

# SEEDS OF LAND RETURN

A white line-art illustration of dandelions on the left side of the page. Several dandelion heads are shown, with their seeds blowing away in the wind, scattered across the center of the page. The seeds are depicted as small, fluffy heads with long, thin stems, some of which are curved as if caught in a breeze.

Legal tools to help you liberate land from the exploitative market and return it to communities of loving stewards



Based on the toolkit created by Sustainable Economies Law Center/ Inspired by work done with BIPOC-led land stewardship organizations like Sogorea Te' Land Trust, East Bay Permanent Real Estate Cooperative, and others.

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# ***Why Land Return?***

We are on stolen Indigenous land and Indigenous people are still here.

Colonization has violently severed Indigenous peoples' land relationships worldwide and capitalism has turned land into a commodity. People everywhere are recognizing our immense loss from having severed the roots of humans' caring relationships with land and lifeways in balance with nature.

How can we heal these legacies of violence and theft?

Liberating land from the speculative market and into Indigenous care is one way to begin unravel the impacts of colonization while committing to a future for the next seven generations.

This toolkit offers some of the legal tools, models, and ideas that might seed the gardens of our next world.

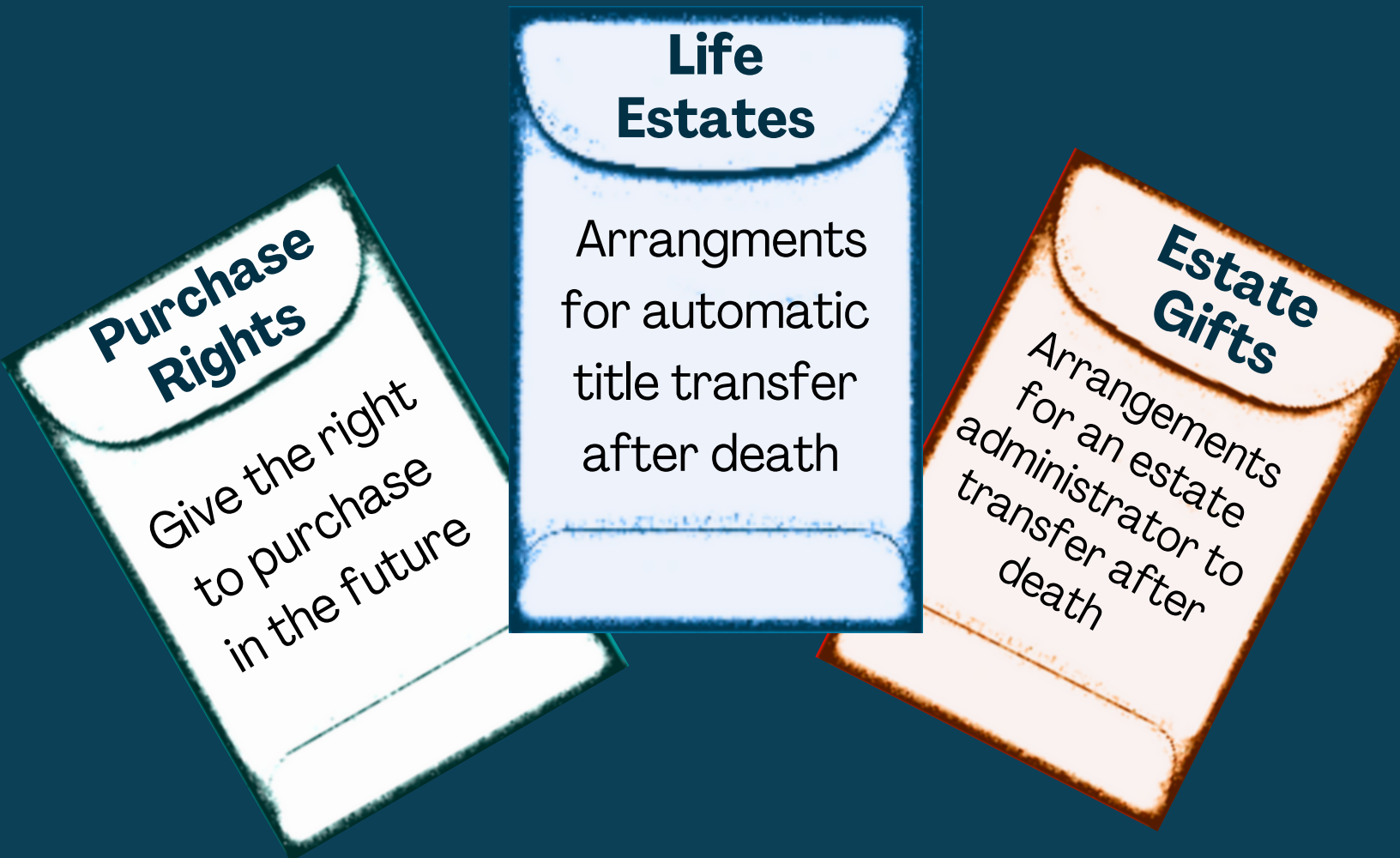
# Sharing Space

Leases, Easements and Land Access Agreements are tools for sharing spaces while one party holds title.



# Future Transfer Agreements

Purchase Rights (right of first refusal), life estates and estate gifts (bequests), arrange for title transfer in the future.



# Transferring Title

Giftng, returning, and selling land, transfer title completely . In land trust relationships, title can be transferred while land acces and relationship can continue in different ways.

## Simple Sale

Transfer full ownership simply, below "market rate"

## Giftng Land Back Land Return

Transfer full ownership completely as a gift.

## Transfer with ongoing relationship

Transfer full ownership while continuing a legal relationship (like a lease)

# Land Access Agreement

**A land access agreement says: You can come onto this land for \_\_\_\_\_. [purpose/time/activity].**

This is like a lease, but doesn't go as far as to give people exclusive access to a particular area. It's like an easement, but doesn't grant permanent access. In legal terms, this is often referred to as a "license," to distinguish it from easements and leases. People could call it many different things, like "land stewardship agreement" or "sharing agreement."

Example: You arrange for a group to regularly come onto your land, and spend time with, get to know, and tend to the health of the creek ecosystem.

Example: You invite a group to use your living room or yard for period events.

# Lease Agreements

**A lease gives exclusive use to a space. Generally, you can craft a lease to varied scenarios: What spaces are exclusive, what spaces are shared, for what purpose, for how long.**

Considerations to keep in mind: Leases for long periods (like 35 years in CA) are treated as a change of ownership, for purposes like property tax. Leases for housing are often subject to legal rules about what an owner must provide tenants, what can be charged, and how and when a lease can be terminated. Example: You designate part of your yard for a group to tend a community food garden for 10 years, with potential to renew for longer.

Leases vary widely based on what kind of land or use they are for. You can write them yourself by starting with bullet points addressing who, what, where, when, how much, and other questions you or the group may want answered. Your local law may require you to disclose or provide certain things when leasing, especially for residential purposes. See the residential lease as an example of this.



# These are seeds of leases:

- **Residential Lease**
- **Land Lease**  
(The Land Access Agreement on the above slide could be expanded on for this purpose)
- **Commercial Lease**  
(A sample lease that's part our toolkit for commercial tenants)



# Easements

**An easement says: You can have certain rights or relationships to this land permanently.** Easements are flexible and used for many purposes. Conservation easements can grant a land trust enforcement power to take care of land and prevent ecosystem destruction. Cultural easements give groups access to land to carry out cultural practices, like wild plant harvesting and ceremony.

Example: You grant an Indigenous group an easement to permanently access part of your land, tend to plants, harvest, and hold periodic gatherings.

Example: You grant a community land trust an easement to permanently protect against selling or renting on the speculative market.

Here is the seed of an easement to support return of land to Indigenous communities or to loving stewardship by other groups: [Rematriation Easement](#) (or “Kinship Conservation Easement”)

Here is the seed on an easement to protect the permanent affordability of housing: [Housing Justice Easement](#)

# ***Additional Easement Resources***

- **Legal Guide to Cultural Easements**
- **Model Cultural Easements**
- **Housing Justice Easement article**



# Purchase Rights

**A purchase right says: You can purchase this land from me for \$\_\_\_\_\_ when \_\_\_\_\_ [I want to sell it or you want to buy it].**

Purchase rights can be arranged in various ways. You can give a group a right of first refusal, which gives them the ability to purchase it when you are ready to sell. You can either set the price in advance, set it by appraisal at the time of sale, or have the group match a price someone else has offered you. A purchase option allows the group to purchase at a specified price when they are ready to buy.

Example: You grant a purchase right to a land trust enabling them to purchase your house for \$100,000

**Seeds of Purchase Rights**  
**Right of First Offer**

# Life Estate

**A life estate says: The remainder interest in this land now belongs to you, meaning you'll receive full title upon my death.**

A life estate is simple: You execute a deed that grants your land to yourself for life and grants full title to a group upon your death. This can be a more meaningful approach to land return than other estate planning tools, because the group immediately receives an irrevocable “remainder interest.” By contrast, many estate planning tools, like wills and trusts, are revocable, and they take longer to administer after death. Using a life estate to donate a remainder interest of a home or farm to a nonprofit can also give you access to a charitable tax deduction.

Note that a life estate deed is more solid than a Transfer on Death (TOD) Deed described on the next slide, because the TOD is revocable.

# Estate Gifts

**An estate gift (aka bequest) doesn't create an immediate relationship of land return, but it does arrange for land to transfer after your death.**

You can use a will, trust, or revocable Transfer on Death (TODD) to leave your land to a group when you die. With a will, the estate administrator will transfer title through a court-supervised proceeding called probate. With a trust, the trustee will make the transfer without probate. With a TODD, land will transfer automatically when you die. This is different than a life estate, because you can still revoke a TODD while you're alive.

Example: You write a simple will leaving your house to a land trust, along with \$75,000 to help the land trust care for the house.

Here are seeds of estate gifts:

- **Simple Will**
- **Revocable Transfer**

# Gift

**A gift says: This land is yours and I want nothing in return.**

A gift of land is simple, yet incredibly powerful. Compared to a sale, it can be done with very little paperwork. When you are making a gift motivated by generosity and you expect nothing in return, then the recipient won't have to treat it as "income" or pay taxes on it, even if they are a tax-paying entity like a cooperative.

If you are hoping to receive a charitable tax deduction, you'll want to give it to a 501(c)(3) nonprofit.

Example: You gift land to a leader of a federally unrecognized tribe. Although they are an individual, they won't pay taxes on it, because a gift is not treated as income.



# Here are the seeds of a land gift:

- **Simple Gift Agreement**
- **Disclosures from Seller to Buyer**  
(Not all of these disclosures are required in a gift transfer, but it doesn't hurt to provide them.)
- **Grant Deed**

## Tax forms:

- **Change of Ownership Report**
- **Certificate of Non-Foreign Status**
- See **this resource** for more information on simple real estate transfers



# Simple sale

A simple sale says: I want you to have this land, and while I need some money, I hope to keep this as simple and low cost as possible

Many real estate purchases get tangled in paperwork and unnecessary pressure, especially when they involve mortgage lenders and professionals like real estate agents and lawyers, who advocate for clients with a “take as much as you can get” posture. It’s often possible to keep things simple, especially when a low cost sale (aka bargain sale) means avoiding lenders.

And bargain sales to 501(c)(3)s can give you a charitable tax deduction.

Example: You sell your home to a land trust for \$100,000 and you handle the paperwork together.

# Here is the seed of a simple sale:

- Simple Sale Agreement

## And documents to accompany it:

- Disclosures from Seller to Buyer
- Grant Deed

## Tax forms:

- Change of Ownership Report
- Form 593 and 593-V and
- a Guide to Form 593
- Certificate of Non-Foreign Status



**Other resources:**

**Our step-by-step guide:**

**How to Transfer Real Estate without Professionals**

**Explanation of what happens in a typical real estate transfer:**

**Anatomy of a Land Transfer**



# Transfer + Retained Relationship

A transfer + reserved right says: This land is yours now, and I want to retain a relationship to the land or other right, such as to visit or live here.

In our real estate system, ownership is like a “bundle of sticks” that represent rights and responsibilities associated with land. If you transfer ownership (by either gift or sale) to a land trust, this is a powerful act that entrusts the bundle of sticks to long-term protection by the land trust. When transferring those sticks, you can retain one or more, like a right to continue living there for a time or to receive income from the land to support you.

Example: You have a home with a back cottage on a large lot. You transfer title to a land trust, while retaining a life lease to the back cottage.

# Preparing to plant your seeds

**Now that you're familiar with the above seeds, here are a few more things to consider:**

## **The soil is critical:**

The relationships and spirit of the land return arrangement matter as much – or arguably more than – than the legal tools.

Before we had fancy legal documents enforced by court systems and police, we had relationships: People in communities found countless ways to come together to share and co-steward land. It's all about relationships and the spirit that act as the glue of such relationships. Without this healthy soil, the seeds of land return won't thrive.

# Preparing to plant your seeds

**Now that you're familiar with the above seeds, here are a few more things to consider:**

**Companion seeds:** In many cases, people will use multiple seeds as companions. For example, you could have a land access agreement to share the land now, and combine it with a purchase right, so a group can buy the land when you are ready to sell. Later, at the time of purchase, you can carry out a simple sale. Another example: You can use a life estate and combine it with a will to leave the group money after you die to help pay down any mortgage or help pay for the stewardship of the land.



## Sprouting and Growing:

The seeds provided above are simple legal documents, and you are encouraged to build on them and adapt them to your unique context.

They don't need to become long and wordy like so many legal documents are, but they do need to be refined to address the nuances of your vision.



# Professional Support

Do you need lawyers and real estate agents?

Honestly, many professionals can poison the spirit of trust and generosity in a land return project. Many are trained to help people protect wealth, not share it.

But professionals may also have important tips, help you avoid pitfalls, or help you reduce taxes so you have more wealth to share. Our advice is to invite professional support if you can afford it, clearly communicate your goals, and ask lots of critical questions. Otherwise, it's possible for you to DIY this, especially if you take time to read the notes below slides here and in the linked documents.





# Common requests from land stewards

We've heard the following expressed by land stewardship groups as requests of those who want to return land:

- Tell the land's story: Share anything you know about the history, natural features, and structures on the land.
- Give money to support the land: Give or bequest money along with a land gift, so that the group can afford to steward the land, pay off debts secured by the land, or address other unforeseen problems.
- Clear up clouded title and disputes: Work to resolve any liens, encumbrances, neighbor disputes, or other problems that the group may inherit when the land transfers.
- Talk to your family: Help your family members understand what inspired you to return land, especially to ensure that a family member doesn't later dispute it with the land stewardship group.



## Common requests from land stewards

- Address the stuff: Make arrangements to remove belongings from a home you are giving or selling, and also invite the group to indicate if there are items in the home they would benefit from having.
- Learn about the group: Read everything you can about the group and from their website, so you understand more about their history, values, needs, and how they would like to be approached
  - about land return.
- Be mindful of the oppressive patterns inherent in real estate transactions: Many people involved in land stewardship organizations are just beginning to learn the vocabulary and processes related to real estate, which are coded, complex, and based on values of individual wealth accumulation and commodification. All of this can be deeply disturbing to people who care deeply about life and the web of relationship around land, and to people who have trauma associated with financial insecurity, math or housing insecurity.



## A Few Laws to Consider

Your choice of seeds will sometimes be constrained by legal considerations. This is where professional advice can sometimes come in handy.

In [these slides](#), you can learn more about 11 legal issues that could present constraints on sharing or arranging to transfer your land.

The most common barriers we see are:

- Property tax increases: In CA, some property taxes remain low, then increase at change of ownership, reassessed either at market value or at the price paid for transfer. Imagine a homeowner pays \$2,000 per year in property taxes, and that taxes will rise to \$20,000 per year at transfer. That might be a reason to arrange for a future transfer, instead of an immediate transfer.



## A Few Laws to Consider...

- *Property tax increases continued:* A lease (no longer than 34 years) accompanied by purchase option can give a group most benefits of full ownership, while letting the group postpone the transfer until they feel able to take on the property tax burden. However, there may be no need to wait in the case of a nonprofit group that plans to use the land in a way that makes them eligible for property tax exemption.
- Limits on the use of land: Zoning laws, homeowners association rules, or other rules may limit how you use land. For example, they might prohibit you from inviting a group to host regular public events on your land. Often, these rules are oppressive and are designed to protect property values. If they are barriers, you could advocate to change rules or assess the risk of breaking them.



## A Few Laws to Consider ....

- Prohibitions by lenders: If you are still paying off a mortgage, the agreement with your lender may prohibit you from doing creative things with your land, like granting an easement or purchase option to a land trust.

Ask yourself: Will my vision for land return make it hard for the lender to foreclose on and auction off my house? If so, it's quite possible that your loan terms may prohibit it. You can potentially avoid problems by including a "subordination" clause in any agreements with the land trust, which says the land trust's rights are subordinate to – i.e. they can only be exercised after – the lender's rights.

- Other options include paying off the mortgage or avoiding letting your lender know about the arrangement, particularly by avoiding filing your agreement with the land trust in official property recorders. The latter may still may violate loan terms, so we don't encourage this, but we respect your decision to take risks based on what you feel is right.

## A Few Laws to Consider...

- Income tax incentives: Giving, bargain-selling, or granting easements to 501(c)(3) nonprofits can give a property owner access to charitable tax deductions. We have decided not to dwell on this topic here, because we discourage people from placing too much weight on the tax incentives, which can constrain what happens with land and who can receive it. If your income is high enough that you are seeking to reduce your taxes, then you likely have a tax person who can advise you on this.
- There are additional tools we have chosen not to include in these resources, but they may still be of interest in specific situations. Find out more in the full Sustainable Economies Law Center's

[Seeds of Land Return Tool Kit Here.](#)



**Thank you for engaging with us!**

**With gratitude for all the seeds being  
planted.**

