

CFC TIPS AND TOOLS

for community foundations



COMMUNITY
FOUNDATIONS
OF CANADA

No. 54
November 2009
Revised
September 2010

Tips and Tools – Creating Agency Agreements

Agency Funds are established through formal agreements between the community foundation (Foundation) and local charitable organizations (Organization) who are interested in building endowment funds as part of their financial strategy. In most cases the purpose of the fund will be to generate and distribute earnings to the Organization to be used at their discretion to meet their particular charitable mandate.

Legal Advice

While the attached template attempts to provide a good example of legal language, each foundation is encouraged to have their legal counsel review the agreement before board approval. These are binding legal contracts and the responsibility for fulfilling their purposes ultimately lies with the board.

Changes to Agreements

Changes can be made with or without an amending clause if the gift has not yet been made. Once a gift occurs then changes can only be made if there is a right to vary clause and within any defined limitations.

Capital

It is important that your foundation has a clear definition of capital and shares that with donors. For many foundations capital is the original contributed amount only. Budget 2010 eliminated the concept of 10 year gifts.

The word “permanent” is in parenthesis in the following template as funds may be established that are not permanent when a donor wishes to spend down the capital.

Designated Gifts

- Contributions from the Organization that do not qualify as transfers of enduring property but are amounts the Organization would like to add to the endowment.
- Must be identified as designated gifts on the T3010 of the Organization in order to qualify.

Minimum Fund Level

Most community foundations have a minimum level of a gift in order to establish a fund. This ensures that the fund will be able to generate enough income to disburse a grant of a reasonable amount. It is important to identify the minimum level in the fund agreement and clarify how the fund will be treated until it reaches the minimum and what will happen if it does not reach that level in a predetermined number of years. Once the fund reaches the minimum level it becomes 'active'. Before that time the earnings may be reinvested or support the unrestricted purposes of the foundation.

Components of an Agency Fund Agreement

The attached template outlines the following components for an Agency Fund Agreement. It is recommended that the Foundation's lawyer review agreements before Board approval. This template should be used as a guide to establishing Agency Fund Agreements after March 4, 2010.

- Initial Gift
- Charitable Organization
- Capital
- Designated Gifts
- Gifts from individual donors
- Gifts not held permanently
- Purposes
- Organization winds down
- Distribution of earnings
- Provision if fund does not reach certain level – reverts to unrestricted
- Recognition
- Administration fee
- Receipting
- Reporting
- Right to vary clause

Financial Management of Funds

Where possible the template refers to the financial management policies of the foundation instead of providing the current details of the foundation's policies or practices. The benefit in referring to policies is that it allows for these to change over the years and ensures that the funds will always follow the current policies of the foundation. It is critical that the relevant policies be shared with donors at the time of the fund agreement discussions and that they understand these can change. These would generally include gift acceptance, investment, administration fees, and spending policies. Additional language clarifies that the capital may be encroached upon for fees or granting when there are insufficient earnings.

Signatures

Who signs the fund agreement? For both the Organization and the Foundation, the signatures are determined in the By-laws as to whoever has the authority to bind the foundation to contracts. If a seal is required, it will also be indicated in the By-laws.

Records Management

The foundation should keep both a hard and soft copy of the signed agreement. The soft copy would be a scanned PDF of the signed agreement and kept in the foundation's electronic files.

ABC COMMUNITY FOUNDATION

AGENCY FUND TEMPLATE AGREEMENT

Initial Gift	_____ (the “Organization”) will provide a gift to establish the Fund within the ABC Foundation (the “Foundation”). The Fund shall be known as the _____ Fund.
Charitable Organization	WHEREAS <i>ABC Charity</i> was incorporated on _____ with registered charity number _____ and its purposes and powers are attached hereto and marked as Schedule “A” to this agreement;
Capital	Each Gift to the Fund (which, for greater certainty, includes the Initial Gift) or any property substituted for it, shall be held “permanently” and invested by the Foundation in accordance with the Financial Management Policies of the Foundation in force from time to time.
Designated Gifts	All contributions to the <i>ABC Charity Fund</i> from <i>ABC Charity</i> shall be treated, in all filings with Canada Revenue Agency, by <i>ABC Charity</i> and the Foundation as a “designated gift” as defined by The Income Tax Act (Canada), except where otherwise identified at the time of the gift. Such contributions shall be expended in accordance with the remaining terms of this Agreement.
Gifts from individual donors	Each Gift to the Fund, or any property substituted for it, shall be held “permanently” and invested by the Foundation in accordance with the Financial Management Policies of the Foundation in force from time to time.
Gifts not held “permanently”	Any contribution received from the Organization or gift from a Donor and designated clearly as a gift that is not to held “permanently” shall be expended in accordance with the remaining terms of this Agreement.
Purposes	The purpose of this Fund will be to support charitable activities or qualified donees* whose activities are within the objects of the Foundation, and more specifically to support the ABC Charity.
Organization winds down	Should the Organization cease to exist, wind down its operations, or cease to be a registered charity, the Foundation shall ensure that the earnings are applied in support of the objects of the Organization or in support of other organizations carrying out similar purposes.

Distribution of earnings	The Foundation shall determine the annual distributable earnings according to the Financial Management Policies of the Foundation in force from time to time. In years where current or accumulated income is not sufficient these amounts may be drawn from the capital of the fund. If applicable, the balance of earnings shall be added to the fund.
Provision if fund doesn't reach certain level – reverts to unrestricted	Until the capital (total of gifts contributed) of the Fund shall reach \$5,000, there will be no disbursements. If the capital of the Fund shall be less than \$5,000.00 on the fifth anniversary of the date of this Agreement, then the Fund shall be folded into the Foundation's unrestricted fund.
Recognition	All distributions will be identified as coming from the Fund.
Administration Fee	The Foundation will charge a administration fee against the fund according to the Financial Management Policies of the Foundation in force from time to time, provided that the Foundation shall only do so on a basis that is equitable relative to its other funds established under this form of agreement.
Receipting	The Foundation will issue a charitable receipt for all donations to the fund according to the Income Tax Act.
Reporting	The Foundation will provide a financial fund report to the Organization on an annual basis.
Right to vary clause	<p>This Agreement may be amended in the future in such respects as the Foundation and the Organization may mutually agree by written amending agreement, provided that in no event shall any such amendment derogate from the following:</p> <ul style="list-style-type: none"> • The capital of the Fund and any additions to the fund shall be held by the Foundation and managed in accordance with the Financial Management Policies of the Foundation in force from time to time; • The capital and investment earnings of the Fund shall only be used to support charitable activities or qualified donees* (as defined by the Income Tax Act (Canada) whose activities are within the objects of the Foundation. <p>*(charitable organizations for those foundations registered in Ontario only)</p>

IN WITNESS WHEREOF the Organization and the Foundation have executed the Agreement as of the date set out below.

Organization name

Charitable Registration Number:

Officer, Signature

Officer, Signature

Print Name

Print Name

Date of Signature

Date of Signature

ABC COMMUNITY FOUNDATION

Officer, Signature

Officer, Signature

Print name

Print name

Date of Signature

Date of Signature

Charitable Registration Number: