



COMMUNITY  
FOUNDATIONS  
OF CANADA

# CFC TIPS & TOOLS

## for Community Foundations

### Creating a Deed of Gift

A Deed of Gift (also known as a fund agreement) is an important part of the work within a community foundation. As a Deed between the donor and the community foundation it ensures that:

- The charitable gift is used to further the mission and charitable objects of the foundation and include appropriate consideration of donor interests and objectives.
- It provides clarification of the roles, responsibilities and expectations of both the foundation and the donor.
- The gift to the foundation is made in accordance with legal and fiduciary regulations and that the foundation policies are being adhered to.

Donors are encouraged to discuss their wishes with the community foundation if they have made a gift or are planning to leave a gift to the foundation as part of their estate plans. Having this conversation in advance and putting a deed of gift in place ensures that there is appropriate planning and that the gift remains relevant in the years ahead. The foundation should ensure that the donor and family have had an open conversation about the gift and everyone involved understands the nature and purpose of the fund. It is highly recommended the donor's advisor review the document as well so all have an understanding about the commitment of the gift. Care should be taken for the donor to understand the reasons for the clauses, the appropriate policies and how the agreement supports the charitable intent of the foundation.

#### **Legal Advice**

While the attached template attempts to provide a good example of legal language, each foundation is encouraged to have their legal counsel review the agreement before board approval. These are binding legal contracts and the responsibility for fulfilling their purposes ultimately lies with the board.

#### **Changes to Agreements**

Changes can be made with or without an amending clause if the gift has not yet been made. Once a gift occurs then changes can only be made if there is a right to vary clause and within any defined limitations.

#### **Capital**

It is important that your foundation has a clear definition of capital and shares that with donors. For many foundations capital is the original contributed amount only. Budget 2010 eliminated the concept of 10 year gifts.

The word "perpetuity" is in parenthesis in the following template as funds may be established that are not permanent when a donor wishes to spend down the capital.

The wording for this clause is intended to give both the foundation and donor flexibility during difficult economic climates when we may well want/need to encroach on capital in order to a) recover our own fees and/or b) continue to grant in all market conditions.



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As some foundations have discussed, while the commitment to perpetuity remains, there may be times that the fund goes “under water” (the market value is below the original contributed capital) and the foundation wants to continue granting. Many donors have expressed greater interest in the commitment to granting than to the preservation of capital and the fine balance is what we are trying to achieve without tying the hands of the foundation.

While this will be up to each foundation to determine at various times and to implement through their policies it was determined to be best practice to allow for flexibility rather than inflexibility.

### **Minimum Fund Level**

Most community foundations have a minimum level of a gift in order to establish a fund. This ensures that the fund will be able to generate enough income to disburse a grant of a reasonable amount. It is important to identify the minimum level in the deed of gift and clarify how the fund will be treated until it reaches the minimum and what will happen if it does not reach that level in a predetermined number of years. Once the fund reaches the minimum level it becomes ‘active’. Before that time the earnings may be reinvested or support the unrestricted purposes of the foundation.

### **Fund Types**

Community foundations provide donors with several options as to the type of fund they wish to establish. Determining the type of fund is a discussion between the foundation and donor. There are unique clauses to some funds and they are outlined in the following template. It is recommended that the foundation’s lawyer review agreements before board approval. The template outlines the following components for a fund agreement:

- Establishing a Gift
- Capital
- Gifts not held permanently
- Purposes
- Distribution of Earnings
- Recognition
- Administrative Fee
- Receipting
- Reporting to donors
- Right to Vary Clause
- Purposes no longer possible
- Provision if fund doesn’t reach certain levels

Additional clauses are provided that address Donor Advised, Successor Advisors, Field of Interest, Scholarships, Designated and Unrestricted funds.

### **Financial Management of Funds**

Where possible the template refers to the financial management policies of the foundation instead of providing the current details of the foundation’s policies or practices. The benefit in referring to policies is that it allows for these to change over the years and ensures that the funds will always follow the current policies of the foundation. It is critical therefore, that the relevant policies be shared with donors at the time of the deed of gift discussions and that they understand these can change. These would generally include gift



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acceptance, investment, administration fees, and spending policies. Additional language clarifies that the capital may be encroached upon for fees or granting when there are insufficient earnings.

### **Signatures**

Who signs the fund agreement? On the donor's behalf it would include the donor(s). For the foundation, the signature is determined in the By-laws as to whoever has the authority to bind the foundation to contracts. If a seal is required, it will also be indicated in the By-laws.

### **Records Management**

The foundation should keep both a hard and soft copy of the signed agreement. The soft copy would be a scanned PDF of the signed agreement and kept in the foundation's electronic files.



**ABC COMMUNITY FOUNDATION  
ENDOWED FUND TEMPLATE DEED OF GIFT**

<b>Initial Gift</b>	This Deed of Gift is dated the _____ day of _____, 20xx. Between _____ (the “Donor”) and _____ (the “Foundation”). The Donor wishes to establish a fund known as the _____ Fund (the “Fund”) with the Foundation; and the Donor intends to contribute _____ (\$ ) Dollars as the initial contribution to constitute the Fund (the “Initial Contributor”).
<b>Acknowledgement</b>	The Foundation acknowledges receipt of the Initial Contribution from the Donor and agrees to hold such sum in “perpetuity”, together with any additional contributions to the Fund from any person upon the terms and conditions set out herein.
<b>Gifts not held “permanently” (use for flow-through or spend down funds)</b>	Any gift received from the Donor or any other person and designated clearly as a gift that is not to be held in “perpetuity” shall be expended in accordance with the remaining terms of this Deed.
<b>Purposes</b>	The purpose of this Fund will be to support charitable activities or charitable organizations whose activities are within the objects of the Foundation [and more specifically ...] (the “Purpose”)
<b>Investment</b>	The Fund may be invested according to the Financial Management Policies of the Foundation in force from time to time.
<b>Definition of Income</b>	“Income” means the interest, dividends and realized capital gains of the Fund.
<b>Distribution of earnings</b>	The Foundation shall determine the annual distributable earnings according to the Financial Management Policies of the Foundation in force from time to time. In years where current or accumulated income is not sufficient these amounts may be drawn from the capital of the fund. If applicable, the balance of earnings shall be added to the fund.
<b>Recognition</b>	All distributions will be identified as coming from the Fund.
<b>Expenses</b>	The Foundation will deduct or pay a proportion of its administrative expenses from the Fund in accordance with the Financial Management Policies of the Foundation in force from time to time.
<b>Receipting</b>	The Foundation will issue a charitable receipt for all donations to the fund according to the Income Tax Act.
<b>Reporting to donors</b>	The Foundation will provide a financial fund report on an annual basis.
<b>Amendment</b>	This Deed may be amended in the future in such respects as the Foundation and the Donor may mutually agree by written amending Deed; or where the Board of the Foundation deems it necessary to amend any of the terms governing the Fund in order to carry out the purpose(s) of the Fund, but is unable to obtain written agreement from the Donor consenting to such amendments, provided that in no event shall any such amendment derogate from the following: <ul style="list-style-type: none"> <li>• The capital of the Fund and any additions to the fund shall be held in perpetuity by the Foundation and managed in accordance with the Financial Management Policies of the Foundation in force from time to time;</li> <li>• The capital and investment earnings of the Fund shall only be used to support charitable activities or qualified donees* (as defined by the Income Tax Act</li> </ul>



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	(Canada) whose activities are within the objects of the Foundation.
<b>Purposes no longer possible</b>	The Donor recognizes that a particular purpose or pattern of grants may not be achievable in the future, particularly if any of the named charitable organization(s) ceases to exist, winds down its operations or ceases to be a registered charity. Should this be the case, the Foundation shall ensure that the earnings are applied in support of other organizations carrying out similar purposes.
<b>Provision if fund doesn't reach certain level – reverts to unrestricted</b>	Until the capital (total of gifts contributed) of the Fund shall reach \$5,000, there will be no disbursements. If the capital of the Fund shall be less than \$5,000.00 on the fifth anniversary of the date of this Deed, then the Fund shall be folded into the Foundation's unrestricted fund.

**Fund Specific Clauses**

<b>Donor advised</b>	<p>Throughout the Donor's lifetime, the Foundation shall seek the Donor's advice with respect to the making of disbursements from the Fund, provided that the Donor is able and willing to advise. The Donor understands the Foundation's Board has final authority regarding disbursements from the Fund. The Donor understands that disbursements from the Fund can only be applied to support charitable activities of the Foundation or qualified donees under the <i>Income Tax Act</i> (Canada) whose purposes are consistent with the objects of the Foundation.</p> <p>In any year when no such advice is received by the Foundation, or when there are no Donor-Advisor(s), or if made are not acceptable to the Foundation's Directors, distribution of the annual Distributable Earnings will be made at the discretion of the Foundation Directors with consideration being given to the original intent of the Donor-Advisor(s) and by guided by the pattern of giving established.</p>
<b>Successor Advisor</b>	<p>At such time as the Donor dies or becomes incapable of managing his/her affairs or advises the Foundation in writing that he/she no longer wishes to act as the advisor the successor shall be: _____ . The Foundation shall seek and receive the advice of the successor under the same terms as the Donor.</p> <p>Note: This provision is optional. It is also possible to include a clause stipulating that the Foundation shall make decisions regarding the disbursement of funds at its sole discretion, having regard to the original intent of the Donor.</p>
<b>Field of Interest</b>	The Purpose of this Fund will be to support charitable purposes and activities of the Foundation and qualified donees whose purposes are consistent with the objects of the Foundation and, in particular ,...i.e. to support research in the field of cancer.
<b>Scholarships</b>	<p>The Purpose of this Fund will be to support charitable purposes and activities of the Foundation and of qualified donees whose purposes are consistent with the objects of the Foundation and, in particular, to provide a scholarship or bursary for ...</p> <p>All scholarship amounts shall be paid to qualified donees for the benefit of the scholarship recipient.</p> <p><i>Optional</i></p> <p>The recipient(s) shall be determined on an annual basis. In the event that no suitable candidate is found in a given year, any earnings on the Fund shall be added to the balance of the Fund.</p>
<b>Designated</b>	The Purpose of this Fund will be to support charitable purposes and activities of the Foundation and qualified donees whose purposes are consistent with the objects of the Foundation and, in particular, to support the programs and services of XYZ Charity.



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<b>Unrestricted</b>	The Purpose of this Fund will be to support the charitable purposes and activities of the Foundation, and to support the charitable activities of qualified donees whose charitable purposes are consistent with the objects of the Foundation.
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IN WITNESS WHEREOF the Donor and the Foundation have signed, sealed and delivered this Deed of Gift by their duly authorized signatories as of the date first above written.

Donor(s):

For the Foundation:

\_\_\_\_\_  
Name

\_\_\_\_\_  
(Name and title of person empowered  
to sign for the Foundation )