

## PINAL COUNTY POLICY AND PROCEDURE

10.2

**Subject:** REAL PROPERTY DONATION

**Date:** January 10, 2007

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**Replaces Policy Dated:** None

**PURPOSE:** To set forth guidelines to ensure that the County is aware of the risks and/or expenses associated with gifts of real property prior to the acceptance of such gift and to ensure the acceptance of such gift is in compliance with Arizona law and Pinal County guidelines.

**STATEMENT OF POLICY:** The Board of Supervisors will accept donations of real property through formal Board action to Pinal County pursuant to A.R.S. Section 11-251, et. seq., provided such gifts are of benefit to the County.

**GENERAL:** Donations of real property have significant legal and tax consequences for donors of such property. Each prospective donor is required to acknowledge on the Real Estate Data Acquisition Sheet that he/she has not relied on any information (written or verbal) provided by Pinal County, its officers, employees or agents with respect to any taxation or other legal issue related to such donation and that he/she understands and acknowledges that he/she has been provided notice of his/her right to consult competent privately retained tax and/or legal counsel prior to execution of any documentation or any other actions with respect to the donation of the subject real property to Pinal County. **IT IS ESSENTIAL THAT NO COUNTY REPRESENTATIVE MAKE ANY REPRESENTATIONS TO DONORS WITH RESPECT TO TAX OR OTHER LEGAL ISSUES AND THAT DONORS BE CONSISTENTLY ADVISED AND URGED TO REVIEW ALL ASPECTS OF A DONATION TRANSACTION WITH COMPETENT TAX/LLEGAL ADVISORS.**

The guidelines contained herein set forth a generally-recommended procedure for the evaluation and completion of property donation transactions. It may be necessary to deviate from these procedures in specific instances where such deviation is in the best interest of the County. In such instances, the circumstances which compel the County to deviate from the procedures set forth herein shall be documented in writing and maintained by the County as an historical account of the transaction. If questions arise with regard to the interpretation of these guidelines or the possible modification of the procedures as described, County staff shall consult with the County Attorney or his designee to obtain approval as to the legal form of the transaction.

**PROCEDURE:** Parties interested in donating real property should contact the Special Services Director who will oversee the process and prepare the necessary documentation for the Board of Supervisors. The donated real property:

1. Shall be free and clear of any encumbrances (including mortgages or leases), third-party restrictions and liens, including prior year taxes and any outstanding penalties or fees.
2. Shall not be subject to any stipulations, conditions, commitments for sale or use which would bind Pinal County if the property is accepted (except a reverter provision if the property is donated for a designated public purpose and if such a restriction is acceptable to the County).
3. Shall be readily marketable (unless donated to the County for a designated public purpose and subject to reversion and if the County intends to use the property for this purpose for the foreseeable future).
4. Shall be physically inspected by County representative(s) with landowner or representative present.
5. A Shall be accompanied by;
  - a. A preliminary title report.
  - b. A completed and signed Real Estate Acquisition Data Sheet (See Attachment 1) which will provide an overview of the property and include relevant environmental and financial circumstances.

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- c. An appraisal performed by a qualified, independent appraiser in order that the donor may complete IRS form 8283 which is required in most cases where a deduction is claimed for a charitable gift of real property. The County will be required to acknowledge receipt of the property on Form 8283. This does not constitute an agreement by the County as to the claimed fair market value.
- d. A copy of the deed. If the title is not held in fee simple by the individual(s) personally, donor shall provide documentation of his/her authority to convey the property (i.e. corporate resolutions, family trust agreement or partnership agreements).

A Phase I environmental audit shall be obtained by County if not available from the donor. The donor will reimburse the County for the costs of the audit. If environmental risks are identified, the donor should be required to obtain a Phase II audit and to rectify identified problems at his/her expense prior to acceptance by County.

The prospective donation shall be reviewed by appropriate County staff to determine if acceptance is in the County's interest upon receipt of the signed Real Estate Acquisition Data Sheet, the preliminary title report, the deed and other documents necessary to establish the donor's right to convey the property, the Phase I environmental audit (and a Phase II audit if deemed necessary) and a report from the County representatives who have physically inspected the property.

If it is determined that acceptance of the gift is in the County's interest, the donor shall be notified in writing that the County intends to accept the donation. The notice shall include any conditions imposed on the donor prior to submitting the matter to the Board of Supervisors for consideration and/or acceptance pursuant to A.R.S. Section 11-251, et. sec.

Federal tax laws provide that a transferee of U.S. real property must withhold tax if the transferor (donor) is a "foreign person." Prior to acceptance, the donor shall fill out a Non-Foreign Certification Form (attachment 6). This form shall be maintained on file by the County and provided to the Internal Revenue Service upon request.

The transfer of the property shall be completed by the execution and delivery of a Warranty Deed unless it is determined by County that the title report is satisfactory and if title insurance is obtained, at which time, the County may accept transfer by execution and delivery of a Quitclaim Deed upon formal approval of the Board of Supervisors at a public meeting (See sample deeds, Attachments 2-3) . County shall immediately record the executed Deed upon receipt.

If the property is sold within two years of the donation, the County will be required to complete and File IRS Form 8282, *Donee Information Return* and to provide the donor with a copy.

### **Special Provisions Regarding Retained Life Estates**

In some instances a prospective donor may wish to donate real property to the County subject to a provision that the donor may continue to occupy all or part of the premises for the remainder of his/her life. Although the County does not take possession of the portion of the property subject to the retention until the retained interest ceases with the death of the donor, the County will take title to the property at the time of transfer. It is, therefore, necessary to perform the same due diligence as outlined above for unrestricted donations of real property. Some additional conditions apply to these transactions as outlined below.

1. Retained life estates shall generally be based only on the life expectancy of the donor or a spouse of roughly equal age. Reference to a life of a younger person or other person not currently residing on the premises can substantially reduce the value of the donation to the County. However, the County may accept a donation of property subject to such an estate if it is deemed to be in the best interest of the County after its review of all documents and circumstances surrounding the donation as delineated herein.

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2. A donor of property subject to a retained life estate is entitled to a tax deduction based on the value of the property transferred. In such instances, the deduction will be less than that for an unrestricted donation. It will be the responsibility of the donor and not the County to ascertain such value through the use of a qualified independent professional.
3. The transfer of such property shall be completed by execution and delivery of a Warranty Deed with Retained Life Estate or, at the County's discretion, a Quitclaim Deed with an acceptable title report and title insurance (see sample deeds, Attachments 4-5).

**PINAL COUNTY  
REAL ESTATE ACQUISITION DATA SHEET  
FOR GIFTS OF REAL ESTATE**

*To assist Pinal County in determining the potential benefit of proposed donations of real property, prospective donors shall provide the information requested below and sign in the space provided. Please use additional sheet(s) if additional space is required for any response(s).*

**A. GENERAL PROPERTY INFORMATION**

Name of

Donor(s): \_\_\_\_\_

1. Location of property TPN#, TNS, RGE, SEC:  
:
  
2. Number of parcels and acreage:
  
3. Type of Property: \_\_\_ wooded; \_\_\_ open; \_\_\_ marshlands; \_\_\_ washes; \_\_\_\_\_ other
4. How long have you owned the property?
5. Current zoning of the property (list any zoning restrictions):
  
6. List improvements (type of building(s), condition, type & date of construction, # of floors):
  
7. Proximity to commercial activity (type, location, and distance):
  
8. Describe the previous use of the buildings/property:
  
9. If property is residential, to your knowledge how long has it been used for residential purposes?
10. Improvements:
  - \_\_\_ Municipal Sanitary Sewer Line
  - \_\_\_ Municipal Storm Sewer Line
  - \_\_\_ Municipal Water Line
  - \_\_\_ Electrical Power
  - \_\_\_ Telephone
11. Access:
  - \_\_\_ Legal access to property (public/private, paved/gravel/unimproved?)
  - \_\_\_ Physical access (same as legal, public/private, paved/gravel)
  - \_\_\_ Land locked property
12. Date of last appraisal (attach copy):

13. Date \_\_\_\_\_ Value \$ \_\_\_\_\_
14. Town/City/County assessed value \$ \_\_\_\_\_ at \_\_\_\_\_ % FMV
15. Date of last assessment : \_\_\_\_\_
16. Are there any unpaid taxes/attachments on the property? (If yes, please describe), provide copy current tax status (available PC Treasurer):
17. Is the property subject to a mortgage? (If yes, please list current balance and date of borrowing including any subsequent borrowing after initial financing):
18. Current yearly operating expenses are:
- Property Taxes \$ \_\_\_\_\_
- Insurance \$ \_\_\_\_\_
- Electricity \$ \_\_\_\_\_
- Heat \$ \_\_\_\_\_
- Condominium/Homeowner Fees \$ \_\_\_\_\_
- Road Maintenance \$ \_\_\_\_\_
- Other \$ \_\_\_\_\_

**B. LEGAL STATUS OF PROPERTY**

1. Has the property recently been offered for sale? \_\_\_\_\_. If yes, how long has it been on the market? \_\_\_\_\_.
2. Do you wish to reserve any rights to this property? \_\_\_\_\_. If yes, explain:
3. Right-of-ways or easements on the property:
4. Potential or pending legal actions or claims:
5. What is the type of current use and zoning of the property that adjoins the tract being considered as a gift to Pinal County within a one-mile radius?
6. What is the type of current use and zoning of the adjoining property within a one-mile radius of the tract being considered as a gift to Pinal County? Please describe:
7. Does the land have potential for development? \_\_\_\_\_ Please explain:

**III. ENVIRONMENTAL CONDITIONS**

1. Has the property known or suspected to have been used as a dumping site, either legally or illegally, for disposal of solid or chemical waste? \_\_\_\_\_. If yes, explain:
  
2. Any evidence or suspicion of asbestos-containing material or lead paint in the building(s)? \_\_\_\_\_ If yes, please describe:
  
3. Are there any known or suspected above ground or underground storage tanks on or near the property including fuel oil, heating oil, or gasoline? \_\_\_\_\_ If yes, please describe including distance from property:
  
4. Other structures and/or improvements on property (e.g., swimming pools, ponds, playgrounds, railroad tracks, etc.):
  
5. Proximity to landfill:
  
6. Explain if any of the following apply: wetlands, ponds, waterways, lakes, washes, gorges, caves, wells, canals/ditches, or other natural or man made hazards:

**D. DONOR CERTIFICATION**

I/We hereby certify that the information provided in this Real Estate Data Acquisition Sheet is true and correct to the best of my(our) knowledge. I/We further acknowledge that I/we have not relied on any information (written or verbal) provided by Pinal County, its officers, employees or agents with respect to any taxation or other legal issues with respect to this donation and that I/we understand and acknowledge that I/we have been given notice of our right to consult competent tax and/or legal counsel and encouraged to seek such advise or consultation prior to execution of any documents or any actions with respect to the donation of the subject real property to Pinal County.

\_\_\_\_\_  
Donor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Donor

\_\_\_\_\_  
Date

Please return the completed form along with a copy of the Deed and other pertinent information to Pinal County. Please include a copy of the most recent independent qualified appraisal which is necessary in order for you to claim a tax deduction for your donation. (See IRS Form 8283). Thank you for your assistance in helping us assess your generous gift offer.