



WAYS TO GIVE – WILL CLAUSES

Thinking of making a gift to Hamilton Community Foundation in your will? This chart is designed to assist you and your advisor to craft the necessary clauses to capture your intent in five easy steps. At each step, decide what answer fits you best. Look in Column B for the wording related to your decision.

A. STEP



B. WORDING FOR CLAUSE



1.

AMOUNT OF GIFT

Do you want to give a fixed amount?	I give the sum of _____dollars (\$___) to Hamilton Community Foundation, Hamilton, Ontario...[go to #2]
Would you prefer to give a % of residue of estate? (i.e. the residue is what's left over after all other legacies and expenses have been paid.)	I give the residue (or x% of the residue) of my estate to Hamilton Community Foundation, Hamilton, Ontario...[go to #2]

2.

PURPOSE OF GIFT

General charitable purposes – This allows you to provide maximum flexibility for the benefit of the community.	...to establish a fund to be used for such charitable purposes as the Foundation may determine from time to time.
Specific charitable purpose – you may include the arts, children, the environment, etc. You specify the area or “field”, then each year, the Board of Directors selects the most appropriate charitable organization or program in that field.	...to establish a fund to provide support for organizations in the field of [name of charitable purpose].
Specific charitable organizations – Organizations should be located in Canada.	...to establish a fund for [name and address of each charitable institution].
Existing fund at Hamilton Community Foundation. The exact name and purpose should be obtained from the VP, Philanthropic Services at HCF. If an existing fund is selected, there are no further steps required in the checklist.	...to be added to the [name of existing fund] at Hamilton Community Foundation.

You may choose a name for your fund.

3.

NAME

This may reflect your own name, a family name or the purpose of the fund, etc. This is also an opportunity to consider the degree of recognition or anonymity with which you are most comfortable. Sometimes our donors have some fun thinking up a name. (e.g., we have an “Angel Fund”, a “Dream Weaver Fund”, etc.)

The fund is to be known as the [select name for fund].

4.

STRUCTURE OF THE FUND

For almost 60 years, gifts received by HCF were put into “capital”, invested and only the investment income was distributed in accordance with the donors’ wishes. New rules were introduced in the 2010 Federal Budget which effectively removed the previous restrictions on spending capital. As a result, there are now more options available on how the gift is held. At the extreme, for example, you now have the option of setting up a fund that is intended to be paid down entirely over a set period of time. More commonly, our donors are choosing to design their funds so that the fund is able to grant each year regardless of income levels. We are confident that HCF’s investment policy will support the average annual granting levels in the long term (currently 3.5%); however, we do recognize that the market volatility may affect these results year by year. The new structure thus allows a fund to grant in the down markets and be replenished in the up markets.

For some donors, growing the capital remains the priority and for others, ensuring annual granting is the objective. We are now better able to meet either objective.

a) Endowed fund

Permission to use capital

For greater certainty, the Foundation may at any time expend any portion of the capital and income of the fund as the Foundation in its sole discretion decides having regard for the long term nature of the fund.

i) Endowed fund designed to grant regardless of income levels. Note that this may result in encroachment on capital in years of below market returns.

Limitation on spending in any year. It is possible to put restrictions on the amount of the capital that may be expended. It may be expressed as a “floor” (no granting if the value of the fund would drop below an amount set by the donor) or granting would be limited to a % of the value of the fund.

...provided the value of the fund, at the beginning of the fiscal year, is equal to at least X% of the total gifts to the fund.

Or

...provided the expenditures in any fiscal year do not exceed x% of the fund value at beginning of each fiscal year.

This sentence is required in each case for a fund designed to allow encroachment.

If expenditures are to be made out of capital, such expenditures may be made by way of ordinary resolution of the Board of Directors of the Foundation.

4.

STRUCTURE OF THE FUND CONT'D

ii)	<p><i>Preservation of capital</i></p> <p>Endowed fund designed with priority to retain the capital.</p>	<p>I direct that the gift be held as capital, invested and only the income be expended for the designated purpose.</p>
b)	<p>“Flow through” fund – It is possible to design a fund to be paid out completely over a set period.</p>	<p>I direct that the capital and any income earned by the fund is to be expended over a ___ year period.</p>

5.

POWER TO CHANGE THE PURPOSE OF THE FUND

It is recommended that this clause be included whenever possible. The clause empowers the Board of Directors to alter or vary the purposes for which the gift should be used should changing conditions make it impossible or impractical to carry out the original purpose.

An example of such a situation could be that the will clause directs support to four specific organizations. Over time, the need for each of the organizations disappears and they each cease operations. With this clause, the Foundation can ensure that the fund does not become stagnant with no viable purpose.

If, in the written opinion of the management of the Foundation and on confirmation by a separate resolution by the Board of Directors of the Foundation, it is either no longer possible, wise, practical or legal to carry out the provisions of this gift, the Foundation may alter the terms on which this gift is held or transfer this gift into the unrestricted fund of the Foundation.

Following this checklist, you and your advisor will be able to craft the clauses to design a gift to Hamilton Community Foundation. We would be pleased to work with you and your advisor to clarify any matters concerning the gift, the fund or the Foundation.

Alternative approach

Although some of our donors choose to keep their plans private, others prefer to work through these steps with the HCF staff. Sometime, the legal advisor makes the first contact with HCF and then, as the client becomes comfortable with the process, the clients become more directly involved in the process. In these conversations, we are able to explore together the various options so the end product is a good match with the client's wishes. These wishes can then be articulated in a fund agreement. This greatly simplifies the will preparation as the clause need only include a direction for a gift to the 'XXX' Fund at Hamilton Community Foundation. As all the details are in the fund agreement, any changes to these plans at a future date can be made simply by contacting the HCF office.

Note to reader: The purpose of this document is to provide general information, not to render legal advice. You should consult your own legal advisor about the applicability of this information to your own situation.