



COMMUNITY
FOUNDATIONS
OF CANADA

CFC TIPS & TOOLS for Community Foundations

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Is There a Way That Our Community Foundation Can Make a Grant to a Non-Qualified Donee?

This is a question that comes frequently to us at CFC. Many members are in small communities where non-profit groups are not always registered as charities with the Canada Revenue Agency (CRA).

As a public foundation, community foundations must adhere to the Income Tax Act and make grants or distributions only to qualified donees. The clear and unequivocal answer from CRA is that community foundations can NOT make grants to organizations that are not qualified donees. Grants cannot be made through an intermediary organization if the charity is simply acting as a flow-through mechanism for funds between the community foundation and the intended grant recipient. There are steps however, that can be taken by qualified donees to act as intermediaries under some conditions.

- There needs to be a written contract or formalized partnership between the charity (in this case the intermediary organization to whom the community foundation makes the grant) that clearly sets out what the non-qualified donee is expected to do in return for the payment or other advantage it will be receiving from the charity.
- The non-qualified donee has to report back to the charity in enough detail that the charity can show it is controlling the use of its funds and can account for them.
- It is recommended that the contract between the intermediary organization (the charity whom the community foundation makes the grant) and non-qualified donees include the following:
 - Names and addresses of all parties;
 - The duration of the agreement or the deadline by which the project must be completed;
 - A description of the specific activities for which funds or other resources have been transferred;
 - Provision for written progress reports submitted by the registered charity;
 - Provision for the charity to be able to inspect the project on reasonable short notice;
 - Provision for withdrawing or withholding funds or resources at the charity's discretion;
 - Provision that the registered charity will make payments by installments (if needed) based on confirmation of reasonable progress and that the resources provided to date have been applied to the specific activities outline in the agreement;
 - Provision for the charity's funds to be segregated from those of the agent and for the agent to keep separate books and records; and
 - Signature of all parties and the date.



There must be a clear link between the intermediary organization and the non-qualified donee (e.g.: a library would not be an acceptable intermediary for a little league baseball team). Guidelines for a Registered Charity acting as a partner or principal are attached as Schedule 1.

An example of an information sheet for non-qualified donees is attached as Schedule 2.

It is advisable that your community foundation develop a policy that outlines how it will or will not work with organizations that are non-qualified donees that includes an agreement, how on-going oversight will be established and follow-up procedures.



Obligations and Responsibilities of a Registered Charity Employing an Organization as its Agent

General Guidelines – When making application to a Community Foundation

By acting as a lead partner for a project being carried out by another organization, the Registered Charity ('RC') is in effect taking on the project as part of its own operations. This arrangement can be an acceptable application of the charity's resources to its 'own' charitable activities providing:

1. The charity has obtained reasonable assurance before entering into agreements with individuals or other organizations that they are able to deliver the services required by the charity (by virtue of their reputation, expertise, years of experience, etc.);
2. All expenditures will further the RC formal purposes and constitute charitable activities that the RC carries on itself;
3. An adequate agreement is in place (CRA recommends a written agreement);
4. The RC provides periodic, specific instructions to individuals or organizations as and when appropriate;
5. The RC regularly monitors the progress of the project or program and can provide satisfactory evidence of this to CRA and;
6. Where appropriate, the RC makes periodic payments on the basis of this monitoring (as opposed to a single lump sum payment) and maintains the right to discontinue payments at any time if it is not satisfied.

Additional Guidelines for Joint Ventures

The following are the type of factors the CRA looks for when determining whether an RC exercises on-going control in joint ventures:

1. Presence of members of the RC on the governing body of the joint venture;
2. Participation in project by members of the RC;
3. Joint control by the RC over the hiring and firing of personnel involved in the venture;
4. Joint ownership by the RC of any assets and property involved in project;
5. Input by the RC into the venture's initiation and follow-through, including the RC ability to direct or modify the venture and to establish deadlines or other performance benchmarks;
6. Signature of RC on loans, contracts, and other agreements arising from the venture;
7. Review and approval of the venture's budget by the RC, availability of an independent audit of the venture and the option to discontinue funding;
8. Authorship of procedures manuals, training guides, standards of conduct etc., by the RC; and
9. On-site identification of the venture as being the work, at least in part, of the RC.

Written Agreements

The *Income Tax Act* recommends that a Registered Charity enter into a written agreement with an organization acting as its agent. If a Canadian Charity operates without a written agreement in the suggested form, it will probably have serious difficulty establishing that a project is charitable and that it is carrying on its own activities. This could jeopardize the charity's registered status under the *Income Tax Act*.



Written agreements should typically include at least the following information:

1. Names and addresses of all parties;
2. The duration of the agreement or the deadline by which the project must be completed;
3. A description of the specific activities for which funds or other resources have been transferred, in sufficient detail to outline clearly the limits of the authority given to the recipient to act for the RC or on its behalf;
4. Provision for written progress reports from the recipient of the RC funds or other resources, or provision for the RC's right to inspect the project on reasonably short notice, or both;
5. Provision that the RC will make payments by installments based on confirmation of reasonable progress and that the resources provided to date have been applied to the specific activities outlined in the agreement;
6. Provision for withdrawing or withholding funds or other resources at the RC's discretion;
7. Provision for maintaining adequate records at the RC's address in Canada;
8. In the case of agency agreements, provision for the RC's funds and property to be segregated from those of the agent and for the agent to keep separate books and records;
and
9. The signature of all parties, along with the date.



Information Sheet for Applicants to Community Foundation Regarding Agency Relationships

As a Public Foundation, the community foundation is restricted by the Canada Revenue Agency (CRA) to make grants or distributions only to organizations that have a registered charitable business number. CRA states that the relationship between the charity (lead partner) and the non-charitable organization (the agent) be formalized and documented before a grant can be awarded.

An organization that is not a registered charity wishing to apply for funding from the community foundation may consider the following:

1. Make formal application to CRA to become a registered charity, or
2. Establish a partnership or agency relationship with a registered charity who would receive the funds for the proposed project from the community foundation.
 - The relationship must be a formal arrangement set out in writing between the Boards of Directors of the registered charity and the organization.
 - The terms of the agreement should include:
 - a full description of the project
 - providing responsibility to the registered charity for insuring the project is completed by the organization as described.
 - that the registered charity has responsibility for distribution of funds to the organization as work progresses
 - that the registered charity has responsibility/accountability to the community foundation for performance of the organization.
 - The relationship must be an appropriate link, not simply one of convenience.