ‘split receipting rules’ at <http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/rcpts/splt-eng.html> for more information.
5. **Title Information:** THE FOUNDATION must obtain a copy of the title, a land survey (if available), and any charges registered against the title of the property.
6. **Environmental Risks:** All proposed gifts of real property are subject to an environmental assessment by a qualified professional. Residential property that has been used solely for residential purposes for a significant time may be exempted at the sole discretion of THE FOUNDATION. The donor may be required to execute an environmental indemnity agreement.
7. **Carrying Costs:** The existence and amount of any carrying costs, including but not limited to, property owners’ association dues, country club membership dues and transfer charges, amount and status of property taxes, and property insurance, must be investigated with the donor.
8. **Documentation:** The Executive Director, or designate, in consultation with THE FOUNDATION’s legal counsel, ensures that all documents necessary to implement a gift of real property are prepared and executed. Documents may be prepared by the donor’s lawyer for review by THE FOUNDATION’s lawyer, or they may be prepared by THE FOUNDATION’s lawyer for review by the donor’s lawyer.
9. **Legal and Other Professional Fees:** All legal and other professional fees incurred by the donor to transfer the property to THE FOUNDATION are the responsibility of the donor.

10. **Disposition:** Unless THE FOUNDATION wishes to retain a property for its charitable purposes, gifted property will be sold as expeditiously as possible. Regardless of the value appearing in the charitable tax receipt, THE FOUNDATION will attempt to sell at a reasonable price in light of current market conditions.
11. **Net Proceeds:** The “net proceeds” are defined as the selling price of a property minus the costs associated with the disposition of that property. These costs include, but are not limited to, realtor’s fees, legal fees, property transfer tax, property tax, appraisals, payment and/or discharge of charges against title, administration fees and any carrying costs associated with the property between the date legal ownership is transferred to THE FOUNDATION and the date the property is sold.
12. **Management and Sale of Property:** After ownership of a property has transferred to THE FOUNDATION, but before its subsequent sale, the Executive Director or designate is responsible for the management of the property. He/she ensures that the property is adequately insured, authorizes maintenance and repairs, tracks income and/or expenses, and makes arrangements for collection of rents and payment of taxes and other expenses. The Executive Director or designate may hire a property manager or retain other professionals to perform these services. The costs shall be borne by the subject property and paid either from income (i.e. rents) or the sale proceeds. The Executive Director or designate and Trustees will select a realtor to act as listing agent and determine the list price, and are authorized to accept offers and make counter-offers. The net proceeds and any net income earned pending sale will be used for the purpose designated by the donor.
13. **Deed of Gift and Tax Receipt:** No donation of property will be accepted by THE FOUNDATION until steps 1 through 7 have been completed.

### **Be Aware**

- If environmental contamination is discovered after the property is transferred to THE FOUNDATION, it could be financially responsible for cleaning the property. The cost of cleaning the property could be greater than either the receipted value or the proceeds of sale.
- The property should be sold as soon as possible, unless the Trustees intend it to be used as part of THE FOUNDATION’s charitable activities.
- The tax treatment for gifts of real estate by developers is different than it is for other individuals, because the property will be considered as a gift from inventory rather than capital.

## **TANGIBLE PERSONAL PROPERTY**

### **Description**

Tangible personal property refers to anything you can see and touch other than real estate – e.g. art, collectibles, jewellery, books, equipment, furniture, etc.

### **Donor Profile**

There is no particular type of donor for gifts of tangible property. Such gifts are not common but can arise, for example, when someone inherits property that they do not wish to keep.

## Guidelines

- Before THE FOUNDATION accepts tangible personal property, it will assess whether the property will help THE FOUNDATION further its charitable purposes or whether THE FOUNDATION can immediately sell the property. If it is not usable or marketable, THE FOUNDATION will not accept the property.
- If the donor wishes to receive a tax receipt, the donor will provide THE FOUNDATION with appropriate documentation supporting the current fair market value of the property and the date the donor acquired the property. If the property is being donated within three years of its acquisition, the donor will also provide appropriate documentation of the donor's cost for the property.
- When the property is valued at over \$1,000, the donor will provide, at the donor's expense and in a form acceptable to THE FOUNDATION, a current written independent appraisal of the property. When the property is valued at under \$1,000 an estimated value from the donor based on the original invoice of purchase may be applied. THE FOUNDATION may obtain its own appraisal.
- Tax receipts will not be issued for donations of items with an advertising component or used goods (such as furniture, toys and clothing).

## Be Aware

When a donor gifts tangible personal property three years or more after acquiring it, and the donor did not purchase the property with the intention to donate it, THE FOUNDATION will issue the tax receipt for the property's fair market value. Otherwise, the tax receipt must be issued for the donor's cost of the property. This practice is based on rules contained in the *Income Tax Act* and must be strictly adhered to.

## PRIVATE COMPANY SHARES

### Description

Donors may make gifts of shares in private companies and other business interests (e.g. partnerships). These are highly complex gifts requiring extensive legal, tax and accounting advice for both the donor and THE FOUNDATION.

### Donor Profile

Much of Canada's wealth is in the hands of entrepreneurs who have created and/or grown private businesses. Many entrepreneurs are community-minded people who are attracted to the idea of philanthropy. However, most of their wealth may be tied up in their business as working capital so the gifting of shares in the business may be the only option for making a substantial gift. Gifts from entrepreneurs often arise as part of their estate and business succession planning. The entrepreneur's accountant will likely play a key role in the gift.

### Guidelines

1. THE FOUNDATION may accept these gifts as long as:
  - THE FOUNDATION assumes no known or contingent liability in receiving them,
  - there is a plan to purchase or redeem the shares at an identified point in the future, and
  - the shares have a minimum value of \$100,000 unless otherwise approved by the Trustees.

2. Satisfactory evidence of the value of the shares must be provided at the donor's expense before a tax receipt will be issued.
3. A deed of gift that specifies the terms of the gift and responsibilities for expenses will be prepared at the donor's expense and must be reviewed by THE FOUNDATION's lawyer before the gift is accepted. THE FOUNDATION will not accept the gift unless the donor and his or her lawyer have determined that the deed is in the proper form and that the gift is appropriate for the donor's situation.

#### **Be Aware**

- These shares do not qualify as publicly traded securities; therefore, the special tax treatment provided by the *Income Tax Act* does not apply to them.
- Canada Revenue Agency is likely to review gifts of private company shares. The major concern is with valuation. Therefore, THE FOUNDATION must retain expert legal and accounting professionals with significant experience in valuation of private companies in order to issue a proper tax receipt.

#### **OTHER GIFTS AS APPROVED BY THE TRUSTEES FROM TIME TO TIME**

All other gift types will be considered on a case-by-case basis and must be reviewed by the Trustees and Executive Director, and may or may not involve consultation with legal counsel, before they may be accepted.

The FOUNDATION has made every effort to ensure that the information in the policy is accurate and up-to-date; it does not accept legal responsibility for omissions or errors. The FOUNDATION will periodically review and update the policy to reflect changes to the law and the general environment of charitable giving.

*The FOUNDATION gratefully acknowledges the prior work of Marilyn Kerfoot and Suzanne Dubé on the creation of the template that was used to develop this policy.*