

Obligations and Responsibilities of a Registered Charity employing an Organization as its Agent

GENERAL GUIDELINES – When making application to a Community Foundation

By acting as a lead partner for a project being carried out by another organization, the Registered Charity is in effect taking on the project as part of its own operations. These arrangements can be an acceptable application of the charity's resources to its 'own' charitable activities providing:

1. the charity has obtained reasonable assurance before entering into agreements with individuals or other organizations that they are able to deliver the services required by the charity (by virtue of their reputation, expertise, years of experience, etc.);
2. all expenditures will further the RC formal purposes and constitute charitable activities that the RC carries on itself;
3. an adequate agreement is in place (CRA recommends a written agreement containing the minimum elements outlined below);
4. the RC provides periodic, specific instructions to individuals or organizations as and when appropriate;
5. the RC regularly monitors the progress of the project or program and can provide satisfactory evidence of this to CRA (see the next section on books and records) and;
6. where appropriate, the RC makes periodic payments on the basis of this monitoring (as opposed to a single lump sum payment) and maintains the right to discontinue payments at any time if it is not satisfied.

ADDITIONAL GUIDELINES FOR JOINT VENTURES

The following are the type of factors the CRA looks for when determining whether an RC exercises on-going control in joint ventures:

1. presence of members of the RC on the governing body of the joint venture;
2. participation in project by members of the RC;
3. joint control by the RC over the hiring and firing of personnel involved in the venture;
4. joint ownership by the RC of any assets and property involved in project;

5. input by the RC into the venture's initiation and follow-through, including the RC ability to direct or modify the venture and to establish deadlines or other performance benchmarks;
6. signature of RC on loans, contracts, and other agreements arising from the venture;
7. review and approval of the venture's budget by the RC, availability of an independent audit of the venture and the option to discontinue funding;
8. authorship of procedures manuals, training guides, standards of conduct, etc., by the RC; and,
9. on-site identification of the venture as being the work, at least in part, of the RC.

WRITTEN AGREEMENTS

Written agreements should typically include **at least** the following information:

1. names and addresses of all parties;
2. the duration of the agreement or the deadline by which the project must be completed;
3. a description of the specific activities for which funds or other resources have been transferred, in sufficient detail to outline clearly the limits of the authority given to the recipient to act for the RC or on its behalf;
4. provision for written progress reports from the recipient of the RC funds or other resources, or provision for the RC's right to inspect the project on reasonably short notice, or both;
5. provision that the RC will make payments by installments based on confirmation of reasonable progress and that the resources provided to date have been applied to the specific activities outlined in the agreement;
6. provision for withdrawing or withholding funds or other resources at the RC's discretion;
7. provision for maintaining adequate records at the RC's address in Canada;
8. in the case of agency agreements, provision for the RC's funds and property to be segregated from those of the agent and for the agent to keep separate books and records; and,
9. the signature of all parties, along with the date.

Please note that the Income Tax Act recommends that a Registered Charity enter into a written agreement with an organization acting as its agent. If a Canadian Charity operates without a written agreement in the suggested form, it will probably have serious difficulty establishing that a project is charitable and that it is carrying on its own activities. This could jeopardize the charity's registered status under the *Income Tax Act*.

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