

CHARITABLE DONATIONS OF LIFE INSURANCE

*Guidelines for
Canadian Advisors*

MARCH 2021



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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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 ADVISORS

This information package is designed to assist you when facilitating the donation of a life insurance policy by your client to a Canadian charity. 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 resources available for insurers, charities and donors at www.cagp-acpdp.org. It may be helpful to provide the prospective donor and the charity with the relevant information package, particularly when working with charities that are not experienced in receiving gifts of insurance.

The charity and/or insurer you are dealing with may request you to sign this page for their records.

Insurance Company: _____
Policy #: _____
Donor Name: _____
Charity Name: _____
Date: _____

As the advisor on the above policy, I attest that I have read the contents of the **Charitable Donations of Life Insurance – a Guide for Life Insurance Advisors**, and followed the recommended practices while engaging with the charity and the donor.

Advisor Signature: _____

GUIDELINES FOR CANADIAN ADVISORS

Steering clear of regulatory concerns

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 or life 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 appropriate plans to keep the insurance in effect. If an advisor were to participate in such a transfer, knowingly or unknowingly, it could result in compliance risks to their practice. 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 interact in a positive way with charities.

IMPORTANT

These guidelines will help you minimize the risks (including regulatory risk) 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.

GUIDELINES FOR CANADIAN ADVISORS

Establishing a valid relationship between donor and charity

For either a new policy donation, or the transfer of an existing life insurance policy from a donor to a charity, to be appropriate 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:

- 1. The donor has a history of giving to the charity over multiple years.*
- 2. The donor has a history of volunteering or working for the charity.*
- 3. The donor or a close family member has been a past recipient of the charity's programs or services.*
- 4. The donor has a clear interest in the mission and/or mandate of the organization.*
- 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, both advisor and charity should proceed with caution when engaging a donor offering a gift of insurance where there is no relationship. The advisor 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.



ADVISOR DUE DILIGENCE

1. Before recommending or facilitating the purchase or transfer of a life insurance policy, an advisor should endeavor to obtain complete financial information from the donor in order to ensure that the donation of the insurance policy is appropriate to their circumstances.
2. In particular, an advisor should be concerned if the donation of a policy to a charity will adversely affect the donor's estate planning and the security of the surviving family.
3. An advisor should strongly recommend, in writing, that the donor discuss their intention to purchase or transfer a policy with their tax and financial advisors. The advisor should be prepared to discuss the strategy and proposal with other advisors with the consent of the donor.

ADVISOR

DUE DILIGENCE (CONT'D)

4. There are many designs of insurance policies that can be used for charitable purposes. Contracts may be issued on a single life or joint life basis, with lifelong premiums or short pay premiums. An advisor should be prepared to show options to the donors and their advisors of the various policies appropriate for the circumstances. Permanent short pay policies are generally preferred by charities to help mitigate risk to the charity.
5. The advisor should ask the charity if they have a Gift Acceptance Policy that references insurance gifts. If the charity has such a policy, it should be reviewed by the advisor to evaluate if the proposed policy is structured in a way that the charity would be willing to accept the policy, and advise all parties accordingly.
6. An advisor should provide a detailed illustration for either a new contract or contract that is intended to be transferred. Many of these policies are subject to adjustment in the event of a change of interest rates or dividends. If the policy is subject to these adjustments the advisor must illustrate how the policy will react in scenarios where the crediting rate is lower than projected.
7. An advisor should function as a resource to both the donor and the charity. However, it is critical that there is direct interaction between the donor and the charity, as well as interaction with the advisor.
8. An advisor should provide the names of at least two independent and expert valuers if a Fair Market Valuation (FMV) of the policy is required, and the charity does not already have contacts who can do such an evaluation. The advisor will need to provide the appropriate information regarding the policy to the selected valuator. The advisor should also familiarize themselves with CRA's current criteria for Fair Market Valuation of an insurance gift.

ADVISOR

DUE DILIGENCE (CONT'D)

9. The advisor should not be expected, nor offer, to cover the fee for the Fair Market Valuation. This is usually an expense to the donor, however, there may be situations where the charity will pay for this cost.
10. In circumstances where an existing personal or corporate-owned policy is used for a charitable gift there may be additional tax considerations. Under these circumstances the advisor should insist on the involvement of the donor's tax and corporate advisors.
11. In the case of a new policy or a transfer, the advisors must be familiar with the forms required to put the contract in effect, or to transfer the contract. These forms are complex. The advisor should consult with the insurance carrier in order to verify that the forms being used are appropriate. The advisor should be present when the forms are signed, and they should be witnessed by the advisor.
12. Conflicts of interest should be declared to both the donor and the charity, especially if the advisor sits on a committee or board of the charity.
13. 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.
14. An advisor who is not actively involved in this market should seek and arrange for collaboration with an advisor who is familiar with charitable giving strategies.

ADVISOR DUE DILIGENCE (CONT'D)

15. Under no circumstances should the servicing advisor or a related party receive payment or other remuneration or incentive from a charity or other third-party to facilitate the transfer of an insurance policy for which they are the advisor of record, as advisor compensation is paid directly by the insurer through commissions and servicing trailers.
16. 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.





CANADIAN ASSOCIATION OF GIFT PLANNERS

Web: www.cagp-acpdp.org

Email: info@cagp-acpdp.org

Phone: 1-888-430-9494