
CAGP OTTAWA ROUNDTABLE CHAPTER

February 5, 2009

GIFTS OF LAND CHANGING GROUND RULES

By Karen J. Cooper, LL.B., LL.L., TEP.

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Gifts of Land
Changing Ground Rules

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WE'RE GOING TO LOOK AT....

- Donors and their land - 3 scenarios
- Land gifting - tools to use with donors
- Ecological gifts - tax examples
- Your Q&A's

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MY LAND.....

- I am deeply rooted to this land
- It's my family land
- This land (my buildings) has a story to tell
- I am connected to the natural setting
- I know all the trees, birds, flowers here
- There were people here long before me

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I WANT TO KNOW THAT YOU WILL....

- Take care of it for me after I leave it
- Respect what I care about
- Keep the historic buildings safe
- Protect the wildlife and trees
- Use it (proceeds from it) wisely

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IT WOULD BE AWFUL IF SOMEONE...

- Logged it/clear cut it
- Drained my wetland
- Took down my family home
- Built on top of the midden
- Carved it up for a subdivision

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COULD THIS BE YOUR NIGHTMARE?

LOCAL WETLAND DRAINED

Aqua Hospital Foundation Sale Condemned

The people of Aqua are calling for a public inquiry after learning that the Aqua Hospital Foundation sold land donated by well-known naturalist Mrs. EO Frog to a developer with a history of

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WHAT CAN YOU DO?

- Listen to your donor
- Find out what the land is telling you
- Look for a gifting tool that will protect key features & elements
 - Natural
 - Historic
 - Archeological
 - Recreation

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WHAT ARE YOUR OPTIONS?

- Ecological gift
 - Total property donation
 - Partial rights – covenant
- Split receipts: sale/donation
- Subdivision (donation to land trust, sale of other parcels)
- Community purchase of land (donations to land trust to purchase from you)

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WHO CAN HELP YOU?

- Assessment of land values
 - The donor
 - Locals (first nations, naturalists, historians, land trust representatives)
 - Professionals (Biologists, archeologists, historians, museum/archives staff)

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WHO CAN HELP YOU?

- Gifting mechanisms
 - Professional advisors (tax, legal)
 - Ecological Gifts Program staff
 - Land trust representatives
 - Assessors
 - Land surveyors

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TAX BENEFITS – EXAMPLE 1

- Assume that the undivided property in the Gulf Islands, Alberta or Ontario has a cost (“ACB”) of \$700,000 and a certified fair market value (“FMV”) of \$1,000,000
- Assume that the property may be certified as ecologically sensitive land and that the donor is considering an ecological gift
- Assume donor has taxable income of \$150,000

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TAX BENEFITS FOR DONOR

- Immediate donation tax credit available in year of gift of FMV of \$1,000,000
- Entire donation may be used – not limited to 75% of taxable income like other gifts
- With an income of \$150,000 and a marginal tax rate of 46%, the donor will want to claim a donation tax credit of about \$150,000 to offset any tax liability arising in the year of gift

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TAX BENEFITS FOR DONOR (CONT'D)

- The remaining \$850,000 may be claimed in the five (5) subsequent years
- No tax on the capital gain (FMV - ACB = \$300,000) arising as a result of the disposition of the property
- If an ordinary gift of land, the donor would pay tax on a taxable capital gain of \$150,000 and need to claim a donation tax credit of about \$300,000 to completely offset any tax

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TAX BENEFITS – EXAMPLE 2

- Assume that the same property is owned by a real estate developer who holds the property on income account (e.g. not capital) or as inventory
- While the property could still qualify as an ecological gift if the land is ecologically sensitive, there would be little tax benefit

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TAX CONSIDERATIONS FOR DONOR

- The donor would have to include in income the proceeds of disposition (deemed to be the FMV of the property) triggering tax on \$1,000,000
- The tax on the disposition would be offset by the donation tax credit on \$1,000,000 gift
- No benefit from the elimination of tax on capital gains since property is held on account of income

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TAX BENEFITS – EXAMPLE 3

- Assume that the donor in scenarios 2 and 3 wants to retain the right to use the home during her lifetime and make a ecological gift of the remainder
- Certified FMV of gift is \$600,000 - it is generally the current appraised FMV of the gift less the value of the life interest (IT 226R)

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TAX CONSIDERATIONS FOR DONOR

- Immediate donation tax credit in year of gift even though able to continue to use the property
- Remainder of the donation may be carried forward for 5 years
- No tax on the capital gain arising as a result of the disposition of the remainder interest

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TAX BENEFITS – EXAMPLE 4

- Assume that the donor in scenario 1 wants to sell the land to a land trust at a 50% discount, e.g., for \$500,000, and that the original cost of the lands was only \$100,000
- Split-receipt situation

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TAX CONSIDERATIONS FOR DONOR

- One half of the transaction will be treated as a sale, such that the donor will have to include in income the taxable capital gain on part of the disposition.
- Since the price paid is 50% of the FMV, 50% of the capital gain will be subject to tax:
 - 50% of the cost = \$50,000
 - \$500,000 - \$50,000 = \$450,000 capital gain
 - \$250,000 taxable capital gain
- But if agricultural land, lifetime exemption?

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TAX CONSIDERATIONS FOR DONOR (CONT'D)

- Immediate donation tax credit available in year of gift of FMV of \$500,000 which would offset any tax arising on the sale portion
- Remainder of the donation may be carried forward for 5 years

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RESOURCES

- Ecological Gifts Program (Environment Canada)
- www.....
- Canadian Land Trust Alliance
- Land Trust Alliance of BC
- Creating a Green Legacy: The Ecological Gifts Program by Karen J. Cooper, *Charity Law Bulletin* #81 available at www.carters.ca

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