
**HOSPITALS AND FOUNDATIONS SEMINAR SERIES
HEALTHCARE PHILANTHROPY:
CHECK-UP 2009**

Toronto - June 11, 2009

**Understanding Gifts of Real Estate
and How to Develop Them**

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

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GIFTS OF REAL PROPERTY

- Value of Canadian real property assets (homes, land, income property, vacation property) = \$2.36 trillion
- Increase in value of real property 1999-2005
 - 50.6% home values
 - 80.5% other real property
- Substantial tax liability

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OVERVIEW

- Underlying non-monetary values
- Benefits to donors and charities
- Donors and their land - 3 scenarios
- Challenges
- Land gifting - tools to use with donors
- Ecological gifts - tax examples

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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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BENEFITS TO CHARITY

- Usually large gifts
- Increase in cash flow
- Increase assets
- Fulfill mission
- Improve, solidify donor relationship

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BENEFITS TO DONOR

- Philanthropic satisfaction
- Tax receipt
- Reduced capital gains liability
- Retain a life interest
- Asset removed from estate
- Corporate gift of inventory

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WHAT CAN YOU DO?

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

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SCENARIOS

- Emotional Hooks
- Get Help
- Other Solutions
- Possible Nightmares

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1. Your Arts Foundation has been approached by a major donor (a couple) about a gift of land. It is 80 acres in size, is located in Alberta, and it includes a permanent wetland (about 1/2 acre in size), 10 acres of native prairie grassland (very rare) and the family home.

The donors have supported the arts for years (she was a dancer, he was a musician). They also love their land and have lived there for almost 40 years. They have led the way in organic, free range poultry production. They cannot keep the farm going anymore and are moving to live with their daughter in Calgary.

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2. Your hospital foundation has been approached by a major donor about a gift of land. It is 5 acres in size, is located very close to Ottawa, Ontario, and it includes a Victorian house, built in 1870 and a year-round creek with creekside habitat that is home to an endangered red salamander and three red-listed plant species.

The donor has been long-time supporter of your foundation and since his wife died last year, has been slowly settling his affairs and packing to move to a retirement home. The property is the last piece of land of what was the family farm (his family were the first settlers in the area). He would like to make a major gift in memory of his wife.

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3. Your university has been approached by a wealthy donor about a gift of land. She owns an island (with a single title) in the 1000 Islands about 3 acres in size and it includes endangered species of grasses, a possible native burial site and a modest size but fairly new house designed by a pre-eminent architect.

The donor would like to continue to use the house, and she wants the university to set up a chair in her name as a result of the donation.

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CHALLENGES

- Mission – do we want it?
- What to do with it? How to manage it?
- Costs, taxes
- Environmental Issues
- Disbursement Quota
- Valuation

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WHAT ARE YOUR OPTIONS?

- Ecological gift
 - Total property donation
 - Partial rights – covenant
- Split receipts: sale/donation
- Subdivision (donation to charity, 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 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 an 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
 - \$225,000 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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