GIFTS OF REAL ESTATE

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GIFTS OF REAL ESTATE

The Montana State University Foundation, Inc. ("Foundation"), a not for profit organization organized under the laws of the State of Montana, encourages the solicitation and acceptance of gifts of real estate to the Foundation for purposes that will help the Foundation further and fulfill its mission. The following guidelines and procedures govern acceptance of gifts of real estate made to the Foundation or for the benefit of Montana State University, its programs or initiatives.

I. INTRODUCTION

A. Purpose

The purpose of this document is to assist development officers working with prospective donors interested in making real estate gifts to the Foundation in furtherance of the objectives of the Foundation and Montana State University ("University"). By setting forth clear guidelines and procedures relating to real estate gifts, this document will guide development officers in the encouragement and cultivation of gifts of real estate individually or jointly held, through outright or deferred gift mechanisms.

The terms set forth in this document are meant to supplement those set forth in the Foundation's Gift Acceptance Guidelines.

B. Philosophy

The Foundation's mission is to enhance the continuing excellence of the University by attracting financial support and being prudent stewards of its resources and friendships. By seeking gifts, grants, bequests and other forms of financial support and managing its assets in accordance with its purpose and fiduciary responsibilities, the Foundation seeks to enhance the quality and scope of the University's programs to provide the margin of excellence to ensure the University's future.

II. GENERAL GUIDELINES

A. Acceptance Authority

The acceptance of real estate gifts is determined by appropriate Foundation staff. However, when circumstances warrant, the final decision to accept or decline a gift may be referred to the Gift Acceptance Committee ("GAC'). While third party professionals may be consulted in making an acceptance decision, the Foundation will not pay a "finder's fee" for any gift directed to it.

B. Acceptance Requirements

Gifts of real estate shall be accepted or declined according to established Foundation policies, guidelines, and procedures governing gift acceptance, investment, spending, income allocation, disbursement, and fee assessment. Foundation staff will obtain from the donor a clear and documented understanding as to the charitable purpose of the gift which must promote the objectives of the University or further the ability of the Foundation to promote the objectives of the University.

Prior to accepting real estate, Foundation staff shall determine all potential liabilities and costs associated with the gift. If the gift is to be retained by the Foundation or the University, issues relating to the future operation and financial responsibility for the asset shall be clearly documented.

Gifts of real estate accepted by the Foundation shall be receipted and substantiated according to IRS requirements.

C. Declining Gifts

Gifts of real estate shall not be accepted if doing so is in contravention of applicable federal or state laws or Foundation policies. If a gift is declined, that decision shall be communicated to the donor and, where appropriate, to his/her advisors in a timely manner. The offer and non-acceptance of the gift will be made part of the donor's permanent record.

D. Disposition of Real Estate

It is the general practice of the Foundation to sell or otherwise dispose of gifted real estate as soon as possible following completion of the transfer, using the net proceeds from the sale to satisfy the donor's intent. Agreements to the contrary may be made in rare and exceptional circumstances when retention effectively supports the mission of the Foundation or the University and other circumstances sufficiently warrant retention.

III. GIFTS ACCEPTED

A. Types of Real Estate Accepted. Gifts of real estate may include, but are not limited to:

- ***Developed property***
- ***Undeveloped property***
- ***Property subject to a retained life estate interest***
- ***Property used for residential purposes*** – single family residences, multiple-unit dwellings, association maintained residences, timeshares, etc.
- ***Property used for commercial purposes*** – places of business, warehouses, residential or commercial rental properties, etc.
- ***Farms, ranches, and vacant acreage***

B. Types of Gifts Accepted. Subject to the criteria set forth below, the following types of real estate gifts may be accepted by the Foundation:

- ***Outright Gifts***
- ***Deferred Gifts***

- ***Real Estate in Exchange for Charitable Gift Annuity***
- ***Real Estate Held in Trust***
- ***Partial Interests in Real Estate***
- ***Retained Life Estates***
- ***Property Subject to Easements or Other Contractual Restrictions***
- ***Encumbered Real Estate***

C. Acceptance Criteria. The following criteria govern the acceptance of individual forms of real estate gifts.

i. Outright Gifts

Gifts of real estate may be made to the Foundation by giving the property in "fee simple," an unqualified ownership of the property.

Unless previously agreed to, when the Foundation receives real estate in fee simple, the property will be immediately liquidated and the proceeds of the sale will be used for unrestricted or donor specified purposes.

ii. Deferred Gifts

Real estate may be gifted to the Foundation through deferred gift mechanisms, most commonly by bequest.

If the Foundation receives real estate through a deferred gift that cannot be accepted pursuant to established gift acceptance guidelines or applicable law, the Foundation will work with the fiduciary or personal representative of the donor's estate to fulfill the donor's intent through other means. If no such agreement can be reached, the Foundation will disclaim or decline the gift of real property.

iii. Real Estate in Exchange for Charitable Gift Annuity

Real estate may be transferred to the Foundation in exchange for a charitable gift annuity, but only under the following circumstances:

1. The property must be marketable;
2. A prospective buyer must be identified for immediate sale and/or the annuity payout must be deferred a minimum of 2 years;
3. The annuity payout rate will be discounted according to industry standards;
4. The value of the annuity will be the lesser of the value as determined by a qualified appraiser or the average value as determined by qualified appraisers if additional appraisals are needed; and
5. The terms of the gift are specifically approved.

When real property is given in this manner, the Foundation will immediately take steps to liquidate the property in order to support the annuity payment structure.

iv. Gifts of Real Estate in Trust

The preferred method for donating real estate in exchange for life income is to give the real estate in trust. Gifts of real estate may be made to the Foundation through trust, including irrevocable trusts, charitable remainder unitrusts, and charitable lead trusts. However, IRS rules prohibit the acceptance of mortgaged property to fund charitable remainder trusts.

If the Foundation receives real estate through trust that cannot be accepted in accordance with established gift acceptance guidelines, the Foundation may work with the donor and/or trustee to similarly satisfy the intent of the donor through other means. If no such agreement can be reached, the Foundation will disclaim or decline the gift of real property.

v. Part Ownership Gifts

Where donors are not the sole owners of real estate or do not want to gift the entire property to the Foundation, s/he may make the Foundation a part owner of the property by transferring *all* his/her ownership interest in a portion of the property to the Foundation without reservation or the withholding of any ownership right. The Foundation will receive these types of gifts in limited situations and only as a tenant in common with the additional owner(s) without restriction on the Foundation's ability to sell the interest. If the Foundation is to retain the interest, an agreement between the donor, Foundation, University and, in some instances, other owner(s) must clearly define the roles, responsibilities, and restrictions upon each party. Due to strict IRS regulations of gifts, this type of gifts is rare and donors are strongly encouraged to seek professional tax and/or legal advice.

vi. Retained Life Estate

Gifts subject to a retained life estate interest in a personal (primary or secondary) residence, farm or ranch may be accepted by the Foundation subject to the following terms:

Minimum Value of Real Property:	$50,000
Minimum Age of Life Tenant:	65
Maximum Number of Lives:	Two

The donor is responsible for taxes, insurance, maintenance, and upkeep of the property for the duration of the life estate or until the donor surrenders his/her right to enjoy and use the property. The Foundation does not generally accept a retained life estate arrangement if the Foundation is

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required to retain the property in perpetuity following the termination of the life estate. Special valuation and tax rules apply to retained life estate arrangements. Donors are strongly advised to seek professional tax and/or legal advice when making a gift of property with a retained life estate.

vii. Property Subject to Easements or Other Contractual Restrictions

The Foundation may accept real estate even if the property is subject to easements, covenants or other contractual restrictions such as rights of first refusal and leasing or rental agreements, if the agreements are not in default and are assignable by the landlord to the Foundation. If the property could be accepted pursuant to established guidelines absent the restriction, a thorough investigation as to the impact of the restriction will be conducted. The GAC will base its final decision regarding acceptance or non-acceptance upon the restriction's affect on marketability, valuation, and other pertinent issues.

vii. Encumbered Real Estate

Property that is subject to liens (tax lien, mechanic's lien, judgment lien, etc.), unpaid mortgages, deeds of trust, unpaid taxes or assessments, or other encumbrances will be accepted by the Foundation only in exceptional circumstances and upon advice from the Foundation's legal counsel or other outside advisors. If accepted, encumbered property will be evaluated as a "bargain sale" whereby the donor is treated as offering property to the Foundation for an amount less than its current fair market value. Generally, this amount is equivalent to the property's fair market value less the liability value of the encumbrance. Special valuation and tax rules apply to bargain sales. Donors are strongly advised to seek professional tax and/or legal advice when making a gift of property that is subject to any encumbrance.

IV. ACCEPTANCE PROCEDURE

A. Initial Response. Upon initial inquiry, the appropriate development staff member will complete the following steps:

- Complete an initial intake form ("GIFT OF REAL PROPERTY: PRELIMINARY REAL ESTATE INTAKE FORM") and forward it and any available supporting documents to the Foundation's Office of Planned Giving.
  - If the donor requests that the property be held by the Foundation or the University, a statement outlining the reasons for retention must be included with the PRELIMINARY REAL ESTATE INTAKE FORM.
- Forward to the potential donors the property inquiry form ("GIFT OF REAL PROPERTY: GENERAL INFORMATION FORM") and request that it be completed and returned to the Foundation's Office of Planned Giving.

Donors are asked to complete the property inquiry form and return it to the Foundation's Office of Planned Giving along with any requested documents that have not yet been provided. These documents include, without limitation, ownership deed/title, current or most recent property tax bill, plot plan and/or survey, and substantiation of zoning status.

B. **Field Evaluation.** Following receipt of the intake and inquiry forms, a member of the Foundation staff or an authorized representative (a realtor or other qualified person) will, upon the direction of the Foundation President/CEO, visit the property and report his/her findings to the Office of Planned Giving. The purpose of this visit is to determine the nature and type of the property and to identify any potential problems not evident from initially supplied information that would hinder or prevent the Foundation's sale or proposed retention of the property.

C. **Formal Review**

Following the successful outcome of these procedures, the Office of Planned Giving will order and review all or some of the following: a title report, an initial environmental screening, and a home inspection (for residential property).

With the cooperation of the development professional, the Office of Planned Giving will prepare a written report on the proposed gift for review. In particular, the report should address the following, as appropriate:

- **Usefulness of Property for University Purposes** – property that is to be held by the Foundation for the benefit of the University must support, enhance, or otherwise directly benefit the University, a University college, department, program, or affiliate, or other University-supported purpose.
- **Market Value and Marketability** – fair market value as determined by a qualified appraisal conducted in accordance with the Internal Revenue Code and other regulations, as well as the general marketability/salability of the property considering the current local and national real estate markets, interest or demand in the specific property or property type, and any prior attempts to market and/or sell the property.
- **Potential Environmental Risks** – existence of actual and potential environmental issues associated with the property as determined through a professionally conducted environmental audit.
- **Limitations and Encumbrances** – existence of restrictions, reservations, easements and/or limitations on the use and enjoyment of the property, encumbrances, mortgages and mechanics liens and any effect upon the value and marketability of the property.
- **Unrelated Business Taxable Income (UBTI)** – a determination whether the gift will result in UBTI.
- **Carrying Costs** – existence of costs associated with the property such as association dues, taxes, insurance and other maintenance expenses; identification of the funding source to cover carrying costs.
- **Title Information** – information relating to ownership and clear title as determined by a proper and thorough title search.

Following the review of these factors and the written report from the Office of Planned Giving, the proffered gift should be accepted or declined, or if a full Phase I Environmental Assessment should be ordered, a Phase II Assessment (involving soil samples) is required, or if other questions remain.

i. Phase I Environmental Audit

In conjunction with the initial general review, or immediately following successful completion of that review, a Phase I environmental audit will be conducted. Typically conducted through a professional service, the environmental audit assesses any potential environmental risks and/or hazards associated with the proffered real estate gift by assessing the following:

- An inquiry of the owner or occupant (if not owner-occupied) regarding his, her, or its knowledge of the history of the property.
- An inquiry of the owner or occupant (if not owner-occupied) regarding his, her, or its knowledge of the current condition and use of the property.
- A title search to identify any prior owners.
- A consultation with federal, state, and local environmental agencies to find out whether the property, or adjacent property, has any history of hazardous waste contamination.
- A visual inspection of the property for any evidence of environmental hazards on the property or adjacent property.

If the Phase I environmental audit identifies problems with the gift property, a Phase II environmental audit will be ordered or the property will be declined. No property will be accepted if there is a likelihood of any liability which could attach to the Foundation as a result of taking title to the property. With approval of the Board of Directors, the Foundation may use a third party to assume ownership of the property and its attendant liability to facilitate the gift. Upon completion of the environmental evaluation(s), a final decision will be made and communicated to the development professional, the donor and, if appropriate, the donor's advisors.

D. **Appraisal.** The donor is responsible for obtaining an appraisal of the property, the cost of which is borne by the donor. Federal regulations prescribe strict appraisal requirements, stating that taxpayers are required to obtain a qualified appraisal for donated property for which a deduction of more than $5,000 is claimed. IRC § 170(f)(11)(C). Donors are strongly encouraged to seek professional tax and/or legal counsel to comply with the appraisal requirements.

E. **Tax Deduction Valuation.** The Foundation will recognize donors for the present fair market value of the gift when made, however this valuation is for Foundation use only and should not be relied upon for tax purposes. Donors are strongly encouraged to seek advice from private tax and/or legal counsel.

F. **Gift Memorialization.** Prior to or upon transfer of title to the Foundation, the donor and the Foundation will sign a Gift Agreement setting forth the terms of the gift, conditions or restrictions upon the use or disposition of the real estate, and the use of the net proceeds garnered from the subsequent sale or disposition of the property.

G. **Transfer of Property.** If the real estate and the terms and conditions of the gift are deemed acceptable, the transfer is handled in the same manner as a sale of land, using a reputable title company and any other outside advisors and experts in accordance with applicable state law. To that end, the donor executes a warranty deed to transfer his/her interest in the property to the Foundation. If transfer is by a trustee, personal representative, or other fiduciary, s/he will execute a deed with warranties appropriate to his/her capacity. The deed is recorded and at that time title/ownership formally transfers to the Foundation.

The allocation of expenses associated with the transfer of real estate to the Foundation is set forth in Section J herein. Unless otherwise specified within that section or if circumstances otherwise warrant, closing costs normally attributable to the “seller” shall be attributable to the donor and closing costs normally attributable to the “buyer” shall be attributable to the Foundation.

H. **Disposition of Property.** It is the Foundation’s general procedure that all gifted real estate be sold or otherwise disposed of as soon as possible following receipt and finalization of the transfer. In rare circumstances, the Foundation may retain the property according to the gift terms/conditions or for other business reasons.

- A gift of real property not likely to appreciate in value or requiring active management, extraordinary maintenance and/or other expenses shall, unless circumstances otherwise warrant, be recommended for immediate disposition at not less than fair market value.
- A gift of real property deemed to have potential for appreciation in value may be retained until Foundation staff determines its value is not likely to materially increase further. At that time, the Foundation staff will recommend to the Board of Directors a process for disposition of said property.
- A gift of real property accepted subject to restrictions on use or disposition shall be held, managed and disposed of or otherwise administered with due regard to said restriction.
- Unless circumstances otherwise warrant, the Foundation shall recover all acquisition and disposition costs related to the gift that it incurs. Generally, such costs are recouped from gross proceeds resulting from the sale of the property.
- Unless circumstances otherwise warrant, the Foundation shall apply the net proceeds to the designated charitable purpose. If the use is not designated, the disposition proceeds will be designated for unrestricted use by the Foundation or a specified college, department, or program.

Disposition of any gifted property will only occur through an “arms length” transaction in which neither the Foundation nor the buyer are under any compulsion or legal obligation to buy or sell the property, with both having a reasonable knowledge of all relevant facts pertaining to the property. Where the Foundation acquires property subject to a right of first refusal, that agreement will be honored if it is legally enforceable and was negotiated at "arms length," requires purchase at fair market value, and if honoring the agreement is made a condition of the gift.

I. **Gift Recognition.** For the Foundation's gift crediting and accounting purposes, the value of the gift is the appraised value of the real estate less any costs paid by the Foundation for maintenance, real estate taxes, realtor and broker commissions, and all other expenses associated with a sale of property.

J. **Allocation of Expenses.** In an effort to clarify the expenses relating to gifts of real estate, the following information tables delineate responsibility for costs associated with the charitable transfer of real estate. The Foundation may charge any fees incurred as a result of the real estate gift, carrying costs, and subsequent sale to the college, department, or program benefiting from the real property.

REAL ESTATE TRANSFER FROM DONOR TO THE MONTANA STATE UNIVERSITY FOUNDATION	
DONOR	***FOUNDATION***
• Current qualified appraisal and/or appraisal updates • Surveys/Plat preparation • Deed preparation • Code and/or zoning compliance costs • All property expenses prior to completion of gift (ex. taxes, insurance, utilities, maintenance, HOA dues, etc.) • Phase I/II environmental audit • Personal legal and/or tax counsel costs	• Title search, if applicable • Title insurance, if applicable • Preparation of gift agreement and/or memorandum of understanding • Costs incidental to property review, marketing, and sale • Property expenses after completion of gift (ex. utilities, maintenance, etc.) • Filing costs

*Also applies to transfers of real estate in exchange for charitable gift annuities.

REAL ESTATE TRANSFER INTO TRUST FOR THE MONTANA STATE UNIVERSITY FOUNDATION		
DONOR	***TRUST***	***FOUNDATION***
• Current qualified appraisal and/or updates • Surveys/Plat preparation • Deed preparation • Phase I/II environmental audit • All property expenses prior to completion of gift (ex. taxes, insurance, utilities, maintenance, HOA dues, etc.) • Trust agreement review; associated legal fees	• Title Search/Insurance • Real Estate closing costs and commissions • Investment management • Trust administration and annual valuation • All expenses related to accepting the property into the trust or its sale • Property expenses post-gift (taxes, insurance, maintenance, etc.)	• Costs associated with coordinating the transfer into trust • Comprehensive review of asset(s) • Draft trust language and documentation • Costs incidental to property review and asset liquidation

REAL ESTATE TRANSFER FROM AN ESTATE TO MONTANA STATE UNIVERSITY FOUNDATION	
ESTATE	***FOUNDATION***
• Current qualified appraisal and/or appraisal updates • Surveys/Plat preparation • Deed preparation • Code and/or zoning compliance costs • All property expenses prior to completion of gift (ex. taxes, insurance, utilities, maintenance, HOA dues, etc.) • Phase I/II environmental audit • Personal legal and/or tax counsel costs	• Title search, if applicable • Title insurance, if applicable • Preparation of gift agreement and/or memorandum of understanding • Costs incidental to property review, marketing, and sale • Property expenses after completion of gift (ex. utilities, maintenance, etc.) • Filing costs

V. DEFINITIONS OF COMMON REAL ESTATE TERMS

A. **Fee Simple.** A term of conveyance that grants *absolute* ownership to the recipient, entitling him/her to the entire property without condition or restriction.

B. **Joint Tenancy or Joint Tenancy with Right of Survivorship.** Two or more persons (joint tenants) having one and the same interest in the property, commencing at one and the same time, through one and the same conveyance. All joint tenants have the same right to undivided use, possession, and enjoyment of the property. Upon the death of one of the joint tenants, the property remains with any surviving joint tenant. The interest of the deceased joint tenant is unassignable and expires upon death.

C. **Partial Interest.** Any interest that represents less than the whole of the property. The IRS considers this type of gift to be a charitable contribution only if the interest represents the donor's *entire* interest in the property or is an *undivided part* of the donor's *entire* interest in the property.

- ***Example*** – Donor owns ½ interest in real property and donates entire ½ interest without limitation.
- ***Example*** – Donor is sole owner of real property and gifts ½ of his/her entire property interest to the Foundation. As a result, the donor and the Foundation become equal co-owners of the property as tenants in common.

D. **Tenancy in Common.** Two or more persons (tenants in common) each holding undivided interests in the property to equal use, possession, and enjoyment of the land. Upon the death of a tenant in common, his/her interest neither terminates nor automatically vests in the surviving tenant(s) in common. Because the interest of a tenant in common is assignable, it vests in whomever the interest was assigned to by will, sale, or other conveyance.