

# Donating Property to a Community Land Trust

*A Two-Part Guide for Donors and Donees*

**WRITTEN BY FATEMA JIVAJI**



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## **DONATING PROPERTY TO A COMMUNITY LAND TRUST**

Legal Guide

Written by Fatema Jivaji

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### **ABOUT CNCLT**

The Canadian Network of Community Land Trusts is the convening place for community land trusts across Canada. Our mission is to support the growth of community land trusts with the primary purpose of acquiring, developing, and/or stewarding permanently affordable housing, land, and other assets that contribute to a thriving community. We do this through resource creation (such as this guide), direct technical assistance, and network-building. We envision a Canadian CLT sector that is well-connected, enabled by government policy and funding, and driving a major increase in the national share of non-market housing assets.

Visit us at [communityland.ca](https://communityland.ca)

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## **TABLE OF CONTENTS**

Introduction	1
Part 1: Information for Donors	2
STEP 1: CHOOSING A RECIPIENT ORGANIZATION	3
STEP 2: DECIDE WHAT TYPE OF DONATION YOU WANT TO MAKE	4
STEP 3: DECIDE WHEN YOU WANT TO GIFT YOUR PROPERTY	5
STEP 4: HOW TO GIFT YOUR PROPERTY	6
Part 2: Information for CLT Recipients	9
CHARITABLE REGISTRATION	9
HOW CAN CLTS ASSIST DONORS?	10
DUE DILIGENCE PROCESS	11
RECEIVING PROPERTIES WITH CONDITIONS	13
PROBATE PROCESS FOR PROPERTIES GIFTED UNDER A WILL	13

# Preface (Don't Skip!)

## **Disclaimer: Understanding What this Document Can and Can't Do**

The [Canadian Network of Community Land Trusts](#) (CNCLT) commissioned the creation of this legal guide. This guide should be considered **legal information**, not **legal advice**. Ultimately, after reading this guide you may still need to seek advice from a qualified legal, or other, advisor.

This Guide Can Offer You:	This Guide Can't Offer You:
<b>General legal information</b>	<b>Legal advice</b> that is accurate and perfectly suited to your situation
<b>Information about typical contractual practices</b> rooted in the author's experience in Ontario	<b>Information specific to law in your province or territory</b>
<b>An overview</b> of typical provisions in funding agreements for the acquisition of rental property	<b>A comprehensive deep dive</b> into the many provisions that may show up in the particular funding agreements you are dealing with
<b>Insight into legal considerations</b> in the decision of whether or not to pursue such agreements	<b>Insights into all the other considerations</b> (political, economic, cultural, etc.) that may drive your decision to pursue these funding agreements, and on what terms

## Introduction

Community land trusts (CLTs) are non-profit organizations that steward land for the use and benefit of the local community they serve. They can be involved in the stewardship of a variety of land uses (residential, commercial, cultural, agricultural), although they are most closely associated with the provision of permanently affordable housing.

The Canadian Network of Community Land Trusts commissioned the creation of this guide. This guide should be considered legal information, not legal advice to be relied on. Readers are encouraged to seek independent legal counsel before pursuing a donation of property.

**Part 1** provides potential donors with key information, questions, and considerations when donating property to community land trusts.

**Part 2** provides community land trusts with a set of guidelines when reviewing potential donations property.

## **Part 1: Information for Donors**

Gifting housing to a CLT offers an opportunity to make an impactful contribution to local affordable housing. Your property will become a community-owned asset, used to further a CLT's mission of perpetual affordability.

While gifting your property may seem simple enough, there are several considerations a prospective donor should consider, including, but not limited to legal and tax consequences.

The purpose of this guide is to provide you with general information on how to leave your property to a CLT. It's important to take the proper steps to ensure that the CLT will be able to seamlessly accept your donation. It is possible to improperly leave your property to a CLT, which can lead to unintended consequences, including the CLT not being able to accept the gift.

## STEP 1: CHOOSING A RECIPIENT ORGANIZATION

The first step is to decide which CLT you want to leave your property to. First, reach out to the organization and make them aware of your intention. Once you have chosen your organization, it is important to speak to your lawyer to get the organization’s official legal name.

Some CLTs are registered charities; if they are, your lawyer can assist you in getting their charitable registration number. CLTs that are charitable organizations have a specific status designation under the Income Tax Act. There are certain tax advantages to donating to a registered charity, such as receiving a charitable donation receipt. This receipt allows the donor to claim a tax deduction or credit for charitable contributions when filing their taxes. For more information on the tax benefits of a charitable donation receipt, you should consult your tax accountant.

### Difference between a charity and a non-profit

"Non-profit" and "charity" are often used interchangeably in everyday language, but they have distinct legal meanings and should not be conflated. Some non-profit organizations may be charities, but it’s important to inquire whether they are or not.

<p><u><i>Non-Profit Organization:</i></u> A non-profit organization (NPO) in Ontario is typically incorporated under the Ontario Corporations Act or the Canada Not-for-profit Corporations Act (if it operates federally). NPOs can engage in a wide range of activities, including charitable activities as listed in the right hand column, but they can also participate in other purpose-driven activities that CRA would not consider “charitable”. They are formed to pursue activities that benefit the community or its members, rather than to generate profit for shareholders or owners.</p>	<p><u><i>Charity:</i></u> A charity is a national designation granted under the <i>Income Tax Act (Canada)</i>. <i>An organization (NPO or other type of organization) can obtain “charitable status” through a registration process with Canada Revenue Agency (CRA)</i>. They must operate exclusively for charitable purposes, such as relieving poverty, advancing education, or promoting religion, as defined by the CRA. Charities have specific legal obligations and benefits under tax laws, such as the ability to issue official donation receipts for income tax purposes.</p>	<p><u><i>Key Differences:</i></u> <b>Legal Status:</b> NPO is a type of corporate organization, it is a legal person and it can exist without charitable status. Whereas the designation of “charity” is a status, not a type of legal organization. <b>Purpose:</b> NPOs can have broader purposes, including social or recreational activities, while charities must exclusively serve charitable purposes as defined by the CRA. <b>Tax Benefits for Donors:</b> From the perspective of donors, charities can issue tax receipts for donations, which NPOs without charitable status cannot.</p>
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## STEP 2: DECIDE WHAT TYPE OF DONATION YOU WANT TO MAKE

Second, you should decide what exactly you want to leave the CLT. You can leave almost anything to a CLT, as long as it can use it in some way to further its objectives and mandates.

### Your home or any investment property you own

For many people who have either benefitted from home ownership or have additional investment properties, the desire to contribute their property towards the benefit of the community in perpetuity is a primary motivation for donation. For others, it's a physical legacy to leave behind. Whatever the motivations, donating your home or investment property is a great way to contribute to the affordable housing stock in your community. Many CLTs are affordable housing providers and therefore a donation of the home fits squarely with their mandates and objectives.

### Other forms of property

For some owners, their home is one of the few assets that they own, and while they would like to leave something for their local CLT, they are also interested in providing for their loved ones. The following are alternative gifts that can be left to a CLT to enable them to carry out their work in the community:

- **Equity in your home or investment property:** For many homeowners, they have purchased their home or investment properties some time ago and have seen the value of these assets appreciate over time. That value is known as equity. Some people choose to leave some gained equity, in the form of a dollar amount, to a CLT.
- **Cash donations:** Cash donations are an easy and simple way to contribute to your local community's CLT.
- **Insurance proceeds:** Some individuals don't have the ability to gift their home or its equity. As they age in place, they also require their cash savings. If you have a life insurance policy, or other insurance or registered accounts, you can name the organization as a beneficiary. This means that the proceeds of your life insurance will be given to the CLT to carry out their purpose driven mandate. Similarly, if you have an RRSP, you can name the organization as the beneficiary and upon death, the remaining outstanding proceeds are donated to the CLT.
- **Other property:** If you have another type of property in mind to donate, reach out to your local CLT and discuss how such a donation could benefit their organization.



### **STEP 3: DECIDE WHEN YOU WANT TO GIFT YOUR PROPERTY**

While there are some gifts you can only leave after death, such as proceeds of a life insurance policy or equity in your home, some gifts are available at any time and the donor should decide when it is appropriate to leave the gift. In either scenario, the donor's gift will leave a lasting legacy on their communities.

#### Option 1: Gifting your property while you are alive

There are several advantages to donating your property while you are still alive.

- **Control and Certainty:** First, you have more control over the donation. Administering a will takes time and there are several intermediary steps one needs to take before the home is transferred to the CLT. In general, there are court proceedings related to obtaining probate, etc. Depending on the nature of the estate and familial relationships, sometimes wills are contested. Family members may question the validity of a will and its provisions. As a result, it may take longer for the donated property to reach the CLT, and there may be legal costs involved for the organization.
- **Tax benefits:** Donating your home to a CLT that is a registered charity allows you to receive a charitable donation receipt. You can offset your income and payable tax using this receipt. If you donate your home, the amount is equal to the value of the home in the open market. This provides donors with a significant tax benefit, which they can use in their lifetime to lower their tax burden and keep more of their cash for their retirement or otherwise. If you leave your home in your will, your estate will benefit from the tax consequences of the donation, but, for many individuals, they prefer to have the tax savings now.
- **You can see your impact:** Donating your property while you are still alive enables you to see your impact firsthand. As CLTs tend to prioritize transparency and community governance, you will be able to observe how the organization is using your donated property to further its important mission.

#### Option 2: Gifting your property in your will

There are several advantages to donating your property in your will: you will retain control of your asset until you die, lower any estate taxes your loved ones may have to pay, and retain the ability to change your mind during your lifetime.

## STEP 4: HOW TO GIFT YOUR PROPERTY

### Option 1: Gifting your property while you are alive

It is possible to gift your property while you are alive. The process will depend on the type of property you intend to donate.

#### Primary Residence

For donors who want to transfer their primary residence while they are alive, it is best to reach out to a CLT in advance to discuss what is viable. For example, it might be possible for a donor to continue to stay in the home for a period of time after the donation. While this approach may not be viable for the recipient organization, it may be worthwhile exploring options and reaching a mutually beneficial arrangement.

#### Investment Properties

Many donors with investment properties choose to transfer those properties to their local CLT while they are alive. The process is fairly simple, and can be done as between your and the CLT lawyers:

- 1. Get an appraisal:** In order to determine the amount of the donation, an appraisal is typically done to assess the value of the property.
- 2. Tenanted properties:** If the property is tenanted, then the CLT may want to examine the lease and determine if it is able to receive a tenanted property. Provide the lease to the CLT so it can review its terms and conditions. In many cases, the CLT may opt to assume the rental agreement and the tenant.
- 3. Other due diligence:** The CLT may want to conduct other due diligence investigations in the same manner as if they were purchasing the property from you. These include title investigations, off title searches, and similar inquiries.
- 4. Land transfer tax:** A lawyer can advise you if any land transfer tax is payable upon the transfer. Any land transfer tax payment shall be paid by the CLT.
- 5. Existing mortgages:** If your property has an existing mortgage, you will need to discuss how to address the mortgage with the CLT and your lender.
- 6. Transfer documents:** Lawyers will draft transfer documents for each party to sign.
- 7. Taxes:** Unlike a transfer of your primary residence, a donation of an investment property may trigger the payment of certain taxes, such as capital gains tax. It's important to speak to your lawyer and accountant to ensure you are aware of these taxes.

## Option 2: Gifting your property in your will

In Ontario, creating a will involves several straightforward steps. Here's a general guide to help you get a will:

- 1. Retain a lawyer:** Retaining a lawyer will help to ensure that your will and all its provisions are enforceable. Lawyers also keep a copy of your will.
- 2. Decide on your wishes:** Determine how you want your assets and belongings to be distributed after your death. Consider who you want to appoint as your executor (the person responsible for administering your estate) and any specific instructions you may have.
- 3. Draft your will:** Your lawyer will draft the will based on your instructions and legal requirements.
- 4. Signing your will:** To be valid in Ontario, your will must meet specific legal requirements, including but not limited to the following:
  - You must sign the will in the presence of two witnesses who are not beneficiaries named in the will or spouses of beneficiaries.
  - Witnesses must also sign the will in your presence and in the presence of each other.
  - The witnesses do not need to know the contents of the will but must confirm they witnessed you signing it.
- 5. Keep your will safe:** Store your original will in a safe place where your executor can access it when needed. Inform your executor of its location and consider providing them with a copy.

What should your will include?

- **Clear language is the most important:** If the will is not explicit and clear on your intentions, it could lead to the will being contested. Contested wills freeze your estate's property until the dispute is resolved. This process often takes a long time, leaving your house unable to be used for affordable housing.
- **Name the organization:** Use the legal name of the organization and include the charitable registration number – this way there is no doubt which organization you wanted to leave your property to.
- **Provide for alternatives:** Donor's often have general language that allows for the estate to transfer a property to another very similar organization if the named organization is no longer operating, has merged with another organization, or is unable, for whatever reason, to accept the gift.

What if you already have a will?

Sometimes, donor's who wish to leave their property to a CLT already have a will. In such a case, it is important to appropriately cancel your old will and create a new one. It is not advisable to create a second will dealing with your home as conflicting language leaves the will open to scrutiny down the road.

We recommend getting legal advice on how to cancel your old will and create a new one. In general, your new will explicitly cancels your old will and any amendments to it. The old will should be adequately destroyed and key people, such as the executor, should be notified about any canceled wills and the new one.

## **CONCLUSION**

Donating property to a CLT is a powerful way to support affordable housing and community benefit, transforming your home or assets into a long-term resource for those in need.

While the process may seem straightforward, there are critical steps to ensure a successful transfer. The first step is to choose a CLT and consult with them about your intention.

Donors may choose to gift the property during their lifetime or through their will. Lifetime donations allow donors to witness the impact of their contribution. Bequeathing property in a will offers control over assets during one's life and can ease the transfer process for loved ones.

Additionally, types of donations can vary from real estate to life insurance or cash contributions, each benefiting the CLT's mission in different ways.

Whatever path you choose, your act of generosity creates a lasting benefit for the community at large.

## Part 2: Information for CLT Recipients

### CHARITABLE REGISTRATION

CLTs that are planning for donation of land or properties as a major part of their acquisition strategy should consider becoming a registered charity. Charitable registration is a designation under the *Income Tax Act* (Canada).

CLTs should conduct a cost benefit analysis on whether charitable registration is worthwhile. There are costs associated with obtaining charitable registration, as well as ongoing costs associated with reporting to CRA. There are also restrictions on the nature of activities that you can conduct through your organization once you are registered as a charity. Ultimately, the question of pursuing charitable registration should be considered in a broader sense beyond accepting donations or fundraising.

The process of obtaining charitable registration is beyond the scope of this guide, but a lawyer can assist you with the process. See also CNCLT's [Charitable Status Legal Guide](#) which explores methods for CLTs to access the benefits of charitable status, with and without directly becoming charitable organizations.

The main benefit of becoming a charitable organization is the ability to issue “donation receipts” to donors. Potential donors may face taxes on capital gains when transferring an investment property to a CLT. A charitable donation receipt can offset such taxes and makes the donation more attractive. Some donors may only consider the donation if a donation receipt from a charity is issued. Fortunately, there are advocacy efforts to offset such taxes for donations to community land trusts (see “Land Trust Policy Initiative”).

#### Land Trust Policy Initiative

The Land Trust Policy is a proposed tax policy to unlock private land for the purposes of affordable housing stewarded by community land trusts. This policy looks to mirror the Federal Ecological Gift program introduced in 1995 to encourage donations of ecologically sensitive land to conservation land conservation trusts. In its first 25 years, 1610 ecological gifts valued at over \$977 million have been donated across Canada for conservation efforts using this mechanism.

The Canadian Network of Community Land Trusts supports this policy. It is also endorsed by the Canadian Chamber of Commerce, representing a network of over 450 chambers and over 200,000 businesses across Canada. You can learn more on the [policy webpage](#) or CNCLT [webinar](#).

## HOW CAN CLTS ASSIST DONORS?

CLTs should exercise caution and sensitivity when assisting anyone in the donation process, particularly elderly persons or other potentially vulnerable people.

- **Informed consent:** It is crucial to ensure that any decision to leave assets to a charity is made voluntarily and with full understanding by the individual. The donor's advisors, and not the CLT or its advisors, should provide clear information about the implications of such decisions, including legal and financial aspects. Taxes are of particular importance and the donor should have a clear idea of what they can expect with respect to taxes levied on such donations.
- **Avoiding undue influence:** CLTs must take steps to prevent any form of undue influence or coercion. This includes ensuring that a person is not pressured or manipulated into making decisions that may not align with their true intentions or best interests. Undue influence is often used as a claim to contested wills. Elder abuse claims by family members and beneficiaries are common, and CLTs should conduct themselves in a manner that ensures their donor has full autonomy over the process.
- **Independent advice:** Encourage the person to seek independent legal and financial advice before making any decisions regarding their assets and estate planning. This ensures that their wishes are documented correctly and that they understand the implications for their heirs and beneficiaries. While you may want to assist in the financial costs of the donation, it is recommended that CLTs not pay for these costs.
- **Transparency and accountability:** CLTs should uphold transparency in their operations and be accountable for how donated assets are used to fulfill their missions. This can help build trust with donors and ensure that their intentions are honored.

## DUE DILIGENCE PROCESS

Before accepting a donation of property, a CLT should conduct thorough due diligence to ensure the gift is beneficial and aligns with the organization's mission and legal requirements. Below is a non-exhaustive list of key due diligence considerations:

1. **Mission alignment:** Evaluate how the property (and any stated conditions for donation) fits with organizational mission and needs.

For example, a donor may make the donation of their property conditional on it being maintained as supportive living for the elderly. If the recipient CLT is organized for the purpose of housing and supporting youth, the CLT will have to conduct additional investigations on how it can accept this gift given its purposes and the conditions placed on donation. There are ways to ensure that both the donor's wishes are respected and the organization is able to fulfill its purposes. The CLT should get legal advice if it's not clear whether accepting the donation aligns with the purposes of the organization.

2. **Impact assessment:** Evaluate the impact of the donation on your organization.

- **Financial impact:** Analyze the financial impact of accepting a property, including property management costs, taxes, and any future liabilities.
- **Reputation risk:** Consider any potential reputational risks associated with the property or its history.
- **Property management implications:** Assess the property management needs of the property, considering whether the CLT will operate the property directly, contract a property manager, or lease to an operating partner. Consider both the CLT's capacity and the location of the property; distance from existing CLT-owned properties may complicate property management.

3. **Legal and financial review:**

- **Ownership verification:** Confirm the donor has clear title to the property with no outstanding liens or encumbrances. A lawyer can assist with this.
- **Property value:** Obtain an independent appraisal to determine the property's fair market value. This helps in understanding the donation's worth and for financial reporting. This can take some time, ensure that you have adequate time. If the donation is being made through a will, a new appraisal will be required when the will is being administered.
- **Tax implications:** Review the tax implications for both the non-profit and the donor. The non-profit may need to ensure it can provide appropriate tax receipts and documentation. Consult your tax accountant.

#### 4. Condition of the property and Insurance:

In most cases a *Building Condition Assessment* (BCA) should be conducted on the property. A BCA is a comprehensive evaluation of a building's physical condition and systems to determine its overall health, functionality, and maintenance needs. This assessment is crucial for organizations considering the acceptance of property donations, as it helps identify potential issues that could impact the organization's operations and financial health.

A BCA involves:

- **Visual inspection:** Examining the building's exterior, interior, structural components, and systems.
  - **Systems evaluation:** Assessing mechanical systems (HVAC, plumbing, electrical) and safety features.
  - **Documentation review:** Checking maintenance records, blueprints, and previous reports.
  - **Reporting:** Providing a detailed report on the building's condition, including deficiencies, repair recommendations, and cost estimates.
  - **Compliance check:** Ensuring the building meets safety codes and regulations.
  - **Maintenance costs:** Consider ongoing maintenance and repair costs and whether the non-profit can manage these expenses.
  - **Insurance:** Assess insurance needs for the property. Ensure the CLT can cover property insurance and any associated risks.
5. **Zoning:** Determine what the zoning of the property is and what the permitted uses are. If CLTs are considering re-developing a property, investigate what other permitted uses are allowed on the property.
6. **Documentation and agreements:**
- **Donation agreement:** Draft a formal donation agreement outlining the terms of the donation, including any conditions set by the donor.
  - **Legal advice:** Consult with legal counsel to ensure all documents are in order and that the donation complies with applicable laws and regulations.
7. **Donor relations:** Maintain clear and open communication with the donor throughout the process. Ensure they understand how their donation will be used and any obligations or restrictions.



## RECEIVING PROPERTIES WITH CONDITIONS

In most instances, a donor leaves their property to a CLT through their will without conditions. That is, the language in the will document states that they want to leave their property to a certain organization. This leaves the CLT with the most options on how to accept the donation.

In some cases, the donor may specify that they want to donate their property for a special purpose, or to be used in a specific manner. These are called conditions on the donations. For example, the donor may state that they are donating their property provided it be used as supporting housing. These are conditions placed on the recipient CLT. CLTs should carefully review the donation language to ensure that they understand the conditions, if any, and whether the CLT can honor them.

## PROBATE PROCESS FOR PROPERTIES GIFTED UNDER A WILL

In Canada, the probate process for accepting a gift of property involves several key steps, which ensure that the transfer of property is legally recognized and properly managed. Before receiving a property under a will, the estate (all the assets of the donor) will need to go through a probate process. Usually, there is nothing for the CLT to do as the executor and/or estate trustee will take on this process.

*Probate* is the legal process by which a deceased person's will is validated by a court and the estate is administered. It ensures that the deceased's debts are paid and assets are distributed according to the will. *Estate Administration* is the process of managing and distributing the deceased's estate, including handling assets, paying debts, and complying with legal requirements.

Here's an overview of the probate and estate administration process:

1. **Application for probate:** The executor named in the will shall apply to the court for a Grant of Probate. This is a legal document that confirms the executor's authority to manage and distribute the estate. The executor will gather the requisite documentation required to obtain a Grant of Probate.
2. **Receive Grant of Probate:** Once the probate court issues the Grant of Probate, it provides the executor with the legal authority to administer the estate, including distributing assets to beneficiaries such as the CLT.
3. **Jurisdiction:** The probate process may vary slightly depending on the province or territory in Canada, so it's essential to be familiar with local regulations.
4. **Timing:** The probate process can take several months to complete, depending on the complexity of the estate and any potential disputes.

## **CONCLUSION**

For CLTs, preparing to receive property donations involves careful planning, transparent donor relations, and adherence to organizational mission, needs, finances, and legal requirements. By fostering trust, respecting donor wishes, and carefully managing the logistics of property acceptance, CLTs can build sustainable, community-owned resources that honor donor intent while supporting long-term, impactful change.