



**KAWARTHA LAND TRUST**

Protecting the land you love.

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## **Land Acquisition & Donation Policy**

### ***For Fee Simple and Conservation Easement Agreement Interests in land***

***Approved by the Board of Directors May 31, 2018***

***Revised and approved December 19, 2018***

**Purpose and Scope:** This policy seeks to address the process and requirements of ensuring sound transactions. Kawartha Land Trust (KLT) is a registered charity and receives gifts of lands and interests in lands of a broad range of value. Providing beneficial tax receipts to donors of these lands or interest in land should reflect “Fair Market Value” as defined by an appropriate and qualified professional.

The following policy statements are adopted in consideration of the *Canadian Land Trust Standards and Practices* in particular *Section 9, Ensuring Sound Transactions*. This policy has also been created with review from guidance available from Canada Revenue Agency, review of policies used by leading national and regional land trusts in Canada including the Nature Conservancy of Canada, Ducks Unlimited Canada and the Bruce Trail Conservancy. In addition, advice was received from Accredited Appraiser of the Canadian Institute (AACI), several licensed Realtors and a certified professional accountant (CPA).

### **Definitions**

“Land acquisition” includes acquisition of title by fee simple purchase, donation, or bequest, or the acquisition of rights such as a right of way or other easements.

An “Appraisal” is defined as an estimate of Fair Market Value (FMV) as defined by the Canadian Standards of Professional Appraisal Practice and valued by an accredited “Appraiser” holding the qualifications of an Accredited Appraiser of the Canadian Institute (AACI) or Certified Residential Appraiser (CRA).

“Opinion of Value” means an estimate of the value of specified interests in, or aspects of, identified real estate which may be based wholly or partly on comparative market analyses. An Opinion of Value may contain more or less analysis of relevant data than an appraisal and may be performed by a Realtor/Real Estate Agent.

NOTE: Opinions of Value by a Realtor/Real Estate Agent are not to be confused with an Appraisal and will not be accepted for most land acquisitions as defined further in the following.

An “Assessment” is defined as the value for property tax purposes by the Municipal Property Assessment Corporation (MPAC) in Ontario.

## **Policy**

### **1. Acquiring Fee Simple Land or Conservation Easement Agreements (CEA).**

For land acquisition with an expected value greater than \$25,000, one (1) third-party appraisal completed by an AACI is required to determine the fair market value. If two appraisals are obtained that vary by more than 10%, the average appraised value of the two appraisals can be used for fair market value. The maximum value is to be no more than 5% above the appraised value(s) or the average of the two.

For acquisitions in which the donor and KLT agree to pursue registering as an Ecological Gift, Environment Canada’s Ecological Gift Program will have additional criteria which may change from time to time. These include though are not limited to the format and scope of appraisal, the effective date of the appraisal relative to the date of approval, certification of the property as “Ecological Significant”, approval of the appraised value and of the registered recipient charities status as a qualified “recipient.”

For land acquisition with an expected value less than \$25,000, a brief narrative report prepared by an AACI, a Canadian Residential Appraiser (CRA), or a licensed real estate agent/realtor is acceptable.

Noteworthy, some Realtors/Real Estate Agents confirm that opinions of value are not covered by their professional 'Errors and Omissions Insurance' unless being completed to assist with the sale of the property.

On timing of valuations, the effective date must be no more than one year prior to transfer.

## **2. Legal Review and Technical Expertise**

KLT will obtain a legal review of every acquisition appropriate to its complexity, by a lawyer experienced with real estate law. If deemed necessary based on the particulars of a transaction, KLT will retain the services of experts in financial, real estate, tax, scientific, and land and water management matters.

KLT will refrain from providing specific legal, financial and/or tax advice to any outside parties involved in a land transaction, and will recommend that each party to a land or conservation agreement transaction obtain independent legal, financial and tax advice.

## **3. Decision Making Authority**

The KLT Land Securement Committee ("Securement Committee") in consultation with other committees, staff, volunteers and the Board has developed a detailed step by step process towards securement. Part way through this process, an "approval in principle" is sought by the Board to provide guidance, support and ensure general congruence in expectations and intentions between the Securement Committee, staff, the Board and prospect donors and other parties who may be involved.

The KLT Board has the authority to direct and approve transactions and all land acquisitions will proceed only after final approval by the KLT Board.

## **4. Land Donations**

In cases where land is being donated, KLT will enter into a legally binding agreement of purchase and sale, or a donor agreement, with the landowner.

## **5. Transactions with Insiders**

Transaction with Insiders "Insiders" include but are not limited to Board, Trustees or staff members, members of the Land Securement Committee, substantial contributors, parties related to Board or staff members or substantial contributors within the meaning of the Income

Tax Act, those who have an ability to influence decisions of the organization and those with access to information not available to the general public.

When conducting all transactions and steps towards land acquisitions, KLT will:

- Document that the transaction meets KLT's mission, Vision and Strategic Plan per a 'Case for Conservation' and other documents, as required;
- Follow all transaction policies and procedures, and;
- Ensure that there is no impermissible undue benefit.

For purchases of property from insiders, KLT will obtain a qualified independent appraisal.

When selling property to insiders, KLT will obtain the services of a realtor to widely market the property to ensure that the property is sold at the market rate and to avoid the reality or perception that the sale inappropriately benefited an insider.

## **6. Determining Property Boundaries**

KLT will ensure that the boundaries of every acquired property are determined, through legal property descriptions, accurately marked boundary corners, or survey. All right of ways and other easements will be clearly described within the title documents and supporting materials to ensure their protection in perpetuity. If the property is surveyed, all rights of ways and other easements will be identified on the survey.

## **7. Registration & Title Investigation**

All land transactions will be legally recorded at the appropriate records office according to municipal and provincial law.

KLT will investigate title to each property for land or interest in land it intends to acquire during the course of the acquisition, to ensure negotiations take place with the legal owners, and to uncover liens, mortgages, mineral or other leases, water rights and/or other encumbrances or matters of record that may affect the transaction.

## **8. Environmental Due Diligence**

KLT will not knowingly acquire any properties which are contaminated. Steps will be taken, as appropriate prior to completing the acquisition, to identify and document the presence or lack of hazardous or toxic materials on or near the property that could create future liabilities for the KLT. This includes at minimum, a physical inspection of the property and an inquiry into the historic uses of the property. If deemed necessary, a Phase 1 Environmental Assessment will be

conducted. All offers of purchase and sale will be made conditional on successful outcome of an environmental inspection.

## **9. Recordkeeping**

KLT will keep the originals of all irreplaceable documents essential to the defence of each transaction (such as legal agreements, critical correspondence, surveys, appraisals, and baseline documents) in one location, and copies in a separate location.

## **10. Transfers and Exchanges of Land**

If KLT transfers or exchanges conservation land or an interest in land to another conservation organization, it must consider whether the new holder can fulfill the long-term stewardship and enforcement responsibilities, ensure that the transaction does not result in a net loss of important conservation values, and for donated properties, ensure that the transfer is in keeping with the donor's intent. If transferring to a party other than another charitable organization or public agency, the value consideration is based on a qualified independent appraisal, according to KLT policy, in order to prevent impermissible undue benefit. Lands held under the Ecological Gifts Program require explicit permission from Environment Canada prior to any changes in status.