

Hamilton Community Foundation  
Policy & Procedures Manual

Section: **Asset Development**

Subject: **GIFT ACCEPTANCE POLICIES SUMMARY DOCUMENT**

Approved by: **Board of Directors**                      Section: **2**  
Sub-section: **15**

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## **RATIONALE**

Gift acceptance policies ensure that donations are used to further the mission of the Foundation and include appropriate consideration of donor interests and objectives. They provide clarification, along with Fund Agreements, of roles, responsibilities and expectations of both the Foundation and its donors.

Gift acceptance policies provide guidance for the Foundation Board in decision making. They ensure that gifts to the Foundation are made in accordance with legal and ethical regulations and guidelines. The policies enable the Foundation to respond consistently and on a timely basis, to anticipate potential issues with gifts and to exercise its fiduciary responsibility. They protect the Foundation from potential liability related to gifts that come with (sometimes unforeseen) financial consequences.

Gift acceptance policies can help to enhance long term relationships with donors and encourage donors and Foundation representatives to work together to provide the most effective benefits to our community consistent with donors' broad philanthropic wishes.

This is a summary document to guide the Foundation in the process of gift acceptance. Please reference specific detailed policies on topics identified in this summary.

## **THE PROCESS OF DEALING WITH THE DONOR**

1. **Code of Ethics:** The Foundation is bound by a code of ethics, approved by the Board, that sets out the high standards of professionalism and practice that are to be applied to all of the Foundation's work. Various aspects of this code pertaining to donor relations and the gift acceptance process are set out separately below.
2. **Protection of Donors' Interests:** Foundation board, committees, volunteers and staff will always consider the interests of the donors as the first priority in fund development activities. The Foundation will inform, serve, guide or otherwise assist donors who wish to support the Foundation's activities, but under no circumstances pressure or unduly persuade a donor to make a gift which is inappropriate in light

of the donor's personal or financial situation or the donor's known philanthropic interests.

3. **Confidentiality of Information:** All agreements with donors and all information learned by any representative of the Foundation concerning donors, their assets or philanthropic intentions shall be held in strict confidence by the Foundation, subject to legally authorized and enforceable requests for information by government agencies and courts. All other requests for, or releases of, information concerning a donor will be honoured or allowed only if permission is obtained from the donor, if living, prior to the release of such information.
4. **Informed Donor:** The Foundation encourages donors to work with their own professional advisors in making gifts. It will not solicit or accept a gift from a donor unless it is satisfied that the donor has a bona fide intention to donate to charity and has a proper understanding of the consequences of making the gift, the work of the Foundation, and the uses to which the gift capital and income will be put. Prospective donors will be encouraged to have the terms of all proposed gift agreements reviewed by their own legal and financial advisors.
5. **Conflict of Interest:** Foundation staff and volunteers must declare any conflict of interest in the development activities, including relationships among parties. When a volunteer has a client who is considering a gift to the Foundation, the conflict must be explained to the client and at no time is the volunteer expected to put the interests of the Foundation ahead of those of the client.  
  
The Foundation does not pay commissions or finders' fees to staff or volunteers involved in the development process.
6. **Preference for Agreements:** The Foundation prefers to work with donors to develop agreements with respect to the name, nature and use of their gifts at the time a gift is made. Since difficulties can arise from gifts where the terms are expressed unilaterally, such as a gift made by a will, donors are encouraged to discuss their wishes with the Foundation in advance to ensure feasibility and appropriate planning. This will ensure that the gift will be used as the donor intended it.
7. **Standard Form Documents:** The Foundation will provide an example of an agreement for the type of fund preferred by the donor and upon request, to their advisors. The Foundation's legal counsel shall review all such examples. Care should be taken to ensure the donor understands the reasoning for the clauses and how the agreement protects the donor and also the Foundation.
8. **Donor Recognition:** The Foundation is prepared to provide donors with recognition to a degree consistent with the recognition afforded donors of gifts of similar magnitude, immediacy of effect (outright or deferred gift) and degree of restriction (imposed by the donor) in accordance with the Foundation's Donor

Recognition program and in accordance with the donors wishes.

9. **Privacy/Anonymity:** While at least one officer must know who is making the gift, the Foundation will make its best efforts to respect a donor's wish for privacy and/or anonymity, or a certain degree of privacy and/or anonymity as agreed to by the donor, subject always to legal requirements as referenced above.

## **THE NATURE OF THE PROPERTY GIVEN TO THE FOUNDATION**

10. **Outright and Deferred (Planned) Gifts:** The Foundation encourages donors to make outright and/or deferred gifts. Types of deferred gifts accepted by the Foundation include bequests, gifts of residual interests, charitable remainder trusts, gifts of life insurance policies and proceeds, and such other gift arrangements as the Board of Directors may approve from time to time.
11. **Gifts of Property:** The Foundation is able to accept property that is readily marketable at reasonable cost. This would include cash, deposit instruments of a government in Canada or financial institution, publicly traded securities, life insurance policies, and any other property that the Foundation may invest in consistent with its investment policies.
12. **Other Forms of Property:** The Foundation recognizes that donors occasionally will wish to give it property that is not described in the previous paragraph such as real estate, tangible personal property, shares in publicly traded corporations that are not listed on prescribed stock exchanges or dealing networks, shares in private corporations, residuary interests in trusts, debentures, partnership interests or other property interests not readily negotiable or valued.

While the Foundation is generally pleased to accept gifts, it has to be careful to evaluate whether there may be "hidden costs" in accepting such property. It, therefore, reserves the discretion to decline a gift of property because of the nature of the property that is being offered. Matters the Foundation will take into account are:

- (a) The difficulty in valuing the property or the likelihood that the value of the property will be a matter of differing opinions. The Foundation does not wish to become involved in valuation disputes with Canada Revenue Agency;
  - (b) The possibility that the property will not sell in a reasonable period of time;
  - (c) The potential carrying cost and environment risk associated with owning the property;
  - (d) The potential for controversy associated with owning the property;
  - (e) Whether a satisfactory arrangement can be made with the donor with respect to the absorption of the costs of valuation, maintenance and disposition of the property.
13. **Source of Property:** The Foundation also reserves the right to refuse to accept property the origin of which may bring the Foundation into disrepute.

14. **Gifts that Create Liabilities:** Tax Laws for foundations prohibit them incurring debts, therefore the Foundation is unable to accept the following types of gifts.
  - (a) Gifts of Annuities, whether reinsured or reserve based.
  - (b) Interest Free Loans
15. **Gift Expenses:** All expenses associated with making a gift, such as the cost of an appraisal, legal and accounting expenses, the cost of an environmental report and the like, shall be paid for by the donor. Expenses incurred by the Foundation in accepting a gift, such as legal expenses, costs of maintenance and disposition of the property, shall be charged against the fund when the fund is established.
16. **Property Valuation:** While the donor is responsible for providing an independent appraisal of the property being offered as a gift, the Foundation reserves the right to secure and rely on its own appraisal in determining the acceptability of the gift and the value for the receipt for income tax purposes.
17. **Timing of Issuance of Receipt:** The Foundation cannot issue a receipt for a gift until it is legally the property of the Foundation and must issue the receipt for the value of the property as of the date it becomes the Foundation's property. In the case of publicly traded securities, the receipt will be determined by the closing price on the day the securities are received into the Foundation's brokerage account which is generally the day notice of the gift is received by the Foundation.
18. **Income Tax Filing:** Donors will be advised of their responsibility to file appropriate tax returns and defend against any challenges to claims for tax benefits.
19. **Minimum Fund Amount:** Gifts of any size are welcomed by the Foundation, however, minimum gift levels apply to various types of named and special purpose funds which are subject to Board review from time to time. Funds may be built up to the requisite amount over a period of time, but no grants will be distributed from a fund until it has reached the required minimum.
20. **Disposition of Gifts:** All gifts of property will be sold as soon as possible and the proceeds invested in accordance with the Foundation's investment policy, unless an express agreement has been made with the donor concurrent with the transfer of the property.
21. **Executor / Trustee:** The Foundation is not able, because of the potential for a conflict of interest, to serve as executor of a donor's will or as trustee of a charitable remainder trust. The Foundation will provide the donor with a list of possible institutions that are able to provide this service to the donor.

## **THE USE THAT IS TO BE MADE OF THE GIFT**

22. **Introduction to the Use of the Gift:** The principal mission of the Foundation is to raise, administer and distribute earnings from funds that are held on a permanent

or endowed basis. As a service to its donors, however, the Foundation is prepared to accept from time to time the receipt and disbursement of gifts that are not intended to be held as permanent endowment funds (see Donor Advised Funds below). The Foundation exercises broad discretion as to whether or not to accept such gifts and may charge an administrative fee in respect thereof. In addition, the Foundation from time to time initiates and/or supports special projects, accepting contributions that are to be flowed through the Foundation and not intended to be retained as permanent capital (see Program Funds below).

23. **Types of Funds:** Donors may choose to direct their contribution to any of the following types of funds: Please refer to specific detailed Types of Funds policies for complete information.
- (a) **Unrestricted Funds** are those funds available to the Foundation for any of the charitable purposes encompassed by the Foundation's mission. The Board of Directors determines how unrestricted funds are used.
  - (b) **Field of Interest Funds** are those fund where the donor expresses a preference that the fund be used for a specific charitable purpose without designating the recipient organizations or programs through which such charitable purposes shall be served. The Board of Directors determines which organizations and programs receive grants from field of interest funds and the amount and timing of such grants.
  - (c) **Donor Advised Funds** allow the donor or persons designated by the donor to offer recommendations to the Foundation regarding distributions from the fund. Donor advised funds may be permanently endowed funds from which grants are made only to the extent determined by the Foundation's spending policy, or non-permanent funds from which grants may be made either from principal or interest, or both.
  - (d) **Designated Funds** are earmarked for a particular charitable organization and all grants made from such funds must be made to, or for the use of, the designated recipient organization. The Board of Directors of the Foundation determines the timing and amount of grants from designated funds. If the recipient organization ceases to exist or changes its status as a charitable organization, the Foundation's Board of Directors will first be guided by the terms of variance set out in the agreement established for the Fund. If this is not possible, the Board of Directors may select an alternate charitable use for the designated fund compatible with its original purpose or be guided by the variance provisions set out in the Foundation's Act.
  - (e) **Scholarship and Bursary Funds** are dedicated to providing grants to individuals for educational purposes. They may be restricted in one of several ways, such as for use at a designated educational institution or for a particular course of study. Such grants are directed to, and administered by, the institution for the benefit of the individual recipients.
  - (f) **Agency Endowment Funds** are established by other charitable organizations as a means of providing a source of annual income for their programs or

operations. Such funds become permanent funds of the Foundation and the capital may not be withdrawn except under terms set out in the agreement to establish the fund. Should the agency cease to exist or change its fundamental purpose, the Board of Directors will first be guided by the terms of variance set out in the agreement established for the Fund. If this is not possible the Foundation may redirect the income to a purpose similar to that of the donor charity at the time the fund was established.

(g) **Administration Endowment Funds** offer donors an opportunity to support the work of the Foundation by investing in its management and administrative capacity through the establishment of a separate endowed fund or a gift to the Operating Endowment Fund.

(h) **Program Funds** are those which support selected projects for which donations may be solicited or directed.

24. **Geographic Focus:** The principal focus of the Foundation's activities is the Hamilton area. However, the Foundation may accept gifts for any charitable purpose across Canada and in some cases beyond Canada, as set out in the Income Tax Act. A gift may be declined if there will be no substantial benefit to the local community. A donor may also be referred to another Community Foundation or charitable organization if the Foundation perceives that the donor will be better served by such other organizations.

25. **Restrictions on Use of Income:** As the Foundation is particularly interested in receiving gifts for endowment purposes where the donor has directed the Foundation in general terms as to how the income from the gift is to be used, rather than in particular terms, donors will be invited to consider making at least a portion of their gift unrestricted. However, the donor's preference is paramount and the Foundation will not decline to accept a gift merely because the earnings derived there from are to be allocated in a specific manner.

26. **Benefit to Donor:** The nature of any charitable gift is that a donor cannot expect material consideration (financial benefits other than income tax relief, or opportunities for other persons not at arm's length) to flow from the gift, or after the gift has been made, to direct the Foundation as to how it must apply the earnings from the gift. A donor may, however:

(a) Establish, at the time the gift is made, limitations on the uses to which the gift may be put, such as specifying particular charities or charitable purposes for which a gift may be used. The donor may subsequently waive or loosen such restrictions.

(b) Advise the Foundation from time to time how he/she wishes the earnings from the gift to be applied.

27. **Nature of Donor's Charitable Purpose:** The Foundation does not seek to pass judgment on the value or merit of the donor's proposed application of the earnings

from a gift, so long as the earnings are applied to a charitable purpose. It will, however, communicate all information at its disposal to a donor about the proposed recipient of the earnings.

28. **Duration of Advice:** Donor Advised Funds provide an opportunity for the original donor establishing such a fund to decide who will serve as an advisor to the Fund. The original donor may recommend a name of a succeeding generation of his/her family or others to serve as advisors.
29. **Application of Administrative Policies and Fees:** The Foundation adopts policies from time to time that impose administrative charges on its endowment funds, guide the manner of investment of the funds, and determine the appropriate portion of funds to distribute for charitable purposes or retain as capital to protect against erosion by inflation. In the absence of any more precise agreement with the donor overriding these general policies, the Foundation will apply its policies equitably to all funds under its control and may amend such policies on a continuing basis.
30. **Preservation of Donor's Intent:** Should the original purpose of the gift become impossible, unwise, impractical or unlawful to fulfil at a future time, the Foundation will apply the variance power given in the gift agreement for redirection of distributions. In the event there is no gift agreement with variance power in place, the Foundation will follow the appropriate legal process to reapply the funds, bearing in mind the donor's original intent.

Should the Foundation ever cease to exist, the provisions of its Act and charitable law would apply (i.e., distribution of remaining assets to appropriate charitable organizations). In such a circumstance, the Foundation would endeavor to ensure that the original intents of its donors would continue to be respected.

31. **No Benefit to Individuals:** As required by law, the Foundation applies the earnings from its funds only to benefit charitable organizations. Except in the case of scholarships and bursaries where funds are generally directed to the educational institution on behalf of the student, the Foundation does not benefit individuals directly, even if the activities they undertake are charitable in nature.

## **GENERAL PROVISIONS AND AUTHORIZATIONS**

32. **Fit with Foundation Mission:** All gifts must be consistent with the overall mission and strategic intents of the Foundation and must not in any way compromise the Foundation's integrity and non-partisan status in the community or its classification as a registered public foundation under the regulations of the Income Tax Act of Canada.
33. **Delegation of Authority:** The President & CEO is authorized to accept outright gifts of cash, publicly traded securities and life insurance, and to negotiate

straightforward fund agreements.

34. **Consultation:** The President & CEO will consult with the Executive Committee before undertaking to accept the following:
- Shares in privately-owned companies
  - Shares in publicly-traded companies that are not listed on prescribed exchanges or dealing networks
  - Real estate
  - Tangible personal property
  - Partnership interests
  - Other property interests that are not readily negotiable or valued
  - Residual interest trust
  - Charitable remainder trusts
  - Debentures
  - Mortgages
  - Gifts of significant size
  - Gifts-in-kind
  - Any other gift where there is reason to question the validity of the gift, the liability that might come with it, the wisdom of accepting it or that fall outside the stated policies of the Foundation.
35. **Application of Laws:** The Foundation will abide by all laws and regulations pertaining to a community (public) foundation, including the Income Tax Act of Canada, the Foundation's Act and by-laws and any other legislation that may be enacted in the future.
36. **Changes to Policies:** The Board of Directors may amend these gift acceptance policies at any time. These policies will be reviewed on an annual basis.