

# REAL ESTATE FOUNDATION

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of SAN LUIS OBISPO COUNTY

## **REAL ESTATE GIFT ACCEPTANCE POLICY**

### **Statement of Purpose**

Consistent with its Gift Acceptance Policy, The Community Foundation San Luis Obispo County (“Community Foundation”) encourages gifts of real estate. The Community Foundation has elected to set up a supporting organization to handle such gifts of real estate, known as Real Estate Foundation of San Luis Obispo County (“REF”). These gifts are subject to review and recommendation by REF and must be accepted by a majority vote of the Community Foundation’s Board. This policy will provide guidelines to the donor and the Community Foundation’s Board on the process for accepting a gift of real estate to the Community Foundation.

### **Statement of Policy**

In reviewing gifts of real estate to REF or the Community Foundation; REF, the Community Foundation Board of Directors and staff will consider the following criteria:

- The charitable intent and ultimate community benefit of the gift;
- The nature of any restrictions;
- The permanency of the gift, or in the case of a non-permanent fund, the amount of time the fund will remain with the Community Foundation;
- Projected costs of managing the gift asset;
- Fee revenues to the Community Foundation/REF for administering the gift.

### **General Rules for Acceptance of Gifts of Real Estate**

1. The charitable intent of the gift must be determined. If no charitable intent, REF cannot accept this gift.
2. The clear title of any gift of real estate must be transferred to REF prior to sale in order for the donor to realize the full-appraised value and to avoid capital gains exposure. In most cases, the property must be mortgage-free. If the property is encumbered by debt, the debt must not be of a level that would unduly burden the Community Foundation or adversely affect the marketability of the property.
3. One or more qualified realtors must give a favorable opinion of the prospect of selling the property within a period of 12 months, based upon an inspection of the property and a review of

comparables. The REF Board, prior to Community Foundation Board approval, will review this information.

4. If deemed necessary, a phase one environmental report must be conducted by a qualified agent.
5. A preliminary title search must be done to determine the extent of loans, liens, claims, judgments or any other monetary obligations associated with ownership of the property. The donor must also indemnify REF unless otherwise directed by the REF Board in writing, in a form satisfactory to the Community Foundation's legal counsel, from any subsequent claims regarding ownership of the property of the donor, relatives, prior co-owners, lenders or others.
6. Prior to acceptance of property, the value of the property must be assessed by a qualified real estate professional, including a recommendation for a "quick sale" price. Once REF has agreed to proceed with the gift, a professional appraisal must be obtained by the donor to establish donation value.
7. All parties must agree that the intent is for donated property to be sold when possible practicable, considering the type of gift, and to maximize value and accommodate donor intent.
8. Sale proceeds will be used to establish a fund with the Community Foundation, or to be added to an existing fund at The Community Foundation. If the proceeds are to be used otherwise (for example, passed-through in their entirety for a charitable purpose other than a fund at the Community Foundation), REF will consider accepting and liquidating such a gift for an agreed-upon fee.
9. REF will handle all its required reporting to the IRS but accepts no responsibility for any tax penalties that may result from the amount of the deduction that a donor may claim differing from the actual sales price of the property. Any reporting required by the donor is the donor's responsibility.
10. Unless otherwise agreed, all expenses associated with the evaluation, acquisition, retention and sale of the property shall be paid for and accounted for by REF and reimbursed to REF at the time the property is sold, with the net proceeds used to create or add to the aforementioned fund.
11. Such expenses could include, but are not limited to: title search, appraiser's fee and other professional fees, insurance, security, environmental clean-up, real estate taxes, property repair and maintenance needed to sell or maintain the property, condominium fees and prior debts levied against the property (such as unpaid utility bills.) REF may charge an additional fee (up to 10%) to cover staff costs if the donor does not intend to establish a fund.
12. Under no conditions will the REF serve as the long-term managing owner of a donated property. Should property be occupied when donated, REF will weigh its ability to manage commercial/rental property for the time necessary to sell the property. For example, income producing property may subject REF to expenses such as upkeep of land, maintenance of buildings and management of property.

13. The acceptance of a gift of real estate requires the approval of the REF Board President. Such approval is subject to acceptance by the Community Foundation Board of Directors at the next Community Foundation Board meeting.

Notwithstanding the authority designated above, gifts requiring immediate action, such as gifts in late December, may be exempted from the requirement of Community Foundation Board acceptance if, in the Community Foundation CEO's judgment, in consultation with the Community Foundation Board Chair, the Chair of the Finance & Administration Committee, the Chair of the Investment Committee and the REF Board President, that gift may be accepted without in any way jeopardizing REF's exempt status, and is deemed to be an appropriate gift to accept.

14. REF must evaluate whether any restrictions on the gift desired by donor will jeopardize the classification of such gift as charitable.
15. If real property is held by REF for more than twelve months, a representative of REF should normally perform a physical inspection of the property every twelve months, when practical. No regular inspection will be required for real property in the form of subsurface mineral rights.

# Appendix A

## Procedures for accepting gifts of real estate

### I. AUTHORITY TO NEGOTIATE

The REF Board President and the Community Foundation CEO will have the overall authority to handle inquiries, negotiate with donors, assemble documentation, retain appraisers, surveyors, realtors and other technical consultants, and execute agreements on behalf of REF.

### II. EVALUATION OF POTENTIAL GIFTS

A. **Property and Report Form:** Upon initial inquiry, potential donors will be asked to complete a Real Property Disclosure Form and return it to REF with appropriate maps and documentation. (A sample form is included as Exhibit 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 legal counsel.

C. **Field Evaluation:** Following an offer of a gift of real estate, a member of the REF Board or an authorized representative will visit the property. A representative may be a local realtor or person as the REF Board President and Community Foundation CEO 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 REF'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 REF Board President may, at his/her opinion, request that the donor provide such an evaluation from a realtor acceptable to the REF Board President.

E. **Expense Budget:** The Community Foundation's staff will prepare a budget outlining all the projected expenses associated with the acceptance of all proposed real estate gifts.

### III. RESPONSIBILITIES OF THE DONOR

A. The donor will be responsible for obtaining (at their expense) 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") before the REF Board will consider accepting the property. See Treas. Reg 1.170A-13(a).

B. In some cases, the donor must obtain a phase one environmental report at their expense. Follow-up investigations may be required (at their expense) and an environmental audit

satisfactory to REF. No property will be accepted if there is a likelihood of any liability that could attach to REF or the Community Foundation as a result of it taking title to the property.

- C. The donor at their expense must furnish REF with evidence of title that shows the current conditions of the title to the property, reflecting all liens, encumbrances, real estate taxes and easements, except for current real estate taxes and restrictions of record. Generally, REF will require a preliminary title report of title with an effective date not less than thirty (30) days past.
- D. It is the donor's responsibility to prepare the deed and other instruments that are necessary to transfer the property to REF. All proposed transfer instruments and the title report must be reviewed by REF's legal counsel prior to acceptance by REF.
- E. Donors will be encouraged to discuss contemplated bequests of real estate before finalizing their wills. Property that is bequeathed to the Community 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 accompanying procedures have been satisfied, the REF Board President will have the authority to accept or reject any gift of real property after a majority vote of the REF Board.
- B. The Community Foundation Board of Directors may reject any offered gifts of real property that are judged not to be in the best interests of REF and the Community Foundation.
- C. Prior to or upon transfer of title to REF, the donor and REF will sign an agreement stating the terms of the gift, which shall specify that there are no restrictions on REF's right to use or convey the property. The agreement will also specify that the property is free of monetary obligations associated with ownership of the property except as otherwise reflected in the preliminary title report.
- D. REF will not generally seek exemption from real estate taxes for real estate.
- E. REF to sign IRS form 8283, Section B, for non-cash contributions exceeding \$5,000.

#### **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 in to 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 REF Board.

- C. In the case of a sale within three years of the date of the gift, REF will report the actual sales proceeds to the IRS on Form 8282 (“Donor Information Return”) and provide a copy to the donor.

**VI. REAL ESTATE GIFTS BY BEQUESTS**

- A. Upon becoming aware that the Community Foundation/REF has been named to receive a gift under any Will that has been admitted to probate or any trust arrangement, the REF President will contact the executor, trustee, or other legal representative of the estate, and determine if the gift consists of any interest in real property, and/or, if the Community Foundation is a residuary beneficiary of the estate, whether the residue passing to the Community Foundation will contain any land.
- B. If the Community Foundation/REF receives real property in satisfaction of the bequest, the REF President will have the discretion to ask the executor, trustee, or other legal representative to conduct an environmental study similar to the one that REF 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, REF must make its own study or decline to accept the gift.

# REAL ESTATE FOUNDATION

of SAN LUIS OBISPO COUNTY

550 Dana Street ~ San Luis Obispo, CA 93401

## REAL PROPERTY DISCLOSURE FORM

**Property owner/donor to complete prior to acceptance of gift**

**Please return to:  
Real Estate Foundation of San Luis Obispo County  
550 Dana Street  
San Luis Obispo, CA 93401**

Owner(s) \_\_\_\_\_

\_\_\_\_\_

Phone \_\_\_\_\_

Email Address \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Property location \_\_\_\_\_

\_\_\_\_\_

A.P.N. # \_\_\_\_\_

Land area (acres or sq. ft.) \_\_\_\_\_

Building area (sq. ft. each floor) \_\_\_\_\_

Zoning \_\_\_\_\_

Replacement cost of building \_\_\_\_\_

Current property insurance coverage and annual premium \_\_\_\_\_

Date of acquisition/form of acquisition \_\_\_\_\_

Current cost basis (includes improvements) \_\_\_\_\_

Principal balance of mortgage \_\_\_\_\_

Current fair market value \_\_\_\_\_

Assessed value for real estate taxes \_\_\_\_\_

Real estate taxes \_\_\_\_\_

Land value \_\_\_\_\_ Appraised value \_\_\_\_\_

Appraiser \_\_\_\_\_ Most recent appraisal (date) \_\_\_\_\_

Occupancy status after transfer of title to the Real Estate Foundation:

Unimproved (no buildings)	_____
Unoccupied (building, but no occupant)	_____
Occupied (building with occupants)	_____

Please indicate by checking "yes" your awareness of any condition or problem that may affect the title or marketability of the property. Use Section VII to provide additional information.

<b>II. Title/Zoning</b>	<b>Yes</b>	<b>No</b>
A. Title	_____	_____
B. Zoning variances, violations or special permits	_____	_____
C. Zoning violations	_____	_____
D. Restrictions or easements	_____	_____
E. Survey available	_____	_____

<b>III. Condition of Building</b>	<b>Yes</b>	<b>No</b>
A. Foundations/slab	_____	_____
B. Basement water/dampness/sump pump	_____	_____
C. Roof leaks	_____	_____
D. General structural	_____	_____
E. UFFI (formaldehyde insulation)	_____	_____
F. Un-reinforced Masonry construction	_____	_____
G. Asbestos	_____	_____
H. Lead paints	_____	_____
I. Termites/ants/pests	_____	_____

J	Swimming pool	_____	_____
K	Radon	_____	_____
L	Building Systems		
	1. Plumbing	_____	_____
	2. Electrical	_____	_____
	3. Heating	_____	_____
	4. Air conditioning	_____	_____
	5. Hot water	_____	_____
	6. Water supply	_____	_____
	7. Sewage; type	_____	_____
<b>IV.</b>	<b>Rental/Condominium/Cooperative</b>	_____	_____
A.	Building systems	_____	_____
	1. Leases	_____	_____
	2. Lease defaults	_____	_____
	3. Last month's rent/security deposit	_____	_____
B.	Common area fees in arrears	_____	_____
C.	Building or sanitary code violations	_____	_____
D.	Operating/capital budget	_____	_____
<b>V.</b>	<b>Environmental</b>	<b>Yes</b>	<b>No</b>
A.	History of property		
	1. Property has prior or current use for industrial, commercial, agricultural, manufacturing, waste disposal or any other non-residential purposes	_____	_____
B.	Condition of property		
	1. Stressed or denuded vegetation or unusual barren areas	_____	_____
	2. Discoloration, oil sheens, or foul/unusual odors in water	_____	_____
	3. Storage drums	_____	_____
	4. Above or underground storage tanks; vent or filler pipes	_____	_____
	5. Evidence of oil or other chemicals in soil	_____	_____
	6. Evidence of hazardous materials	_____	_____
	7. Evidence of toxic air emissions	_____	_____
C.	Adjacent properties		
	1. Properties adjacent or close to subject have conditions requiring "yes" answer to any questions in (A) and (B) above	_____	_____
D.	Flood plain/wetlands/drainage	_____	_____
E.	Endangered plants or wildlife	_____	_____

Are you aware of any other information concerning any part of \_\_\_\_\_  
the land or buildings that might affect the decision of a buyer  
or affect value of property or affect use by buyer?

**VI. Property Expense Budget**

To hold this property as a Foundation asset, the following income and expenses are anticipated:

A.	Income	<b>Annual</b>
	1. Rent	_____
	2. Other	_____
B.	Expenses	
	1. <u>Real estate taxes:</u>	
	First payment due _____ (date) _____	
	Second payment due _____ (date) _____	
	2. <u>Utilities:</u>	
	Gas	_____
	Water/sewer	_____
	Electric	_____
	Trash	_____
	3. <u>Services:</u>	
	Caretaker/property manager	_____
	Landscaping	_____
	Heating/cooling service contract	_____
	Security	_____
	Pool services	_____
	Common area charge (condominium)	_____
	4. Maintenance/Repairs	_____
	5. Insurance	_____
	<b>Total Expenses</b>	_____

**VII. Additional Information on Sections II through VII**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Acknowledgments**

**VIII.** Owner(s) hereby acknowledge that the information set forth above is true and accurate to the best of my (our) knowledge

\_\_\_\_\_

Owner

Date \_\_\_\_\_

\_\_\_\_\_

Owner

Date \_\_\_\_\_

## Internal Checklist of items needed for Donation of Real Property

<u>Documents to Obtain</u>	Date	Responsible Party
<p>Preliminary Report of Title: <i>Donor should be asked to supply.</i></p>	_____	Donor
<p><b>Appraisal:</b> <i>Must be ordered, paid for and submitted within 60 days of deed delivery.</i></p>	_____	Donor
<p><b>Deed:</b> <i>Shows how title is vested and is used to prepare the title transfer.</i></p>	_____	_____
<p><b>Property Tax Bill:</b> <i>Shows assessed value of land, improvements, actual tax and any assessments.</i></p>	_____	_____
<p><b>Income/Expense Statements for the past Three-Year Period:</b> <i>If commercial income-producing property.</i></p>	_____	_____
<p><b>Association Documents:</b> <i>Ownership rights and responsibilities of some properties, primarily residential. Or condominiums are governed by an owners' association. The agreement <u>should include fees or assessments, together with a statement showing the condition of any reserve fund for deferred maintenance.</u></i></p>	_____	Donor
<p><b>Lease or Rental Agreements:</b> <i>If the property is leased or rented to others, a copy of each rental agreement should be obtained showing the terms of the agreement term of rental, deposits, etc.</i></p>	_____	_____
<p><b>Notes and Trust Deeds or Mortgages:</b> <i>If the property has a mortgage or trust deed or other notes, copies of those documents must be obtained.</i></p>	_____	_____
<p><b>Current Mortgage Statement:</b> <i>Will show the current status of a loan and will be helpful in identifying and discussing the loan with the lender.</i></p>	_____	_____

**Insurance Policy:**

*Will verify cost of Insurance and provide information for REF to transfer insurance, if desired, after gift is made.*

\_\_\_\_\_

**Plot Map/Property Line:**

*This indicates location of property and is an important step in acquiring much of the information for gift analysis. Obtain any existing surveys.*

\_\_\_\_\_

**Inspection/Environmental Reports:**

*Where inspection reports are available from previous activity related to the property, such a Code Officers, inspection reports or structural assessment reports by an engineer. Existing environmental, archeological reports, plans & specifications. Any history on the property. Any documents indicated in preliminary report Sch B*

\_\_\_\_\_

**Fund Agreement:**

*Outline of donor's charitable interest.*

\_\_\_\_\_

**Donor/Donee Transfer Agreement:**

*Must use REF approved agreement form (if appropriate depending on type of gift). The agreement should be drafted with legal counsel help to meet the needs of each gift.*

\_\_\_\_\_

**Known Neighbor Issues**

\_\_\_\_\_

## Real Estate Gift Check List

1.  CEO or designee responsible for physical observation of property under consideration.
2.  Receive real property disclosure checklist from donor.
3.  Consult with real estate agent to determine marketability
4.  Receive written communication from donor on intent to make gift
5.  Approve title search on the property
6.  Order Phase One assessment if deemed necessary at owner's expense. Vendor will provide certificate of insurance verifying minimum of \$1 million of insurance & indemnification coverage. Assessment should include:
  - 50-year Title history
  - Existence of federal, state & local phase 1 environmental clean-up liens
  - Review of government records of sites where there have been releases likely to cause contamination at the site
  - Visual site inspection and immediately adjacent sites to investigate chemical use, storage, treatment & disposal practices
    - On-site interview
    - Asbestos presence
    - Radon levels
    - Evidence of lead-based paints
    - Underground and above ground storage tanks
7.  Develop Following Agreements:
  - Fund agreement
  - Expense reimbursement & fee agreement
  - Deed execution
  - Title insurance policy
  - Open Escrow – add estoppel certificates
8.  Record deed and receipt of gift
9.  Change address, utilities as necessary
10.  Contact real estate agent to sell property if directed by REF Board
11.  Receive check/wire for net proceeds of sale
12.  File form 8282 with IRS if required  
(if property disposed of within 3 years of donation)
13.  Send thank you to donors
14.  Obtain Insurance on property, both property and general liability
15.  1099 for mortgage interest sent
16.  Provide copy of IRS form 8282 to donor