

# Planned Giving – A Guide for Clients



## **WHY SUN LIFE CREATED THIS GUIDE**

Canada's charitable tax credit rules allow you to optimize your tax and estate plan. You can receive a tax credit and feel good about helping the charities of your choice.

The gifting of a life insurance policy can be an attractive option for you as a prospective donor. It's also an important strategic charitable giving tool.

We prepared this guide to outline the various ways to donate with a life insurance policy. This guide reflects tax rules up to May 2021. Tax rates and other information may change as a result of new legislation. Please discuss your needs in confidence with your advisor.<sup>1</sup>

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<sup>1</sup> The information presented in this document is for general information only. Sun Life does not provide legal, accounting, taxation or other professional advice to advisors or their clients. Before you act on any of the information contained in this guide, please obtain advice from qualified professionals. Tax and accounting professionals, along with your advisor, can thoroughly examine your situation and provide you with the best insurance and tax planning option suited to your needs.

## **TOPICS COVERED IN THIS GUIDE**

The following are the topics that will be covered in this guide:

- Donations support many causes – your choices of charities
- Tax treatment of charitable donations
- Planned giving strategies using life insurance
  - Opportunity #1 - Donate a new policy
    - How it works
    - Tax advantages and consequences
  - Opportunity #2 - Donate an existing policy
    - How it works
    - Tax advantages and consequences
  - Things to note for Opportunities #1 and #2
  - Opportunity #3 - Donate the death benefit proceeds
    - How it works
    - Tax advantages and consequences
  - Things to note for Opportunity #3
- Life insurance and publicly listed securities – a combination strategy
  - How it works
  - Tax advantages and consequences
- Opportunity #4 - Life insurance as a wealth replacement strategy
  - How it works
  - Tax and non-tax advantages
  - Tax advantages on all gifts
  - Things to note

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- Opportunity #5 - RRSP/RRIF Insurance
  - How it works
  - Tax advantages and consequences
- Summary of Opportunities #1, #2, #3
- CRA Criteria for a Gift
- Important considerations
  - Addressing the insurance need
  - Conflict of interest concerns
  - Underwriting considerations
  - Who should apply for the policy?
  - Tax sheltered donation arrangements
  - Regulations associated with donations of policies
  - Disbursement quota and life insurance gifts
- How can your advisor help?
- Why choose Sun Life?

## **DONATIONS SUPPORT MANY CAUSES – YOUR CHOICES OF CHARITIES**

There are over 85,000 charities registered with the Canada Revenue Agency (CRA).<sup>2</sup> Only charities that are registered with the CRA can issue official donation tax receipts for gifts they receive. Some of these charities include:

- Organizations like the Red Cross and the Canadian Cancer Society
- Canadian universities and colleges
- Canadian amateur athletic associations
- Registered journalism organizations
- Foreign charities that have received a gift from Her Majesty in right of Canada
- Low-cost housing corporations for the aged
- Municipal or public bodies performing a function of government in Canada
- Municipalities
- Universities outside Canada
- Her Majesty in right of Canada, a province, or a territory, and the United Nations and its agencies

To confirm if the charity of your choice is registered with the CRA, you can check on the CRA's website at this address:

[https://apps.cra-arc.gc.ca/ebci/hacc/srch/pub/dsplyBscSrch?request\\_locale=en](https://apps.cra-arc.gc.ca/ebci/hacc/srch/pub/dsplyBscSrch?request_locale=en).

Alternatively, you can also call the CRA.

It is important to note that your advisor cannot recommend a charity to you. However, your advisor can guide you to a selection of charities that suits your philanthropic inclinations.

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<sup>2</sup> [http://sectorsource.ca/research-and-impact/sector-](http://sectorsource.ca/research-and-impact/sector-impact#:~:text=There%20are%20over%20170%2C000%20charitable%20and%20nonprofit%20organizations%20in%20Canada.&text=85%2C000%20of%20these%20are%20registered,by%20the%20Canada%20Revenue%20Agency)

[impact#:~:text=There%20are%20over%20170%2C000%20charitable%20and%20nonprofit%20organizations%20in%20Canada.&text=85%2C000%20of%20these%20are%20registered,by%20the%20Canada%20Revenue%20Agency](http://sectorsource.ca/research-and-impact/sector-impact#:~:text=There%20are%20over%20170%2C000%20charitable%20and%20nonprofit%20organizations%20in%20Canada.&text=85%2C000%20of%20these%20are%20registered,by%20the%20Canada%20Revenue%20Agency)).

## **TAX TREATMENT OF CHARITABLE DONATIONS**

The following is an overview of the tax treatment of charitable donations in Canada:

- Donors are entitled to a three-tier tax credit: federal, provincial, and an enhanced credit for individuals in the highest tax bracket.
- Donors will receive a federal tax credit of 15% for donations up to \$200, plus the applicable provincial credit.<sup>3</sup>
- For gifts over \$200, the federal tax credit is 29%, plus the applicable provincial credit.
- As of 2016, there is also a federal tax credit of 33% applicable to taxable income in excess of certain amounts over \$200,000 (and indexed thereafter).<sup>4</sup> The credit is then enhanced by a parallel provincial tax credit (20% to 30% (first \$200)) and 40-54% (over \$200).
- An individual at the top income level can expect tax savings up to 54% for every dollar donated over \$200 (depending on the province of residence).
- A donor can donate as much as they want, and receive a donation tax receipt for their entire donation. However, in any given year a donor can only claim a charitable tax credit for total donations equal to or less than 75%<sup>5</sup> of net income<sup>6</sup> for the year (100% in Quebec).
- Individuals can carry forward any excess donations up to five years. For example, if John gives his local hospital foundation a gift of \$200,000, and his net income that year is \$80,000, he can claim a charitable donation tax credit for \$60,000 in the year of the gift, \$60,000 for each of the next two years and \$20,000 in the fourth year. Alternatively, he can spread the donation out equally over six years and claim credits for \$33,333 each year (assuming his

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<sup>3</sup> Provincial tax credit rates vary between 5.05% and 21% in 2021.

<sup>4</sup> For 2020, this amount is \$216,511.

<sup>5</sup> This limit is increased to 100% of net income certain gifts of ecologically sensitive lands and "certified cultural property".

<sup>6</sup> Your net income is calculated by subtracting all allowable deductions from your total income for the year. It's used to determine your federal and provincial or territorial non-refundable credits, or any social benefits you receive like the GST/HST credit or the Canada child benefit.

income doesn't change and he makes no other donations). He has flexibility in structuring the donation as long as he is within the annual 75% limit.

- Donations used in the year of death or the immediately preceding year may be used against 100% of net income in those years. For example, let's assume again that John's net income in his year of death is \$80,000. If he left \$160,000 to his favorite charity in his will when he passed away in 2019, his charitable receipt will be \$80,000 for 2019. The remaining \$80,000 can be carried back to his 2018 income tax return. This generally requires filing an amendment of the previous year's tax return. Also, the estate must be a "graduated rate estate" (GRE).<sup>7</sup> Again, there is a five-year carryforward of gifts within the estate and the maximum amount of donations an estate can claim in a year is 75% of net income.
- Charitable donations made by both spouses/partners may be totaled and claimed by either person.

## PLANNED GIVING STRATEGIES USING LIFE INSURANCE

Below are the three most common methods of donating a life insurance policy:

### OPPORTUNITY #1 - DONATE A NEW POLICY

You can donate a new policy. The charity is both the owner and beneficiary of the policy.

#### How it works:

- You purchase a new life insurance policy and pay the first premium.
- You donate the policy to a charity of your choice and transfer the ownership of the policy to the charity. The charity is now the new owner of the policy.

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<sup>7</sup> A GRE is an estate arising on an individual's death. The advantages of a GRE is that it will have access to marginal tax rates on the first 36 months as opposed to paying tax at the highest marginal tax rate for inter vivos (lifetime) trusts. Also, the testator has flexibility in allocating a charitable tax credit (either on your terminal tax return or in the year prior to your death). The estate must designate itself as a GRE in its tax return. Only one GRE per deceased person is permitted.

- The charity is also named as policy beneficiary on the application or at the time of the policy ownership transfer.
- After you donate the policy to the charity, you continue to pay the premiums.
- After your death, Sun Life pays the death benefit to the charity.

### **Tax advantages and consequences:**

- You will receive a charitable donation tax receipt for the premiums.
- You may also receive a charitable donation tax receipt for the fair market value (FMV) of the policy on transfer. Subsection 248(35) of the *Income Tax Act (Canada)* (the "ITA") deems the policy's FMV to be the policy's adjusted cost basis (ACB) if you had acquired the policy within the past three years, or if you had acquired the policy within the past ten years, and one of your main reasons for acquiring it was to donate it to a charity. However, the ACB of a typical policy in its first year after the payment of one premium payment will be very small.
- If the deeming rule under subsection 248(35) does not apply, an actuary will be needed to determine the policy's FMV.<sup>8</sup>
- The donation will be treated as a disposition for tax purposes under subsection 148(7) of the ITA.<sup>9</sup> For a donation of a newly issued life insurance policy, the tax consequences will probably be nil because the policy likely would not have a cash value greater than its ACB immediately after its issue. It is still important, however, to determine before making the donation what the likely tax consequences of the disposition will be, and to obtain tax advice on how any taxable gain will affect your donation.

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<sup>8</sup> The factors the actuary can consider are listed in CRA's Information Circular 89-3, "Policy Statement on Business Equity Valuations," August 25, 1989 and include: the policy's cash surrender value (CSV), the policy's loan value, face value, the state of health of the insured and his/her life expectancy, conversion privileges, other policy terms, such as term riders, double indemnity provisions, and replacement value.

<sup>9</sup> Subsection 148(7) requires the transferring policy owner to determine the taxable amount of the disposition by subtracting the policy's ACB from its "value". Its value is the greatest of the fair market value of any consideration received in exchange for the policy, the policy's cash surrender value (CSV), or its ACB. With donations, the donor receives nothing in exchange for the policy, so the policy's value will be the greater of its CSV or ACB.



- The charity will receive the death benefit on a tax-free basis. Charities are tax-exempt entities, and death benefits paid from exempt life insurance policies are tax-free. The death benefit, however, is not a donation and will not qualify for a charitable donation tax receipt.
- Probate fees (estate administration tax in Ontario) will not apply.
- The CRA is indifferent as to whether you pay the premiums directly, or donate the premium amount to the charity so that the charity can pay the premiums.
- You should ensure that your other life insurance needs are met.

### **OPPORTUNITY #2 - DONATE AN EXISTING POLICY**

You can donate an existing policy. This may be a good option if you no longer need the policy. As in the above strategy, the charity is the owner and beneficiary of the policy.

#### **How it works:**

- You donate an existing policy that has been in force for some time.
- You simply transfer ownership of the policy to the charity and name the charity as beneficiary. Alternatively, the charity can name itself as beneficiary after becoming owner of the policy.
- You continue to pay the premiums.
- After your death, Sun Life pays the death benefit to the charity.

#### **Tax advantages and consequences:**

- The tax consequences are the same as outlined in Opportunity #1 above. To obtain the maximum donation tax receipt on the transfer of the policy, it's best to donate a policy that you have owned for at least ten years, or, where you've owned the policy for between three and ten years, to have documentation supporting the position that none of the main reasons for your acquiring the policy was to donate it to a charity. A needs analysis completed at the time you acquired the policy could help.

- The donation will be treated as a disposition for tax purposes under subsection 148(7) of the ITA. If the policy's cash surrender value (CSV) is greater than its ACB, you will have to include the difference in income. If there is a taxable gain, the life insurance company will send you a T5 slip to report the taxable gain to you and the CRA. **It's best to understand how much taxable gain there is in the policy before you donate it, and to obtain tax advice on how any taxable gain will affect your donation.**

### THINGS TO NOTE FOR OPPORTUNITIES #1 AND #2

- This gift is irrevocable. This means that you give up control of the policy. You will no longer be able to change ownership of the policy or the beneficiary designation. Nor will you be able to access cash from the policy through policy loans, third party loans or full or partial surrenders. If you later become unhappy with the charity, you could stop paying premiums. The charity, however, would have the following options:
  - continue to pay the premiums from other donations
  - use the policy's cash value to keep the policy in force, or
  - surrender the policy for its cash value.
- There is a method for partly mitigating the loss of control when a policy is donated to charity: donate the policy to a public foundation. Many public foundations will assume ownership of a policy, and will agree to direct the proceeds to a charity or charities of your choice. You can change the charity or charities from time to time simply by providing new instructions to the public foundation. This does not change the irrevocable decision of gifting the policy to the foundation, but it does provide flexibility as to which charity or charities will benefit from the proceeds.
- The CRA is indifferent as to whether you pay the premiums directly, or donate the premium amount to the charity so that the charity can pay the premiums.
- You should ensure that your other life insurance needs are met and that your intentions related to any donated policies are well documented for your executor and/or beneficiaries.

### **OPPORTUNITY #3 – DONATE THE DEATH BENEFIT PROCEEDS**

You are the owner of the policy. You can name a charity of your choice as the beneficiary of the policy. This might be a good option if you have owned a policy for a long time. You also maintain the flexibility of changing the beneficiary of the policy.

#### **How it works:**

- You only need to name the charity as beneficiary of the policy.
- You continue to pay the premiums.
- After your death, Sun Life pays the death benefit to the charity.

#### **Tax advantages and consequences:**

- The charity receives the death benefit proceeds on a tax-free basis.
- Your estate will receive a charitable donation tax receipt for the policy proceeds.
- However, you will not receive a charitable donation receipt for the premiums.
- If you name the charity directly as beneficiary of the policy, the death benefit proceeds will not be subject to probate fees (estate administration tax in Ontario) or claims from any of your creditors.<sup>10</sup>
- As mentioned, you maintain the flexibility of changing the beneficiary at any time.

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<sup>10</sup> You can also name your estate as beneficiary of the proceeds, but the proceeds will be subject to probate fees (estate administration tax in Ontario). Please note that there are no probate fees in Quebec. The proceeds may also be exposed to creditors' claims and estate litigation claims. In both cases where an estate is named as beneficiary or the charity is named as beneficiary, there may be possible dependent relief claims for support. (See for example, s. 58 and s. 72(1)(f) of the *Succession Law Reform Act (Ontario)*).

### THINGS TO NOTE FOR OPPORTUNITY #3

- The CRA is indifferent as to whether the beneficiary designation is irrevocable or revocable. The tax result is the same.
- The death benefit will not qualify as a donation if the charity is named as beneficiary on a corporately-owned policy.

## LIFE INSURANCE AND PUBLICLY LISTED SECURITIES – A COMBINATION STRATEGY

Another opportunity is to gift publicly-listed securities<sup>11</sup> as well as a life insurance policy. This “combination” strategy has many tax benefits. For example, this strategy not only provides for a gift to the charity, but it also eliminates the capital gains tax that would otherwise result from gifting the securities. It is more tax efficient to donate the securities than to sell them and donate the proceeds.

### How it works:

- You donate publicly-listed securities to a charity of your choice.
- You also gift a life insurance policy using Opportunities #1 or #2 above.
- The charity can use the dividends from the securities to pay for the remaining premiums on the policy. Alternatively, the charity can sell the securities and use the sale proceeds to pay for the remaining premiums.

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<sup>11</sup> “Qualifying marketable securities” include: shares, bonds, warrants and options listed on prescribed stock exchange (Toronto, Vancouver, New York), mutual fund shares and units, segregated fund units, prescribed debt obligations and stock option shares. Only advisors with a securities license can advise on matters regarding a publicly traded security. Advisors who are life insurance licensed and mutual fund registered and who do not have a securities license may not discuss securities with clients.

**Tax Advantages and consequences:**

- When you gift the securities to the charity, you eliminate the capital gains tax.
- You will receive a charitable donation tax credit for the FMV of the securities.
- You will also receive a charitable donation tax credit for the value of the policy when it is transferred to the charity. (Please see footnote 8 above for the factors in valuing a policy.)
- You are relieved of any further premium obligations.
- The donation of a life insurance policy is a potentially taxable disposition of that policy and, therefore, the comments made regarding opportunities #1 and #2 above also apply.

An example of this strategy is demonstrated in the following chart:

Tax on Disposition of Publicly Listed Securities		Charitable Tax Credit on Gift of Publicly Listed Securities	
Fair market value	\$50,000	\$50,000	Tax Tip:  Charity can sell securities and use proceeds to pay for future premiums or use dividends from the securities to help pay for premiums.
Cost	<u>10,000</u>	<u>N/A</u>	
Taxable Gain	40,000	0	
Taxable capital gain	20,000	0	
Tax Due (50% rate assumed)	<b>\$10,000</b>	<b>Total charitable tax credit (40%) = \$20,039</b>	



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In this example, the donor sells securities for \$50,000 and would face a total tax bill of \$10,000 (as can be seen in the first column). The second column shows a charitable donation tax credit of \$20,039 if the donor donates the securities. The charity now pays for the premiums on the policy from the securities' sale proceeds and/or using the dividends from the securities. In some cases, the dividends or the proceeds from selling the securities might not be enough to pay for the ongoing premiums. Therefore, the charity may need to find additional funds to keep the policy from lapsing.

The donor's total tax savings is \$30,039 (\$10,000 + \$20,039) from the capital gains tax saved on the donation of the securities and the charitable tax credit on the donation of the securities. The charity also benefits from receiving valuable assets such as the securities and a life insurance policy. This strategy results in a win-win situation for both the donor and the charity.<sup>12</sup>

Another aspect to this strategy is that the donor can continue to pay the premiums and the charity could sell the securities immediately after the donation. The donor would receive an additional charitable tax credit on the premium payments. And, the charity would receive cash right away from the sale of the securities.

Please note that only advisors with securities licenses can advise on matters regarding a publicly traded security. Also, it is important to consult the charity in advance when making these types of gifts.

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<sup>12</sup> Please note that only advisors with securities licenses can advise on matters regarding a publicly traded security. Advisors who are life insurance licensed and mutual fund registered and who do not have a securities license may not discuss securities with clients.

## OPPORTUNITY #4 - LIFE INSURANCE AS A WEALTH REPLACEMENT STRATEGY

Instead of donating a life insurance policy to a charity, you may want to donate other assets instead. To replace those donated assets, you would purchase a life insurance policy as part of a wealth replacement insurance. You can choose your policy beneficiaries. This will enable you to see the positive impact of a charitable donation during your lifetime without diminishing your family legacy.

### How it works:

- You donate a valuable asset to a charity. Examples of assets to donate can include:
  - publicly listed securities
  - non-registered segregated fund contracts
  - real estate
  
  - certified cultural property and ecologically sensitive land
  - cash or equivalents (for example, guaranteed income certificates, T-bills)
  - artwork, jewelry and other personal property<sup>13</sup>
  - income or capital from an *inter vivos* or lifetime trust
- You can use the tax savings (discussed below) to help purchase a life insurance policy.
- You name a beneficiary of your choice under the policy.

### Tax and non-tax advantages:

- **Publicly listed securities:** As discussed above, you will not pay capital gains tax on gifts of publicly listed securities.<sup>14</sup>

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<sup>13</sup>Subsection 248(35) of the ITA would deem the donation to be the lesser of the FMV or cost of the gift if the gift was made within three years of purchase or within ten years if it reasonable to conclude that one of the main reasons for acquiring the property was to gift it to a charity. In these situations, you will need to consult with your tax advisor.

<sup>14</sup> Gifts of private corporation shares are not eligible for this special capital gains treatment. Generally, 50% of the capital gain that arises from the disposition of private corporation shares is subject to tax.

- **Non-registered segregated fund contracts:** There is also no capital gains tax on gifts of non-registered segregated fund contracts.
- **Real estate:** Generally 50% of the capital gain is included in income and subject to tax.
- **Certified cultural property and ecologically sensitive land:** Capital gains arising on the donation of these types of property are generally not taxable. Also, the annual donation limit is increased to 100% of net income on gifts of these properties. For ecologically sensitive land, any unused donations can be carried forward over ten years (five years more than for regular donations).<sup>15</sup>

### Tax advantages on all gifts:

- You will receive a charitable donation tax receipt on the donation of the assets to the charity.
- The charity receives immediate support and you fulfill your charitable giving objectives during your lifetime.
- On your death, your beneficiaries will receive a tax-free inheritance of life insurance proceeds.
- By naming beneficiaries, the proceeds will not be subject to probate fees (estate administration tax) and creditor claims.

### Things to note:

- Neither the life insurance premiums nor the death benefit proceeds are donations eligible for a charitable donation tax receipt.
- Making large donations could mean that you may need to pay alternative minimum tax (AMT). For example, this tax may have to be paid if you have certain large deductions or capital gains in a year and the property donations result in additional gains. Please make sure to check with your tax advisor to ensure that AMT does not arise.

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<sup>15</sup> The gift of ecologically sensitive land must be made after February 10, 2014.



- If any of the above property is gifted to a charity through a will, the estate must be a GRE in order for the estate to receive a charitable donation tax receipt.
- The proceeds from the sale of the asset may not be enough to fund the ongoing premiums. In such a scenario, the Client may need to use other funds to keep the policy from lapsing.
- You should consult the charity in advance when making these types of gifts.

### **OPPORTUNITY #5 - RRSP/RRIF INSURANCE**

Another variation on the wealth replacement strategy is “RRSP or RRIF insurance”. This can be an excellent strategy for those that are philanthropically inclined and want to make a donation.

The added bonus to this strategy is that the donation tax receipt can offset the tax on the RRSP/RRIF income.

#### **How it works:**

- You own an RRSP/RRIF. Let's use an example of an RRSP worth \$200,000.
- You name the charity of your choice as the beneficiary of the RRSP/RRIF.
- You purchase a life insurance policy worth \$200,000 and name your family and/friends as beneficiaries under the policy.
- You leave \$200,000 to a charity of your choice in your will.

#### **Tax advantages and consequences:**

- Upon your death:
  - The policy beneficiaries receive the life insurance policy death benefit on a tax-free basis.
  - The life insurance proceeds will not be subject to probate fees, creditors' and/or estate litigation claims.
  - The charity will receive the RRSP/RRIF proceeds and the charity will issue your estate a donation tax receipt for the value of the RRSP/RRIF proceeds.

- The RRSP/RRIF proceeds will be included in your income.<sup>16</sup> However, if this gift is made by the GRE, your estate will receive a tax credit up to 100% of net income in the year of death (and the preceding year). Therefore, the RRSP/RRIF donation tax receipt can offset the tax on the RRSP/RRIF income.

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<sup>16</sup> This will be included in income under ss. 146(8.8) of the ITA.

## SUMMARY OF OPPORTUNITIES #1, #2, #3, #4, #5

The opportunities are summarized below in the following table:

Opportunity	Owner of Policy	Beneficiary	Taxpayer's tax benefit during life	Tax benefit at death
#1 – Donate a new policy	Charity	Charity	Annual premium and value on transfer is a donation	None
#2 – Donate an existing policy	Charity	Charity	Annual premium and value on transfer is a donation	None
#3 – Donate the death benefit proceeds	Taxpayer	Charity	None	Death benefit is a donation
#4 – Life insurance (LI) as a wealth replacement strategy	Client	<ul style="list-style-type: none"> <li>Client's beneficiaries (LI proceeds)</li> <li>Charity (donated asset)</li> </ul>	Tax receipt on donation of asset	Beneficiaries receive tax-free LI proceeds
#5 – RRSP/RRIF Insurance	Client	<ul style="list-style-type: none"> <li>Charity (RRSP/RRIF)</li> <li>Family/Friends (LI proceeds)</li> </ul>	None	RRSP/RRIF is a donation and donation tax receipt offsets RRSP/RRIF tax

## **CRA CRITERIA FOR A GIFT**

- The CRA has outlined the following criteria for a gift<sup>17</sup>:
  - There must be a voluntary transfer of property to the charity and the property must have a value that can be clearly determined.
  - If any “advantage” was received (compensation or other benefits) in return for the donation (that is, tickets, meals), the eligible gift for purposes of the donation is the FMV of the donation minus the FMV of the advantage received.
  - The above rule only applies to gifts that are above the *de minimis* threshold of \$75 or 10 per cent of the value of the gift. When the FMV of an advantage received for a gift is more than 80% of the FMV of the gift itself, the CRA generally considers that there is no true intention to make a gift. Therefore, a charity cannot issue a charitable donation tax receipt. However, in some cases, the intention to make a gift threshold has not been met but there was a clear intention to make a gift. In these cases, you must be able to prove to the CRA that you intended to make a gift.

## **IMPORTANT CONSIDERATIONS**

It is very important that you discuss the following considerations with your advisor:

### **ADDRESSING THE INSURANCE NEED**

- A life insurance policy is a solution to a genuine insurance need. Charitable gifting is something to contemplate after you have purchased a policy and you and your advisor have addressed your insurance need. Ensure that your intentions related to any donated policies are well documented for your executor and/or beneficiaries.

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<sup>17</sup> See the CRA website at: <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/receiving-gifts/what-a-gift.html>.

### CONFLICT OF INTEREST CONCERNS

- Always ensure there is no conflict of interest, especially between the advisor recommending the policy and the intended policy beneficiary.
- An advisor cannot recommend a charity to you. You must choose your own charity that suits your philanthropic inclinations.

### UNDERWRITING CONSIDERATIONS

- Sun Life does not support charitable giving in the following situations:
  - Borrowed fund charitable strategies where there is no prior history of giving or association<sup>18</sup>
  - Borrowed fund charitable strategies with split dollar or shared ownership arrangements<sup>19</sup>
  - Split dollar and shared ownership arrangements.
- There is a maximum amount of insurance any individual can obtain. Therefore, as you use up your insurability for charitable purposes, the amount of coverage that is available to you personally is similarly reduced.
- The underwriting department expects some level of past charitable giving commensurate with the amount of insurance for which you are applying. For example, if there is no past history of giving, this may limit the amount that Sun Life will approve. Alternatively, Sun Life will look for some close personal or family association to a particular charity.
- A question can arise as to whether a charity may even be able to own a life insurance policy on your life since it does not have an insurable interest in your life as donor. Most *Insurance Acts* state that if a donor gives consent, a charity can own a policy on the

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<sup>18</sup> With any leveraged situation, Sun Life will perform a suitability review examining such items as the nominee/trust arrangements to confirm the Charity is not a beneficial owner.

<sup>19</sup> An example of a charitable shared ownership structure would be where the donor enters into an agreement with the charity to share ownership of the policy. The donor will own the policy's cash value while the charity will own the pure insurance part of the policy, or death benefit. The donor will continue to pay all the premiums. But the charity will give the donor a charitable donation tax receipt only for that part of the premium that pays for the death benefit.

donor's life. It is important to make sure that the applicable provincial or territorial laws allow you to consent to the charity owning the policy on your life.

### **WHO SHOULD APPLY FOR THE POLICY?**

A charity can apply for a policy, but it is better for you to do so. One reason is privacy. If the underwriting process results in you as donor being rated or declined, that underwriting decision is passed on to the applicant. You may not want the charity to be made aware of your general status. Your personal medical information would not be shared.

It is also better for you to apply for the policy as it avoids the complication of requiring the charity's signing officers to apply for the policy on its behalf.

### **TAX SHELTERED DONATION ARRANGEMENTS**

It is important to note that the CRA applies special scrutiny to any arrangement that it determines to be a "tax shelter". Briefly, the CRA defines tax shelters as donations or arrangements where a participant receives a tax benefit/deduction that is equal to or in excess of the cost they contributed. Some examples include buy-low and donate-high arrangements, gifting trust arrangements, leveraged cash donations and leveraged insured annuity arrangements. The CRA has audited many of these arrangements and has been successful in reducing the tax credit claimed or denying the gift completely.

Tax shelter promoters must obtain a tax shelter identification number from the CRA. The CRA uses this number to identify the tax shelter and its participant investors. The number, however, does not guarantee that a donor will receive the associated charitable tax credits.

### REGULATIONS ASSOCIATED WITH DONATIONS OF POLICIES

Most Insurance Acts in Canada make it an offence for someone who "traffics or trades in life insurance policies for the purpose of procuring the sale, surrender, transfer, assignment, pledge or hypothecation of them to himself or herself or any person...."<sup>20</sup>

In the fall of 2019, there was much uncertainty created with the charitable gifting of life insurance policies in British Columbia (BC) and whether it might be a breach of provincial insurance laws. The BC Financial Services Authority (BCFSA, formerly the FICOM) took the position that a charity accepting life insurance policies as donations would contravene the anti-trafficking provisions of section 152 of B.C.'s *Insurance Act*. In May 2020, the BCFSA clarified its position and is now of the view that, when an insured makes a donation directly to a *bona fide* charitable organization, none of the three ways of donating (Opportunities #1, 2 and 3 discussed above) are generally prohibited. However, the BCFSA did not clarify what it considers a *bona fide* charity to be or under what circumstances these types of donations would be prohibited. Other provincial and territorial insurance regulators have yet to comment publicly on this. Until some regulatory consensus is reached, there will remain some risk that, under some circumstances, donating a life insurance policy might contravene anti-trafficking laws.

### DISBURSEMENT QUOTA AND LIFE INSURANCE GIFTS

The requirement that charities distribute 80 percent of total gifts each year was eliminated on December 5, 2010. The 10-year enduring property rule (which helped planned gifts avoid the 80% disbursement rule) was also eliminated. Charities must now disburse 3.5 percent of the value

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<sup>20</sup> See for example section 152 of British Columbia's *Insurance Act*, RSBC 2012 Chapter 1 (B.C. *Insurance Act*).

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of their assets for charitable purposes every year.<sup>21</sup> However, the value of a life insurance policy is deemed to be nil.<sup>22</sup> The elimination of the 80 percent quota allows for a simpler process for donors wishing to donate life insurance policies.

### HOW CAN YOUR ADVISOR HELP?

To learn more about the various ways to gift a life insurance policy and how life insurance can be part of your overall tax and estate plan, speak with your trusted Sun Life advisor.

Your Sun Life advisor can help in the following ways:

- Review the various aspects of your financial and estate plans.
- Help you clarify your planned giving goals.
- Recommend planned giving and financial strategies.
- Pinpoint problems and opportunities.
- Help you carry out your gift plan.
- Monitor your plan over time to ensure that it continues to be the best one for you.

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<sup>21</sup> Section 149.1 of the ITA.

<sup>22</sup> Regulation 3702(1)(b)(vi) of the ITA.



## **WHY CHOOSE SUN LIFE?**

Sun Life is a leading international financial services organization. We have a 150-year history of honouring our commitments – to our customers, partners, shareholders and communities.

Sun Life Financial is a strong, well-capitalized company with solid financial ratings. We are committed to the highest standards of business ethics and good governance. We practice sound risk management and strive to build sustainable, healthier communities for life.

Our strength also comes from the diversified nature of our business, as we operate in a range of financial services businesses and in many countries around the world.

At Sun Life, our Purpose is clear: to help our clients achieve lifetime financial security and live healthier lives.

Anchored by our proud history, we continuously look for ways to bring innovative, insightful and simple solutions to Canadians, so they can feel confident that they have a financial partner that cares about their well-being and that they can trust.

We continue to build that trust through our unwavering commitment to our clients. When we help clients with their financial management needs, and their health and well-being goals we are enabling them to gain the freedom to live their lives their way, from now through retirement.

Every day, we do what we do to give our clients peace of mind for their futures and for their families' futures – to make Life brighter under the sun.

## **WE'RE DEDICATED TO HELPING YOU ACHIEVE A LIFETIME OF FINANCIAL SECURITY.**

For more information and resources  
visit [www.sunlife.ca](http://www.sunlife.ca), or call

1 877 SUN-LIFE (1 877 786-5433).





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