

**ROCHESTER AREA COMMUNITY FOUNDATION
POLICY AND PROCEDURE
FOR POTENTIAL GIFTS OF REAL ESTATE**

I. AUTHORITY TO NEGOTIATE

The President will have the overall authority to handle inquiries, negotiate with donors, assemble documentation, retain appraisers, surveyors, realtors and other technical consultants, and prepare agreements on behalf of RACF. However, the Board of Directors of Rochester Area Foundation must formally accept any gift of real estate prior to its transfer.

II. EVALUATION OF POTENTIAL GIFTS

A. **Property and Report Form:** Upon initial inquiry, potential donors will be asked to complete a Real Property Gift Inquiry Form and return it to the Foundation with appropriate maps and documentation. (Included as Appendix A.)

B. **Liens, Mortgages and Encumbrances:** Property which is subject to liens, unpaid mortgages, deeds of trust, judgment liens, unpaid taxes or assessments, mechanics' liens or other encumbrances will be accepted only in exceptional circumstances and upon advice from the Foundation's legal counsel. If accepted, property which is subject to encumbrances will be evaluated as a "bargain sale" (a bargain sale is an arrangement whereby a donor offers property to the Foundation for an amount less than its current fair market value). Properties subject to encumbrances will be considered for acceptance only if evaluation convincingly demonstrates that the property can be sold at a price which exceeds the aggregate amount of the encumbrances and any costs associated with satisfying them.

C. **Field Evaluation:** If initial information indicates that an offer is serious and if the property seems potentially profitable, a member of the Foundation staff or an authorized representative will visit the property. A representative may be a local realtor or person as the President may deem appropriate. The purpose of the visit will be to determine the nature and type of the property and to identify any potential problems not evident from initially supplied information that would hinder or prevent the Foundation's sale of property.

D. **Market Evaluation:** Whenever practicable, arrangements will be made to have a realtor analyze the property to evaluate the existence of a market for such property. The President may, at his/her option, request that the donor provide such an evaluation from a realtor acceptable to the President.

E. **Expense Budget:** The Foundation's staff will prepare for the Board of Directors a budget outlining all the projected expenses associated with the acceptance of any proposed real estate gift.

III. RESPONSIBILITIES OF THE DONOR

A. The donor will be responsible for obtaining a qualified appraisal complying with IRS regulations for the purposes of establishing the value of the gift for federal income tax purposes, including the preparation of Form 8283 ("Noncash Charitable Contributions") See Treas. Reg 1.170A-13(a).

B. For nonresidential property, the donor must obtain, typically at the donor's expense, an environmental audit satisfactory to the Foundation. No property will be accepted if there is a likelihood of any liability which could attach to the Foundation as a result of its taking title to the property.

C. The donor must furnish the Foundation with evidence of title which shows that title to the property is free and clear except for current real estate taxes and restrictions of record which would not create any economic burden on the Foundation.

D. It is the donor's responsibility to prepare the deed and other instruments which are necessary to transfer the property to the Foundation. All proposed transfer instruments must be reviewed by the Foundation's legal counsel prior to acceptance by the Foundation.

E. Prior to acceptance of the property, the Foundation and the donor must agree in writing on arrangements for paying expenses associated with the property, such as commissions, real estate taxes, utilities, insurance, and maintenance costs. Generally, the Foundation will not advance funds for the payment of such expenses.

F. Donors will be encouraged to discuss contemplated bequests of real estate before finalizing their wills. Property that is bequeathed to the Foundation will be evaluated in accordance with this Policy and Procedure like all other gifts of real property.

IV. PROCEDURE FOR ACCEPTING REAL ESTATE

A. After the requirements of this Policy and Procedure have been satisfied, only the Board of Directors of Rochester Area Foundation will have the authority to accept a gift of real property.

B. The President may refuse any offered gift of real property that is judged not to be in the best interests of the Foundation.

C. Prior to or upon transfer of title to the Foundation, the donor and the Foundation will sign an agreement (approved by legal counsel) stating the terms of the gift, which shall specify that there are no restrictions on the Foundation's right to use or convey the property.

D. Prior to agreeing to accept the gift of real estate, the Foundation will obtain title certification. At the time of acceptance, the Foundation will obtain title insurance in an amount equal to the appraised value of the property. When deemed appropriate, the foundation may accept written indemnification by the donor in lieu of title insurance.

E. The Foundation will not seek exemption from real estate taxes for donated real estate, unless the property is put to use furthering the Foundation's charitable purposes and mission.

V. MARKETING AND SALE OF REAL ESTATE

A. After accepting a real estate gift, arrangements will be made to sell the property through a qualified real estate professional.

B. While it is anticipated that in most circumstances the sale price will equal or exceed the appraised value of the property, the terms of the sale will take into account current market conditions, availability of financing and other factors. Any offer that is below 70 percent of the appraised value must be approved by the President.

C. In the case of a sale within two years of the date of the gift, the Foundation will report the actual sales proceeds to the IRS on Form 8282 ("Donor Information Return").

VI. REAL ESTATE GIFTS BY BEQUESTS

A. Donors will be encouraged to discuss contemplated bequests of real property before finalizing their wills. Property that is bequeathed to the Foundation will be evaluated like all other gifts of real estate.

B. Upon becoming aware that the Foundation has been named to receive a gift under any Will that has been admitted to probate or any trust arrangement, the President will contact the executor, trustee, or other legal representative of the estate, and determine if the Foundation's gift consists of land or, if the Foundation is a residuary beneficiary of the estate, whether the residue passing to the Foundation will contain any land.

B. If the Foundation will or may receive land in satisfaction of the gift, the President will ask the executor, trustee, or other legal representative to conduct an environmental study similar to the one that the Foundation would require if it were to receive an inter-vivos gift. If the executor, trustee, or other legal representative has not made the study and if it does not do so, the Foundation should make its own study or decline to accept the gift.

VII. WHAT THE FOUNDATION WILL NOT DO

A. Except in extraordinary circumstances, the Foundation will not pay for legal assistance, appraisals or other services on behalf of the donor.

B. The Foundation will not establish or corroborate the value of any property for the purpose of substantiating the donor's income tax charitable deduction.

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**ROCHESTER AREA COMMUNITY FOUNDATION
CHECKLIST OF DESIRED ITEMS
IN CONNECTION WITH CONSIDERATION
OF ACCEPTANCE OF REAL ESTATE DONATION**

1. Exact legal name of donor and federal identification number.
2. Description of property (copy of deed).
3. Description of any buildings or other structures located on the land.
4. Boundary survey of property with location of all structures, easements, and encumbrances appearing on the face of the survey.
5. Information regarding existing zoning status.
6. Information on all ingress/egress for the property.
7. Description of prior use of the property.
8. Description of use of surrounding property, with specific disclosure of any storage tanks or potential environmental factors affecting the property.
9. Disclosure of any contemplated or anticipated condemnations, right-of-ways or other actions by municipalities that may affect the subject property.
10. Phase I environmental report on the property, including environmental report on any structures located on the real estate, unless waived by counsel for a gift of residential property.
11. Evidence of title, such as title examination and report, title insurance commitment, or schedule describing any liens, encumbrances, or title matters affecting the property.
12. Copy of appraisal showing the fair market value of the property current within sixty days.
13. Disclosure of amount of existing real estate taxes, insurance premiums, and assessments attributable to the property.
14. Discussion with proposed donor regarding any special arrangements for donor's fund or other sources to address ongoing expenses for taxes, insurance, assessments, maintenance, grass cutting, security, utilities, and similar items.

JL Shared:Development:Gift Acceptance Policies 1/16/02