

Standards and Practices

ABOUT THIS DOCUMENT

This example can be used as a starting point to create a policy or other document for your own land trust, but should be altered as necessary to reflect your organization's unique circumstances.

If you are using this material for accreditation purposes, see the [Land Trust Accreditation Commission website](#) for additional information.

To search for policies from accredited land trusts on [the Learning Center](#), include the word "accredited" along with your search terms (e.g., conflict interest policy accredited).

QUESTIONS?



Email tlc@lta.org or click the blue circle on any Learning Center page to chat with us.

Checklist for Reviewing IRS Qualified Appraisal & Form 8283 (rev. 18Feb2019)

(To meet the combined standards of IRS deductibility rules *and* LTA Accreditation requirements.)

Name of Donor:

Description of Gift:

Name of Reviewer:

Date of Review:

Check box if item is present and satisfactory, otherwise add explanatory note. Any one item ***in bold italics*** that's unchecked usually gives sufficient reason at least to raise question/concern in writing with Landowner and possibly for us not to sign Form 8283. For any substantial concern, confer with our legal counsel, as appropriate, before taking action, which may include any or all of the following: a) documenting our conveyance of concerns to the landowner; b) seeking additional substantiation of value; c) withdrawing from transaction (if prior to closing); and d) refusing to sign Form 8283.

Appraisal

- ☐ ***FMV passes gut check/smell test***, e.g. FMV appears defensible in light of our knowledge of local land values, there are no unjustified extraordinary assumptions, FMV is not significantly >donor's cost or adjusted basis for recently acquired property, and, indeed, a gift has been made ("donative intent").
- ☐ ***"Before and after methodology"*** used for CE (assuming no comparable sales of CE's directly).
- ☐ For CE, for ***property contiguous to CE owned by donor or "donor's family"*** (per IRC Code Sect. 267(c)(4), includes donor's siblings, spouse, ancestors, & lineal descendants), inclusion of that contiguous property with CE area in "before" & "after" values.
- ☐ For CE, other ***property owned by donor or "related persons"*** (per IRC Code Sect. 267(b), includes "donor's family" per above plus others w/ ties to donor via possible trust, estate, or corporation, & per Sect. 707(b) others w/ ties via possible partnership), whether contiguous to CE or beyond, an explicit statement that enhancement was considered. If appraiser found any significant impact of CE on these other properties, there should be a calculation of that enhancement value. However, if the property under consideration for enhancement is "contiguous property" owned by donor or "donor's family" and included within the "before & after" analysis per prior par., this may inherently satisfy the enhancement rule, in which case the appraiser should explain this. Bottom line: for any contiguous or other property owned by the donor or "related persons," ensure term "enhancement" appears & is addressed in appraisal.
- ☐ No indication that appraiser's fee was based on percentage of property's FMV.
- ☐ ***Recognition of recorded encumbrances, rights-of-way, etc.*** described in documents (e.g. source deed, survey, title report, etc.) contained in or referenced by appraisal.

- **Double check calculations**, esp. in sales comparison/adjustments table, & calculation of any final indicated value of subject derived by averaging comparables after adjustment.

Items Req'd. in IRS "Qualified Appraisal" (per U.S. Treas. Regs. 1.170A-13(c)(3)(ii)):

- **Description of property**, sufficiently detailed to determine that appraised land/CE was the donated land/CE; shld. include correct depiction & # of acres; for CE, ensure use of final, or near-final, draft of CE w/ correct key terms.
- **Date of contribution**--date of recording for CE, or date of delivery for fee (only req'd. for appraisal prepared *after* closing)
- **Terms of any agreement or understanding** made or to be made regarding use, sale, or disposition of donated property, e.g. for a land gift, an advance agreement that donee will later convey a CE on the property to some other party.
- **Name**, address, identifying #, and signature **of qualified appraiser**.
- Qualifications of qualified appraiser.
- Statement that appraisal was prepared for income tax purposes.
- **Valuation date** (a/k/a "effective date" or "as of date"). Must be the date of contribution or a date w/in 60 days before then.
- **Appraised fair market value** of property a/o valuation date.

For a CE w/ "contiguous" property, the appraisal may well NOT show the true *FMV* of CE, which the IRS says is the difference between "before" and "after" values *for only the encumbered area*. Instead, the appraisal may jump ahead to derive the *deduction* amount for the CE by doing the "before and after" analyses only on the *combined* area of the CE land plus the contiguous property excluded from the CE. Even though an appraisal done in this manner doesn't technically provide the required FMV figure for the CE, this approach reflects traditional appraisal practice, has not apparently been challenged by the IRS to date, and thus should not be a problem for us as long as the appraisal meets our other review stds.

Similarly, for a CE where the appraiser must consider "enhancement," the appraisal might not show or otherwise label clearly the true FMV of the CE as required by the IRS. The appraisal may jump ahead to derive the *deduction* amount for the CE by proceeding to subtract the enhancement amount from the FMV of a CE, a calculation *not* required by the IRS to be shown in the appraisal. As above, an appraisal which includes an enhancement adjustment and proceeds to calculate the *deduction* value for the CE without identifying/labeling the true FMV of the CE should not be a problem for us. It

may be of service, however, for us to point out the situation to the landowner or his/her advisor.

- ☐ Method of valuation, e.g. income, vs. market data, vs. replacement cost approach.
- ☐ Specific basis for valuation, e.g. inclusion of comparable sales transactions.

Form 8283

Most donors complete Section B (pg. 2) “Donated Property Over \$5,000...” requiring our signature. If someone makes a gift for which s/he is claiming a deduction of \$5,000 or less, only Section A applies and doesn’t require our signature, and so we’d never receive this Form.

Note that the IRS says that Form 8283 does not need to be completed before the donee signs it and specifically may exclude the following items before the donee signs the Form: appraiser information, manner and date of acquisition, cost basis in the property, appraised fair market value of the property, and amount of charitable contribution. *See* 170A-16(d)(5). However, because LTA requires the donee to have this info prior to signing the Form, we adhere to the stricter LTA stds.

- ☐ ***Name(s) of donor (top of page 1 or 2).*** Should match name(s) identified in title report. If donor is trustee of trust, it’s sufficient just to see person’s name w/o ref. to trusteeship if we get separate confirmation from donor that a) trust uses that person’s SS #, and b) there’s no separate tax return being filed by trust. OK if SS# not shown, as some donors don’t wish to share that info.
- ☐ ***For CE, attached statement*** identifying: a) conservation purposes furthered by donation; b) “before” and “after” FMV’s of property (should match #’s in appraisal); c) any quid pro quo or contractual obligation to donate CE; and d) any property in vicinity owned by donor or “related persons.” Any factual disconnect with what we know should also be of concern.
- ☐ For deduction > than \$500,000, attached full appraisal for return for initial year of gift AND for any subsequent “carryover” year in which deduction is claimed. Although not of concern to us if not done (as long as we already have a copy of appraisal), we’d be of service to donor to point out this requirement in 8283 instructions.

Sect. B, Part I “Information on Donated Property”:

- ☐ ***Item 4 “type of property donated.”*** For CE, checked box b “Qualified Conservation Contribution.” For fee, checked box e “Other Real Estate.”
- ☐ ***Item 5(a) “Description of donated property.”*** Should uniquely describe donated property, including at least size, physical address or perhaps Tax Parcel #, name of municipality, and NH. If CE, ensure inclusion of “conservation easement” in description.

Also, IRS instructions say: “describe the easement terms in detail, or attach a copy of the easement deed.”

- **Item 5(c) “Appraised fair market value.”** Entry here should match the figure appearing in appraisal regardless of price paid in any bargain sale, unless there’s an adequate accompanying explanation.

If a CE appraisal w/ “contiguous” property and/or enhancement adjustment doesn’t clearly identify the true **FMV** of the CE as explained in “Appraisal” sect. above, you may instead see entered at Item 5(c) the *deduction* amount for the CE. The savvy taxpayer and/or advisor would attach a statement as to why. However, the lack of such an explanation shouldn’t be a major concern to us as long as: a) the figure in Item 5(c) matches the deduction value appearing in the appraisal; and b) the appraisal meets our other review standards above.

If a CE appraisal with an enhancement adjustment *does* clearly identify the FMV of the CE prior to any subtraction of enhancement to generate the deduction amount, the figure in 5(c) should be the FMV from the appraisal. If instead the donor has mistakenly entered the deduction value at 5(c), this is not of concern to us as long as the figure there is consistent with what appears in the appraisal. However, pointing out the FMV figure in the appraisal may be of service to the donor.

- **Items 5(d) “Date acquired by donor,” 5(e) “How acquired by donor,” and 5(f) “Donor’s cost or adjusted basis.”** For CE, IRS asks for clarification whether entries are for CE or underlying fee. Although we’re not in position to judge veracity of such data, we need to verify that entries have been made, in part because these may help us evaluate possible existence of a problematic gift by a syndicate.
- **Item 5(g), “For bargain sales...amount received.”** This should be donor’s sale price (plus, in very rare cases, amount we might pay for donor’s IRS appraisal). In bargain sale, actual deduction amount is *not* shown on Form 8283, but instead, on Form 1040, Schedule A “Itemized Deductions.” Since we don’t receive a copy of Schedule A, we won’t know what the donor finally claims as a deduction.

Item 5(b) “summary of the overall physical condition” relates only to personal property and should be left blank. Also, items 5(h) “Amount claimed as a deduction” and 5(i) “Date of contribution” should be left blank, as these apply only if no appraisal is needed. If donor mistakenly gives these data, we don’t care UNLESS info is wrong, in which case we’d at least want to let donor know of our concern.

Part III “Declaration of Appraiser”

- **Name**, address, identifying number, & **signature of appraiser**. The IRS is not clear about what it’s looking for after “Date,” but date of appraiser’s signature on the Form is suspected to be what’s intended. If appraiser hasn’t yet completed this section, we shouldn’t sign Form until this has been done.

Part IV “Donee Acknowledgment”

Blank for date we received property should be either date of recording for CE, or date of delivery for fee.

Regarding question about unrelated use, Atty. Tom Masland has advised us not to reply (i.e. leave both boxes unchecked) under belief this applies only to personal, not real, property.