

REAL ESTATE GIFTS POLICY

I. INFORMATION TO OBTAIN PRIOR TO ACCEPTING GIFTS.

- A.** Donor, including donor's attorney, Realtor, and/or CPA should provide the following information to the Foundation before a property is accepted.

1. BASIC INFORMATION. The basic information should include the following:

- (1) address;
- (2) assessor's parcel numbers;
- (3) lot size or acreage;
- (4) description of any building (such as nature, age, prior uses);
- (5) copy of current year's tax bill; and
- (6) any other information which would be relevant to the Foundation.

2. PRELIMINARY TITLE REPORT. Donor is requested to provide to the Foundation a current preliminary title report on the property, including copies of all documents shown as exceptions to title on the report. Upon the transfer of real property to the Foundation, it should receive a policy of title insurance on an American Land Title Association Form. To aid investigation of environmental matters, the title insurer should be asked to identify owners in the chain of title during the preceding fifty (50) years.

3. MARKET VALUE. The Donor should provide the Foundation with a recent appraisal, or, if none is available, a value opinion letter from a local Realtor.

4. CURRENT MARKET CONDITIONS. The Donor or Donor's Realtor should provide a comparative market analysis of parcels in the same area as the property.

5. DISCLOSURE. Environmental Problems. The Donor should make a written statement in the form attached to the effect that he/she is not aware of any actual or potential environmental problems within the area where the property is located or if aware, the nature and scope of any such problems. For example, the Foundation should ask the Donor to disclose if he or she knows of any problem regarding:

- (1) hazardous waste;
- (2) excessive noise;
- (3) polluted air;
- (4) polluted water, streams, ground water;
- (5) wetlands;
- (6) endangered species;
- (7) any other known or potential problem or notice of violations;
- (8) the presence of asbestos;
- (9) lead-based paint.

If the property is the site of large amounts of hazardous substances or underground storage tanks, or is listed on the **CERCLIS** list, the Donor must deliver an environmental disclosure document under the Indiana Responsible

Property Transfer Law. Property subject to disclosure should be carefully inspected by a qualified environmental consultant.

6. **SURVEY.** The Foundation should request some form of current survey (not older than six months, except in cases involving new construction where a survey should be no more than 30 days old) before accepting a property. A surveyor location report, also known as a mortgage survey, is generally sufficient for single family residential property. A staked survey, preferably done in accordance with the Minimum Standard Detail Requirements for Indiana Land Title Surveys (a "minimum standards survey") is preferable in the case of commercial properties, large tracts of undeveloped land or where there is a known boundary dispute or discrepancies between the location of structures and improvements and the purported property line. The Donor is asked to contribute an amount sufficient for a survey if one does not exist.

B. **COSTS.** If essential information is not provided by the Donor, Donor is requested to contribute an amount sufficient to pay for obtaining it. However, if the Donor is not willing to advance these costs, the Foundation should determine whether it would be advantageous for it to do so.

II. **CRITERIA TO USE TO DETERMINE WHETHER TO ACCEPT THE GIFT.** The Foundation shall consider the following criteria in determining whether to accept an offered property:

A. **ANALYSIS OF SALE AND HOLDING COST.** The Foundation shall evaluate present and future sale and holding costs. This analysis shall include the following:

1. present market value;
2. future market value (potential for appreciation);
3. encumbrances;
4. net cost of sale;
5. holding cost (ongoing maintenance and repair costs; debt service; taxes).

B. **HAZARDOUS WASTE OR OTHER ENVIRONMENTAL PROBLEMS.** The Foundation shall undertake such investigation of environmental issues relating to the property as it deems necessary or appropriate to enable it to determine whether any problems exist, including without limitation an investigation of any problems identified by the Donor's statement under Section (A)(5) above. **In addition, the Foundation may, in its discretion, engage a qualified engineering or other environmental assessment firm to undertake an environmental review and deliver a report to the Foundation.*** Specifically, the Foundation will investigate the potential dangers of current and past hazardous conditions on or near the property. The following is a list of some of the prior uses that should be investigated by a thorough environmental study before a property is accepted: underground fuel storage (such as service stations and vehicle fleet servicing); chemical and manufacturing plants; printing facility; photo developing; dumps; dentist office; and cleaners. This list is by no means comprehensive. Property adjoining any past or present industrial use may have been contaminated by that use and may also bear further examination.

***Policy to require Phase One review and report unless the Board or the Executive Committee in its discretion decides not to require such a review and report.**

C. **ON-SITE INSPECTION.** An on-site inspection of any property should be undertaken by the Foundation's officers or staff before it is accepted. If none of the foregoing can

make an inspection, a broker, licensed contractor, qualified environmental assessment firm or other appropriate person should make an on-site inspection.

The appointed persons should look for any problems regarding the following:

1. Environmental conditions (see sub paragraph (A)(5)) specifically, the inspectors should look for drainage ponds, pits or lagoons on the property; stained soils; fill pipes protruding from the ground; flooring, drains or walls stained by substances other than water or emitting foul odors; evidence of waste water discharge into a stream or ditch; demolition debris, tires or other waste materials, or drums or barrels located on the property;
2. Boundaries;
3. If the property is improved, structural and soil conditions; and
4. Evidence of occupancy or encroachment.

D. UNUSUAL CIRCUMSTANCES. No property should be accepted which has excessive environmental or structural problems, or where the holding cost may approach or exceed sale proceeds.

1. There may be situations where the Foundation finds that the property ownership may be undesirable, yet the gift may be substantial if converted to cash. (An example: potential environmental problem - the Foundation should not be in chain of title). The Foundation should attempt to work with the potential Donor in developing creative solutions to issues which may be raised by the condition of the real property, including without limitation seeking advice from attorneys, tax advisors, and other counsel.
2. While giving all preceding items full consideration, some "special circumstances" consideration may be used if the rejection of the property would appear to have other long term negative affects on the Foundation (i.e.: affect future gifts).

III. CRITERIA TO USE IN DETERMINING WHETHER TO HOLD OR SELL A DONATED PROPERTY.

A. THE GENERAL RULE. To sell donated properties as soon as possible. But properties may be held if the Foundation determines that it would be beneficial to do so.

B. OTHER CRITERIA. The Foundation shall consider such criteria as it deems necessary or appropriate in determining whether or not to hold or sell the real property, which criteria may include some or all of the following:

1. Whether or not the Foundation assumes any mortgage payments;
2. Whether or not the land is income producing;
3. Whether or not the carrying costs are reasonable;
4. Whether or not the property has a potential for exceptional appreciation short term (less than three (3) years);
5. Whether or not the property has a potential for exceptional appreciation long term (greater than three (3) years);
6. Whether or not it would be beneficial for the Foundation to manage a property that is located out of its general area of activity;
7. Whether or not there are any present or potential managerial problems;
8. Whether or not the property will be owned by the Foundation as a Program related investment.

- C. **LIFE ESTATES.** This policy will generally apply in determining whether or not to accept property subject to reservation of a life estate. Of course, the determination of whether to hold or sell will depend upon the terms of the life estate agreement.

IV. **CRITERIA TO USE IN DISPOSING OF DONATED PROPERTY**

- A. **CASH.** Generally, all properties should be sold for cash.
- B. **CARRYING PAPER.** The Foundation may consider taking a promissory note, secured by a mortgage, if it is advantageous to do so. The Foundation shall consider the following criteria in making this determination:
1. The amount of the note;
 2. The security;
 3. The time period;
 4. The interest rate;
 5. The amount of other income (if property income producing);
 6. The effect carrying paper may have on the selling price received by the Foundation;
 7. The effect carrying such paper may have on the value of the property, the length of time required to sell the property, or other related issues;
 8. The credit worthiness of the buyer.

If the Foundation takes a mortgage, it should avoid participating in the management of the property or the buyer, in order to fall within the protection afforded secured creditors from liability under the "Superfund" environmental law.

V. **METHOD OF DISPOSING OF DONATED PROPERTY**

- A. **BROKER CONSIDERATION.** The Foundation Shall Undertake An Inquiry To Determine The Manner Most Advantageous To The Foundation For The Disposition Of Donated Property. The Foundation May, But Shall Not Be Required To, Engage A Broker In Connection With The Sale Of Any Donated Property.
- B. **MARKETING PROGRAM.** If the Foundation determines that listing the property with a broker is in its best interest, then all potential listing brokers selected by the Foundation shall be required to provide it with a comprehensive marketing program. The Foundation shall consider such factors as it deems appropriate in selecting a broker, which may include the marketing program, the commission rate and the reputation of the broker.
- C. **TRANSFER DOCUMENTS.** Whenever possible, the conveyance should be made "as is" and by quit claim or special warranty deed. The Foundation should receive an express release from liability for environmental matters.



Melinda Truex, Board Secretary

PROSPECTIVE DONOR'S ENVIRONMENTAL STATEMENT

To: Kosciusko County Community Foundation, Inc.

Ladies and Gentlemen:

To induce Kosciusko County Community Foundation, Inc. ("Transferee"), to accept a donation of real property, the undersigned ("Donor"), hereby represents and warrants to Transferee that, to the knowledge of Donor, after reasonable inquiry, (a) there is not constructed, deposited, stored, disposed, placed or located on the real property to be donated (the "Property") any material, element, compound, solution, mixture, substance or other matter of any kind, including solid, liquid or gaseous material which (i) is a contaminant of soil or groundwater or a cause of degradation of the soil and/or water to the extent that mitigation methods are needed to restore the soil or water to its natural state, or (ii) a cause or contributor to damage to human health or the environment; and (b) there are no regulated wetlands located on the Property, nor any asbestos or lead-based paint in any buildings or other improvements located thereon. Donor further represents and warrants that (x) Donor has not received any notice of alleged violations, and to the best of Donor's knowledge, there are no existing violations, of any law, ordinances or regulations pertaining to the environment, including those related to hazardous waste, noise or air or water pollution, and (y) there are no underground storage tanks located on the property. Donor is not required to deliver an environmental disclosure document under the Indiana Responsible Property transfer Law, Indiana Code : 13-7-22.5 et seq. Notwithstanding the foregoing, Donor is aware of the following exceptions to the statements above {if none, state "None"}:

Sincerely,

Printed Name of Donor