Your Land, Your Legacy

A Farm and Foodland Owner’s Guide
Acknowledgements

This guide was written by Ava Reeve based on legal research and support provided by Ian Moore, Brad Bryan, and Morgan Blakley, as well as additional contributions by Darcy Smith, Natasha van Bentum, Keeley Nixon, Lori Snyder and Heather Pritchard. Editing was provided by Ian Moore, Brad Bryan, Darcy Smith, Michelle Tsutsumi and Michael Marrapese. The design was created by Michael Marrapese. Photography by Michael Marrapese except as noted.

The Foodlands Cooperative of BC sincerely thanks the following funders for their support of this project:

![The Law Foundation of British Columbia](image1.png)

This project was funded in part by Agriculture and Agri-Food Canada and the Government of British Columbia through programs delivered by the Investment Agriculture Foundation of B.C.

Young Agrarians contributed a vital resource in their *2020 BC Transition Toolkit for Non-Family Farm Transfer*, which outlines alternative ways to transition land and farms from one generation to the next, including many valuable options in addition to working with a land trust. Our guide drew heavily on this toolkit, especially to help landowners develop and assess their vision for their land.

Foodlands Cooperative wishes to thank the following individuals for their time reviewing and providing feedback on this document (in alphabetical order):

Morgan Blakley, Lawyer, Columbia Valley Law Corporation
Dr. Brad Bryan, B.W. Bryan Law; Assistant Professor, University of Victoria Faculty of Law
Chad Hershler, Deer Crossing the Art Farm
Michael Marrapese, Communications & IT, Foodlands Cooperative; Fraser Common Farm Cooperative
Lindsay McCoubrey, Policy Analyst, Agricultural Land Commission
Ian Moore, Barrister & Solicitor
Amir Niroumand, Abundance Community Farm
Keeley Nixon, Keeley Nixon Creative & Consulting
Heather Pritchard, Lead Developer, Foodlands Cooperative; Fraser Common Farm Cooperative
Ava Reeve, Legal Literacy Project Manager, Foodlands Cooperative
Darcy Smith, BC Land Matching Program Manager, Young Agrarians
Lori Snyder, Earth Awareness Realized Through Health & Company
Michelle Tsutsumi, Certified Organic Associations of BC; Golden Ears Farm
Natasha van Bentum, CFRE (Ret.) Legacy & Outreach Advisor, Foodlands Cooperative; Director, Give Green Canada

Cover Photo: Charles Knowles, knowlesgallery.smugmug.com
Land Transfer Guide for Landowners

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“Foodlands”

The Foodlands Cooperative of BC is a community service cooperative founded in 2017 with the mission to secure land in trust and to promote the protection and stewardship of food-provisioning lands across BC. Foodlands Cooperative works with landholders, farmers, local communities and leaders in the agricultural and land trust sectors to develop and support diverse models of community-managed foodlands, and build healthy local food systems.

Foodlands Cooperative recognizes the tension between living on stolen land and the mission to secure land in trust. Early dialogue with the Working Group on Indigenous Food Sovereignty, through the BC Food Systems Network, led our founders to use the term “foodlands” instead of “farmland” to recognize the diversity of food harvesting systems and the colonial history of agricultural land policies, and to further open a dialogue between and across communities and initiatives around inclusive land access. Foodlands Cooperative holds a vision where Indigenous Nations and settlers live in relation to the land in a just and peaceful relationship, and where Indigenous sovereignty is fully recognized, including cultural, political, economic and territorial self-determination.

Working across what is dominantly known as BC, we are grateful to be striving for this vision within the traditional and unceded territories of 27 distinct Nations who have been the stewards of these lands since time immemorial. Foodlands Cooperative and the members of its staff and board of directors are actively engaged in a decolonizing process at both personal and organizational levels. We are committed to being in these territories in a good way, promoting the protection of food-provisioning lands across BC so that land can be accessed and stewarded by communities.

Foodlands Cooperative upholds and demonstrates the public and community interest for sustainable land use, and is at the forefront of encouraging alternative forms of land ownership and practices that ensure our foodlands provide food security for their communities in perpetuity.
Letter from Board Member Lori Snyder

Born and raised in the ‘60’s in Squamish, I had no idea I was on the lands of the Skwxwú7mesh Nation. As I identify as a Metis refugee, I am grateful and humbled to be imprinted by the beauty, resilience and abundance of the animal and plant teachers that have guided me to share, respect and celebrate the diversity of land, water and Nations that I call my home. May I walk in a good way and remember to be a good guest with practices of reciprocity and responsibility, and continue to build relationships with all that exists.

All my Relations.

Lori Snyder is a descendant from the Powhatan, Dakota, T’suu tina, Nakota, Cree, Nipissing, Dene and Anishinaabe peoples, mixed with French and Celtic ancestry. She was born and raised on the lands of the Squamish people, near Vancouver, Canada, overlooking the Salish Sea on the Pacific Northwest Coast of Turtle Island. Today Lori is an herbalist and educator with a deep knowledge of wild, medicinal and edible plants that grow in everyday spaces. Foodlands Cooperative is grateful for her ongoing support of our development as a member of our board of directors.
Why

In British Columbia today we face significant barriers to secure and affordable land access for food production, especially for a new generation of farmers and foragers interested in building alternative, sustainable food networks that utilize environmental best practices and enable regional food security.

Over the past decade, many young people have begun to aspire to make a career of farming or foraging. In BC and elsewhere there is a groundswell committed to sustainable local food production. But it faces a host of problems:

- lack of capital to purchase land, especially with ready farm infrastructure, because the real estate value of farmland is at an all-time high, especially around more populated areas;
- reduction of the farmland-base due to speculation and the development of non-farm estates; and
- reluctance among landowners to provide long-term tenure to leaseholders.

Current Landowners

At the same time as new-entrant farmers struggle to access land, many current farmers in British Columbia are poised to retire; however, their children have often developed their own careers or rooted themselves in a different place, and may not intend to carry on the family farming tradition. Few farms have a formal succession plan in place.

Yet many retiring farmers wish to see their legacy continue. Perhaps they have carefully tended the land with sustainable practices, and they worry this care will not continue if it is purchased by a large commercial farm. Or, they may be confronted with the possibility of their land being acquired for a non-farm estate, for speculation, or even for development. These landowners often hope instead to see the work they invested in the property continue to be valued by and for their community.
Putting Farms and Foodlands into Trust

Fortunately, there is an option available to landowners to contribute to land access and security—putting their land into “trust” by means of a land trust.

In its many forms, a land trust is a type of land-holding organization that effectively removes land from the speculative real estate market, returns it to the ‘commons’ as a community resource, and ensures community oversight of its ongoing use and management.

Farms or foodlands that are transferred to a land trust are managed in accordance with the land trust’s governing documents (such as its constitution and bylaws), the terms of any contract that facilitated the transfer of the land to it, and any applicable legislation and local government bylaws. (Note that this is different from what might be considered a ‘legal trust’, where property is managed by a trustee for the benefit of specified people or purposes - see “Ways to Transfer Ownership to a Charity” in “Ways to Transfer Ownership to a Charity” on page 29)

For the purposes of this guide, and unless otherwise stated, “putting land into trust” does not refer to a legal trust arrangement, but rather to the general activity of working with a land trust organization, using one of many possible arrangements in order to offer land access to new farmers and foragers with security and stability in perpetuity.

The Legal Literacy Project

Those who wish to put their land into trust for the benefit of the community typically have to wade through layers of government regulations from multiple agencies and bodies. Navigating these legalities has been a barrier to the donation of land and other innovative arrangements.

Foodlands Cooperative identified a significant lack of information and guidance for farm and foodland owners who desire to protect their land for future generations. There was a clear need for insights into the various options, processes and costs of having land transferred to a land trust, either via donation or through other transfer mechanisms.

This guide provides an introduction to the available mechanisms of land preservation in BC, including some of their legal and financial implications. It is our hope this publication will help to alleviate many of the challenges of working with land trusts, and lead to greater community access for farming and foraging forever.

We are striving to keep this document up-to-date, and welcome feedback as we monitor ongoing changes in legislation.
Where to Start

This Guide

This guide is designed for BC owners of farmland and foodlands who wish to create a legacy by preserving their land for generations to come. Our intention is that it will inform these landowners and empower them to define and pursue their vision, by providing a high-level understanding of the key legal and financial considerations that will impact this process.

Foodlands Cooperative created this guide because the law surrounding estate planning and land transfers can be hard to navigate, and this can be a barrier for landowners who want to donate their land. We appreciate that these legal topics are not easy to read, even in this simplified form. We’ve broken them down as follows:

*Your Land, Your Legacy: A Farm and Foodland Owner’s Guide in BC* consists of three primary sections and two appendices (see the Table of Contents above for more detail and page numbers):

- **Where to Start** (the current section) covers introductory information, including how to develop your vision and what types of organizations to consider as donees.

The subsequent sections explain the two primary options for protecting land through a third-party entity:

- **“Creating a Legacy by Transferring Land Ownership” on page 26** covers the various ways in which a landowner can transfer ownership of their land to a third-party entity, and the important considerations of each.

- **“Creating a Legacy by Granting a Covenant” on page 38** covers ‘Section 219’ covenants under the *BC Land Title Act* as a means to secure land, including the important limitations of this option.
This is followed by two appendices:

- “Appendix A: Tax Implications” on page 45 covers some of the tax and other financial implications of donating an interest in land, including capital gains, property transfer taxes, probate fees and donation receipts.

- “Appendix B: Due Diligence when Transferring Land” on page 67 describes the types of restrictions that may be pre-existing on a parcel of land, and the due diligence that a donor and donee should conduct (likely with the assistance of one or more professionals).

We also show guiding questions throughout this guide. You’ll notice that these often align with questions raised in the upcoming section, “Developing Your Vision”.

Finally, although we try to incorporate definitions for terms in the text, a glossary for many of the technical terms can be found at the very end of this guide.

**Obtaining Professional Advice**

This guide is provided with the understanding that its authors, as well as those consulted in its development, are not providing legal or other professional advice. Its contents are meant to provide owners of foodlands and farm businesses with general information about donating land and related property. To ensure your own circumstances and the latest information have been properly considered, the services of a lawyer, accountant, or other professional advisor should be sought. The information referenced in this guide may also change from time to time. While Foodlands Cooperative aspires to provide up-to-date information, your professional advisors can confirm whether the information contained here remains accurate.

Particularly, in order to facilitate a donation with as little risk as possible and ensure estate planning is executed effectively, we recommend that landowners retain legal representation early on in the process. A lawyer can also help a landowner navigate the nuances of the law, including more specific options for accomplishing the landowner’s unique vision.

While engaging the services of a lawyer or other estate planning professional will increase the cost of a donation, it will also reduce the risk of an expensive mistake—and the cost of a mistake in real property transfers can be significant.

**Who can help you navigate the options for developing your legacy?**
Other Resources

- The **BC Transition Toolkit for Non-Family Farm Transfer** was developed by Young Agrarians to explore alternative ways to transition land and farms. It supports the community to develop plans that transfer lands, farm businesses and knowledge between generations. Although its scope covers transfer options besides those involving a charity, we highly recommend this toolkit’s walk-through process for setting your vision, assessing feasibility, making a plan, documenting, implementing, and maintaining your transition.

- The **Green Legacies Guide** is a one-stop resource for legal, financial and other professional advisors whose clients wish to create their personal nature legacies. The guide shows how a donor’s goals can be linked with advantageous gift planning options to discover the financial benefits of gifting ecologically sensitive land and covenants.

- **Planned Giving for Canadians** is an essential guide for estate planning professionals and charities, from the Canadian Association of Gift Planners.

Developing Your Vision

Your vision for your land will inform the legacy you create. There are many different ways to protect foodlands for future generations, and your vision will help you and your advisors define a path forward. This section poses some of the questions that will help you specify what you value, as well as your needs in practical terms, as you develop this vision. The following is adapted from the Young Agrarians Transition Toolkit (“Considerations: Current Farmer”), with gratitude.

There are many different ways to protect foodlands for the future. Different approaches will offer different degrees of protection for the land, as well as different levels of financial benefit for the landowner, and will impact the way the land can be used by the charity and the community. Understanding your vision and needs will help you choose a pathway. Ultimately, your vision will be shaped by factors like when you want the transfer to begin or complete, how you or your family want to be involved in the land during and after the
transition, your financial needs, your family’s expectations, and the legacy you want to leave for the future.

Decisions about the future of your land should be part of a wider estate-planning process, assisted by an estate lawyer or other estate professional. But having a clear vision for your land before approaching a professional advisor can help you be efficient with the advisor’s time.

We strongly recommend actually writing your vision out. A great resource for this process is the section of the Young Agrarians Transition Toolkit on “Setting Your Vision”; see especially the “Legacy Letters” for a creative way to articulate your vision, including examples from other landowners and templates for your own use.

**Defining Your Resource**

The first step in this process of articulating your vision is to define your resource. What property exactly are you talking about, including land and buildings, as well as other assets?

Who else is involved in this property—perhaps other owners, or family members who have a personal interest? See “Your Current Ownership Structure” later in this section for some considerations regarding other owners, and “Family Legacy” below for considerations regarding your heirs.

**Articulating Your Values**

Your values are the key reasons that have led you to look at alternatives to putting your land on the market. These values inform your goals for the land, which should be approached with as much careful and advanced thought as possible. For many current farmers, primary goals for their legacy might be based on simply ensuring that their land continues to be farmed, or that it is appreciated by further generations. The ecological and social value of the land may feel more important than the financial value, or they may want to ensure the land is valued for food provisioning and never exploited as a commodity.
Consider:
- How do you want your legacy to impact your community?
- What is it about your land that is most important to you?
- What elements of the culture you have developed on the property (e.g. traditions, values) do you want to pass on to the next generation?
- What does your desired legacy mean for your relationship to the land going forward?
- How involved do you want to be in the management of the farm once you retire? How might that change with time?
- How do you want the land to be stewarded in the future? Might certain areas need extra protection?
- How open are you to the vision of the donee or of your wider community?
- How do you want to commemorate the history of this land?

Articulating Your Needs

Access to the Land: Many landowners want to stay on their land while transferring its management to the community during their lifetime, and there are various ways to do this. The exact mechanism for staying on the land will be different depending on the land transfer model that fits your needs. It will be important to consider what housing is available on the land and what changes may need to be made to accommodate both current and new uses. For more on this topic, see “Continuing to Enjoy the Land”, within both “Creating a Legacy by Transferring Land Ownership” on page 26 and “Creating a Legacy by Granting a Covenant” on page 38.

Consider:
- Where do you want to live?
- If you want to continue to live on the land, for how long?
- Do you want to continue to farm the land? What is your timeline for retiring?
- Do you want to continue to access the land after you retire? If so, which parts and how?
Wealth Management: Financial needs are an important part of land-legacy planning. Land is generally the most significant asset held by a farmer or their family, and the income from farming can be relatively small in comparison. This can influence the expectations of your heirs, and also have implications for your financial security after a donation.

For many farmers, a land sale is anticipated to be the main source of retirement income. It’s important to understand what you want your retirement to look like, what funds you’ll need, and what you want to leave as a financial legacy to your heirs, so that your legacy plan meets those needs.

There are options for protecting land while garnering income, whether ongoing income such as through a rent-to-own arrangement, or one-time income through a below-market sale to a charity or even a highest-bidder public sale combined with a protective covenant held by a charity. See Appendix A for information about the tax and other implications of transferring land.

Consider:

- What are your living expenses? How will those change over time?
- What income do you need from farming?
- What are your financial needs in order to retire from farming?
- Do you require one-time income from this land? Ongoing income?
- When would a donation make the most sense, during your lifetime or upon your passing?
- Besides the land, what other assets would you like to leave to the charity? Or to your family? What would you prefer to sell?
**Family Legacy**

The family property is an emotionally-charged asset, and inheritance is a matter that should be carefully weighed when considering transferring land to a charity. It’s possible that one heir wants to continue the family farm, or that off-farm heirs expect their fair share of the family’s financial legacy. How do you balance leaving something for your heirs while donating your land to your community?

Many children of farmers cherish memories of growing up on the farm and feel a close connection to the land. Any legacy plan should consider how the family wants to remain involved in their legacy in the future, or to adequately recognize the family’s donation.

Engaging the whole family early in the process ensures that everyone who will be impacted by the land transfer has had the opportunity to share their voice; getting them on board with the decision avoids future complications, such as children contesting a will. Mediators can be helpful to ensure everyone’s voice is heard while navigating these conversations.

**Consider:**

- What values do you hold as a family around the land?
- What do your children want to see happen with the land in the future? What do they think about your vision?
- What role do they see themselves having in relation to the land? Is this expected to change over time?
- What are the needs of your heirs? Do they need a financial benefit from the transfer?

- What other assets are part of this picture (e.g. life insurance, investments, other properties)?
- What is equitable? This might not be the same thing as equal.

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**Putting Your Vision to Paper**

Whether it happens in private moments of thought, conversations with your partner, or full-scale family debates, throughout your visioning process remember to record your questions and decisions, including questions for the organizations you approach. Be aware that creating a land legacy requires developing a relationship of trust and reciprocity with an organization, and that you will likely need to compromise and prioritize among your goals.
See “Documenting the Intent of a Transfer” below for information about how a Memorandum of Understanding can be used to lay out many of the decisions that comprise an agreement with an organization, in a non-binding manner, before you prepare for a legal agreement.

**Resources**
- Young Agrarians [BC Transition Toolkit for Non-Family Farm Transfer](#)
- “Setting Your Vision”
- “Considerations: Current Farmer”
- “Legacy Letters” (PDF/Word templates)
- “Testing the Models”

**Types of Land Legacies**

This section provides an overview of your primary options in creating a land legacy.

When full land ownership (the ‘fee simple interest in the land’) is transferred either to family or on the open market, a risk remains that that your vision for the land will be lost over time. Many landowners are interested in leaving a legacy with their land to ensure it is managed with specific values and goals in mind, such as the pursuit of community food security, benefit to your community, and access for future generations of food producers.

As a landowner, you have two options you can use to secure your land to advance your vision:

**Transferring Ownership:** You can secure your land by transferring complete ownership—formally referred to as *fee simple ownership*—to a third-party organization with a mandate that aligns with your vision. Such a transfer can be made during your lifetime through either a donation or a sale, or at the time of your passing through a donation in your will. While the end outcome will generally be the same—that ownership of the land is ultimately held by the organization—different legal
Summary comparison of implications of creating a legacy by transferring ownership versus by granting a Section 219 covenant

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<thead>
<tr>
<th>Who owns the land afterwards?</th>
<th>Transferring Ownership</th>
<th>Granting a Covenant</th>
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<tbody>
<tr>
<td>Ultimately the donee or purchasing organization, although the transfer does not need to be immediate</td>
<td>The landowner who granted the covenant continues to own the land, and can transfer this ownership through the same means as any other landowner</td>
<td></td>
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<th>What can limit how the land is used?</th>
<th>Transferring Ownership</th>
<th>Granting a Covenant</th>
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<td>The governing documents of the organization</td>
<td>All of the following:</td>
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<td>the legislation that governs that type of organization</td>
<td>- the terms of the Section 219 covenant</td>
<td></td>
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<tr>
<td>Depending on the structure of the transfer, potentially also:</td>
<td>- the enforcement policies of the covenantee organization</td>
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<tr>
<td>a deed of gift</td>
<td>- the legislation governing Section 219 covenants (e.g. the BC Land Title Act, the BC Property Law Act)</td>
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<td>the BC Charitable Purposes Preservation Act</td>
<td>- the law of legal trusts</td>
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<td>the law of legal trusts</td>
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<th>How can the land be transferred in the future?</th>
<th>Transferring Ownership</th>
<th>Granting a Covenant</th>
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<tr>
<td>Only in extreme circumstances, unless the deed of gift permits transfers; in any case, it typically must be transferred to a similar organization limited by the same deed of gift</td>
<td>At any time, unless the covenant limits transfers, but the covenant will carry over to each new owner</td>
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<th>What are the financial implications for the landowner?</th>
<th>Transferring Ownership</th>
<th>Granting a Covenant</th>
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<tr>
<td>Land could be donated, sold, or partially donated to the organization</td>
<td>The covenant can be donated, sold, or partially donated to the covenantee organization</td>
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<tr>
<td>donations to a registered charity or other qualified donee can result in a tax credit (or a tax deduction if the donor is a corporation)</td>
<td>donation of a covenant to a charity or other qualified donee can result in a moderate tax credit</td>
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<tr>
<td>the donor also retains the right to lease out or sell the land</td>
<td>the donor also retains the right to lease out or sell the land</td>
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mechanisms can also be used to facilitate the transfer in different ways depending on your needs. All of these options are explored further in Creating a Legacy by Transferring Land Ownership, below.

**Granting a Covenant:** Alternatively, instead of transferring complete ownership to an organization, you can protect your land by registering a ‘Section 219 covenant’ that specifies requirements on the way any current and future owners use the land, naming the third-party organization as the enforcer of the covenant. This option is explored further in “Creating a Legacy by Granting a Covenant” on page 38, below.

**Ownership Structures**

Different kinds of property can be donated, including land, buildings on the land, equipment, assets like quota or inventory, and the shares of a farm corporation.

Regardless of the kind of property, however, when considering donating it is important to understand the ways in which your current ownership structure will inform how and when a donation decision can be made.

For instance, while there may be only one person—the intended donor—listed on the title to the land in question, there may be others with interests or charges registered against the land who must be involved in or consent to the donation in order for it to have legal effect. Similarly, others, including family members with rights under the BC Family Law Act, may have an interest in the property and may need to be consulted or consent as well.

Therefore, it is advisable to include in the decision-making process any other individuals or entities who might have, or feel they have, claim to an ownership interest in the land. (For more information, see “Registered vs. Beneficial Ownership” below, and “Appendix B: Due Diligence when Transferring Land” on page 67. A lawyer should be consulted to help a landowner determine and identify any other individuals or entities with an ownership interest in a specific parcel of land.)

The name of the registered owner on title to the land is usually the legal ‘person’ or ‘persons’ entitled to sell or donate the property. This could be an individual or an incorporated entity, or even a combination. The registered owner(s) on title (or those with the authority to make decisions on behalf of an incorporated entity on title) should be the individuals in discussion with the organization, and are referred to in this guide collectively as the landowner. They can, of course, choose to include additional people in the decision, such as impacted family members (see “Developing Your Vision”, above).
It is also important to distinguish between the ownership of the land—the entity/entities with the legal and beneficial rights to the land—and the structure of the business that might be farming on that land (such as a sole proprietorship, joint venture, limited partnership, partnership, corporation, or cooperative). The owners of a tenant business farming on the land are not entitled to decision-making power over a land transfer, although it may be best practice to include them, especially if there is a lease that may need to be assigned to the new owner.

**Registered vs. Beneficial Ownership**

There are actually two components to ownership of property: registered ownership and beneficial ownership.

In the context of real property, the *registered owner* is the person or entity that is registered on title at the BC Land Title Office. In contrast, the beneficial owner is the person or entity that has the right to the economic benefit of the property, including, in many cases, the right to the proceeds of a sale.

In most cases of real property ownership, the same entity holds both sets of rights. However, it is possible for an entity other than the registered owner to hold a beneficial interest in the property. While in some cases this arrangement will be structured as a ‘legal trust’ (the details of which are beyond the scope of this guide, though some information is provided below in “Ways to Transfer Ownership to a Charity” under *Creating a Legacy by Transferring Land Ownership*), in others the arrangement may serve another purpose. BC recently brought into force the *Land Owner Transparency Act* to bring greater transparency to the existence of beneficial interests in real property.

If applicable, the identities of the registered and beneficial owners of property will be key details in a decision to donate land or other farm property.
Legal Entities That Can Be Owners

Individuals: Individuals can own land as a single person, as joint tenants, or as a tenant in common. They can be the registered owner, the beneficial owner, or both.

Within the limitations of their ownership structure, individuals can transfer land (or an interest in it) through living gifts, wills, or sales. All these concepts are explained further in the next section, “Creating a Legacy by Transferring Land Ownership” on page 26. Importantly, there will be tax implications for each individual who disposes of their interest in land (i.e. sells, gifts, or otherwise transfers their interest to another person or entity); see “Appendix A: Tax Implications” on page 45 for more information.

Even when the prospective donor is the only person listed as the registered owner of the property, if they have a spouse, their spouse may need to be involved in a transfer decision, as BC’s Family Law Act, or a previous agreement between the spouses, may give them a claim to the property.

Incorporated Entities: Where land is owned by an incorporated entity, such as a company, society, or cooperative association, decisions respecting that land must be made according to the legislation that governs that type of organization, as well as the entity’s own governing documents.

This may involve consent of all shareholders or members. For example, the BC Business Corporations Act says that an incorporated company must not sell, lease, or otherwise dispose of ‘substantially all’ of its undertaking unless it has been authorized to do so by special resolution. Where an incorporated company wishes to transfer a significant asset of the company (such as land), the owners should confirm with their lawyer whether such a resolution is required. The donee may also request a copy of any relevant special resolution for its own records.

It is also possible for the shares of a company to be donated instead of its assets. Where the shareholders of a company transfer all shares to an organization, the donee organization...
would effectively own all the assets (and liabilities) of the company through its control of the company’s shares—not only the land, but also the machinery, equipment, livestock and inventory. Before accepting the shares, the donee organization will conduct due diligence in relation to the company, in order to fully understand the implications of receiving the donation.

In most circumstances, after receiving the shares, the donee organization will dissolve the company and transfer the company’s assets to itself, as it may not be permitted by legislation or by its governing documents to hold shares of an active company.

If, on the other hand, the donee organization is able to maintain the company, the original landowner (or their heirs or other designated individuals) might be able to retain minority shares in the corporation. Administration of the corporation would be subject to the donee organization’s legislated restrictions and its governing documents.

Donation of either assets or shares to an organization will each have different implications for the donor’s taxes. (See “Appendix A: Tax Implications” on page 45 for more information.)

**Joint Tenancies and Tenants in Common**

Land can also be jointly owned by multiple legal entities at the same time. There are important distinctions between these two systems: ‘joint tenancies and ‘tenancies-in-common’.

**Joint Tenants:** Each joint tenant is generally deemed to hold an equal share in the property. Joint tenants also have a ‘right of survivorship’: upon their death, one owner’s interest in the land is transferred to the surviving joint tenant(s), rather than becoming part of their estate.

Note that this also means if a charity receives a donation or sale of joint tenancy, when the other joint tenant(s) (the current landowners) pass away, full ownership passes onto the charity.
Tenants-in-Common: By contrast, unless they have an agreement stating otherwise, a tenant-in-common can sell their interest in land to another entity without the consent of the other tenant(s)-in-common. Or, on the passing of a tenant-in-common, their interest in the land is passed according to their will. Tenants in common can also own unequal shares—as long as the total adds up to 100%.

Donees

Securing land for community benefit is generally done through a third-party organization that receives ownership or another kind of interest in the land, which bestows upon that organization the authority to protect that land for a specific purpose. This arrangement is commonly called a ‘land trust’, but an organization that does not identify itself as a ‘land trust’ can often perform the same functions. Therefore, this guide refers to these organizations by their legal structures, such as a registered charity, rather than as ‘land trusts’ generally.

Note that a ‘land trust’ is different from a ‘legal trust’, which is a specific type of legal construct through which property, such as land, is managed by a ‘trustee’ (which can be individuals, organizations, or both) for the benefit of specified people or, in some cases, specified purposes. The trustee under a legal trust is subject to fiduciary obligations in relation to the property that do not usually apply to a land trust. While it is possible for a land trust to be the trustee under a legal trust, for the purposes of this guide, “putting land into trust” refers to working with an organization, using one of many possible arrangements in order to offer land access to new farmers and foragers with security and stability in perpetuity. (Unless otherwise stated, it does not refer to a legal trust arrangement.)
Registered Charities

Registered charities are charitable organizations, public foundations, or private foundations that have been approved by the Canada Revenue Agency (CRA) to hold charitable status and issue donation receipts. A registered charity must have purposes that are exclusively and legally charitable, and must be established for the benefit of the public. Further, a registered charity’s activities must support its recognized charitable purposes. Entities that can apply to the CRA for status as a registered charity include non-profit societies, community service cooperatives, and some legal trusts. Not all organizations with ‘charitable’ purposes or activities are registered charities.

When an interest in land is donated, the donation is most commonly made to a registered charity because of the associated tax benefits. Furthermore, a landowner can be assured that the charity will be legally required to use its interest in the land in accordance with its constituting documents (e.g. its constitution, bylaws, memorandum of association, rules), its charitable purposes, and, in some cases, BC’s Charitable Purposes Preservation Act. See the next section, “Creating a Legacy by Transferring Land Ownership” on page 26, “Mitigating the Risk of your Vision not being Realized”, for some information on how a registered charity is restricted in its management of land, depending on whether it is full ownership or a covenant that is transferred, and the structure of that gift.

If these factors are important to a landowner, they should confirm that the organization they are contemplating donating property to is in fact a registered charity and capable of issuing donation receipts.

Because of the multiple benefits of donating land to a registered charity, this is the most common structure of a land trust. Therefore, throughout the remainder of this guide the donee organization is typically referred to as “the charity”.

However, other organizations are able to act as land trusts as well.

Other Qualified Donees

Under the Canadian Income Tax Act, qualified donees are organizations that can issue official donation receipts. While registered charities are one kind of qualified donee, the CRA recognizes a number of others. Potential other qualified donees include the Crown (at the federal, provincial, or territorial levels), registered low-income seniors’ housing corporations, and registered Canadian municipal or other public bodies that perform a function of government in Canada. As the most likely candidates for a farm or foodland trust, two types of public bodies that perform a function of government are elaborated here.

Note that many Indigenous governing bodies have registered as qualified donees; see below for more information.
**Local Governments**

A municipality (or other local government) can register as a qualified donee and thereafter provide tax receipts for donations.

Everything a municipality in BC does is legally bound by enabling legislation like the *BC Local Government Act* and the *BC Community Charter*. The purposes of a municipality, and the powers it has for pursuing these, are quite broad and include different avenues for accepting land by donation, or receiving land *in trust* (i.e. by means of a legal trust).

Once a donation is received, a municipality can lease land out in accordance with the terms of the trust and the *BC Community Charter*. A municipality could also incorporate a company or society for the purpose of receiving and managing land.

Any property donated for what would be considered a charitable purpose may be subject to the restrictions and protections offered by the *BC Charitable Purposes Preservation Act*. However, the *BC Community Charter* does provide municipalities with an avenue for obtaining a court order to vary the terms of a trust, where the municipality is of the opinion that the terms are no longer in the best interests of the municipality.

**Other Organizations**

Land can also be transferred to an organization that is not a charity or a qualified donee. The transfer will not be eligible for the same tax benefits, nor the same kinds of legislated protection, but the law does still provide a degree of protection for these donations. Some types of organizations that might be considered for the donation of land are non-profit societies, community service cooperatives, and farmers’ institutes.

As elsewhere, a prospective donor will want to consult with professional advisors about how to best ensure their intentions are executed, and to mitigate other risks. In particular, a donation to a non-charitable organization will not entitle the donor to a tax receipt and could actually have negative tax consequences if poorly planned. See “Appendix A: Tax Implications” on page 45 for information.
**Non-Profit Societies:** Many societies in BC are formed under the BC Societies Act but do not qualify as charities with the Canada Revenue Agency. Besides the Societies Act, societies must also abide by their own governing constitution and bylaws, though these documents can often be changed through a special resolution at an annual general meeting of the society’s members.

If the society is not registered as a charity, the only automatic limitation on the use of donated property may be that it is used in furtherance of the society’s purposes. As in every situation, the donor will want to ensure the prospective donee society’s purposes align with the intended purpose of the gift.

However, it may be possible to restrict the purposes to which a gift is put. A landowner may be able to donate their property to a society in a trust arrangement; as the trustee, the society would be mandated to use the property for the purposes set out in the trust. Land can also be gifted ‘for charitable purposes’ even if the society is not registered as a charity, and the use of land may therefore be restricted, including under the BC Charitable Purposes Preservation Act.

A prospective donor will also want to consider who the possible recipients of their donation may be if the society to which they are donating ceases to exist, either by dissolution or insolvency. These processes are governed by the Societies Act, but can be further controlled by the society’s governing documents, as well as by a ‘deed of gift’.

**Community Service Cooperatives:** Cooperatives in BC are registered as one of several types depending on their purpose. Community service cooperatives are a special designation created in BC through the Cooperative Association Act. Community service cooperatives have a similar status to that of non-profit societies. In simple terms, a cooperative exists for the benefit of its members, whereas a community service cooperative exists for the benefit of the community.

If the community service cooperative is not registered as a charity, transferring land to it will carry the same risks as described above for societies: the donation will be primarily protected by the donation’s ‘deed of gift’, the cooperative’s own governing documents (which can often be changed through a special resolution at an annual general meeting), and the BC Cooperative Association Act.
According to the Cooperative Association Act, property owned by a community service cooperative can only be transferred to another community service cooperative, or to a registered charity with the capacity to take on the property and use it for the purposes to which it has previously been put. An exception may be if the cooperative dissolves and has outstanding debts and liabilities that must take priority over any other commitments or restrictions related to donated property.

For extra protection, a landowner can likewise donate their property to a cooperative in trust, mandating the trustee cooperative to use the property for the purposes set out in the trust, or land can also be gifted to a cooperative ‘for charitable purposes’ so that the use of land may be restricted under the BC Charitable Purposes Preservation Act.

**Farmers’ Institutes:** In BC, a unique type of non-profit organization can be incorporated under the BC Farmers and Womens Institutes Act with specific purposes, including improving conditions of rural life or promoting the theory and practice of agriculture. Farmers’ institutes may acquire property, but they are subject to a unique legislative regime that will need to be reviewed, along with the purposes of a particular farmers’ institute, whenever such an organization is being considered for a donation of property.

**Indigenous Nations**

A donation of land to an Indigenous nation will depend on how the land of that nation is governed. This will also determine whether a donation receipt can be issued by the donee. Many Indigenous governing bodies have registered as qualified donees under the Canadian Income Tax Act and so could be in a position to provide a donation receipt to a prospective donor. Below are some additional factors for consideration.

If a nation’s land is subject to the Canadian Indian Act, or it regulates its land pursuant to the Canadian First Nations Land Management Act, all of the nation’s land is likely held by the Crown for the use and benefit of that nation. As such, a donation to a nation in this position would likely actually be a donation to the federal government, which could then undertake
an ‘addition to reserve’ process. In the context of a nation with a ‘land code’ in place—pursuant to the Canadian First Nations Land Management Act—laws enacted under that land code may also affect the donation.

If, on the other hand, a nation is self-governing, then all of the land governed by that nation may be held in fee simple by that nation, subject to the legislation and any relevant agreements that enabled that nation to be self-governing. As such, the donee of land in this situation would be the entity that holds the fee simple title to the nation’s property.

A third option is where a nation holds their land pursuant to a treaty. In this case, the land is generally held pursuant to the terms of the treaty and any donations will be subject to these, and any laws the nation has put in place pursuant to it.

Finally, a fourth option is where a nation has incorporated a company or society through which it pursues certain activities or business. In this circumstance, a donation would function the same way as any other donation to a company or society, Indigenous or not; likewise, if this entity has charitable status, a donation would function like a donation to any other registered charity.

Note that any donee nation will likely place heightened importance on the underlying relationships of any potential donation. Although not a legal aspect of the arrangement, it is an equally, if not more, important aspect to working with an Indigenous community to repatriate land.

Resources
- CRA
  - “What is Charitable?”
  - “Qualified Donees”
  - “Guidelines for registering a charity: Meeting the public benefit test”
- BC Charitable Purposes Preservation Act, SBC 2004, c 59
- BC Community Charter, Section 184
- BC College and Institute Act, RSBC 1996, c 52
- BC University Act, RSBC 1996, c 468
- BC Farmers and Womens Institutes Act
- Canadian Indian Act, RSC 1985, c I-5
- Canadian First Nations Land Management Act, SC 1999, C 24

Documenting the Intent of a Transfer

In all of the possible combinations of donor and donee described above, in the process of discussing and negotiating a common vision for the land, a landowner and organization can develop and enter into a memorandum of understanding (MOU) that sets out their respective expectations.

Collaborating with Your Donee: Approach the development of an MOU as a collaboration. Below are some guiding principles for having these kinds of conversations, adapted from the Young Agrarians Transition Toolkit on “Building a Common Vision”:

- Stay curious and listen deeply. Work to understand those involved and how they came to the perspective they have.
- Ask open ended questions and have exploratory conversations to build mutual understanding.
- Seek common ground to build trust and understanding and identify your key interests. Ask, “What is your basic concern in wanting…?” “What do we both value here?”
- Consider and acknowledge the other party’s perspective. Let them know you heard them by using clarifying questions such as: “It sounds like … is really important to you—did I get that right?”
- Clarify your assumptions. Ask, “What did you mean when you said…?”
- Tackle barriers together. Rather than ‘me’ versus ‘them’, shift your approach to ‘us’ versus ‘the issue’.
- Avoid going straight to solutions. Explore each party’s needs and what is important to them in a solution, before brainstorming as a team.
- Be patient and stay committed. Some of these conversations may be hard to navigate, and the entire process will take time.
- Strive to always end on a good note, and take the time to build positive relationships outside of the transition conversations.

Writing an MOU: An MOU is generally not legally binding (though certain provisions could be made binding) and can be used to set out expectations and responsibilities in preparation for an anticipated legally-binding contract. See “Ways to Transfer Ownership to a Charity” on page 29 in the next section to learn about legally-binding documentation of transfers.

Be aware that a charity’s preference will be for the greatest flexibility possible in its administration of the property, to adapt to changing circumstances of the many years to come. An MOU, and subsequent ‘deed of gift’, should be negotiated carefully and with due consideration to these concerns.

An MOU between an organization and a prospective donor could address any of the following factors, including the anticipated timeline for each step.

- Which party will be responsible for obtaining any necessary appraisals; the identity of the desired appraiser(s) and the distribution of costs.
- Which party will be responsible for conducting property searches and investigations; the distribution of the respective costs.
- Responsibility for obtaining a survey if either of the parties are concerned about encroachments (a neighbour’s unauthorized use of land).

- The intentions for addressing the income and residential needs of the donor (e.g. whether a lease or life estate will remain with the donor).

- How the organization will ensure the property will be used for the desired purpose of the donor.

- How property other than real estate will be addressed by the parties. Donations of a farm’s machinery, equipment, livestock, quota or inventory will usually need to be separate from a donation of land. The parties will want to obtain a list of all assets that will be transferred in order to prepare a comprehensive bill of sale and deed of gift; see “Ways to Transfer Ownership to a Charity” on page 29 in the next section for information on deeds of gift.

- The approximate date of donation.
Creating a Legacy by Transferring Land Ownership

Introduction

A landowner can ensure their land continues to contribute to their community’s food security by transferring ownership to a third-party organization, such as a charity, whose objectives align with the landowner’s values and vision. Because there are many options for how ownership can be transferred, this mechanism for protecting foodlands can be adapted to almost any situation and vision.

Note that, as the most secure and financially-advantageous recipient of such a transfer, we will refer to the donee or recipient organization as “the charity” (See “Where to Start” on page 5 under “Donees”, in most circumstances this will be a registered charitable organization).

A charity’s options for ownership or interest in the land will be defined by the structure chosen for facilitating the transfer of ownership to it. While there is a long history of charities owning land in order to preserve ecological or historical value, there are fewer examples of land being preserved for food provisioning.

Depending on the circumstances, the charity may not need to be the entity that directly uses the land. While the charity could potentially operate a farm within the scope of its charitable purposes, or lease it out, for example to new-entrant farmers, it could also contract with an ‘intermediary’ organization to manage the land. Using an intermediary can also be a good fit when a community organization wants to manage a property but is not able to receive or purchase it, and a registered charity partner can. In either case, the intermediary must manage the land according to its agreement with the landholding charity, which will reflect the charity’s charitable purposes and the law governing charities, as well as its own incorporating documents (e.g. bylaws, constitution).
| **Who owns the land after the transfer?** | Ultimately the donee or purchasing organization, although transfer does not need to be immediate |
| **How can the transfer limit how the land will be used?** | - The governing documents of the organization,  
- the legislation that governs that type of organization,  
and, depending on the structure of the transfer, potentially also:  
- a deed of gift,  
- the BC Charitable Purposes Preservation Act, and/or  
- the law of legal trusts |
| **What are the responsibilities of the recipient charity?** | To maintain and manage the property (or contract a third party to do this), within its legal limitations |
| **Can the current owner continue to enjoy the land?** (I.e. live on or farm it) | A transfer can be structured to provide for the current owner to continue to enjoy or reside on the land; this could be until a certain point, or until their passing |
| **How can the land be transferred in the future?** | Only in specific circumstances (unless the deed of gift permits transfers); in any case, it typically must be transferred to a similar organization and will be subject to the same limitations as above |
| **What are the financial implications for the landowner?** | - Land could be donated, sold, or partially donated to the recipient organization;  
- donations to a registered charity or other qualified donee can result in a tax credit (or a tax deduction if the donor is a corporation) |
| **What are the financial implications for the charity?** | The recipient organization must be able to fund the maintenance and management of the property within the limitations above |
The following section describes how a transfer of ownership of land to a charity can be used to secure and preserve that land. We elaborate on the different structures that a transfer can take, including consideration of the donor’s goals and the options available for a donor who wishes to continue to use or live on their land until their passing or another fixed time.

About Land Ownership

A transfer of land ownership from a landowner to a charity can either be made during a landowner’s lifetime (e.g. through a donation or a sale) or after a landowner’s passing (e.g. through a will or by means of a trust such as an ‘alter ego’ or ‘joint partner’ trust). These options are explored further below in “Ways to Transfer Ownership to a Charity”.

What different types of ownership could you transfer in order to establish your legacy?

The closest thing to complete ownership of land is known as fee simple ownership, and constitutes the largest ‘bundle’ of rights that a landowner can hold in relation to land. In many cases, donating a fee simple interest in land to a charity can generate significant tax benefits for the donor (see “Appendix A: Tax Implications” on page 45).

The intention in transferring land to a charity is often for the charity to ultimately become the sole fee simple owner of the land, as this is the simplest and most easily-enforced arrangement in the long term. In this case, the donor is assured that the charity will be legally required to use the land in accordance with its charitable purposes and the law governing charities, as well as any other restrictions put in place, which should be structured with the assistance of qualified legal counsel. (See “Ways to Transfer Ownership to a Charity”, below, for more about deeds of gift.)

An individual can transfer their ownership of land in a variety of ways, with the most common being: a sale, a living gift, or under a will. What they can transfer includes the same rights they hold, or a kind of right to land that amounts to less than

In the model that Foodlands Cooperative has developed, ownership of land is received and held by an established charity, often with a province-wide scope, but each individual property is managed by a locally-based intermediary organization, which we believe is better positioned to respond to its community’s unique food security needs and to maximize local partnerships and resources in response.
full ownership (e.g. lease, life interest). See “Your Current Ownership Structure” in “Where to Start” on page 5, above, for information about registered and beneficial ownership, joint tenancies, tenants in common, and other options for ownership structures.

Ways to Transfer Ownership to a Charity

Donating Land
Remember that acquiring land is only the first step for a charity; maintaining ownership and management of the land will require regular human and financial resources. Receiving the land as a donation minimizes the financial burden placed on the charity in the transfer process, and allows the charity to focus its resources on implementing the landowner’s vision in concert with the needs of the benefitting community.

Donating land can be the right fit when a landowner wants to prioritize foodland preservation over financial benefit (or where the tax benefits of a donation outweigh the potential gains of a sale). See “Appendix A: Tax Implications” on page 45 for more information about the financial benefits of donating land.

Living Gifts: Transferring ownership in a manner where no compensation is expected in return, during a landowner’s lifetime, is called a living (or inter vivos) gift. This is commonly referred to as a donation when the recipient is a charity.

Inter vivos donation of fee simple ownership (the full set of interests that the current landowners possess) creates the simplest situation for a charity, and possibly also the most significant tax receipt for the donor. See “Appendix A: Tax Implications” on page 45 for information about the financial benefits of this kind of donation.

Gifts after Passing: Where a landowner wishes to transfer their land or other property to a charity after they pass away, such a donation can be made through the landowner’s will (known as a bequest). On the passing of a sole owner or a tenant-in-common, their interest in land is passed according to their will.

By contrast, joint tenancies are affected by the right of survivorship, which means that upon the passing of one joint tenant their share in the land is transferred to the surviving joint tenant(s). Where land is owned as a joint tenancy and a transfer to an entity other than the remaining joint tenant(s) is desired, an estate planning professional should be consulted.

What are your options for how you transfer any ownership to a charity?

A landowner can structure the timing of their donation in various ways depending on their needs. The main options available are summarized below, although if none of these would meet the needs of a landowner, an estate planning professional can provide further expertise.
When a person who ordinarily resides in BC passes away, a grant of probate will generally be required from the Supreme Court of British Columbia; this process legally validates a will before the assets of the estate can be distributed. See “Other Taxes to Consider” in “Appendix A: Tax Implications” on page 45.

A bequest may not be as collaborative as a living gift, as the executor of the estate may not prioritize the transfer, nor is a charity under any obligation to accept the land from the estate.

**Gifting the Right of Survivorship:** Joint tenancies and the associated right of survivorship can be used in estate planning to simplify the administration of the estate, to ensure that property passes to the intended person or entity, and to minimize probate fees. Using this mechanism, a landowner can gift fee simple ownership of their land to a charity upon their passing, outside of the scope of their will, by transferring joint tenancy to the charity during their life. In this way, when the other joint tenant(s) pass away, ownership of the land will pass onto the charity as the surviving joint tenant. This would be a kind of living gift, even though the full transfer would not take place until the passing of the last joint tenant. (See “Continuing to Enjoy the Land” below for more details on this option.)

**Gifts by a Trust:** A legal trust, in the simplest terms, is a legal arrangement whereby certain property is transferred by one party (the settlor) to another party (the trustee) for the benefit of the beneficiary. While trusts are a complex legal topic that is beyond the scope of this guide, it is worth noting that they are a common estate planning tool that can also be used to facilitate a donation of property to a charity at a certain point in time. For instance, a legal trust can be structured so that after the initial beneficiaries of the trust pass away, some or all of the remaining assets of the trust are donated—see below under “Continuing to Enjoy the Land”. A qualified estate planning professional should be consulted to determine whether and how a trust may help a particular landowner realize their vision.

**Documenting a Donation: A Deed of Gift**

For a living gift to be considered legally valid, it is necessary that an intention to gift is clearly established, and is accompanied by both acceptance and delivery of the gift. It is generally best practice for the intention, acceptance and delivery to be supported by a deed of gift and a statutory declaration. It is highly advisable to consult a lawyer on the drafting of these documents, as they are legally binding and will effectively transfer beneficial ownership to the charity, even if transfer of registered ownership takes place at a later date (or never).
A written *deed of gift* under seal, drafted and signed by the parties, articulates an arrangement between an organization and a donor. It should be witnessed by a notary public.

A *statutory declaration* sets out the donor's intention to gift. Made at the same time as the deed of gift, it captures the intention of the donor fully and in a legally-binding manner.

**Selling Land Below Market Value**

When a charity is in a financial position to offer compensation for land, or when there is widespread community support to allow for fundraising, sale of land to a charity below ‘fair-market-value’ can still take advantage of *split receipting* tax benefits.

Split receipting rules allow for a below-fair-market-value sale to occur, while the landowner receives a donation tax receipt for the difference between the appraised price and the sale price. See “**Appendix A: Tax Implications**” on page 45 for more information about below-market sales. A professional advisor can help a landowner clarify their financial needs in a land transfer, and the best approach to a sale.

Note that it is also possible for a contract of purchase and sale to be structured to secure the charity's right to purchase the land, while giving the charity time to fundraise to make the purchase.

**Selling Without Split Receipting:** There may be circumstances in which a landowner wishes to sell property below fair-market-value without using split receipting, such as to be eligible for another tax benefit. Conversely, it is also possible that a charity might wish to purchase a particular parcel of land even at full market value.

**Documenting a Sale**

**Sale Portion:** The parties will want to enter into a contract of purchase and sale in relation to the property transfer; this is a standard form contract for the conveyancing of real estate.

**Gift Portion:** It will likely be advisable for a written deed of gift under seal to be drafted and signed by the parties, articulating the arrangement between the charity and the donor. See above for more information.

**Mitigating the Risk of your Vision not being Realized**

While it is not possible to completely guarantee that a landowner’s vision for their foodlands will be upheld for eternity, a landowner can work with their professional advisors to ensure their donation is structured so as to mitigate this risk.

For instance, a donation of property can be structured to conform with the BC Charitable Purposes Preservation Act (CPPA), in which case the donee will be restricted from selling or otherwise transferring the property even if they are no longer willing or able to fulfil its designated purposes. Similarly, property subject to the CPPA cannot be used to satisfy the debts or liabilities of the donee, and in
the event the donee goes bankrupt or otherwise winds up the CPPA helps ensure that the property will be transferred to another entity capable of advancing the purposes of the donation.

If the gift does not meet the CPPA criteria, donor-restricted gifts can also be used to restrict what happens to donated property in the event that the charity dissolves. (Restrictions a donor places on such a gift could also prevent the donated property from being used in a manner that does not align with the donor’s vision.) Note, though, that the gifting of a restricted gift rather than an unrestricted gift may affect the value of the gift and therefore the value of any tax receipt. It may also be less desirable to a charity than a gift that otherwise conforms with the CPPA.

An estate planning professional can help a landowner ensure their donation is structured to conform with the CPPA, or to otherwise mitigate the risk of their vision not being realized.

Ways that a landowner can continue to enjoy their land (or ‘retain an interest in the property’) can include living on the land or even continuing to farm it. Four tools are presented here: right of survivorship, life estates, leases/licences, and legal trusts. We also include a note on regulations regarding housing on agricultural land.

As always, a landowner should consult with professional advisors regarding the advisability of these options to their particular situation and the parties’ legal counsel should be involved in drafting and negotiating the appropriate documentation to ensure that the transfer will accomplish the intended goals.

Continuing to Enjoy the Land

Transferring ownership to a charity does not mean the current owners, or their family, have to stop living on or using the land after the transfer has occurred or been set in motion. This section reviews some of the options a donor can consider if remaining connected with the land is an important factor for their legacy.

What are your options for living on your land after a donation?
Right of Survivorship

Recall that land held in ‘joint tenancy’ is subject to the right of survivorship: rather than a particular party’s interest in the land becoming part of their estate upon their death, a joint tenant’s interest in the land transfers to the surviving owner(s).

As explored above, the right of survivorship can be used in estate planning to simplify the administration of the estate and ensure that property passes to the intended person or entity: if a landowner gifts the right of survivorship to a charity, by adding the charity as a joint tenant, the current landowner and any other joint tenant(s) could continue to enjoy ownership and use of the land for the remainder of their lives. At the point of the passing of the last joint tenant (other than the charity), ownership of the entire property would pass onto the charity as the last surviving joint tenant.

Where a charity is to be gifted the right of survivorship over property, the gift may need to be structured so that the charity holds its interest in the land ‘in trust’ for the other joint tenants until they pass away, in order to ensure that the charity does not run afoul of its charitable purposes. This would also allow the other joint tenants not to be restricted in their use of the property.

Where a charity is to be gifted the right of survivorship over property, the gift may need to be structured so that the charity holds its interest ‘in trust’ for the other joint tenants until they pass away, in order to ensure that the charity does not run afoul of its charitable purposes. This would also allow the other joint tenants not to be restricted in their use of the property. A landowner will want to consult with qualified professional advisors about this option.

Life Estates

A life estate is a kind of limited ownership of real property that ends upon the death of a specified individual. A life estate allows someone to share in the use of a property until the passing of the specified individual, at which point the rest of the ownership is transferred to the charity. The individual who holds the life estate and the one to whose life it is tied can be the same person, but do not need to be.
As elsewhere, the creation of a life estate should happen in consultation with and on the advice of a qualified professional. Note that any legal instrument facilitating a life estate transfer will indicate the nature of the life estate, including: who will hold it, whose life it is tied to, the nature of the ‘remainder interest’ held by the charity, and whether the holder of the life estate can encroach upon the capital of the life estate (e.g. whether the holder of the life estate will have a right to sell any portion of or interest in the property). Note that even if a sale of an interest is permitted, the contingent interest would still terminate upon the passing of the specified individual.

In most cases, a transfer to a charity involving a life estate will be structured so that fee simple ownership is first transferred to the charity and then a life estate is granted back to the original owner.

Even though the charity will ultimately become the fee simple owner of the property, the creation of a life estate will affect the value of the donation and the associated tax implications. As such, a professional advisor should be consulted in order to determine how to best take advantage of tax benefits.

Leases & Licences

If a landowner chooses to make an *inter vivos* transfer of full fee simple ownership to a charity (rather than transferring joint tenancy or a life estate as described above), they can still continue to live on or even farm their land through a contractual arrangement such as a lease or a licence.

**Leases:** A lease is an agreement that grants an entity the exclusive right to occupy and use real property in accordance with the terms of the agreement. Charities are permitted to lease property to third parties provided that such a lease continues to advance their charitable purposes. The CRA allows registered charities to lease to other charities at below-market value, while leases with non-charitable third parties—such as the previous landowner, a farm business, or a non-profit—must be at full market value. This will likely be more significant where it applies to a residence rather than land only.

A lease agreement between the charity that now owns the land, and the previous owner, could pertain to the residence only, the residence and some of the surrounding land, or the land and all of the buildings on it. Alternatively, two lease agreements can be entered into, with the residence being the subject of one and a portion of the surrounding land being the subject of the other.

Leases can be registered on title, and generally must be in BC if their term is over three years. The benefit of registering a lease is that it then becomes enforceable against third parties, while a lease agreement that is not registered on title is only enforceable between the parties to the contract.
Licences: In contrast to a lease, a licence can grant to the previous owner a non-exclusive right to occupy and/or use the licenced area. A licence cannot be used for a residence, but could be granted for a portion of the surrounding land. This is appropriate where a landowner desires access to land but does not need that access to be exclusive, for example where the charity is growing crops but the original landowner is also granted a licence to walk the land at their leisure.

Legal Trusts Used in Estate Planning

As mentioned above, legal trusts are a common estate planning tool that can also be used to facilitate charitable donations. Legal trusts involve a settlor, who currently owns the property, and a trustee who manages the property for the benefit of a beneficiary.

An alter ego trust is a kind of legal trust whereby the settlor and the beneficiary are the same person, and no other person is entitled to receive or use income or capital from the trust during this person’s lifetime. A joint spousal/common-law partner trust allows for both spouses/common-law-partners to be the sole beneficiaries during their lifetime. In both cases, property is transferred to the legal trust, used by the beneficiaries during their lifetime, and then at the settlor’s option some or all of the property can be transferred to a charity upon the last beneficiary’s passing.

Such a trust can also be structured as a charitable remainder trust, which could allow for the settlor to receive a donation tax credit at the time the trust is created, rather than the trust itself receiving the credit at the time the property is transferred to the charity.

As with other aspects of estate planning, a qualified professional should be consulted in order to determine whether this option makes sense under a landowner’s particular circumstances.

Restrictions on Housing

If the land falls within the BC Agricultural Land Reserve (ALR), there are restrictions on certain land uses, including housing. Special attention should be paid to these restrictions where there is an intention to build or install an additional residence so that the previous owner can reside in one house, and tenants of the charity reside in another.

As of the time of writing, landowners within the ALR are only permitted to build a separate, second residence if it is deemed “necessary for farm use”, except for a provision for manufactured homes for immediate family members and grandfathering protection for some pre-existing structures.
It is not clear whether a residence for a farming tenant of a charity would be considered “necessary for farm use”. If a second residence does not meet the above criteria (as well as criteria regarding the size and siting of the house), the proposal is considered a “non-adhering residential use” and will require application to the Agricultural Land Commission, made through the landowner’s local government.

Within or outside of the ALR, housing is also subject to local government bylaws and zoning. Local governments often apply ALR-type rules to all their rural-agricultural zones, but they are permitted to be more restrictive on housing than the BC Agricultural Land Commission Act, and may have additional stipulations or limitations for secondary housing.

**Resources**

- RBC Wealth Management, “*Alter Ego and Joint Partner Trusts*” web article
- Agricultural Land Commission, “*Information Bulletin 05: Residences in the ALR*” (Revised March 18, 2021)
- Ministry of Agriculture, “*Policy Intentions Paper: Residential Flexibility in the ALR (2020)*”
**Practical Steps for Transferring Ownership**

The following are the steps a landowner should consider when transferring ownership of land to an organization, regardless of the type of ownership or the means of transfer.

1. **Confirm the status of the organization:** If it is important to receive a tax receipt for any donation occurring, ensure that the donee is a registered charity or other eligible donee.

2. **Have in-depth, honest conversations with the organization:** Be aware that this is a slow process and will take many long conversations to clarify and communicate your common vision. Be patient, honest and open. Confirm and document decisions, as well as other important information that emerges about the land, the donor(s) and the organization.

3. **Develop an MOU:** There are many decisions to make. Agreements regarding responsibilities and processes that emerge from your conversations should be recorded in an Memorandum of Understanding (MOU) signed by all relevant parties. See “Documenting the Intent of a Transfer” in “Where to Start” on page 5.

4. **Conduct due diligence:** While many of the aspects of due diligence in a land transfer will be primarily the concern of the organization, you may need to be involved in order to share or verify information being collected by the organization or their legal counsel (See “Appendix B: Due Diligence when Transferring Land” on page 67).

5. **Draft the necessary legal documents:** You will need different legal documents depending on the structure chosen for the transfer. For instance, you may need an updated will, a deed of gift, a contract of purchase and sale, or documents establishing a trust. If written well and with the assistance of a qualified lawyer, these documents will ensure your vision is brought to reality as accurately as possible. See “Ways to Transfer Ownership to a Charity” under “Creating a Legacy by Transferring Land Ownership” on page 26 for more information about a deed of gift.

6. **Execute the transfer:** This may take place immediately, or in stages that could conclude as late as the passing of the last family member, depending on the mechanisms used in your transfer. At each point that the ownership arrangement changes, various forms will need to be completed and filed.

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**What is the process for transferring a type of ownership to a charity?**
Creating a Legacy by Granting a Covenant

Introduction

This section explains how a landowner may be able to use a ‘Section 219 covenant’ under BC’s Land Title Act to create a legacy that protects their farm or foodlands.

A Section 219 covenant is a kind of interest in real property that is registered on title and imposes certain requirements or restrictions on that property. It is called such because it is governed by Section 219 of the Land Title Act. Where allowed for by this provision, a landowner can grant a Section 219 covenant to an organization in order to set out specific uses that they want to require, or prohibit, on that land, and which the organization will subsequently be responsible to enforce as the covenantee.

When a covenant is registered on title, the landowner maintains ownership of the property, but this interest is thereafter subject to the terms of the covenant. The covenant “runs with the land,” which means that it will bind all future owners of the land until it is discharged from title or otherwise expires.

A covenant is an important option for a landowner to consider if retaining ownership of the land is an important factor in their legacy. A covenant can also be combined with other types of land transfers to accomplish specific goals.

However, although many conservation and heritage trust organizations use covenants to protect land or buildings by ensuring appropriate stewardship, this model has not been tested extensively for protecting specific agricultural uses of land in BC. Furthermore, if land falls within the BC Agricultural Land Reserve, the use of covenants is subject to additional oversight by the Agricultural Land Commission (see below).

We may refer to Section 219 covenants simply as “covenants” throughout this guide; however, the term “covenant” has many different legal meanings.

Remember that this guide is not providing legal or other professional advice. Its contents are meant to provide landowners and their advisors with general information. For application to specific cases, the services of professional advisors should be sought.
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<th>Answer</th>
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<td>The landowner who granted the covenant continues to own the land, and can transfer this ownership through the same means as any other landowner.</td>
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<td>What is the legal effect of the covenant?</td>
<td>A Section 219 covenant can contain provisions regarding the use of land or a building, and/or it can restrict the ability to build, subdivide or separately sell/otherwise transfer one or more parcels subject to the same covenant. These provisions can be negative in nature, (i.e. restricting something) or positive (i.e. requiring something).</td>
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<td>What can limit how the land will be used?</td>
<td>All of the following:</td>
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<td></td>
<td>■ the terms of the Section 219 covenant</td>
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<td>■ the enforcement policies of the covenantee organization</td>
</tr>
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<td></td>
<td>■ the legislation governing Section 219 covenants (e.g. the BC Land Title Act, the BC Property Law Act)</td>
</tr>
<tr>
<td>What are the responsibilities of the covenantee organization?</td>
<td>To enforce the terms of the covenant, often through regular inspections of the land.</td>
</tr>
<tr>
<td>Can the current owner continue to enjoy the land? (I.e. live on or farm it)</td>
<td>Yes, subject to the terms of the covenant.</td>
</tr>
<tr>
<td>How can the land be transferred in the future?</td>
<td>At any time; however, the covenant will “run with the land” and bind all future owners.</td>
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<tr>
<td>What are the financial implications for the donor?</td>
<td>■ The covenant can be donated, sold, or partially donated to the covenantee organization;</td>
</tr>
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<td></td>
<td>■ donation of a covenant to a charity or other qualified donee can result in a moderate tax credit;</td>
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<td></td>
<td>■ the donor also retains the right to lease out or sell the land.</td>
</tr>
<tr>
<td>What are the financial implications for the covenantee organization?</td>
<td>The covenantee organization must be able to fund inspections of the property and enforcement of the covenant.</td>
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About Section 219 Covenants

A Section 219 covenant is a type of interest in land (authorized under the BC Land Title Act BC) that allows for requirements or restrictions to be imposed on the property that the holder of the covenant (the covenantee, i.e. the charity) has the authority to enforce.

What is a covenant and how can it be used to create a legacy?

These requirements or restrictions can relate to:

- the use of land or a building on it;
- the act of building on the land;
- subdivision of the land;
- the sale or other transfer of multiple parcels that are subject to the same covenant; and
- protecting, preserving, or otherwise maintaining the land or an amenity (e.g. a specific feature)

Before a landowner can consider donating or selling a covenant to an organization, the organization must apply to be designated by BC’s Surveyor General as eligible to hold a Section 219 covenant. We will hereafter refer to the covenantee organization as “the charity” because this is the most likely type of organization to become a covenantee due to their ability to issue donation receipts. (See “Where to Start” on page 5, under “Donees”.)

Impact of a Section 219 Covenant

The primary advantage of a covenant is that it “runs with the land” and continues to bind subsequent owners. In most circumstances, a landowner considering using a Section 219 covenant to establish their legacy will do so in anticipation of eventually selling or otherwise transferring their land to another person or entity.

Additionally, a Section 219 covenant does not prevent a landowner from leasing their land to be farmed by another legal entity. The landowner’s obligations under the covenant can be incorporated into a lease agreement so that the tenant(s) share the responsibility to abide by the covenant.

Because the creation of a Section 219 covenant is a transfer of an interest in property, it is considered a ‘disposition’ for tax purposes and therefore the grantor of the covenant will need to be mindful of any tax implications. These might include property transfer taxes and taxation on capital gains. A landowner granting a covenant to a registered charity may also be eligible for a tax receipt relative to the value of the covenant.
A landowner who grants a Section 219 covenant will also want to consider the impact of the covenant on their land value; in some circumstances, the granting of the covenant may reduce the value of the land and therefore any potential gains from a sale of the land. See “Appendix A: Tax Implications” on page 45 for more information.

A covenant that meets the criteria of the Ecological Gifts Program may also be eligible for special tax benefits, although this program is beyond the scope of this guide as its focus is on the ecological value of the land, rather than its food security value; see “Resources” below for additional information.

**Limitations in the Agricultural Land Reserve**

The BC Agricultural Land Commission Act states that any covenant that restricts farming on land within the ALR has no effect until approved by its Commission. Therefore, Section 219 covenants that might be considered to restrict farming (e.g. by requiring tenants to use only organic farming practices) should be presented for approval by the Commission before registration. Otherwise, the proposed covenant may not be able to be registered by the Land Title Office.

There are not many examples of covenants on ALR land in BC, but the Commission has approved Section 219 covenants in the past. Its current policy is to approve restrictions on agriculture where there are “important, demonstrated environmental values that can be reasonably balanced with agricultural values,” but the Commission has not published policies regarding covenants for purposes other than environmental value. A landowner should consult with a lawyer and also check a covenant’s wording with Commission staff before formally applying to the Commission or registering the covenant.

**Enforcement of a Covenant**

As the purpose of a covenant is to restrict or impose requirements on land without restricting the ownership of the land, the success of a covenant depends on its enforcement, in spite of potential changes in ownership over time. A covenant agreement should establish a process for addressing non-compliance outside of court wherever possible, but a covenantee charity does have the authority to enforce a covenant in court where necessary.
In most cases action in court would only occur where the process for addressing the non-compliance has been unsuccessful. Court action might then involve obtaining an injunction against the owner and/or tenant(s). However, if the covenantee charity’s interests in the covenant have been harmed in some way, it could also involve the covenantee seeking compensation from the current landowner and/or tenant(s).

A landowner who is interested in granting a Section 219 covenant in favour of a charity will want to confirm the charity’s inspection and enforcement policy and capacity in relation to:

- How frequently the charity will inspect the land to ensure it is being used in compliance with the covenant. (Annual inspections are a common practice.)
- Who will conduct the inspections for the charity and whether the owner, any tenants, and/or their representatives need to be present.
- Any notice requirements for the charity (e.g. how far in advance of an inspection the notice must be given, and how the notice needs to be delivered).
- Reporting obligations of the landowner and/or their tenant(s).
- Reporting outcomes for the charity after each inspection.
- The process to be used for addressing non-compliance with various parts of the covenant, perhaps organized by priority.

The covenant agreement registered on title can set out these details, or it may grant discretion to the charity to adopt and follow a policy that makes the most sense based on present circumstances. While the former gives the landowner more clarity about the inspection process—which could be particularly valuable to a new landowner—the latter allows the charity to be more responsive to changing circumstances and needs.

Mitigating the Risk of your Vision Not Being Realized

At some point, either the current landowner or the covenantee charity might wish to modify or end (discharge) a covenant. The covenant agreement itself can contain provisions setting out how it may be discharged. The parties to the covenant agreement may also be able to have it discharged or modified by mutual agreement, or by a court if particular circumstances can be demonstrated (e.g. the reasonable use of the land will be impeded).

Where a charity wishes to end its role as a covenantee and there is not mutual agreement with the current landowner to discharge the covenant, the BC Land Title Act provides that the rights and responsibilities of a covenantee organization cannot be assigned to another organization unless they are named in the covenant agreement, or the assignment is approved by the responsible minister. Therefore, covenants of the nature described in this section tend to have two named covenantees. This structure is useful both where the first covenantee wishes to assign its rights to another, and where one of the covenantees ceases to exist.
A covenantor landowner can mitigate these risks by carefully choosing both the primary and secondary covenantee organizations to be named in the agreement, and crafting the covenant with the support of a legal professional to ensure due diligence is performed.

Continuing to Enjoy the Land

A Section 219 covenant allows a landowner to live on and use their land—within the restrictions of the covenant—as well as to transfer the land, including selling it on the open market. This provides a high degree of freedom for a landowner to live on, farm, and even sell the land, as these rights can remain in their possession even while a charity holds a covenant.

That being said, by granting a covenant a landowner gives up certain rights on the land, as their use of it will be limited by the terms of the covenant. For this reason, a covenant will often be registered at the point at which a landowner no longer needs full use of the land, or in anticipation of selling or otherwise transferring the land.

As always, the parties’ legal counsel should be involved in drafting and negotiating the appropriate documentation to ensure that the covenant will accomplish the intended goals. Attention should be paid to the terms of the covenant and how it might affect the ability of the landowner, and their family and heirs, to enjoy their land as they envision.

What are your options for living on your land after registering a covenant?
Practical Steps for Granting a Covenant

The following are the steps a landowner should consider when granting a covenant to an organization.

Confirm the status of the organization: Ensure that your preferred organization is designated by BC’s Surveyor General as eligible to hold a Section 219 covenant.

Have in-depth, honest conversations with the organization: Be aware that this is a slow process and will take many long conversations to clarify and communicate your common vision.

Be patient, honest and open. Confirm and document decisions, as well as other important information that emerges about the land, the donor(s) and the organization.

Develop an MOU: There are many decisions to make. Agreements regarding responsibilities and processes that emerge from your conversations should be recorded in a Memorandum of Understanding (MOU) signed by all relevant parties. See “Documenting the Intent of a Transfer” in “Where to Start” on page 5.

Draft the terms of the covenant: Conduct due diligence (see “Appendix B: Due Diligence when Transferring Land” on page 67), and draft the covenant with the assistance of legal counsel. Have the covenant approved by the Agricultural Land Commission if necessary.

Register the covenant at the BC Land Title Office.

Abide by the terms of the covenant. This does not preclude selling, leasing or otherwise transferring your land as desired. The covenant organization may regularly inspect the land according to both the agreement and its own policies, and enforce the covenant as needed.
Appendix A: Tax Implications

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Remember that this guide is not providing legal or other professional advice. Its contents are meant to provide landowners and their advisors with general information. For application to specific cases, the services of professional advisors should be sought.
Introduction

This section is intended to give landowners a high-level understanding of the tax implications of donating farmland and other related property to a charity. It begins with a general overview of the tax treatment of transfers of capital property—e.g. land and depreciable property—under the Canadian Income Tax Act, and then moves into a description of how transfers of farmland and other farm property may be treated uniquely, as well as transfers to family members and qualified donees. It then considers the relevance of other forms of taxation to the transfer of farmland and other farm property.

The tax consequences arising from a transfer of farmland and other farm property will be an important consideration for a prospective donor. In creating a plan for their estate—and/or a succession plan for their farm operation—a landowner will want to understand the different tax benefits or policies that might complement or counteract other financial considerations like the potential income from a full-market sale.

Tax planning in the context of a farmland transfer is an exercise that applies to all business structures, including farm partnerships and corporations. It should integrate into a person's estate and succession planning more generally, and account for:

- at minimum, the interests of the farm owners, their spouses/common-law partners, and their children; and
- all applicable forms of taxation, including income tax, sales tax and property tax.

Importantly, tax planning is an exercise that should be undertaken with the assistance of a qualified professional, and this guide is not intended to replace this professional assistance. Especially as there may be multiple ways to structure a donation or transfer, it will be advisable for a prospective donor to seek professional advice to determine the most tax-advantageous options available to them. It is important to emphasize that a landowner should not look at this section as a roadmap for donating their property in whatever structure it is currently held or taxed, but instead as a presentation of options that could be used for tax planning purposes when creating a legacy with their land.

How might you be taxed if you sold your property under normal circumstances?
Tax Treatment of Dispositions of Capital Property

The starting point for understanding how Canadian income tax law treats donations of land, and other kinds of property, is an understanding of how Canadian income tax law treats dispositions of ‘capital property’ more generally.

A disposition is usually an event or transaction where a person gives up possession, control, and all other aspects of property ownership. This includes both sales of property at fair market value as well as deemed dispositions, where a person is considered to have disposed of property for a certain value even though they may not have received anything in return (e.g. as happens when property is donated or transferred as a result of death).

The section below outlines the default ways in which Canada’s income tax regime treats most dispositions of capital property, in order to prepare the reader for a better understanding of how a donation of farmland and other farm property may differ; later sections will dive deeper into the tax treatment of donations and other forms of transfers of farmland and other farm property.

Capital Gains: The disposition of capital property has special income tax implications. Capital property is defined as the kind of property a person would usually buy for investment purposes, or else to earn income. This includes ‘depreciable’ property (see below), but does not include the ‘trading assets’ of a business, such as inventory.

Terminology:

The proceeds of disposition is the amount received, or that will be received, for a property. In most cases, it refers to the sale price of the property.

Deemed proceeds of dispositions is the expression used when a person is considered to have received an amount for the disposition of property, even though they did not actually receive the amount.

The adjusted cost base is the cost of the capital property plus the expenses to acquire it. Here, the cost of the capital property is either its actual or ‘deemed’ cost, depending on the type of property and how it was acquired, plus capital expenditures, such as the cost of additions and improvements to the property. (However, the ‘cost of the capital property’ does not include ongoing expenses, such as maintenance and repairs.)

Adjusted cost base = (actual or deemed cost of the property plus capital expenditures) plus expenses to acquire it

Note that the adjusted cost base is determined based on the value of the Canadian dollar at the time the property was acquired; it is not adjusted to the dollar value at the time of the new disposition of the property.

Outlays and expenses are amounts that a person incurred to sell a capital property (e.g. fixing-up expenses, commissions, transfer taxes, advertising costs, or fees for brokers, surveyors, or lawyers). Note that a person cannot claim these costs here if they have already reduced other income by claiming a deduction for these outlays and expenses elsewhere.

A taxable capital gain is the capital gain for the year multiplied by the inclusion rate (currently 50%), and which a person has to report as income on their income tax and benefit return.

An allowable capital loss is the capital loss for the year multiplied by the inclusion rate (currently 50%), which may be able to be carried back to a maximum of three years or forward indefinitely, to offset taxable capital gains.
Some types of capital property relevant to this guide can include:

- farmland
- interests in farmland (e.g. a ‘Section 219 covenant,’ or the right of survivorship through joint tenancy)
- farm buildings and equipment
  - shares in a farm corporation
  - an interest in a farm partnership
  - quotas

Where a person disposes of capital property, they are deemed to have incurred either a capital loss or a capital gain. (Note that, for tax purposes, a ‘person’ refers to an individual as well as to incorporated entities.)

The amount of capital loss or capital gain for a piece of capital property can be calculated using the following formula.

\[
\text{capital gain or loss} = \text{proceeds of disposition} \quad \text{minus} \quad \text{adjusted cost base} + \text{outlays and expenses}
\]

Importantly, capital gains and losses are not taxable in their entirety, but rather based on the inclusion rate, currently 50%: if a person has a capital gain in a particular year of $100,000, the taxable capital gain would be $50,000. Similarly, where a person has a net capital loss in a particular year of $100,000, the allowable capital loss would be $50,000.

This calculation should be completed for the disposition of every piece of capital property in a given year in order to determine, for that particular tax year, the person's taxable capital gains (which may need to be recorded as taxable income for the year) and allowable capital losses (which can, in some circumstances, be carried back to a maximum of three years to offset past taxable capital gains or carried forward indefinitely to do the same).

Where it is determined that an individual has had taxable capital gains that have not been offset by allowable capital losses in a given tax year, the remaining taxable capital gains will be taxed at their marginal rate for that year. (This is why the Lifetime Capital Gains Exemption for specific types of capital property is so valuable; see below.) (Note that a corporation is subject to different rules around capital gains and capital losses, with the most significant difference being the availability of capital losses for corporations.)
Qualified Farm Property

Although farms and foodland have been collectively referred to as “land” elsewhere in this guide, the Canadian Income Tax Act makes distinctions between different kinds of farm-related property, which are important to keep in mind while reading this appendix. Most significantly, the Income Tax Act makes specific use of the term ‘qualified farm or fishing property’ (commonly referred to as “QFFP” in tax literature); see inset box below for the definition from section 110.6(1) of the Income Tax Act. For readability, we will refer to it as “QFF Property”.

Lifetime Capital Gains Exemption: An individual who would otherwise have a taxable capital gain arising from the transfer of QFF Property may be eligible to claim a special deduction, referred to as the ‘lifetime capital

---

Qualified farm or fishing property, of an individual (other than a trust that is not a personal trust) at any time, means a property that is owned at that time by the individual, the spouse or common-law partner of the individual or a partnership, an interest in which is an interest in a family farm or fishing partnership of the individual or the individual’s spouse or common-law partner and that is

- (a) real or immovable property or a fishing vessel that was used in the course of carrying on a farming or fishing business in Canada by,
  - (i) the individual,
  - (ii) if the individual is a personal trust, a beneficiary of the trust that is entitled to receive directly from the trust any income or capital of the trust,
  - (iii) a spouse, common-law partner, child or parent of an individual referred to in subparagraph (i) or (ii),
  - (iv) a corporation, a share of the capital stock of which is a share of the capital stock of a family farm or fishing corporation of an individual referred to in any of subparagraphs (i) to (iii), or
- (v) a partnership, an interest in which is an interest in a family farm or fishing partnership of an individual referred to in any of subparagraphs (i) to (iii),
- (b) a share of the capital stock of a family farm or fishing corporation of the individual or the individual’s spouse or common-law partner,
- (c) an interest in a family farm or fishing partnership of the individual or the individual’s spouse or common-law partner, or
- (d) a property included in Class 14.1 of Schedule II to the Income Tax Regulations, used by a person or partnership referred to in any of subparagraphs (a)(i) to (v), or by a personal trust from which the individual acquired the property, in the course of carrying on a farming or fishing business in Canada; (bien agricole ou de pêche admissible)

Editor's note: Subsequent sections of the Act provide additional qualifications for the purpose of applying this definition.
gains exemption’. (Note that in the context of the sale or other transfer of a principal residence, the ‘principal residence exemption’ may apply instead—see below.)

The lifetime capital gains exemption or LCG Exemption (often referred to in tax literature as simply the “LCGE”) is a deduction that applies to the disposition of certain capital property—regardless of who is receiving it, and whether the disposition is a sale or donation. The LCG Exemption can be applied to capital gains that would otherwise be taxable from any dispositions, or deemed dispositions, of QFF Property (see above) or a “Qualified Small Business Corporation” share. (See section 110.6(1) of the Income Tax Act for the definition of a Qualified Small Business Corporation share.)

The LCG Exemption for dispositions of Qualified Small Business Corporation shares was $883,384 in 2020, and is indexed to inflation for subsequent years until it matches the LCG Exemption for dispositions of QFF Property, which is $1,000,000 for dispositions that took place after April 20, 2015. Note that, since the inclusion rate for capital gains and losses is 50%, the lifetime capital gains deduction limit would be $441,691 for dispositions of Qualified Small Business Corporation shares in 2020 and $500,000 for dispositions of QFF Property.

The LCG Exemption can be claimed in increments over a person’s lifetime until the maximum has been reached. The maximum must be shared between any dispositions (or deemed dispositions) of QFF Property and Qualified Small Business Corporation shares, and the amount claimed is tracked by the CRA over an individual’s lifetime.

Criteria for Eligibility of QFF Property: A farm owner should work with a tax professional to confirm whether a disposition of their property would be eligible for the LCG Exemption that applies to dispositions of QFF Property. Where it may not currently be, a tax professional with enough time to conduct a proper tax and estate planning process may be able to structure the farm owner’s property and holdings so that the LCG Exemption can be accessed.

For the purposes of this guide it is sufficient to note that in order for a disposition of a certain property to be eligible for the LCG Exemption, the property must be one of those set out in the Canadian Income Tax Act definition for QFF Property (see “Qualified Farm Property”, above), and the property must be owned at the time of disposition by either the individual, their spouse/common-law partner, or by a family farm partnership of the individual or their spouse/common-law partner.

If the individual has passed away and the LCG Exemption is being applied to their estate, the estate must be a personal trust such as a ‘graduated rate estate’ (see “Donating Property to a Charity”, below).

**Exceptions:** It is important to highlight that, in situations where farmland is rented out, or is held or operated by tiered corporate holdings or partnerships, the farmland may not be considered to be used in a farming operation by any eligible individuals, even though farming may be taking place on the land and eligible individuals may even be involved in the farm corporation or partnership. In such a situation, the LCG Exemption may not apply from the point at which the use of the land changed to something other than what is considered ‘a farming operation’, and the landowner may enjoy only a partial LCG Exemption.
There are additional conditions related to the period of ownership as well as the use of the eligible property that must be met in order for the above kinds of property to be considered QFF Property.

1. Throughout a period of at least 24 months immediately preceding the disposition of the property by an individual, the property must have been owned by one or more of:
   - the individual, or a spouse, common-law partner, child, or parent of the individual,
   - a partnership, an interest in which is an interest in a family farm partnership of the individual or of the individual’s spouse or common-law partner,
   - if the individual is a personal trust, the individual from whom the trust acquired the property or a spouse, common-law partner, child, or parent of that individual, or
   - a personal trust from which the individual or a child or parent of the individual acquired the property;

and

2. one of the following requirements must also be met:
   - in at least two of the years while the property was owned by the one or more persons mentioned above:
     - the gross revenue of the eligible person from the farming business exceeded the income of that person from all other sources for that period, and
     - the property was used principally in a farming business carried on in Canada in which an eligible individual, or where the individual is a personal trust, a beneficiary of the trust, was actively engaged on a regular and continuous basis; or
   - the property was used by a family farm corporation or partnership in the course of carrying on the business of farming in Canada throughout a period of at least 24 months during which time one of the persons mentioned above was actively engaged on a regular and continuous basis in the farming business in which the property was used.

For the full text of this definition, see Section 110.6(1.3)(a) of the Income Tax Act. Note also that the Act defines some terms in ways that are different from their common understanding, such as the word “parent”. Farmland owners will want to consult with a tax professional to determine whether their land is QFF Property and whether it is possible to structure it so that it is.
Note: If the farm property is ‘real property’ that was acquired prior to June 18, 1987 and does not meet the above requirements, it may still qualify for the exemption and may even be afforded greater flexibility. Farm owners in this circumstance should consult section 110.6(1.3)(c) of the Income Tax Act, and a tax professional.

**Example:** Ishmael wants to dispose of a parcel of land this year that is worth $950,000 and that he acquired for $500,000, resulting in a capital gain of $450,000. If the land is not QFF Property, Ishmael’s reported taxable income for the year of disposition would have included 50% of the capital gains from the disposition (i.e. a taxable capital gain of $225,000), even if he receives no monetary income from the transfer.

Assuming the land is QFF Property and that Ishmael has never accessed the LCG Exemption, the $225,000 will be offset by the LCG Exemption. After accessing the LCG Exemption, Ishmael will have up to $275,000 left to claim on taxable capital gains from dispositions of QFF Property (or up to the difference between half of the the current indexed amount for dispositions of Qualified Small Business Corporation shares and $225,000).

**Depreciable Farm Property**

While this guide deals primarily with land, a farm owner can dispose of other kinds of farm property besides land (which is only one kind of capital property). Depreciable property is another kind of capital property that is used to earn income from a business, and is generally characterized by its tendency to depreciate (i.e. it wears out or its value goes down over time). Depreciable property can include farm buildings and equipment.

To understand the financial implications of disposing of depreciable property, we must first explain how the cost of depreciable property is claimed by a business.

In the year a business owner buys depreciable property, such as a building, they cannot deduct its full cost from the business’ income; instead, since this type of property wears out or becomes obsolete over time, a business owner can claim the capital cost as a tax deduction only incrementally, over a period of several years. The rate of deduction of the capital cost over time is called the capital cost allowance; the total capital cost described below is the amount on which a person first claims this capital cost allowance, until the full capital cost has been claimed.

The capital cost of depreciable property is generally the total of:

- the purchase price of the property (remember this does not include land, which is non-depreciable);
- the part of the owner’s legal, accounting, engineering, installation, and other fees that relate to buying or constructing the property (not including any portion of these fees that applies to purchasing the land);
- the cost of any additions or improvements the owner made to the property after they acquired it, as long as they did not claim these costs as a current expense at the time; and
- for a building, soft costs (such as interest, legal and accounting fees, and property taxes) incurred in the process of constructing, renovating, or altering the building, if these expenses were not deducted as current expenses.

Depreciable capital property is grouped into classes under the Canadian Income Tax Regulations in order to provide an applicable rate for calculating how much of the capital cost can be deducted in a given year; a business owner must base their capital cost allowance claim on the rate assigned to each class of property. The total capital cost of all the property a person has in one class, minus the total capital cost allowance they have claimed in previous years, is called the undepreciated capital cost for that class. This is tracked from year to year so that a taxpayer knows how much is left to deduct for all of the assets in that group.

**Dispositions of Depreciable Property:** Although rare, remember that a business owner can have capital gains on depreciable property, just as with land.

A capital gain on depreciable property happens whenever an individual disposes of depreciable property for more than the sum of its adjusted cost base and outlays and expenses (the actual cost of the capital property plus any expenses to acquire it, the cost of additions and improvements, and costs that the owner incurred in the process of selling the capital property). See “Taxation of Common Transfers of Capital Property”, above, for more about the taxation of capital gains.
Each year, if a person sells or donates depreciable property, they also have to subtract from the undepreciated capital cost (UCC) for that class one of the following two amounts, whichever is less:

- the sum of the proceeds of disposition of the property (either actual or deemed) minus the outlays and expenses incurred to sell it, or
- the original capital cost of the property.

When a person disposes of depreciable property for more than the UCC remaining in its class (even though the sale price might be less than the original capital cost), this results in a negative UCC balance for a class at the end of the year; this balance is considered a recapture of capital cost allowance, and the amount must also be included in the person’s income for the year.

On the other hand, where the UCC of a class has a positive balance at the end of a particular year, and the person does not have any properties left in that class, this amount is considered to be a terminal loss. In contrast to a loss in the disposition of land, the full amount (100%) of a terminal loss for depreciable capital property can be deducted from the person's income for the year.

**Principal Residences**

If a landowner transfers land that includes their principal residence, they may be entitled to the principal residence exemption for part of the proceeds (or deemed proceeds) of the disposition. Note that this applies to any principal residence, not only those associated with a farm.

At present, the capital gains on the transfer of a principal residence (and the land considered to be part of that residence) is not taxable. The amount of land considered as part of the principal residence is usually a maximum of one half hectare (1.24 acres).

Where the property being transferred is larger than 1.24 acres, or there are other buildings involved in the transfer, a professional appraisal can help with the calculation of the capital gains that can be attributed to the principal residence. While it is outside the scope of this guide to elaborate, within such a transfer the landowner can choose between two ways of calculating the remaining, taxable capital gain (ideally identifying the more financially advantageous method, with the advice of a financial or tax advisor).
Transfer of Farm Property to Family
Special rules apply to transfers of farm property within families. Note that, in situations where no family member can receive the property, there may be an additional incentive for a landowner to donate land and other property to a charity.

Transfers to Descendants—During Life: A person can transfer certain farm property to a descendent in a manner that postpones the tax payable, both on any taxable capital gain and any recapture of ‘capital cost allowance’.

A child is here defined to include natural children, adopted children, and the children of the farm owner’s spouse/common-law partner, or a person who is wholly dependent on the farm owner’s support and who is (or was immediately before the age of 19) under the custody and control of the farm owner. This definition also includes the spouse/common-law partner of a farm owner’s child (i.e. the landowner’s son- or daughter-in-law).

A person can transfer certain farm property to a ‘child’, grandchild, or great-grandchild in a manner that postpones the tax payable on any taxable capital gain and any recapture of ‘capital cost allowance’. If employed, whether or not money actually changes hands, the farm owner will not pay any tax on the value of the disposition, as there is no capital gain or recapture declared. Instead, when the eligible descendent disposes of the properties, they will report in their own income any taxable capital gain based on the ‘adjusted cost base’ that would have otherwise needed to have been declared by the person from whom they received the property (the farm-owner parent), and any recapture that the farm-owner parent had postponed.

How is taxation different when you are transferring property to a family member?
To do this, two conditions must be met:

- the ‘child’ must be a resident of Canada just before the transfer; and
- the farm property must be land or depreciable property of a prescribed class in Canada, that has been used in a farm business in which the person, their spouse/common-law partner, or any of their children were actively engaged on a regular and ongoing basis before the transfer.

The types of property eligible for this postponement are farmland and buildings. Other types of farm property may also qualify, including shares in a family-farm corporation or an interest in a family-farm partnership, provided that substantially all of the entity’s property (generally 90% or more) is used principally in a farm business—i.e. for more than 50% of the years in question.

To utilize this postponement of tax payable, the landowner must choose the ‘price’ at which to transfer the land (even if no money is actually changing hands). For most property, the transfer may occur at any amount between the ‘adjusted cost base’ and fair market value. (Remember the adjusted cost base is usually the cost of a capital property plus any expenses to acquire it and the cost of additions and improvements.) For depreciable property, the transfer may occur at any amount between the fair market value and a special amount (see Guide T4011 in “Resources” below). The price set by the parent will determine whether a capital gain or recapture of capital cost allowance remains, on which the parent must pay taxes.

**Transfers to Descendants—After Passing:** A tax-free transfer or ‘rollover’ of farm property is also available where the property is transferred between the estate of a deceased parent and their ‘child’ (as defined above).

In order for the transfer to be tax free, the following conditions must be met:

1. The child was resident in Canada just before the parent’s death;
2. The property was used mainly in a farming business on a regular and ongoing basis by the deceased, their spouse/common-law partner, or any of their children, before the parent’s death; and
3. the property is transferred to the child no later than 36 months after the parent’s death.

The procedure is similar to that for the intergenerational transfer of farm property between a living person and their child, above, except that the deceased’s executor will choose the “price” at which to value the transfer. The price set by the executor will determine whether the estate will have any capital gain or recapture of capital cost allowance on which it must pay taxes.

**Transfers to a Spouse/Common-Law Partner:** If a landowner transfers farm property to a spouse/common-law partner (or a ‘spousal or common-law partner trust’) during the landowner’s lifetime, the landowner can choose to postpone any taxable capital gain or recapture of capital cost allowance. However, unlike in the context of intergenerational transfers of farm property, if the spouse/common-law partner later disposes of the property then the original farm owner must then report the taxable capital gain or recapture of capital cost allowance. Note, however, that depending on the circumstances the original owner may be able to claim the LCG Exemption on the disposition.

Where eligible farm property is transferred to a spouse/common-law partner, or a ‘spousal or common-law partner trust’, after the death of the landowner (such as through their will), additional rules exist for eliminating the possibility of a taxable capital gain or recapture of capital cost allowance on the transfer. This topic is beyond the scope of this guide, but the intention is effectively the same as above; in many circumstances the taxable capital gain or recapture of capital cost allowance can be postponed by giving effect to a spousal rollover.

**Resources**
- CRA, “Basic Information About Capital Cost Allowance (CCA)”
- The Canadian Income Tax Act, in particular:
  - Section 70
  - Section 110.6(1), in particular definitions for “qualified farm or fishing property” and “qualified small business corporation share”
  - Section 110.6(1.3)(a) “Farming or fishing property — conditions”
  - Section 111(1)(b)
- Class 14.1 of Schedule II of the Income Tax Regulations
- Chapter 4, “Deemed disposition of property,” in Guide T4011, Preparing Returns for Deceased Individuals
- Guide T4037, Capital Gains
- CRA, “Farm or fishing property transferred to a child”
Donating Property to a Charity

This section outlines the special tax policies that have been created to encourage donations of money and property to registered charities and other ‘qualified donees’ (here collectively referred to as ‘charities’).

In donations to a charity that are gifts at law (i.e. where there is nothing of value received by the donor in return), generally a person donates the property to the charity and in return receives a tax receipt equal to the fair market value of the donation.

*Fair market value* is usually the highest dollar value a person could get for their property in an open and unrestricted market, between a willing buyer and a willing seller who are acting independently of each other. Where needed, this value can be established by an independent professional appraiser.

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Capital Gains on Donated Capital Property

Where an individual makes a donation of ‘capital property’ to a charity (remember this is the kind of property a person would usually buy for investment purposes or to earn income), typically the deemed ‘proceeds of disposition’ would be equal to the fair market value of the property, and any resulting capital gain or loss would be calculated accordingly: as explained above, taxable capital gains in a given tax year are added to the taxable income of the person, and taxed at their marginal rate for that year. Thus, even when an individual has donated capital property, where there are no other exemptions or tax policies available to prevent taxation on the capital gains they could be taxed as if they had sold it at its fair market value. This is why donations of capital property are typically made to registered charities or qualified donees, as the income tax credit for the donation (or deduction in the case of a corporation) is needed to balance a deemed capital gain (see “Income Tax Credits on Donations”, below).

It is possible, however, for an individual to reduce or eliminate a capital gain on a donation by ‘designating’ the amount of proceeds for that disposition to be less than fair market value. The Canadian *Income Tax Act* provides...
that the amount that is designated must be:

- less than the fair market value
- greater than:
  - any ‘advantage’ received (see “Split-Receipting”, below), and
  - the ‘adjusted cost base’ of the property

Remember the adjusted cost base is usually the cost of a capital property, plus any expenses incurred to acquire it (such as commissions and legal fees) and the cost of additions and improvements (though not maintenance and repair costs).

This effectively allows for an individual to eliminate the capital gain on donated capital property if they designate the proceeds to be an amount between what the property has cost them, and what the fair market value would be. However, designating proceeds at below fair market value also reduces the size of the eligible donation that can be claimed, as these two values must match.

Because there can be implications to both a maximized and minimized designation of the proceeds of a donation, it is advisable for a landowner to consult with a tax or estate planning professional to choose the most appropriate amount to designate for their particular situation. See inset box for an example.

**Depreciable Capital Property:** Similarly, where the donated property is depreciable capital property (e.g. farm buildings and equipment), the donor may be subject to recapture of capital cost allowance. To avoid this, the donor can designate the amount of proceeds to be an amount that is:

- less than the fair market value; and
- greater than the adjusted cost base (see above) and the donor’s ‘undepreciated capital cost’ for the specific class of property being donated (see “Depreciable Farm Property”, above)

See inset box for an example.

**Example:** If Wilhelm donates depreciable capital property worth $30,000, with an adjusted cost base of $20,000 and an undepreciated capital cost of $6,000, he can choose to designate the amount of proceeds as an amount between $6,000 and $30,000. If he chooses to designate proceeds of $27,000, the results are:

- a capital gain of $7,000 ($27,000 minus $20,000);
- a taxable gain of $3,500 (50% of $7,000);
- a recapture amount of $14,000 ($20,000 minus $6,000);
- a total amount included as taxable income of $17,500 ($3,500 plus $14,000); and
- an eligible amount of gift of $27,000 (note this number would be reduced by any ‘advantage’ received).

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**Example:** If Sama donates farmland with a fair market value of $100,000 and an adjusted cost base of $20,000, she can eliminate the capital gains on the donation by designating the proceeds as $20,000. By doing this, however, the total eligible value of the donation that she can claim for income tax credit purposes—subject to the donation limit rules outlined above—is $20,000, rather than the full value of $100,000.
Income Tax Credits on Donations

An individual who donates property or cash to a registered charity (or other qualified donee) can use their tax receipt to claim a non-refundable tax credit. The tax credit reduces their income tax otherwise payable by a percentage of the receipted value of the donation. This is the primary financial benefit of donating to a charity or other qualified donee, rather than another type of entity, and this tax credit may be key to reducing any capital gains that could not be eliminated by designating reduced proceeds for the disposition (see above).

As of the time of writing, in BC the first $200 donated in the year is credited at 20.06% (15% federal plus 5.06% BC), and any donations exceeding the first $200 are credited at a combined rate of 43.7% (29% federal and 14.7% BC).

Individuals have maximum contribution limits that in turn limit the size of a tax credit that can be claimed in any particular year. For donations made anytime before the year an individual passes away, the maximum donation amount they can use for the calculation above is normally equal to 75% of net income. (Using the current percentages provided above, this would result in a credit equal to 32.7% of the individual’s net income.) Contributions in excess of this limit may be carried forward up to five years.

Additionally, a gift receipt resulting from a charitable donation can be split between the donor and their spouse/common-law partner, so that they each claim donations up to a total of 75% of their respective net incomes.

Corporations: While the same tax rules generally apply to corporations, a corporation that makes a donation to a charity will receive a deduction rather than a tax credit. In this case, the corporation’s reported taxable income for that year is reduced by a percentage of the value of the donation, thereby reducing the total net income on which it pays tax.

Donations of Capital Property: An individual can increase their donation limit beyond 75% of their net income when they donate ‘capital property’, rather than cash. Remember that capital property is the kind of property a person would usually acquire either for investment purposes or to earn income, and applies not only to farms and foodlands but also to many common farm assets.
Specifically, 25% of the taxable capital gain and 25% of recaptured depreciation can be added to the donation limit, with the excess being carried forward in accordance with the previous paragraphs. (See the definition for “total gifts” in the Income Tax Act. Note, these amounts tend to change fairly regularly depending on the political winds.)

The Year of an Individual’s Death: For donations made in the year of an individual’s death (including testamentary gifts made through a will), the annual limit is 100% of net income reported on that individual’s final tax return. Any excess amount can also be carried back to the preceding year’s return, for a total contribution limit of 100% of net income in that year as well.

Taxation of Donations by Will
Special provisions exist for donations of property made after a person’s death through their will (a bequest).

In most cases, a bequest will be deemed to be made either by an individual’s estate, or by a ‘graduated rate estate’ that is part of an individual’s ‘testamentary trust’ (see below). (There are some exceptions to this, but these are beyond the scope of this guide.)

Where a donation is made by an individual’s estate—i.e. not a graduated rate estate—it is deemed to be made at the time the donated property is transferred to the donee. As a result, the value of the donation will be the fair market value at the time of transfer, or a designated lower amount; any applicable capital gain or loss, as well as the tax credit, will be calculated accordingly. The charitable contribution limit for an estate will be 75% of the taxable income for a given year (except for gifts of capital property as per above). Note that with a donation from an estate, excess donation amounts can still be carried forward five years if the estate continues to have income against which to claim the credit—which could include any taxable ‘income’ from the deemed capital gains, which will be taxed at the highest personal marginal rate.

Graduated Rate Estates & Testamentary Trusts: By contrast, where a testamentary donation is deemed to be made by a graduated rate estate, the donation will be subject to more flexibility around allocation of the tax consequences that result from disposing of property.

To qualify as a graduated rate estate (GRE), first the estate must be considered a testamentary trust for income tax purposes. A testamentary

Ecological Gifts Program: It may be possible for a portion of a donor’s land to be eligible under Canada’s Ecological Gifts Program. Under this program, a donor of ecologically-sensitive land receives a tax receipt for the fair market value of their donated ecological gift, which is not subject to the “75% of net income” contribution limit to which other donations are subject. The donation is not taxed on any capital gains, and the donor is given a ten-year period to apply the tax receipt to their income, rather than five years. While the full details of the Ecological Gifts Program are beyond the scope of this guide, a landowner may wish to consult the Green Legacies Guide for its summary of the process for donating an ecological gift. Note that the process to have land designated under the Ecological Gifts Program can be time-consuming and involved, and requires the assistance of professionals. As such, this summary is intended to give the reader a starting point to understand the full scope of what is needed.
trust can be either a planned trust that is created as result of a
death where the terms are established by the will, or any estate
where the terms of the trust are established by a provincial or
territorial court order. A testamentary trust must file annual
taxes for its duration.

If an estate is considered a testamentary trust, the executor can
file a designation for its status as a GRE within 36 months of the
person’s passing. If the estate qualifies as a GRE, the executor
will be able to allocate the tax credit arising from a donation
of property against the individual’s tax year of death, as well as
the tax year prior (up to 100% of net income). Alternatively, the
credit could be applied to the annual taxes of the testamentary
trust itself (up to 75% of the trust’s net income), for either the
tax year in which the donation is made, any earlier tax year, or
up to 24 months after the GRE is established.

Note that, as a type of personal trust, a GRE will maintain the
land’s status as QFF Property.

However, while the above flexibility may be motivation to
establish an estate plan that will lead to the designation of a
GRE, be aware that a GRE is subject to graduated tax rates, as
opposed to the personal marginal rate for a non-GRE estate.

Other Taxes and Fees Applicable to a
Donation

Property Transfer Tax: Property transfer tax is a registration
tax paid by the acquirer of certain types of interests in real
property (this would be the donee or purchasing organization)
when registering that interest in BC’s Land Title Office. The
interests subject to the property transfer tax are those that fall
under the definition of “taxable transaction” in the BC Property
Transfer Tax Act. The amount of property transfer tax payable
is based on the fair market value of the interest, regardless
of whether money changes hands, and can include transfers
made by means of a gift.

In most cases, the amount is calculated according to Section 3
of the Act:

- 1% on the first $200,000 of the fair market value;
- 2% on the fair market value between $200,000 and
  $2,000,000; and
- 3% on the fair market value greater than $2,000,000.
Probate Fees: Probate fees are a tax that is a charge from the Supreme Court of British Columbia to legally validate a will. This can be a significant amount as it is based on the value of property over $25,000:

- $200 fee, plus
- $6 for each $1,000 of the value of the estate in between $25,000 and $50,000 rounded up to the next thousand (i.e. up to $150), plus
- $14 for each $1,000 of the value of the estate in excess of $50,000 rounded up.

A simplified calculation can be followed to estimate this amount. For example, on property worth $999,050:

- $999,050 rounded up to the next thousand = $1,000,000
- $1,000,000 x 0.014 = $14,000
- $14,000 - 350 = $13,650 of probate fees total

When a landowner is considering donating or selling land to a charity, it is worthwhile to consider options for doing so that reduce or eliminate probate fees. One popular method is to remove the land from the estate altogether by putting it into joint tenancy before the owner passes away: as mentioned in “Creating a Legacy by Transferring Land Ownership” on page 26, a landowner can make the charity a joint tenant of their land, and therefore have the land be fully transferred to the charity at the time of the landowner’s passing without the delays or costs of probate.

Sales Taxes: GST does not apply to any donations/gifts. PST does not apply to donations/gifts made to a registered charity.

Property Taxes, Utility Fees and Related Charges: Where property is being transferred by means of a gift to a charity, it will be wise for the parties to prepare something similar to the standard statement of adjustments used by the real estate industry, in order to ensure it is clear which person or entity is responsible for which costs, and on what timeline.

Another option, such as for a transfer made over a great length of time, is to deal with adjustment of property taxes, utility fees, and related charges in the ‘deed of gift’ (see “Ways to Transfer Ownership to a Charity” in “Creating a Legacy by Transferring Land Ownership” on page 26), for example specifying the date at which responsibility for property taxes and related charges transfers over to the charity.

Resources

- Section 118.1 of the Canadian Income Tax Act
- Definition for “total gifts” in section 118.1(a) of the Income Tax Act
- Section 110.1 of the Canadian Income Tax Act
- CRA, “Ecological Gifts Program: Overview”
- Green Legacies Guide
Selling Property to a Charity

Split-Receipting
The section above described gifts at law, where there is no exchange of value received by a donor. However, in many circumstances Canadian tax law does allow for a donor to receive something of value in return for their donation and still have the transfer of property be considered a donation for tax purposes.

What the donor receives in such an exchange is called an advantage, which is any property, service, compensation, use, or any other benefit that a donor might receive, whether in exchange or simply in gratitude for a gift. The advantage may be contingent on an event, or receivable in the future, and may be given to the donor themselves, or to a non-arm’s-length person or partnership associated with the donor. As long as the value of the advantage is not more than 80% of the total value of the donation, a donor can receive a receipt for income tax purposes, see inset box.

Example: Layla has property with a fair market value of $10,000. She sells it to a registered charity for $6,000. The advantage received is below the 80% “intention to make a gift” threshold ($8,000), and therefore the charity can issue a receipt for the fair market value minus the advantage received: $10,000 - 6,000 = a tax receipt for $4,000.

Capital Gains on Split-Receipted Donations:
Remember that any capital gain or loss is still calculated based on the fair market value of the property. However, the Canadian Income Tax Act has rules that allow the fair market value of a property donated under a split-receipting scheme to be deemed less than the actual fair market value under certain circumstances; however, this deemed amount cannot be less than the value of any advantage received. See “Donating Property to a Charity”, above, for more information. A potential donor should consult their professional advisor(s) to discuss these circumstances in more detail.

Income Tax on Split-Receipted Donations:
Split receipting can offer a desirable compromise for a landowner, where they receive cash revenue to meet their financial needs but also
reduce their taxable income through a donation receipt.

A charity can give the donor a receipt for the gifted portion of the transferred property, i.e. fair market value minus the advantage. A donor’s income tax will be impacted similarly to the situation of a full donation as described in “Donating Property to a Charity” on page 58, above, although the value of the tax credits will be lower.

Resources
- CRA, “Split receipting”
- CRA, “Income Tax Folio S7-F1-C1, Split-receipting and Deemed Fair Market Value”
  - Para. 1.5 “Split-receipting - intention to give”

Other Taxes to Consider

**Other Taxes on Land**

**Sales Taxes:** PST does not apply to sales of real property. Some dispositions of certain types of farm property are also exempt from GST.

For property that is not exempt, if a charity purchases the property at below-fair-market-value in a manner that falls under the split-receipting rules, GST will only be payable on the amount the charity actually pays rather than on the full fair market value of the land. However, the fair market value of each type of property should be carefully considered when determining the extent to which GST applies, and how much GST may be payable.

The CRA will view the sale of land that includes a residence or house as two separate sales for the purposes of calculating GST:

1. Sale of the portion that includes the house, plus the land that is necessary for the use and enjoyment of the house: Sales of used houses are usually exempt from GST; however, professional advisors can confirm whether one of the exceptions to this general rule applies.

2. Sale of the remaining portion of the land: It is prudent for the parties to proceed under the presumption that the sale of the land would be subject to GST, unless a certain exemption is confirmed to apply. For example, GST would not apply if the farmland is currently a hobby farm, where the owner isn’t making, or expecting to make, any profit. GST also would not apply if the farmer is retired and the land is now used solely for personal use. (Notably, though, the land would likely be considered by the CRA to be vacant,
no longer ‘farmland’, which can have other implications.) By contrast, if the farmland is part of a sale of a farming business that is a GST registrant, and if certain conditions are met, the farmer and the charity may jointly elect to have no GST payable on the sale by completing a designated form (see “Resources”, below).

The parties will want to confirm with an accountant which, if any, of these situations apply.

**Property Taxes, Utility Fees and Related Charges:** Where land is being transferred by way of sale to a charity, a statement of adjustments should be prepared by the parties’ lawyers, setting out the parties’ respective liability for these kinds of taxes, fees, and charges.

**Taxes on Other Property**
Sales of ‘affixed machinery’ will be subject to PST (though this excludes machinery that is built in, on site, and is expected to remain there for its useful life). The parties will want to consult with its professional advisors in order to determine whether any machinery, equipment, or apparatus that forms part of the property being sold constitutes taxable affixed machinery.

**Sales Taxes on Shares of a Corporation**
Sales of shares of an incorporated business are not subject to PST, and are generally not subject to GST.

**Resources**
CRA, “GST 44: Election Concerning the Acquisition of a Business or Part of Business”
Appendix B: Due Diligence when Transferring Land

Introduction

This section describes some of the types of searches and investigations that are commonly conducted as part of a sale or other transfer of land (and other real property such as buildings). These investigations inform the parties to a land transfer of things like rights to the property that are held by third parties, some restrictions on the use of the land, and outstanding money owed to third parties that is secured by the land or property. These searches are typically conducted with professional assistance, but this section can help both a donor and a charity understand why due diligence is important and its role in the transfer of land.

What information do you and your donee need to know about your land?

Engaging Professionals

A donee-charity will be in a similar position as a conventional purchaser and therefore want to conduct the same kinds of searches and investigations. Unlike in a purchase/sale transaction, however, the ways in which these steps are taken, and the allocation of their costs, is likely to be undertaken in a more collaborative manner than in a purchase and sale transaction. Furthermore, the information will be valuable to the estate-planning process of the landowner, especially if they do not intend to transfer full ‘fee simple’ ownership to the charity, or at least not for some time.

Both parties can, of course, obtain quotes in order to know in advance how much this process might cost.

Remember that this guide is not providing legal or other professional advice. Its contents are meant to provide landowners and their advisors with general information. For application to specific cases, the services of professional advisors should be sought.
**Lawyer:** It is recommended that both parties retain legal representation early on in the process in order to facilitate the donation with as little risk as possible. Although this will increase the cost of the donation, it will also significantly mitigate the risk of a costly mistake—indeed, the cost of a mistake in relation to real property transfers can be quite significant.

**Appraiser:** Donations of in-kind gifts worth $1,000 or more must be valued by an independent appraiser. Although it is possible for the donor to obtain their own appraisal that is then accepted by the charity, it is best practice for the charity to have its own independent appraisal. There may still be circumstances where it makes sense for the donor to obtain their own appraisal, such as to assist with estate and tax planning.

The appraisal should be obtained within a time period that allows for an accurate and reliable tax receipt to be issued. Where there are circumstances that can be anticipated to affect the value of the land before the donations and tax receipt will be issued (e.g. boundary or zoning changes), the appraisal should take place after the changes occur.

**Surveyor, if necessary:** A survey certificate depicts the location of the property lines and improvements such as buildings. Although it is rare for residential purchasers in BC to get survey certificates, as costs can run into the thousands of dollars, in some circumstances it may be advisable for the parties to a donation of land to obtain a survey certificate from an accredited land surveyor. These circumstances include where there is ambiguity about the boundaries of a particular property (e.g. where land abutting a body of water has been subject to erosion) or where there could be conflict with a neighbouring property owner in relation to the location of a building or fence line (see below regarding encroachments).

A survey could affect the value of the land and so the timing of a survey will want to be considered in conjunction with any appraisal that is conducted.
Defining the Land and Its Owners

With the assistance of the professionals described above, the parties involved in a land transfer will want to obtain all the plans of a property, and any other plans affecting it.

The first source of information the donor and the charity will look to for information about the land will be a title search of the property conducted through BC’s Land Title Office (at the Land Title and Survey Authority, or LTSA). Many of the elements below can be found through a land title search.

Registered Owners: A title search will indicate the identities of the registered owner(s) of the property. If the registered owner is an incorporated entity, the donee-charity will need to confirm that the organization is in good standing and who exactly has the authority to make a decision about the property. The donee-charity will also want to confirm the existence of any beneficial owners by conducting a search of the Land Owner Transparency Registry.

A charity receiving a gift of real property may want to obtain title insurance in relation to that property. This is a kind of insurance policy that protects the policyholder against challenges to their ownership. A charity may also be interested to know whether the current landowner has held title insurance in relation to the property.

Boundaries: The parties will want to confirm that the location of the property as indicated in the legal description is the same as the location of the property that is proposed to be donated. If not, the parties will need to obtain the correct legal description and/or correct any mistakes on title.

Easements, Restrictive Covenants, & Statutory Rights-of-Way: The parties will want to determine the extent of all easements, restrictive covenants, and other related charges, in order to confirm whether they will impede the ability of the land to be used in accordance with the donor’s vision and the charity’s purposes. Similarly, the parties will also want to confirm the existence of unregistered interests such as ‘equitable easements’. This can, however, be difficult to do.

Encroachments: The parties will want to confirm whether there are any concerns about potential encroachments, including both where the current landowner is encroaching onto another’s land and where a neighbour is using the land without authorization.
Where the encroachment is on the land that is being considered for donation, the donor will want to address the encroachment before the transfer occurs (e.g. have the offending property removed, or obtain an encroachment agreement from them with a licence fee attached), as it may affect the appraised value of the land and therefore the tax receipt that the charity may be able to issue.

Where the encroaching party is the donor, the donor or the charity may wish to seek an encroachment agreement, or to take advantage of section 36 of the BC Property Law Act, which empowers the Supreme Court to declare an easement for the encroachment notwithstanding the actual boundaries of the parcel of land.

If the parties are unsure whether an encroachment is occurring, a surveyor may need to be engaged.

Water Licences: The parties should confirm whether there are any water licences under the BC Water Sustainability Act that will need to be transferred to the charity or otherwise dealt with.

Condition of the Land

Environmental Site Assessment: If the charity has any concerns about the environmental condition of the land, it could have a site assessment (or ‘environmental audit’) conducted. The donor will be concerned about the outcome of such an assessment, as the results may affect the value of their property or reveal environmental liabilities that they did not otherwise know about.

Site profile: The donor could also be subject to obligations under section 40(6) of the BC Environmental Management Act, which reads that a vendor of real property that has been...
used for a prescribed industrial or commercial purpose, or another prescribed purpose or activity (such as “organic...material spreading”), must provide a site profile to a prospective purchaser of real property. A site profile is a screening tool used to identify potentially-contaminated sites, and would be a starting point for environmental investigations that would then be part of the charity’s due diligence.

The donor should consult their lawyer as to whether they are required to provide a site profile.

**Restrictions on the Transfer of Land**

Charges, liens, and other interests registered on property can affect the use and disposition of that property. Again, much of this information can be found through a land title search.

Recall that an interest is a legal right to a property. As described in “Where to Start” on page 5, “Your Current Ownership Structure”, other owners registered on title, such as joint tenants, tenants-in-common, beneficial owners or registered owners, each may have the right to participate in a land transfer decision.

Interests can also be held by other parties, such as through a charge or lien registered on a property when it is used as collateral for a loan.

**Charges & Securities**

**Charges:** There are a number of charges that, when registered, give another legal entity an interest in the parcel of land. Different types of charges are dealt with differently in a transfer. Some charges must be removed before the property is transferred, unless otherwise agreed between the parties.

In other cases a charge or notation was registered for a limited time; if that time has expired, the current or subsequent owner can apply to cancel the charge due to the passing of
time. Mortgages are an example of registered charges that are impliedly assumed to be taken over by the party to whom property is transferred, unless otherwise dealt with.

**Liens:** A lien is a type of security interest in property that is used as collateral to satisfy a debt. The property can be used to satisfy the debt if it is not paid.

**Local Government**

The parties will want to apply to the relevant municipality—or, if the property is in an unincorporated area, to the nearest office of the Surveyor of Taxes or BC OnLine—for a written statement of outstanding taxes, utilities (e.g. water, sewer, dyking, garbage, electricity, gas), charges, and any arrears and penalties.

Where applicable, it will also be advisable to confirm whether any local improvement taxes or similar charges have been established or are in the process of being established for the property.

**Bylaw Compliance:** The donee-organization will want to investigate whether the property is being used for a non-conforming use or is otherwise not in compliance with any land use bylaws (e.g. any setback requirements), whether a zoning bylaw amendment or permission from the ALC will be needed in order to use the property in accordance with its charitable purposes, and whether there are any buildings that have been or are being built without a requisite development, building, or occupancy permit.
Restrictions on the Transfer of Property Other Than Land

Bank Act Security: The parties will want to confirm the existence of any security given pursuant to section 427 of the Canadian Bank Act, which allows a chartered bank (or foreign bank subsidiary) to advance money to a farm owner without the farmer actually delivering the collateral property.

In exchange for the advance or loan, the bank holds full ownership of the property described in the security instrument, which for farmers may be crops, livestock, seeds, or equipment, or even an interest in property the farmer does not currently possess but may later come to own. The bank’s rights end upon payment of all outstanding debt by the farmer-borrower.

The donor and charity will want to consider the terms of these written agreements, as well as property rights held by the bank, before proceeding with the donation. The donor may be limited in what they can donate and may have outstanding financial obligations to the bank that they will need to account for in their estate and tax planning.

Interests in Personal Farm Property: In general, security interests in land, like mortgages, are registered on title at the LTSA, but farm property that constitutes ‘personal property’ (e.g. inventory, some equipment, quotas, and crops that have not become fixtures) can also constitute the collateral of a security agreement under the BC Personal Property Security Act (PPSA). These kinds of security interests can be both registered and unregistered. A security interest that is undisclosed and unsecured may not affect the property rights of the charity post-donation, but it is nevertheless advisable for the parties to consider such a situation before executing the transfer in order to avoid any potential problems in the future.
Glossary

**ADJUSTED COST BASE (ACB):** Usually the cost of a property plus any expenses to acquire it, including commissions and legal fees. The adjusted cost base can also include capital expenditures, such as the cost of improvements to the property. (CRA: https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/t4037/capital-gains.html)

**ADVANTAGE (IN A DONATION):** Any property, service, compensation, use, or any other benefit that a donor receives in exchange, or in gratitude, for a gift.

**ALTER EGO TRUST:** A trust created after 1999 by a settlor who was 65 years of age or older at the time the trust was created, for which the settlor is entitled to receive all the income that may arise during their lifetime, and is the only person who can receive, or get the use of, any income or capital of the trust during the settlor’s lifetime. (CRA: https://www.canada.ca/en/revenue-agency/services/tax/trust-administrators/types-trusts.html#aet)

**ARM’S LENGTH:** “At arm’s length” describes a relationship where persons act independently of each other or who are not related. This term is used in contrast to “not at arm’s length”, which means persons acting in concert without separate interests or who are related.

**BENEFICIAL OWNERSHIP OF LAND:** An equitable interest in land that entitles the beneficial owner to some or all of the income/economic benefits of the property, including the proceeds of a sale. In many cases, the registered owner of land, if different than the beneficial owner, holds the land in trust for the beneficial owner. (See also, “registered ownership”)

**CAPITAL COST:** (including “capital cost allowance (CCA)” (also see “undepreciated capital cost (UCC)”) The cost of purchasing depreciable capital property, including the purchase price, professional fees and contractor costs related to purchasing or constructing the property, and (for a building) professional fees and property taxes incurred in the process of constructing, renovating or altering the building. Capital costs cannot include expenses that were deducted as current expenses at the time. These costs can be deducted against a person’s taxes over time at a rate called the capital cost allowance (CCA).

**capital property:** Includes depreciable property, and any property which, if sold, would result in a capital gain or a capital loss. A person usually buys capital property for investment purposes or to earn income. Capital property does not include the trading assets of a business, such as inventory.

**CAPITAL GAINS AND LOSSES:** The amount that a person is deemed to have incurred when they dispose of capital property: the gain or loss is the proceeds of the disposition minus the sum of the adjusted cost base and any outlays and expenses. Capital gains and losses are included in income tax reporting at specified rates.

**CHARGES (ON LAND):** A legal instrument that is registered against title to real property and that may affect the use or disposition of that property.

**CHARITABLE PURPOSES:** The recognized purposes of a charitable organization that allow it to operate as a registered charity.
CHARITABLE ORGANIZATION: A charitable organization is characterized by the following:

- is established as a corporation, a trust, or under a constitution;
- has exclusively charitable purposes;
- primarily carries on its own charitable activities, but may also gift funds to other qualified donees, (e.g., registered charities);
- more than 50% of its governing officials must be at arm's length with each other;
- generally receives its funding from a variety of arm's length donors; and
- cannot use its income for the personal benefit of any of its members, shareholders, or governing officials.

CONSERVATION COVENANT: A Section 219 covenant registered against land whereby the owner agrees to protect or conserve the land or some feature of the land.

CONTINGENT INTEREST IN LAND: A type of interest in land that does not take effect until a certain condition has been met or satisfied.

DEED OF GIFT: A written, legally-binding document that sets out the structure of a gifting arrangement, including one between a donor and a donee.

DEPRECIABLE PROPERTY: Typically capital property that is used to earn income from a business. In the context of a farm business, it can include farm buildings and equipment. The depreciation, or loss of value of this property over time, is claimed as capital cost allowance.

DISPOSITION OF LAND: Usually an event or transaction where a person gives up possession, control, and all other aspects of property ownership. A deemed disposition is where a person is considered to have disposed of property even though they did not sell it, e.g. through a living gift of property, or a transfer of property as a result of death.

DONOR-RESTRICTED GIFT: A donation that includes provisions that restrict how the donated property can be used.

EASEMENT: A limited right attached to land (the dominant tenement) for the benefit of the owner of dominant tenement to use land of the owner of servient tenement. An example of an easement would be a driveway crossing one owner’s land (the servient tenement) to provide access to another owner’s land (the dominant tenement). (LTSA: https://ltsa.ca/property-owners/about-land-records/glossary/#)

executor: The person designated by a will, or assigned by a court, to administrate another person's will or estate after their death. An executor has many responsibilities.

FAIR MARKET VALUE (FMV): Usually the highest dollar value a person could get for their property, in an open and unrestricted market, between a willing buyer and a willing seller who are acting independently of each other. Where needed, this value can be established by an independent professional appraiser.

FEE SIMPLE OWNERSHIP: The largest possible set of rights in the ownership of land. With fee simple ownership, a landowner has the power to make any decision legally permissible, regarding that land.

FOODLANDS: Land that provides food, whether through agriculture, cultivation, hunting, foraging, or other means.
GIFT AT LAW: A donation where there is no exchange of value and no advantage received by the donor in return.

GRADUATED RATE ESTATE (GRE): An estate that is considered a testamentary trust for income tax purposes, where the executor applies for its status as a GRE within 36 months of the individual’s death. In a GRE, the executor has enhanced flexibility for allocation of taxation to an estate’s income.

INCLUSION RATE: The rate at which capital gains or losses are calculated to be taxable income. The current rate is 50%, which means only 50% of any capital gains or losses are taxable.

INTER VIVOS GIFT: A gift made during the donor’s lifetime. To be considered legally valid, the following must be clearly established: an intention to gift, acceptance of the gift, and delivery of the gift. A deed of gift and a statutory declaration are typically used to establish these.

INTEREST (IN LAND): A legal right to property. There are many types of interests in land, including some that are not registered on title (i.e. do not appear in a land title search).

JOINT SPOUSAL OR COMMON-LAW PARTNER TRUST: This is a trust created after 1999 by a settlor who was 65 years of age or older at the time the trust was created. The settlor and the settlor’s spouse or common-law partner are entitled to receive all the income that may arise from the trust before the later of their deaths. They are the only persons who can receive, or get the use of, any income or capital of the trust before the later of their deaths. (CRA: https://www.canada.ca/en/revenue-agency/services/tax/trust-administrators/types-trusts.html#gre)

JOINT TENANTS: Two or more individuals who share ownership of land with a right of survivorship, so that when one joint tenant passes away, their share in the land is transferred to the surviving joint tenant(s). (See also, “tenants-in-common”)

LEASE: A right to exclusively occupy and use real property in accordance with the terms of a lease agreement. (See also, “licence”)

LEGAL TITLE: (See “title to land”)

LICENCE (IN RELATION TO REAL PROPERTY): A non-exclusive right to occupy and/or use real property in accordance with the terms of a licensing agreement. In general, a licence cannot be used for a residence. (See also, “lease”)

LIEN: A type of security interest in property that is used as collateral to satisfy a debt. The property can be used to satisfy the debt if it is not paid.

LIFETIME CAPITAL GAINS EXEMPTION (LCGE): An income tax deduction that applies to the disposition of certain capital property, including qualified farm or fishing property, and qualified small business corporation shares.

MEMORANDUM OF UNDERSTANDING (MOU): A non-binding agreement that can be used to outline an agreement before preparing a binding document.

NET INCOME: Calculated by subtracting all allowable deductions from a person’s total income for the year.
OUTLAYS AND EXPENSES: Amounts that a person incurred to sell a capital property (e.g. fixing-up expenses, commissions, transfer taxes, advertising costs, or fees for brokers, surveyors, or lawyers).

PERSONAL TRUST: (also see “trust”) In general, this is a trust that is either (1) a graduated rate estate (GRE), or (2) a trust in which no beneficial interest was acquired for consideration payable directly or indirectly to the trust or any person or partnership that has made a contribution to the trust by way of transfer, assignment, or other disposition of property.

PRINCIPAL RESIDENCE EXEMPTION: An income tax exemption that can apply to dispositions of real property that includes the owner’s principal residence.

PROBATE: The process undertaken through the Supreme Court of British Columbia to legally validate a will before it can be administered. The Supreme Court charges a fee for probate relative to the value of the estate.

QUALIFIED DONEE: Specific types of legal entities that are registered with the CRA to be considered equivalent to a charity in many ways, including with the ability to write donation receipts. Examples of entities that can register as qualified donees include charitable organizations, local governments and universities.

QUALIFIED FARM OR FISHING PROPERTY (QFFP): Certain kinds of property that are eligible for the lifetime capital gains exemption. See the text of this guide for a paraphrase of the criteria, and section 110.6(1) of Canada’s Income Tax Act for the definition in full.

QUALIFIED SMALL BUSINESS CORPORATION (QSBC) SHARES: See section 110.6(1) of Canada’s Income Tax Act for the definition in full.

REAL PROPERTY: Includes land and those things permanently attached to it (e.g. buildings and fixtures).

RECAPTURE OF CAPITAL COST ALLOWANCE: An amount that is claimed as income due to the disposition of depreciable property for more than the undepreciated capital cost (UCC) remaining in its class (i.e. resulting in a negative UCC balance for that class at the end of a year).

REMAINDER INTEREST (IN LAND): In the context of a life estate, a remainder interest is the interest in the land held by the entity after the life estate is extinguished or expires. Generally in the establishment of a land trust, the life estate is held by an individual and the remainder is held by the charity to which the individual wishes to transfer the land upon their passing.

REGISTERED OWNERSHIP: The interest held by the entity whose name is on the deed or title to the land, as registered with the Land Title and Survey Authority; also referred to as holding legal title. A registered owner may be holding land in trust for a beneficial owner. (See also, “beneficial ownership”)

REPATRIATION: Transfer of land to an Indigenous nation.

RIGHT OF SURVIVORSHIP: A right interviewed with joint tenancies that provides for a joint tenant’s interest in property to be passed onto the surviving joint tenant(s) upon their passing. (See also, “joint tenants”)

SECTION 219 COVENANT: A type of interest in land, registered pursuant to section 219 of BC’s Land Title Act, that allows a third party to impose...
negative or positive conditions on the use of the land or a building on the land, building on the land, subdivision, or selling one or more parcels subject to the same covenant. The registered owner of the land is called the covenantor, and the third party is called the covenantee.

**SPLIT RECEIPTING:** The method used to calculate the eligible amount of a gift for receipting purposes when the donor has received an advantage (consideration) in return for his or her donation. (CRA: https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/issuing-receipts/split-receipting.html)

**STATUTORY DECLARATION:** A legally-binding document that can be used by a declarant to confirm that the facts set out in the document are true to the best of their knowledge. It is similar to an oral statement made under oath.

**TAX CREDIT:** An amount by which income tax payable is reduced.

**TAX DEDUCTION:** An amount by which taxable income is reduced (thereby reducing the tax payable).

**TENANCY-IN-COMMON:** A type of a shared ownership of land. Unlike joint tenants, tenants in common can hold unequal shares in the land and do not hold a right of survivorship. (See also, “joint tenants”)

**TERMINAL LOSS (FOR DEPRECIABLE CAPITAL PROPERTY):** An amount that is claimed as a loss when the undepreciated capital cost for a class has a positive balance at the end of a year and the person does not have any properties left in that class.

**TESTAMENTARY TRANSFER:** Transfer of property through upon an individual’s passing, as prescribed by their will or by virtue of intestacy.

**TESTAMENTARY TRUST:** A trust or estate that is generally created on and as result of the death of the person. The terms of the trust are established by the will, or by a court order in relation to the deceased individual’s estate under provincial or territorial law.

**TITLE (TO LAND):** Depending on the context in which it is used title means, on the one hand the right of ownership of land and, on the other, the instruments or evidence of such right. In the register, title to land evidences fee simple ownership of land in one or more Registered Owner(s). Also referred to as land title and indefeasible title. A title may also refer to the ownership of interests in land less than fee simple, such as a mortgage or easement. (LTSA: https://ltsa.ca/property-owners/about-land-records/glossary/#)

**TRUSTEE:** The entity that holds land in trust for a beneficial owner or purpose.

**UNDEPRECIATED CAPITAL COST (UCC):** Generally, UCC is equal to the total capital cost of all the properties of the class minus the capital cost allowance a person claimed in previous years. If a person sells depreciable property in a year, they also have to subtract from the UCC one of the following two amounts, whichever is less:

- the proceeds of disposition of the property (either actual or deemed) minus the outlays and expenses incurred to sell it
- the capital cost of the property

Your Land, Your Legacy

Creating a legacy gift in your will is a wonderful and simple way to make an impact and to put your values into action. Legacy gifts can significantly contribute to our common goals of protecting and ensuring the long-term availability of foodland and farmland.

You may wish to consider creating your legacy in honour of a loved one, an ancestor or a special friend.

Gifts of Land

By securing land in trust through our network, Foodlands Co-operative provides a vehicle for current landowners to donate their properties and have peace of mind that their land will provide food security for their local community, while also helping farmers and community groups who support diversified, regenerative agriculture.

For more information, please contact Heather Pritchard, Foodlands Cooperative Co-Founder at heather@foodlands.org, or by telephone (604) 916-9658.

Foodlands Cooperative thanks the following funders for their support of this guide: