CHARITABLE DONATIONS OF LIFE INSURANCE

Guidelines for Canadian Charities

MARCH 2021

CAGP

ACKNOWLEDGEMENTS

These best practices materials have been developed to provide guidance and support for donors, charities, advisors and insurers wishing to make charitable gifts of life insurance.

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- **David Wm. Brown**, CLU, CH.F.C., CHS, TEP, Conference for Advanced Life Underwriting (CALU)
- **Ryan Fraser**, CFP, CIM, RIS, MFA-P, Quiet Legacy Planning Group Ltd.
- **Robert Kleinman**, FCPA, FC, Jewish Community Foundation of Montreal
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- **Ruth MacKenzie**, Canadian Association of Gift Planners (CAGP)
- **Brenda McEachern**, B. Comm., LL.B., TEP, RBC Wealth Management
- **Grant Monck**, LL.B., PGgrowth
- **DeWayne Osborn**, CPA, CGA, CFP, Cardinal Capital Management

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OVERVIEW

This set of documents has been designed to assist donors, charities, insurance advisors and life insurers with the donation of life insurance policies to Canadian charities. It has been developed by the Canadian Association of Gift Planners in conjunction with the life insurance industry to help all parties mitigate risks, better protect consumers, and ensure that high-quality gifts of insurance are made to charities.

This Charitable Donations of Life Insurance Package consists of four Guides :

- *A Guide for Canadian Donors*
- *A Guide for Canadian Advisors*
- *A Guide for Canadian Charities*
- *A Guide for Canadian Insurers*

As best practices guides, all materials are optional, however **CAGP encourages each party to ask the other parties to follow their respective guides throughout the process.**

The first three guides listed above contain optional signature forms that will allow each party to document for their compliance records that best practices have been followed, should they wish.

These guidelines are applicable to both transfers of policies and the setup of new charitably-owned policies.

Additionally, other guideline resources available include:

- Understanding Tax Receipting for Charitable Gifts of Life Insurance
- How to use Life Insurance as a Charitable Gift
- What is Insurance Trafficking?

GUIDELINES FOR CANADIAN CHARITIES

This information package is designed to assist you in making an informed decision when accepting a donation of a life insurance policy. It has been jointly developed by the Canadian Association of Gift Planners (www.cagp-acpdp.org), and the insurance industry.

In addition to this document, there are information documents available for insurance advisors, insurers and donors at www.cagp-acpdp.org. You may wish to make it part of your Gift Acceptance Policy to provide these packages to your donor and their insurance advisor. They may find the information in their packages very useful to assist you in making your donation work as smoothly as possible. These resources may be particularly helpful when working with advisors with limited experience in policies which are donated to charities.

Steering clear of regulatory concerns and unnecessary risks

One of the driving factors in the creation of this toolkit was provincial insurance regulatory concerns around the trafficking of life insurance policies, in particular Stranger-Owned Life Insurance (STOLI) and viatical settlements. Both of these are prohibited in almost all Canadian Provinces, with the exception of Quebec and Saskatchewan at the time of publishing these guidelines.

Provincial regulators are concerned that entities whose business is focused on the trafficking of life insurance policies (STOLIs and viatical settlements) may use another entity's charitable status to try and bypass life insurance trafficking prohibitions or that registered charities may be accepting gifts of life insurance to facilitate large donations without an appropriate plan to keep the insurance in effect. If a charity were to participate in such a transfer – knowingly or unknowingly – it might create a significant legal or public relations risk to the organization. Additionally, at least one regulator has specifically recommended that the charitable sector produce best practices guidelines to help mitigate this risk.

These guidelines are designed to help you keep a compliant practice, and to ensure that there is a public set of standards and guidelines to help you safely accept gifts of insurance.

GUIDELINES FOR CANADIAN CHARITIES

IMPORTANT

These guidelines will help you minimize the risks (including regulatory risk) of acceptance of a life insurance policy donation. Adhering to these best practices cannot, however, guarantee that a transfer or donation of insurance will be free of regulatory concern.

Please consider your impact on the sector as a whole.

Recent history has shown that organizations which take a more aggressive approach to soliciting and acquiring gift of life insurance may attract unwanted regulatory attention which can affect the entire sector. Should your organization choose to take a more aggressive approach than recommended in these best practices, please take into consideration the impact to the sector as a whole.

Best Practices in determining a valid relationship between donor and charity

For a transfer of an existing life insurance policy from a donor to a charity to be appropriate, ideally there should be a clear relationship between the donor and the charity prior to the gift being made. One or more of the following may be used as evidence of such a relationship between charity and donor:

1. *The donor has a clear interest in the mission and/or mandate of the organization.*
2. *The donor has a history of giving to the charity, ideally over multiple years.*
3. *The donor has a history of volunteering or working for the charity.*
4. *The donor or a close family member has been a past recipient of the charity's programs or services.*
5. *The donor is making a gift to a community or other foundation, where the intention is to have the death benefit flow to its general funds for the betterment of the community it serves or to another charity that meets the above criteria.*

The absence of an existing relationship does not automatically mean a gift of insurance is illegitimate, however, a charity should proceed with caution when engaging a donor offering a gift of insurance where there is no relationship. The charity should take time to ensure that there is a clear and legitimate philanthropic intent on behalf of the donor that extends beyond a simple desire to obtain a tax receipt, especially for situations where ongoing premiums will be required for a long period of time.

Best practices for charities regarding the transfer

1. *Ensure the donor understands the need to obtain appropriate advice about the gift. The charity should advise the donor to obtain independent financial planning, legal and/or accounting advice on the implications of the transfer to their personal financial situation.*

2. *The charity and/or the advisor (if appropriate) should immediately seek independent advice if there is any question as to the capacity of the donor, or indications of undue influence around the gift.*

3. *The charity is accepting the insurance policy as a donation, not purchasing the policy from the donor. Purchasing a policy is usually considered trafficking in most provinces, and may open up the charity to a variety of legal challenges at a later date.*

4. *The charity should not normally sell or transfer ownership of the policy to another charity but may access the cash value (if any) of the policy or surrender it during the donor's lifetime.*

Ideally, the charity's gift agreement with the donor should indicate that the charity may reserve the right to lapse or surrender the policy for cash if the donor is unable to maintain future payments, or if the policy is at risk due to changes in dividend scales, or other unexpected events.

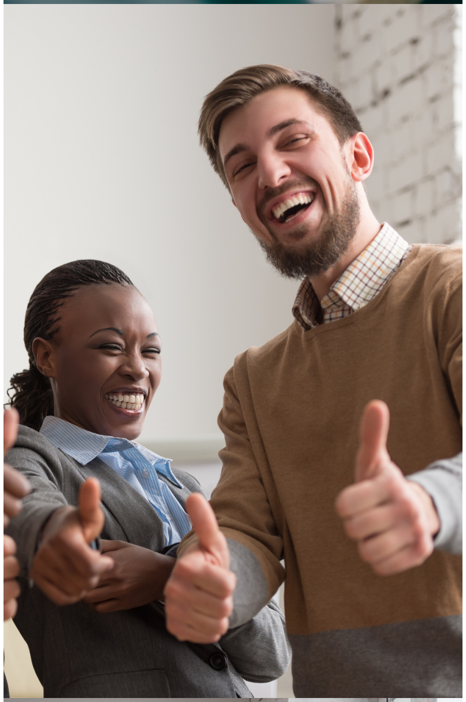
In the rare circumstance where a policy is transferred by a charity, policies should only be transferred to another charitable organization with a similar mandate. The sale or transference of a policy to another organization – especially one not a charity – may create the risk of the transfer being treated as a Stranger-Owned Life Insurance (STOLI) or a viatical settlement, and the charity should get legal advice prior to agreeing to a transfer.

Recommended charity due diligence

Prior to accepting a gift, the charity should obtain a detailed illustration of the proposed insurance policy. The charity should complete an independent review of the policy to determine viability that answers the following questions:

1. *Does the gift meet the criteria of the organization's Gift Acceptance Policy?*
2. *Does the policy have a reasonable Return on Investment (ROI) to the donor's expected lifespan?*
3. *Does it also have a reasonable ROI to the end of the paying period, if the donor experiences unusual longevity?*
4. *Is the premium-paying period reasonable, relative to the current age of the donor (i.e., a life-pay for a donor in their 20's requires a 60 to 80-year relationship with the donor, which may not be reasonable)?*
5. *Is the size of the death benefit sufficient, relative to the donor age and stewardship costs, to be economically viable for the charity?*
6. *Is the premium or death benefit subject to variability as the policy ages? If so, what are the risks to the charity if such a change happens?*
7. *Is the charity able to accommodate the gift without causing issues around their disbursement quota?*

Preferred types of policies



Gifts of new policies

From the charity’s perspective, the ideal gift of a new life insurance policy would be a policy with a relatively short, and clearly defined, guaranteed payment window, known as a “limited-pay” policy. This will minimize the risk to the charity that a donor may need to make a lengthy commitment to a long premium paying period.

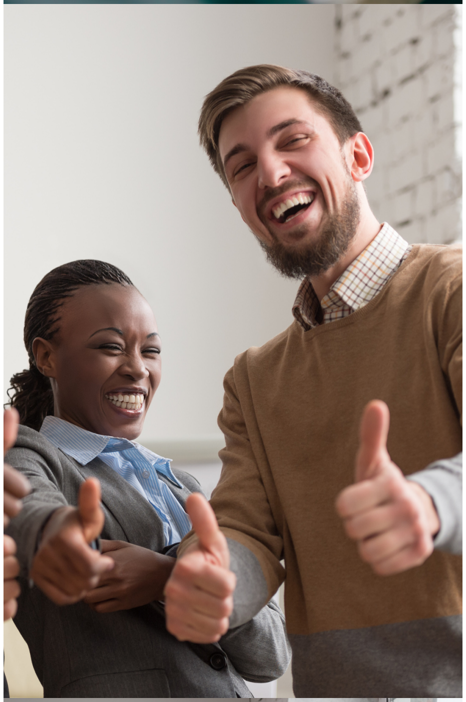
Common limited-pay windows are for 8, 10, 15 and 20 years from the start of the policy, or to age 65. Most guaranteed limited-pay policies will have the limited-pay period as part of the brand name of the policy, or explicitly stated in the contract. From the charity’s perspective, a shorter limited-pay window is usually better. It is relatively easy to structure a policy as a limited-pay if the donor is setting up a brand-new policy, and the charity is encouraged to share with the donor and advisor that this would be their preferred structure, and negotiate the gift accordingly.

As with any charitable gift, remaining flexible to match the needs of both charity and donor leads to the best results, even if this means a longer payment period than would be ideal from the charity’s perspective.

Preferred types of policies (cont'd)

Gifts of existing policies

Any gift of an existing policy which matches the policies described under '**Gifts of new policies'** is clearly ideal. However, some insurance policies previously placed in force may have been structured differently. Some can be changed to a limited-pay, while others may be a pay-for-life design.

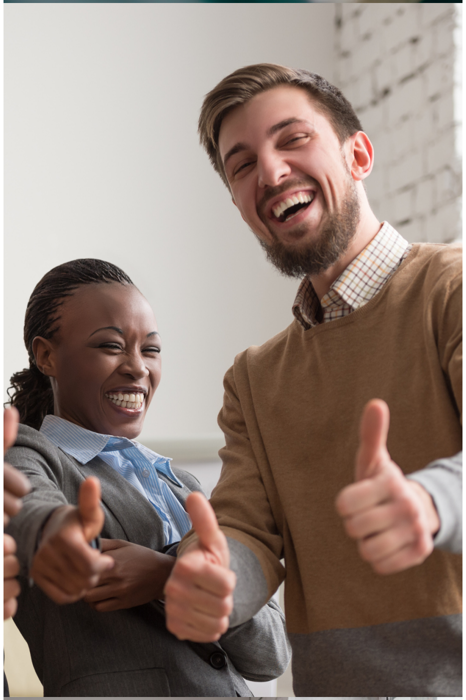


As such, due diligence is vital to determine if the gift should be accepted. Both guaranteed limited-pay and life-pay policies may make excellent gifts, so do not discount a gift just because it is not limited-pay, but do exercise more caution.

Term insurance policies, other than Term-to-100 are usually convertible to a permanent policy, and may make a quality gift if the intention is to immediately convert the policy.

GUIDELINES FOR CANADIAN CHARITIES

Preferred types of policies (cont'd)



Donations involving joint ownership with the donor or related parties

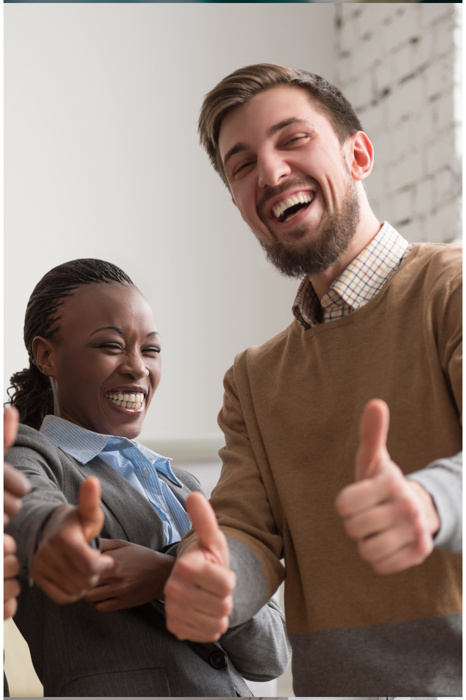
The charity should exercise extreme caution if the proposed donation involves the donor retaining ownership of part of the policy (known as split-dollar donations). Only charities with access to significant internal insurance, legal and financial expertise should consider accepting policies where the donor does not fully gift ownership.

Such gifts are often very large but extremely complicated and involve a number of risks and concerns from the charity perspective regarding both regulatory concerns on transfers, as well as tax receipting. Organizations that accept such gifts should have very detailed Gift Acceptance Policies around these gifts and/or a requirement for board or senior staff approvals, and the decision to accept a gift structured this way should never be taken lightly.

Preferred types of policies (cont'd)

Donation of one policy to two or more charities

Charities should not normally share ownership of a policy with another charity, as coordinating administration of the policy can become quite difficult. Instead, for the rare situation where it may make sense to split a policy and its proceeds between two or more charities, the best approach is for the policy to be donated to a single charity, with a gift agreement indicating that the proceeds will eventually be shared with another charity/charities. Community foundations are often an excellent intermediary for these situations.



Interacting with insurance advisors

1. *A charity should never provide compensation to an insurance advisor or other outside individual interacting with a donor to incentify the transfer of a policy to the organization, and under no circumstances should a fee be paid to anyone who is the advisor of record on the policy being evaluated for transfer. CAGP's Code of Ethics specifically forbids the payment of commissions on fundraising activity, and any payments to incentify a gift of insurance would likely be of grave concern to insurance regulators.*

   It would be legitimate, however, to pay an hourly or set fee to a qualified third party who has no involvement in the transfer or solicitation of the gift to render an independent analysis of the proposed policy to the charity prior to acceptance.

2. *It would be prudent to ask the advisor assisting with or proposing the transfer for proof of their status as a licensed insurance agent. Life insurance is provincially regulated, and an advisor must hold a valid license to sell in the province where the policy application was completed. Note that in the case of an existing transfer, the advisor may be licensed in a different jurisdiction than the head office of the charity.* ***If an advisor is proposing a donation, and does not hold a valid insurance license, the charity should proceed with caution.***

Interacting with insurance advisors (cont'd)

3. *An advisor has a responsibility to provide duty of care to the owner of the charitable insurance policy. This should include monitoring that premiums are paid, any issue affecting the existing contract and annual reviews, if requested by the owner. If the charity is the owner, it is important that the advisor recognizes that the charity is legally responsible for decisions on the policy after donation, and that the donor may not be entitled to certain policy information without the charity's consent first being obtained.*

4. *The advisor should understand that participating in the transfer of an insurance policy where there is no clear relationship between the charity and the donor as outlined in the section '**Establishing a valid relationship between donor and charity**' may involve a significantly higher risk of regulatory scrutiny than a donation which meets these criteria. If the advisor does not understand or acknowledge this fact, the charity should proceed with caution.*

A charity is under no obligation, once the owner of the policy, to retain the same advisor as the advisor of record on the policy.

Recommended charity donation checklist

Step #1	Provide the Donor with **Charitable Donations of Life Insurance – *A Guide for Canadian Donors*.** *Optional: You may wish to obtain the signature page for your records, to establish your due diligence in informing the donor should the gift be challenged at a later date.*
Step #2	Provide the Advisor with **Charitable Donations of Life Insurance – *A Guide for Canadian Advisors***, and inquire as to their past experience in this type of transfer. If the insurance advisor is unknown to you, check their licensing status with their applicable provincial regulator and other sources, and search for any potential reputational or other concerns. *Optional: You may wish to obtain the signature page for your records to record that the advisor has read through the material.*
Step #3	Obtain a copy of the illustration for the policy from the advisor/ insurer. *A proper illustration will show current and future guaranteed and estimated values (where applicable) and premiums, not just the current status of the policy.*
Step #4	Obtain an independent third-party opinion on the structure and risks of the policy from a qualified source, if you do not have sufficient expertise on staff. *Larger organizations may have in-house expertise. CAGP maintains a list of third party evaluators if you do not have internal expertise.*
Step #5	Obtain a copy of the Fair Market Valuation report, if applicable. This may be done concurrently with other steps. *NOTE: you should verify that the actuary producing the report was aware that the valuation was for a charitable gift.*
Step #6	If you are satisfied that the policy is a good fit with your organization's guidelines, indicate to the donor you are willing to proceed.
Step #7	Sign the transfer paperwork. Determine if the donor will keep paying the insurer directly, or if they will donate to the charity, and the charity will pay the premiums.
Step #8	Issue the tax receipt for the Cash Surrender Value or Fair Market Value (if eligible and a Fair Market Valuation is applicable as per the Income Tax Act guidelines). *Normally the date the transfer paperwork is completed is the date of legal donation for tax receipting purposes, however, insurance companies make take several weeks to process the transfer on their end.*

CANADIAN ASSOCIATION OF GIFT PLANNERS

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