

CENTRAL INDIANA COMMUNITY FOUNDATION, INC.
POLICY FOR
GIFTS OF REAL PROPERTY

Approved by the Boards of Directors of:
Central Indiana Community Foundation, Inc.
December 8, 2016
Legacy Fund, Inc.
December 6, 2016
The Indianapolis Foundation, Inc.
December 8, 2016

I. PURPOSE.

As a trusted philanthropic partner, the mission of Central Indiana Community Foundation, Inc. and its affiliates, Legacy Fund, Inc. and The Indianapolis Foundation, Inc. (collectively, "CICF"), is to inspire, support and practice philanthropy, leadership and service. The purpose of this policy is to govern the acceptance of gifts of real property to best serve the interests of CICF and its donors, as well as to provide guidance to professional advisors in completing gifts of real property. The purpose of the gift must be charitable. CICF must ensure that its donors' wishes will be fulfilled through the acceptance of any and all gifts.

II. GENERAL GUIDELINES.

A. Gift Review. Proposed gifts of real property, whether current or deferred, will be evaluated on a case-by-case basis in accordance with this Policy as well as CICF's Gift Acceptance Policies and Procedures. The Vice President for Development and Philanthropic Services and/or the Chief Financial Officer, with the assistance of the Director of Charitable Gift Planning and Legal Affairs and appropriate staff, will have the overall authority to handle inquiries, negotiate with the donors, assemble documentation, retain appraisers, surveyors, realtors and other technical consultants, and execute agreements on behalf of CICF. Gifts of real property will be accepted only after the requirements of CICF's policies and procedures have been satisfied and with the prior approval of the gift acceptance committee. CICF may refuse any proposed gift of real property that is judged not to be in the best interests of CICF or the donor.

B. Gift Parameters. Generally, a gift of real estate should be worth \$100,000 or more to be worthwhile. (Property worth less than that should have enough value to cover direct costs of the sale as well as the cost of CICF staff time in managing the property and sale process.)

C. Evaluation of Potential Gifts.

1. *Types of Interest.* CICF may accept a variety of interests¹ in property. CICF will not accept time shares.

2. *Liens, Mortgages and Encumbrances.* Property which is subject to liens, unpaid mortgages, deeds of trust, judgment liens, unpaid taxes or assessments, mechanics' liens, leases or other encumbrances will be accepted only in exceptional circumstances. If accepted, property which is subject to encumbrances will be evaluated as a "bargain sale" (a bargain sale is an arrangement whereby a donor offers property to CICF for an amount less than its current fair market value).

¹ Interests that may be considered include a full interest, partial interest, life estate, or leaseholds.

3. *Property and Report Form.* Upon initial inquiry, potential donors will be asked to complete a Real Property Disclosure Form and return it to CICF with appropriate maps and documentation. (See Attachment 1 for the Real Property Disclosure Form).

4. *Field Evaluation.* Following an offer of a gift of real property, a member of CICF staff or an authorized representative will visit the property.

5. *Market Evaluation.* Whenever practicable, arrangements will be made to have a realtor analyze the property to evaluate the existence of a market for such property.

6. *Documentation.* CICF will review any relevant documentation in consideration of the proposed gift which may include, but is not limited to: a qualified appraisal, environmental audits, evidence of title, the Property Disclosure Form, proposed transfer instruments, and any proposed agreements or arrangements pertaining to the property.

7. *Sale or Liquidation.* It should appear reasonably certain that the real property interest proposed to be transferred to CICF will be sold or liquidated for a fair value and proceeds received into a component fund of CICF within a specific time frame, preferably less than five years.

In the alternative, it should appear reasonably certain that the real property interest proposed to be transferred to CICF will generate annual income sufficient to provide a reasonable rate of return for the component fund into which it is received.² For purposes of this policy, the definition of “a reasonable rate of return” shall be determined by CICF, in its sole discretion. The President/CEO (in consultation with the Vice President for Development and Philanthropic Services and the Chief Financial Officer) shall have the authority to determine whether the requirements of this paragraph have been met.

If the property listed on Internal Revenue Service (IRS) Form 8283 is sold, liquidated, or otherwise disposed of within three years of receipt, per the IRS, CICF is required to file IRS Form 8282 (“Donee Information Return”), unless the gift was valued below \$500 or was distributed for charitable purposes. See Treas. Reg. 1.6050L-1.

8. *Administrative and Investment Fee Schedule.* Prior to accepting a gift of real property, CICF will negotiate with the prospective donor an appropriate fee schedule for the administration and investment of the component fund that will receive the gift. If the transferred interests have not been liquidated or sold within five years from the date of the initial gift, and if CICF determines that annual distribution income is insufficient to produce a reasonable rate of return for the recipient component fund, CICF may re-negotiate with the donor and impose a higher fee schedule on the recipient component fund.

9. *Tax Deductibility.* The allowable tax deduction for gifts of real property will be subject to the IRS rules for real property and bargain sales, if relevant. CICF will provide the donor with any substantiation required for the donor to obtain a tax deduction.

² Treasury Regulations require that CICF assure that its funds produce a reasonable rate of return. This can be particularly important for property held in designated funds, because while this requirement is applied based on the aggregate performance of most funds, it is made on a fund-by-fund basis for designated funds. See Treas. Reg. 1.170A-9(f)(11)(v)(F) and 1.170A-9(f)(13)(x). See Hoyt, *Legal Compendium for Community Foundations* 90.

10. *Deferred Gifts of Real Property.* Upon becoming aware that CICF will or may receive a gift containing land under any Will that has been admitted to probate or any trust arrangement, the Vice President for Development and Philanthropic Services or the Director of Charitable Gift Planning and Legal Affairs Counsel of CICF will ask the executor, trustee, or other legal representative to conduct an environmental assessment similar to the one that CICF would require if it were to receive an inter-vivos gift. If the executor, trustee, or other legal representative has not made the assessment and if it does not do so, CICF should arrange an audit or decline to accept the gift.

Note: Excess Business Holdings. Gifts of business interests to a donor advised fund may raise the issue of excess business holdings under the Pension Protection Act and Internal Revenue Code section 4943. Excess business holdings exist when the holdings of a donor advised fund together with the holdings of disqualified persons exceed 20% of the voting stock of the incorporated business, 20% of the profit interest of a partnership or joint venture, or 20% of a beneficial interest of a trust or similar entity. In such a case, CICF must divest of the excess business holdings within a period not exceeding five years. Ownership of unincorporated businesses that are not substantially related to the fund's purposes is also prohibited. (Generally, holding companies, the sole asset of which is real estate, should not constitute a business interest.)

IV. RESPONSIBILITIES OF THE DONOR.

A. *Property Disclosures.* The donor is responsible for completing the Real Property Disclosure Form and for providing CICF with accurate information of all existing real property costs, including but not limited to taxes and insurance premiums.

B. *Appraisal.* The donor will be responsible for obtaining a qualified appraisal complying with IRS regulations for the purposes of establishing the value of the gift for federal income tax purposes, including the preparation of Form 8283 ("Noncash Charitable Contributions"). See Treas. Reg. 1.170A-13(c).

C. *Environmental Assessment.* The donor must obtain, at the donor's expense, an environmental assessment satisfactory to CICF. No property will be accepted if there is a likelihood of any liability which could attach to CICF as a result of its taking title to the property.

D. *Evidence of Title.* The donor must furnish CICF with evidence of title which shows that title to the property is free and clear except for current real property taxes and restrictions of record which would not create any economic burden on CICF.

E. *Transfer Instruments.* It is the donor's responsibility to prepare the deed and other instruments which are necessary to transfer the property to CICF.

F. *Remainder Interests.* For all proposed gifts of remainder interests made known to CICF during the donor's life, the donor is responsible for providing CICF with accurate information for any inquiries made about the property before the possessory interest passes to CICF.

G. *Acceptance Agreement.* Prior to or upon acceptance of the gift, the donor and CICF must agree in writing to all the terms of the gift which will include the following (See Attachment 2 for a Sample Agreement for the Terms for a Gift of Real Property):

1. *No Material Restrictions.* Prior to or upon transfer of title to CICF, the donor and CICF will sign an agreement (approved by legal counsel) stating the terms of the gift, which must specify that there are no restrictions on CICF's right to use or convey the property.

2. *Expenses Associated with the Gift.* Prior to acceptance of the property, CICF and the donor must agree in writing on arrangements for paying expenses associated with the property, such as commissions, real property taxes, utilities, insurance, maintenance costs, or potential Unrelated Business Income Tax (UBIT).³ Generally, CICF will not advance funds from its Operating Fund for the payment of such expenses.

3. *Administrative Costs.* Prior to acceptance of the real property, CICF and the donor must agree on an appropriate fee schedule for the administration and investment of the component fund that will receive the gift. The donor should provide adequate assurances that the affected fund will have adequate cash to pay any administrative fees, either from the gift itself, income generated by the gift or from further contributions from the donor.

H. *Expenses in Preparation of Gift.* The donor is responsible for all expenses incurred during the preparation of the transfer of real property.

I. *Discuss Gift with Professional Advisors.* The donor is encouraged to and responsible for discussing all benefits, liabilities, and tax consequences derived from the gift of real property with their professional advisors before the gift is made.

J. *Discuss Gift with Family or Interested Parties.* Donors will be encouraged to discuss contemplated gifts of real property with their family or other interested parties before the gift is made.

VIII. WHAT CICF WILL NOT DO.

A. *Property Interests.* CICF will not accept interests in time shares, act as trustee of the property or hold any mortgages secured by the property.

B. *Donor Expenses.* Except in extraordinary circumstances, CICF's Operating Fund will not pay for legal assistance, appraisals or other services on behalf of the donor. In general, the expenses will be deducted from the proceeds of the sale or otherwise charged against the fund holding the gift.⁴

C. *Taxes.* CICF will not seek exemption from real property taxes for real property.

D. *Corroboration of Value.* CICF will not establish or corroborate the value of any property for the purpose of substantiating the donor's income tax charitable deduction.

E. *Best Interest.* CICF will not accept any gift that would not be in the best interest of CICF or the donor.

³ Property that is debt financed and produces an income may incur UBIT. If such property is accepted, the donor should provide adequate assurances that the affected fund will have adequate cash to pay any UBIT that may be incurred by holding or through the sale of such property.

⁴ Discharge of such expenses by CICF may be treated as taxable income if the payment of the liability would not have given rise to a deduction. See 26 U.S.C. 108. Discharge of such expenses may also create a material restriction on the gift. See Treas. Reg. 1.507-2(a)(8)(iv)(B). See also Hoyt, *Legal Compendium for Community Foundations* 69-70, n.356.

Attachment 1
Central Indiana Community Foundation Real Property Disclosure Form

I. General Information

Owner(s) _____ Phone _____

Address _____

Property Interest Owned _____

Property Interest Being Gifted (if different than above) _____

Property location _____

Land area (acres or sq. ft.) _____

Building area (sq. ft. each floor) _____

Zoning _____

Land Usage: Present _____

Land Usage: Past _____

Replacement cost of building _____

Current property insurance coverage _____

Date of acquisition/form of acquisition _____

Current cost basis (includes improvements) _____

Principal balance of mortgage _____ Current fair market value _____

Assessed value for real estate taxes _____

Land value _____ Building value _____

Most recent appraisal (date) _____ Appraised value _____

Appraiser _____

Please complete this form to the best of your ability based on your knowledge of the property.

Occupancy status after transfer of title to charity:

- Unimproved (no buildings) _____
- Unoccupied (building, but no occupant) _____
- Occupied (building with occupants) _____

Please check the box and provide any additional information you are aware of for any of the following items listed.

- II. Title/Zoning** Additional Information
- Title _____
 - Zoning variances, violations of special permits _____
 - Zoning violations _____
 - Restrictions or easements _____
 - Survey available _____

- III. Condition of Building** Additional Information
- Foundations/slab _____
 - Basement/water/dampness/sump pump _____
 - Roof Leaks _____
 - General structural _____
 - UFFI (formaldehyde insulation) _____
 - Asbestos _____
 - Lead Paints _____
 - Termites/ants/pests _____
 - Swimming pool _____
 - Radon _____
 - Building systems _____
 - Plumbing _____
 - Electrical _____
 - Heating _____
 - Air conditioning _____
 - Hot water _____
 - Water supply _____
 - Sewage; type _____
 - other fixtures _____

- IV. Rental/Condominium/Cooperative** Additional Information
- Building Systems _____
 - Leases _____
 - Rental arrears _____
 - Last month's rent/security deposit _____
 - Common area fees in arrears _____
 - Building or sanitary code violations _____
 - Operating/capital budget _____

V. Environmental

Additional Information

- A. History of property
 - Property has prior or current use for industrial commercial, agricultural, manufacturing, waste disposal or any other non-residential purposes

- B. Condition of property
 - Stressed or denuded vegetation or unusual barren areas
 - Discoloration, oil sheens, or foul/unusual odors In water
 - Storage drums
 - Above or underground storage tanks, vents or filler pipes
 - Evidence of oil or other chemicals in soil
 - Evidence of PCBs
 - Evidence of toxic air emissions

- C. Adjacent properties
 - Properties adjacent or close to subject have Conditions requiring "yes" answer to any questions In (A) or (B) above
 - Flood plain/wetlands/drainage
 - Endangered plants or wildlife

Are you aware of any other information concerning any part of the land or buildings which might affect the decision of a buyer or affect value of property or affect use by buyer?

VI. Property Expense Budget

To hold this property as an asset of Central Indiana Community Foundation, the following income and expenses are anticipated:

- A. Income
 - a. Rent
 - b. Other

- B. Expenses
 - a. Real estate taxes:
 - First payment due _____ date _____
 - Second payment due _____ date _____
 - b. Utilities:

	Monthly Amount
<input type="checkbox"/> Gas	_____
<input type="checkbox"/> Oil	_____
<input type="checkbox"/> Electric	_____
<input type="checkbox"/> Water/Sewer	_____
<input type="checkbox"/> Other	_____

C. Services:	Additional Information
<input type="checkbox"/> Caretaking/Property Management	_____
<input type="checkbox"/> Landscaping	_____
<input type="checkbox"/> Heating/cooling service contract	_____
<input type="checkbox"/> Snow removal	_____
<input type="checkbox"/> Pool Services	_____
<input type="checkbox"/> Common area charges	_____
<input type="checkbox"/> Security	_____
<input type="checkbox"/> Other	_____
 D. Maintenance/Repairs	_____
 E. Insurance	_____
Total Expenses _____	
Net Income (loss) _____	

VII. Additional Information on Sections II through VI

VIII. Acknowledgments

Owner(s) hereby acknowledge that the information set forth above is true and accurate to the best of my (our) knowledge

_____	Date _____
Owner	
_____	Date _____
Owner	

Development
 Central Indiana Community Foundation
 615 N. Alabama Street, Ste. 119
 Indianapolis, IN 46204
 317-634-2423, ext. 509, 319 or 510

Attachment 2
Sample Agreement for the Terms for a Gift of Real Property

[DATE]

Mr. Robert A. MacPherson, Vice President of Development
Central Indiana Community Foundation
615 N. Alabama Street, Ste. 119
Indianapolis, IN 46204-1498

Re: Gift of Real Estate Located at [ADDRESS]

Dear Mr. MacPherson:

In connection with my irrevocable gift of the property listed above to [CICF/IF/LF], please be advised:

1. It is likely that the property will be sold or liquidated for a fair value and proceeds received into a component fund at [CICF/IF/LF] within approximately five years or less.
2. I agree that [CICF/IF/LF] will exclusively control the sale, including negotiating the sale price.
3. The resulting donor advised fund will be created with the net proceeds of the sale, less all costs incurred by [CICF/IF/LF] in accepting, carrying, and disposing of the property.
4. If [CICF/IF/LF] has not sold the property within six months of accepting it, I will make a charitable contribution to cover costs of maintaining the property at that time and every six months thereafter. Examples of these maintenance expenses include but are not limited to insurance, taxes, utilities, yard maintenance and repairs.
5. There are no material restrictions which would prevent [CICF/IF/LF] from freely and effectively using or conveying the property in furtherance of its charitable purposes.
6. I acknowledge that I am responsible for obtaining a qualified appraisal complying with IRS regulations for the purposes of establishing the value of the contribution, and that if the property is sold, liquidated, or otherwise disposed of within three years of its receipt by [CICF/IF/LF], [CICF/IF/LF] is required to file IRS Form 8282 ("Donee Information Return").

Sincerely,

[DONOR]
Current Owner and Donor

Agreed to and Accepted by:
[CICF/IF/LF]

By _____
[NAME, TITLE]