2021 EDITION

REAL ESTATE DONATIONS

47 CRITICAL QUESTIONS

Dennis Haber & Chase Magnuson

Forward by Viken Mikaelian

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This publication is designed to serve as a marketing tool, not as a legal guide.

The publication is intended to provide an accurate overview of certain charitable real estate gift plans. It is not intended to provide legal, tax, investment, or other professional advice, and it may not be relied on for such advice.

For assistance in specific cases, obtain the services of a competent attorney or other professional advisor.

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Forward

by: Allen Thomas

This new book, *47 Questions*, by Chase Magnuson and Dennis Haber, delves deeply into the spectrum of issues that gift planners and real estate professionals will encounter with gifts of real property. This book goes from a fundamental primer to difficult tax issues and IRS regulations affecting such gifts.

What makes *47 Questions* so invaluable to the reader is Chase's and Dennis's sage advice from years of in-depth knowledge derived from managing hundreds of complex real estate gifts. They are experts in this field of unique gifting opportunities.

Beyond the technical mastery of real estate gifts, they present practical and pragmatic insights to avoid or overcome the issues that inevitably surface in the gifting process. They provide solid answers to all of the most common questions that a gift planner or real estate professional might ask.

47 Questions is the authoritative book that everyone involved in the gifting of real property should have at their desk.

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Introduction

by: Viken Mikaelian

As Zig Ziglar says, "There are no traffic jams on the extra mile."

If you're in planned giving you're already on the road less traveled. (Most fundraisers are jammed up on Main Street competing for the limited cash gifts.) Now, with the book you hold in your hands, you're ready to go to the extra mile.

And you know what's waiting for you when you go the extra mile on the road less traveled…

Money.

Big money.

The majority of Americans own real estate. Yet 99% of nonprofits in this country do not accept gifts of real estate. Why? For one thing, they are more complicated and require more work than, say, accepting a simple gift of stock. But, for those who are willing to do the extra work, the rewards are great—six-figure great. The average real estate gift nationwide is in the range of $400,000.

I'm excited to partner with Dennis Haber and Chase Magnuson to bring you this valuable resource. These guys know their stuff, and soon you will, too.

Do me a favor. Email me when you facilitate your first real estate gift. Tell me how it feels going the extra mile. Tell me if the extra work was worth it.

VIKEN MIKAELIAN, CEO
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How to deepen your knowledge of real estate gift giving and just about anything else

Dennis Haber & Chase Magnuson

We begin with a GOLD MEDAL strategy. Asking questions IS the WINNING plan. Good questions lead to better questions. Along the way, you'll become that much smarter. Certainly you will become smarter than your competition. Questioning really does provide the fuel and catalyst for attaining your prodigious goals and accomplishments.

Accordingly, these questions (and answers) will give you confidence to discuss the rather challenging topic of real estate philanthropy. More importantly, you will help your donors realize their wishes and desires as they take advantage of strategic options and opportunities.

The problem is where to start. Every person will have a different starting point; a different set of initial questions. It does not matter where you begin. It does matter that you begin. We try to help. We have provided salient questions (and answers) that will keep you on your road to success. As your development continues, and complexities become evident, you will develop additional questions.

You must learn to be a serial questioner as there is mountain-size power in asking questions. It provides an aura of credibility. It is far better to be credible than appear credible. After all, no one has all the answers. Revealing vulnerability is powerful.

We wish you a pleasant and enriched journey, as you further your understanding of gifts of real estate in the nonprofit world and become the winner you are meant to be.

Most likely, more questions will arise along the way. Excellent! Write them down. Then find the answers. Build your wealth of knowledge. Become the expert!

Editor's note: The terms nonprofit, charity, tax exempt organization and 501(c)(3) all have the same meaning.

Disclaimer: The material in this book is not intended to covey legal or tax advice. Every situation is different and the facts of that particular situation will affect the answer. The donor and the nonprofit should always hire competent professionals before proceeding.

THE QUESTIONS

1

What are the benefits of a real estate donation?

A real estate donation provides what we call a *triple win strategy*: The donor wins because a gift of real estate can eliminate capital gains, management issues, estate taxes and family feuds regarding future use and ownership. And the donor can watch how their real estate gift impacts and benefits the work of their favorite nonprofit. The nonprofit wins because it can increase its funding. Even the ultimate purchaser can win because they can enjoy and/or develop property that ordinarily wouldn't have come on the market (except for the donation).

Additionally, a donor may consider their gift as an alternative way to dispose of unwanted real estate. Such a gift can also facilitate lifetime cash flow. The nonprofit may also view such a gift as a way to develop closer ties with the donor because a gift of real estate takes longer to conclude.

A real estate gift may include timber, water rights and mineral rights.

The professionals who counsel donors and the 501(c)(3) community are also winners. Such gifts can be a game changer to the attorneys, accountants, financial planners and planned giving folks. Trusted advisor status is on the wane. Referrals are down. Client attrition is on the rise. A gift of real estate requires team building and could reverse these trends. The typical answer by a donor who first learns that a real estate donation is even possible is the "I didn't know that" refrain. "My attorney (accountant, financial planner, etc. — take your pick) never mentioned that to me."

2

Does a nonprofit have to take title to the donated gift?

While it is logical to assume that a charity will take title to the gifted real estate, a charity does not have to own the property. Instead, the charity can instruct the donor to convey title directly to the third-party purchaser (obtained by the charity pursuant to the option contained in the donation agreement). The technique is called a simultaneous closing. Two tax court cases have firmly established the rule. This provision also acknowledges this part of the agreement between the purchaser and the nonprofit. See Question #16.

3

Why are step transactions and prearranged sales prohibited by the IRS?

The "step transaction" doctrine is a judicial doctrine that combines a number of distinct separate steps so a whole transaction is viewed as one event. Its purpose is to ensure the substance of the event governs its form.

The courts have employed three various tests when deciding whether to invoke the step transaction doctrine: Whether at the time of the first transaction there is a commitment to take the next step (Binding Commitment Test); whether the distinct parts are really prearranged parts of a single transaction intended from the beginning to arrive at the ultimate result (End Result Test); whether the steps are so interdependent that the legal relations so created are of such a nature that the first transaction would have been fruitless without completion of the series (Mutual Interdependence Test).

Let's look at typical fact pattern:

Donor wishes to donate property. She calls up her favorite nonprofit and says, "*Although I'm in contract to sell my property to Mr. Jones, I really want to donate the property to you. Once the donation is complete, you're just going to put the property on the market to sell anyway. I already did your job by finding a purchaser who wants to buy the property. You have an instant buyer. This way I get the charitable deduction; you get the sale proceeds from this buyer. Let's do the transaction*."

The charitable deduction will not be allowed because it is a prearranged sale. Capital gains will be imputed to the donor should the "donation" be completed, and the property sold to the original buyer.

The tax -exempt organization does not wish to be complicit in this type of transaction. So the question becomes, if the nonprofit rejects this type of gift, can it nevertheless be saved?

The answer is unequivocally *yes*, if the property was held for investment. The donor can do a 1031 exchange on the subject property (the relinquished property with no immediate capital gains resulting) and then donate the replacement property to the nonprofit.

4

Can a simultaneous closing be considered a step transaction or prearranged sale by the IRS?

No. Non-sequential deeding does not void the charitable deduction when the charity is not considered to be the agent of the donor. It is key to remember that it is the donation agreement that permits the nonprofit to choose either to take title or in the alternative, to direct that the donor convey to the third-party purchaser obtained by the nonprofit.

5

How important is the appraisal in the real estate gifting process?

An appraisal is very important to the process. The written appraisal must be done by a qualified appraiser and is attached to IRS form 8283 (Non-Cash Charitable Contribution) if the value of the property exceeds $5,000. If the donor does not submit IRS form 8283 with his tax returns, the donor will not receive a charitable deduction for the gift. When the agent for the tax-exempt organization signs the form, the acknowledgment goes to the receipt of the gift. The value of the gift is subject to the appraisal. The weight given an appraisal really depends on the qualification of the appraiser, the completeness of the report and the appraiser's knowledge of the donated property. You may wish to visit IRS Publication 561 for more detailed information on appraisal requirements.

Imagine for a moment that a donor donates a property valued at $18,000,000 to his favorite charity. He figures that since he is an appraiser and that no one is more familiar with the real estate than he is, he will do the required appraisal on the property. It is important to note that *good intentions* do not provide a persuasive argument. The Tax Court stated, among other things, that he did not comply with the essential requirement of attaining an independent qualified appraisal, since he was both the donor and the appraiser.

An example of another kind of mistake: A corporation owns two apartment buildings. Shares of stock in the corporation were donated. The gift was the stock. The appraisal was done on the real estate. The tax court simply said that the appraisal was done on the wrong asset and disallowed the deduction. Getting the appraisal right the first time is very critical to achieving a successful gift.

Even when a "dealer" (sale of inventory/investment property or property held less than a year) donates real estate to a 501(c)(3), the dealer will receive a charitable deduction for his basis (cost) and not for the fair market value of the property.

6

Can the nonprofit pay for the appraisal?

The nonprofit may pay for the appraisal (if the donor refuses) but — and this is a strong but — the appraiser has no obligation to defend the donor should the IRS challenge the appraisal. Accordingly, this then leaves the door open to an unsupported claim, for the charitable deduction, taken by the donor.

7

Why does a nonprofit board member need to be especially involved and engaged in the real estate gifting process?

Ultimately, it is the board's decision whether to accept a gift. A nonprofit proceeds at its own peril if gifts are accepted without a thought-out, procedurally sound, *gifting acceptance policy*. This policy must provide a repeatable protocol and process overview that meets the evolving needs of the 501(c)(3). For example, the following, among other things, need to be taken into account: *Gifting structure* (Bargain Sale, Charitable Gift Annuity, Retained Life Estate, Charitable Remainder Trust or Outright Gift) *Property Types, Zoning Status, Property Use, Amount of Debt, Carrying Costs, Site Inspection* and *Initial Due Diligence*. Depending on the size of the nonprofit, real estate located in another country could make an appropriate gift.

As a member of a board, you may have the desire to make such a gift in your own right. You have probably effectuated a comprehensive and up-to-date financial and estate plan that could make such a real estate gift a reality.

Because each of us travel in similar social and business circles, our friends, acquaintances, and business associates may even consider a gift once they are made aware of this possibility. Typically, they first think about this activity only after you casually mention that “your” charity is now considering a gift of real estate.

8

What is the interplay between IRS form 8283 and IRS form 8282?

The 8283 (Non-Cash Charitable Contribution form) is attached to the donor’s tax return and is signed by the donor, the nonprofit and the appraiser. It indicates that the donor contributed real estate (farm, ranch, condo in foreign land, medical building, vacant lot, cabin and percentage ownership in a building) of a certain value as indicated in the appraisal, to a charitable organization. The organization is merely acknowledging that it has received the property. It is not certifying the value. If the organization sells the property within 3 years from the date of the gift, the organization will file form 8282 (Donee Information Return) with the IRS. It is possible that a subsequent sale for less than the fair market value (the value noted in 8283) by the organization may trigger an audit of the donor once the IRS compares these two forms. An explanation by the organization, that it sold at the lower value, in order to quickly realize the cash, is usually sufficient absent nefarious intent.

9

Limited liability companies are ubiquitous today. Can they be used as a gift- giving vehicle?

A nonprofit can protect its assets from the myriad of real estate pitfalls/liabilities by accepting gifts of real estate into a single member limited liability company. In 2012, the IRS promulgated IRS *notice 2012-52*. It finally answered the question whether a contribution to a single member limited liability company owned by a 501(c)(3) is deductible (under IRC §170). To be clear, contributions made to a SMLLC, owned by that charity, is the same as contributing directly to that charity.

It is important to note that a SMLLC is considered a disregarded entity and does not have to file a separate EIN #, as the SMLLC has the same EIN# as its 501(c)(3). It also avoids filing a separate IRS form 1023 (application) as well as IRS form 990 (information return).

This is a great format to use to protect those gifts of real estate, as the gift is completed, once the deed is recorded. Title flows from the donor directly to the SMLLC.

There are three things to remember:

1. The SMLLC funds must be used solely by the 501(c)(3) member.
2. Upon dissolution, the assets must be used for exempt purposes only.
3. There can be no distribution of the assets to an individual. It can only be disbursed to the nonprofit. Otherwise, it could be deemed to be a private inurement or an excess benefit transaction under the internal revenue code.

Limited liability laws vary among the states. The revised Uniform Limited Liability Act promulgated by the Uniform Laws Commission states that an LLC can have a lawful purpose, whether for profit or not. This has been adopted by a relatively small number of states. Other states do require a business purpose and others require that such a company must have 2 or more members. You must be aware of the laws in your jurisdiction.

Finally, it is also important to note that the operating agreement is one of contract and must be in furtherance of the exempt purpose of the nonprofit.

10

How can Realtors, under a simultaneous closing protocol, list the real estate when the nonprofit does not own the property ?

The nonprofit will add a detailed *completion of donation clause* as a contingency in the listing and sales agreement. The agreement acknowledges, among other things, that the nonprofit does not currently have title to the property and that the agreed upon compensation is earned when a third party, procured by the brokerage company, purchases the property and the proceeds are received by the nonprofit.

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Why are nonprofits reluctant to accept gifts of real estate?

There is one legal case that seemingly stands for the proposition that acceptance of a real estate gift can be dangerous to a nonprofit's existence. The facts of this case were clearly an outlier. Today there are protective actions that a nonprofit can easily take to prevent the cataclysmic results of the Goodwill Industries of Chicago case of the 1980s.

A short summary: GWI of Chicago was taking title to all offered gifts of real estate. Eventually, without foreknowledge, GWI accepted gifts of very environmentally contaminated property. The property was so contaminated that toxic waste caused fires to smolder for months. Some of the folks that ran GWI had concocted a criminal scheme whereby they would sell the real estate gifts, and then misappropriate some of those funds for personal gain. Their abiding attitude was: The more gifts we accept, the more money goes in our pockets.

A lawsuit was brought by the state of Illinois that caused a scare of a lifetime. There were 13 defendants. GWI of Chicago was a heartbeat away from having to declare bankruptcy. The state settled with two defendants with deep pockets. GWI was spared the ultimate humiliation.

Yet, even today, while the case has disappeared into the background, the refusal to accept a gift of real estate remains a common response by some organizations. The acceptance of stocks, cash, bonds and tangible personal property continues to be their main focus. Nonprofits remain scared and afraid to deviate from the acceptance of the above noted types of gifts.

Real estate represents the largest asset class in the nation. The 501(c) (3)s in need of additional capital that continue to refuse such gifts, do so at their peril. More and more of the 1,600,000 nonprofits are either taking such gifts or are considering doing so.

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Why should nonprofits change their focus to accept such gifts?

As we noted in the last question, real estate is by far the largest asset class in the nation. Today only about 2 percent of all donations are comprised of real estate. Imagine for a moment if that number alone approached ten percent. That would add many billions of dollars into the coffers of nonprofits. Real estate represents roughly 43 percent of the capital wealth of this country. The Philanthropy 400 takes in about 90 billion dollars (roughly 25% of the total donations) of the total amount of funds donated. This means that the balance of the nonprofits are fighting over the remaining cash, stocks and bonds. Perhaps it is time to give real estate gifts another look.

The financial makeup of our nonprofits reminds us of how most of America lives: paycheck to paycheck. Many of those 1,600,000 nonprofits live fundraiser to fundraiser. They have little capital reserves at a time when grant money is down and government is providing fewer services. This means that demand for services are up as well. Therefore, there is a great need to get more money into charities. A modest real estate donation will prove to be very valuable.

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So what would you do if a donor calls up your tax-exempt organization to donate real estate?

Let us assume that this donor plaintively says, *I want to give to you, my favorite charity, this real estate gift, because no one in the family wants it.* Would you say "*We don't accept real estate gifts?*" Would you say, "*Sell it— then give us the cash?*" Or would you definitely continue the conversation?

Before answering these questions, it is important to note a few salient points: If the organization does accept real estate, you do not want to accept timeshares, because they are extremely difficult to value. On the other hand, primary residences, second homes and investment properties are viable opportunities for donations. It is interesting to note that many people believe that junk properties make up the typical real estate donation. Nothing could be further from the truth.

Before you can be in a position to accept a gift of real estate, the organization must have a *Gift Acceptance Policy* in place. It provides a broad outline of the process and procedure that must be followed, whenever a gift of real estate is considered. The policy enables everyone to be on the same page. Ultimately, the board members must agree whether to accept such a donation. The gifting structure must be clear (Charitable Gift annuity, Charitable Remainder Trust, Retained Life Estate, Bargain Sale and/or Outright Gift). You'll need to determine which one meets the need of the donor. Smaller nonprofits may be prohibited from providing a Charitable Gift Annuity, because of its complexity and potential liability if your "annuity numbers" are wrong.

The process must be efficient because real estate gifts are perishable. People change their minds, and life events can rear their ugly head. Along the way, you'll want to have pertinent and relevant information regarding the property. Initially, you would like to know such things as: Type of property, FMV, zoning status, existence of a survey and ownership interests. If it's a commercial property, then gross income, current expenses, lease terms and permitted uses.

If the organization wishes to proceed, then you will want the donor to execute a donation agreement or, preliminarily, a letter of intent. The duration of the donation agreement ranges from 90-120 days during which time the organization performs its due diligence, unless a simultaneous closing is used. In that case, the end purchaser will perform the due diligence.

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If a donor calls their favorite nonprofit to donate real estate and the reply is: We don't accept gifts of real estate. Has the Nonprofit erred by answering this way?

When a gift of real estate is refused, the organization runs the risk of alienating the donor, and loses the possibility of realizing a sizeable donation.

However, there is something you can do. You can isolate all risks with the assistance of an accommodating or facilitating charity. This charity receives the gift and obtains the ultimate purchaser. In short, it does all the work. You just wait until the gift is subsequently sold to accept 80 to 93% of the proceeds while the charity that did all the work receives 20 to 7% of the proceeds. (The splitting of the proceeds is subject to negotiation).

A donor may wish to split their gift among several charities. However, it really depends upon the gifting vehicle that is used.

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What technique is used by a majority of nonprofits when accepting gifts of real estate?

Overwhelmingly, nonprofits use the *fundamental technique* (what we call it) when accepting gifts of real estate. In this instance, the donor conveys title to the nonprofit. The nonprofit will then convey title to the ultimate purchaser. When the nonprofit takes title, it is taking on certain risks. For example, with this technique, environmental liability could possibly attach to the nonprofit as well. That is why it is critical that due diligence be extensive. Due diligence is like a parachute jump: You have to get it right the first time. But what if your organization got it wrong? It could be in for the surprise of a lifetime.

Conceptually, there is nothing wrong with this structure and a reasonable due diligence effort should mitigate the risks. However, it is important to note that this technique will not necessarily take the organization out of the litigation line of fire. There could be bundles of potential liability in tort, contract and environmental law.

There could even be issues under Title 3 of the Americans with Disabilities Act (1990) regarding the removal of barriers and issues under the 1988 amendments to the Fair Housing Act of 1968.

So, with the *fundamental technique* noted above, there is no "*stay out of trouble card*." If you get into trouble you have no choice but to extricate the organization. Remember, it is easier to stay out of trouble than get out of trouble. These other techniques help an organization stay out of trouble. The problem is that the nonprofits are not aware of them.

16

What are the liability reduction and avoidance strategies that can be used to protect the nonprofit from the basket of liabilities it may encounter?

The supporting organization, the single member limited liability company and the simultaneous closing are such techniques. Here, we will focus in more detail upon the supporting organization and the simultaneous closing. See Question #9 for information on the use of limited liability companies.

When the Supporting Organization technique is used, the donor conveys title directly to the supporting organization. The supporting organization then conveys to the ultimate purchaser. The named charity is not in the chain of title. Actually, the 501(c)(3) forms another organization pursuant to IRC 509(a)(3) to carry out its purpose. There are three different types of supporting organizations that can be formed and the most popular is referred to as a Type1 supporting organization. It must meet 5 separate and distinct tests that ensure that the supporting organization exists to serve the needs of its 501(c)(3).

The simultaneous closing is another effective way to keep the nonprofit out of the chain of title. This is rather a significant strategy. It is believed that this strategy, (keeping the nonprofit out of the chain of title) precludes it from being a *potentially responsible party* under the **Comprehensive Environmental Response Compensation Liability Act**. This superfund law enables hazardous waste sites to be remediated and attaches liability to owners in the chain of title.

Two tax court cases — Guest V Commissioner 77 TC 9 (1981) and Stark V Commissioner 86 TC 243 (1986) — permit a charitable deduction when a donor conveys to someone other than the nonprofit. Also see questions 2,4 & 10.

17

What is UBIT?

The acronym stands for unrelated business income tax. It is income derived from a trade or business regularly conducted by a nonprofit that is not substantially related to its tax exempt purpose. A nonprofit cannot have an advantage over a for-profit enterprise. Such activity is not substantially related to the nonprofit's activity if it does not contribute in an important way to accomplishing that purpose. The facts of each situation become rather important.

By way of example:

Let's look at a cafeteria in a museum; a tennis club at a school and a stadium at a university.

The cafeteria is used both by the public and by the nonprofit's staff. The cafeteria allows visitors to spend more time viewing the exhibits without having to visit restaurants outside of the museum. It allows the staff more time to remain in the museum throughout the day. Therefore, it can be said that the cafeteria contributes in a substantial way to attaining the museum's exempt purpose and is not an unrelated trade or business.

A certain school has tennis courts with dressing rooms that it uses during the school year. However, during the summer, the school operates a tennis club that is open to the general public. Employees of the school run the club during the time the school is not in session. Clearly the exempt purpose is education. Furnishing tennis facilities does not further the exempt purpose. This activity falls into an unrelated trade or business activity.

A university leases its football stadium during several months to an NFL team for a fixed fee. Under the lease agreement, the university furnishes all utilities and ground maintenance, etc. Leasing the stadium is considered an unrelated business activity and the income from the real property lease is an unrelated business taxable income.

Finally, investment income that would otherwise be excluded from UBIT is included to the extent it is derived from debt-financed property. The amount of income included is proportionate to the debt on the property. If property is acquired subject to a mortgage, the outstanding debt is treated as acquisition indebtedness even if the nonprofit didn't assume or agree to pay the debt.

However, if property is acquired by gift, bequeath or devise, the outstanding debt is not acquisition indebtedness during a 10-year period following the gift, if the loan was placed on the property more than 5 years before gift and the donor owned the property for more than 5 years.

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In what way does the Internal Revenue Code affect gift giving?

The Tax Cut and Jobs Act of 2017 controls. The maximum marginal rate is 37% down from 39.6%. The maximum capital gain rate is capped at 20%. These rates range from 0 to 20%, depending on one's tax bracket.

For example, if one were to sell property (investment) valued at $500,000 with a cost basis of $100,000 the gain would be $400,000. The resulting maximum tax liability would be $80,000. If the owner accomplished an outright donation, the donor would be excused from paying a capital gains tax, while enhancing the work of his/her favorite charity.

A taxpayer can deduct up to 30% of their AGI (adjustable gross income). A corporation can deduct up to 10% of corporate income. A donor has up to 6 years to use their charitable deduction based upon the above limits.

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What 5 questions should the planned giving officer ask the real estate donor?

1. What type of property is adjacent to the subject property?
2. Beside yourself, who has or had a present or past ownership interest in the property?
3. What is your cost basis in the property?
4. Would you like to continue to live in the property after making the gift?
5. Do you need to receive a lifetime income from the property?

20

What are the basic requirements of a gift of real estate?

The essential elements require that a donor divest title and control over the property. The gift must be an irrevocable transfer. However, in certain situations a gift will not be recognized or effective. These include a prearranged sale; debt encumbered property and appraisal issues that pose insurmountable barriers (See question #5).

21

What are the most repeated myths about real estate gift giving?

a. Donated property can't be encumbered with debt.

b. The donor must give 100% of the gift/equity to one charity only

c. The charity must have extra funds to cover the carrying costs until the property is sold.

d. Real estate agents should agree to sell the donated property without charging a commission.

e. Only junk properties are donated.

Myths Debunked

   a. Donated properties are usually encumbered with debt. Even in those instances where debt is prohibited, there are well-defined exceptions to the rule.

   b. The donor can divide a charitable contribution among a number of tax exempt organizations.

   c. Usually, pursuant to an agreement between donor and nonprofit, the donor will be responsible for costs, property management and repairs until closing. Sometimes the nonprofit may choose to reimburse the donor for these expenses. In this instance, the charity will issue a 1099 form for the reimbursements.

   d. A nonprofit that does not wish to take the property for its own use, will subsequently place it on the market. The organization knows that the best opportunity for a quicker sale resides with the real estate brokerage community. Accordingly, a full commission as negotiated, will be earned.

e. To the contrary, all types of real estate including residential, commercial, agriculture and undeveloped land are offered as gifts. To protect themselves from different sources of liability, “junk” properties would not be accepted by the nonprofit, in accordance with their gift acceptance policy.

22

Can leased space be the subject of a real estate donation?

No. A partial interest in real estate is not permitted. A leasehold estate is a partial interest. If a donor owns a commercial building, a donation of space to his favorite nonprofit will preclude the landlord from taking a charitable deduction. That doesn’t mean such space cannot be offered. It just means a charitable deduction is not appropriate in this given situation.

23

What advantages does the donor receive when real estate is donated rather than sold?

There are a few advantages that should be noted. Some donors who wish to avoid playing the typical “real estate” game can eliminate the vagaries of the real estate market. They can also eliminate capital gains taxation, recapture of depreciation (accelerated depreciation) on commercial property, and can reduce the value of their gross estate. Above all, the donor can advance their philanthropic legacy.

24

Does corporate America donate unwanted real estate?

Yes. However, realizing a loss on donated real estate is the initial objection that management must overcome. It appears that the elimination of a potential liability is not the driving force you think it would be. When management is shown how donating non-productive assets (placed in a CRT) can fund corporate personnel packages, severances and retirement, the initial refusal is revisited. Too often, corporations also miss the opportunity to create positive community relations and good will.

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Why is the annuity rate lower when an annuity is funded with real estate?

The nonprofit must be circumspect because it will incur holding and selling costs as the case may be. The longer it takes to dispose of the asset, the greater these costs will be. Until the property is placed on the market, the nonprofit can only guess when the sales process will be completed. Until the property is sold, the proceeds received are speculative. The unknown risks can be offset with a degree of caution. Besides a lower rate, a deferred annuity could provide some time for the property to be sold. However, such a deferral will provide for higher annuity payments. It should be noted that a lower annuity rate is accompanied by a higher charitable deduction.

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What document can one review to discover important facts about a nonprofit?

IRS Form 990 (Return of Organization Exempt from Income Tax) is a detailed return that is filed annually with the Internal Revenue Service. It is an informational return, not an income tax return. Many states also require that a similar information return be filed as well. Regulators review these returns to determine whether donated funds are being spent appropriately. Form 990 provides a plethora of information about the overall financial condition of the organization including, but not limited to, net assets, board members, sources of funds, salaries of top staff, types of programs offered, etc. This form can also be reviewed by the general public.

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Why shouldn't your usual real estate contacts be used as the main connection point to discuss a charitable donation?

Most real estate agents (residential and commercial) have not obtained additional training on the finer points of charitable giving. Real estate professionals can help a nonprofit understand specific markets as to holding and disposition issues. This information can assist a nonprofit's decision to proceed or not with the proffered gift.

While other professionals also lack general knowledge in this area, attorneys, accountants and financial planners are slowly gaining expertise, as more of their clients are asking about real estate donations.

28

Is the fear of environmental liability under **CERCLA** (Compensation Environmental Response Compensation Liability Act) stopping nonprofits from accepting real estate gifts?

Yes. This law has been construed to contain a strict liability provision. Strict liability means that one is legally responsible even if one isn't at fault. The fact that one is dealing in a particular proscribed activity is reason enough to impose liability notwithstanding reasonable conduct. Some examples: Owning abnormally dangerous animals; use of pyrotechnics; traffic offenses (even if no intent); environmental law — CERCLA and state environmental legislation.

Prior to 1980, no federal statute could force the cleanup of a contaminated site. Congress cobbled together legislation to do just that. If one is in a contractual relationship with the party causing the pollution, then that innocent party could be designated a *Potentially Responsible Party (PRP)*.

Being in the chain of title can cause a nonprofit to become a PRP. In 1986, The Superfund Amendments and Reauthorization Act created the *innocent landowners defense*. Originally the structure of the defense was simple: If the landowner exercised due care in dealing with the hazardous waste and took certain precautions, then the defense could be utilized. However, Congress changed the original language to include an evidentiary standard that eviscerated the clear standard that would have added certainty. A nonprofit does not want litigation or the specter of litigation, to determine with certainty, whether the defense can be successfully utilized.

While no court has ruled on the use of a simultaneous closing in the environmental law area, it is believed, absent fraud, that it is an effective strategy to escape liability.

29

What does a nonprofit need to know about the Americans with Disabilities Act?

In 1990, Congress passed the American with Disabilities Act. Its scope is rather broad and is a national mandate to eliminate discrimination against those individuals with a disability. The germane provisions are found in Title III. This title guarantees that disabled individuals are able to enjoy the *goods, services facilities, privileges, advantages and accommodations offered by a place of public accommodations*.

It is important to note that the public accommodation provision applies to charities and places of businesses that are open to the public. Accordingly, the disabled must have an equal opportunity to enjoy, participate and benefit from activities and services being offered. To the extent that they cannot, programs may have to be modified, alternative aids and services may have to be provided and architectural barriers may have to be removed.

This may mean that a museum, for example, may need to provide additional assistance for the hard of hearing or blind patrons. It also means that individuals with a disability must have equal access to all that is being offered on the premises. If a structure is residential in nature and part of the residential structure is used for commercial purposes, then the part so used for commercial purposes would be subject to the requirements of the Act. The standards are updated from time to time.

If it can be demonstrated that it is structurally impractical to comply with the act, or such action would require extensive and burdensome changes, then a lesser degree of modification could be accepted. The law requires that both a tenant and a landlord must comply with the terms of the act. The Act is monitored by the Department of Justice. It is important to note that the Act can be enforced by the DOJ or by individuals who have been discriminated against.

The 1988 Amendments to the Fair Housing Act of 1968 also has additional accessibility design requirements.

30

Does a Donor unduly risk their charitable deduction by imposing conditions on their gift?

Under the Internal Revenue Code, a gift is deductible as long as it is made *to or for the use of* a tax-exempt organization. For example, if a gift is given for either a non-charitable purpose or for a charitable purpose outside the scope of the charity's mission, then such gift is not deductible. A donor cannot require that a gift to a nonprofit be for the benefit of a certain individual.

Donors sometimes seek some degree of control over their gifts to ensure that their gift conditions are followed. Sometimes these conditions could place the charitable deduction at risk. For example, you could gift a parcel of land to your municipality to be used as a park, with the provision that if the land was not used as a park, title would revert back to you, the donor. To achieve the charitable deduction, the reversion (the condition causing title to revert back to the donor) must be *so remote as to be negligible and so highly improbable and remote to be lacking in reason.* If at the time of the gift, the municipality didn't want the land to be used as a park (easy case) or was equivocating, then the charitable deduction would be disallowed. However, when the facts indicate a significant likelihood there would be no reversion (the land will be used as a park), then the charitable deduction would be allowed.

When on the other hand, a gift of land is made with the condition that building funds first be raised to construct a certain building, the gift will fail unless at the time of the gift, adequate funds were in place for the construction. Otherwise, the condition is not so remote as to be negligible.

31

What is the difference between a private foundation and a public charity?

A public charity derives its funds from the public as it carries out direct charitable activity. A public charity has higher donor tax deduction giving limits, and its board must act in an arms-length manner without private benefits flowing to individuals. Violation of the private inurement or excess benefit provisions of the Internal Revenue Code will provide a monetary penalty and or subject an organization to revocation of its tax-exempt status.

A nonprofit also has a choice of how to inform the public about its activities by way of IRS form 990, 990 EZ or 990N.

Private foundations generally support the work of public charities by its grant making function. (Public charities can also issue grants). It can be controlled by related parties and must distribute 5% of its annual assets per year. It generally is supported by a single source of funds and has a lower donor tax deduction giving limit.

32

Is it possible to mitigate naming rights misunderstandings?

Naming rights present a set of separate issues as it pertains to colleges, universities and hospitals. A well-thought-out gift acceptance policy and gifting agreement are essential. The spate of "scandals" regarding well-known individuals require that nonprofits protect their integrity, whenever naming opportunities arise. Many donors have sued the tax -exempt organization over questions and concerns regarding these rights.

It is absolutely critical for changes in circumstances to be addressed up front. The following should be considered: Whether naming placement will be withheld or removed, as the case may be, until the completion of the gift; consequences if the building is destroyed, demolished or renovated; rights of the parties if the subject building is used for a different purpose; consequences if the donor is convicted of a crime (felony or misdemeanor) and /or brings shame upon the organization; rights of donor if the integrity of the institution/organization is called into question; donor defaults on future gift payments; payment of additional costs if construction is over budget.

33

Can a nonprofit accept debt-encumbered property?

Yes. When a nonprofit accepts debt-encumbered property, the Internal Revenue Code treats the amount of the debt as the indebtedness of the nonprofit, notwithstanding the nonprofit does not assume or agree to pay the debt. Income from the property attributed to the debt is considered debt-financed income and taxed to the charity as UBIT (Unrelated Business Income Tax). There are exceptions to this rule: If 85% of the property is used for the exempt purposes of the nonprofit; if the debt was placed upon the property 5 years from the date of the transfer and the debt is at least 5 years old, the nonprofit will have 10 years to sell the property without this liability attaching. Broadly speaking then, a nonprofit can accept property with debt on it. There will be times when it will refuse to do so. Primarily, the refusal may occur if the debt is too high and the borrower is seeking lifetime income; or the debt reduces the remainder gift significantly; or a CRT (Charitable Remainder Trust) is contemplated.

34

What are some basic charitable gift-giving rules?

There are a few factors one should be aware of. For example, one needs to be aware of the amount of equity remaining, not just the fair market value of the property. Deducting the unpaid balance on the existing mortgage from the fair market value will equal the amount of equity. This resulting amount will in turn provide the amount of the charitable deduction.

If the donation is composed of commercial real estate, any accelerated depreciation will reduce the amount of the charitable deduction. This decrease will be the difference between straight-line depreciation and the accelerated depreciation.

The cost basis of the property will be relevant if the donor is contemplating a bargain sale transaction. Typically such a transaction occurs when the donor sells property to a nonprofit for less than its fair market value. A bargain sale also can occur when a donated property is encumbered with debt. In this case, the sale portion is represented by the debt on the property. Some gain will also be recognized. The gain is recognized on the difference between the debt and the property's adjusted basis allocated to the sale. This is a mouthful. Here is an example.

- FMV $100,000
- Mortgage $40,000
- Basis $45,000
- The equity is $60,000. (FMV-mortgage)
- Allocated basis is $18,000 (mortgage/FMV)
- Gain is $22,000 (mortgage-allocated basis) taxed to the donor at their individual rate
- Charitable deduction: $60,000
- Taxable savings:
  $17,700 (Charitable deduction x assumed tax bracket 35%) – (Capital gains x 15%). Assumes income not exceeding $425,800.

35

What is a simple way to determine gain on debt encumbered property?

First, determine the relationship the current mortgage balance has to the fair market value of said property. Then multiply the cost basis or adjusted cost basis of the property by the above noted number. This will give the allocated basis to be used for the *sale portion* of the transaction. This basis is then subtracted from the sale amount to arrive at the gain.

An example: Assume the value of the property is $100,000 with a cost basis of $40,000 and mortgage balance of $20,000. This mortgage balance represents 20% of the sale price or $20,000. Accordingly 20% of the cost basis ($8,000) would be subtracted from the sales price, which would give a gain of $12,000.00.

36

What is the Partial Interest Rule?

This is an important concept to understand and was mentioned in Question 22, as it pertained to leased space. Succinctly, a donor cannot donate an interest which is less than the taxpayer's entire interest in the property. There are recognized exceptions to this rule: A gift of a remainder interest, conservation easement and a gift with an undivided fractional interest.

A charitable deduction is also permitted for a donor who wishes to gift less than a 100% interest in the property. This type of donation works well for a donor who wishes to give an undivided fractional interest over a period of time subject to the limitations on adjustable gross income.

37

Should an attorney board member offer legal assistance to a donor, who is making a gift to the organization?

While the answer would be determined by a formal ethics opinion, the appearance of impropriety would generally dictate that the attorney and donor proceed with the utmost of caution. Likewise, it shouldn't seem to matter whether the donor was also a member of the board or not. It should also be noted, that as long as the donor and nonprofit, after full and complete disclosure and understanding of the arrangement, consent thereto, the representation generally should not violate any canons of ethics. The facts of each situation become very important to the ultimate determination.

38

What is a Bargain Sale Gift?

A Bargain Sale occurs when the donor, intending to make a charitable deduction, sells the property to a nonprofit for less than the fair market value for cash. The donor receives a charitable deduction for the difference between the appraised value and the sales price. Such a transaction recognizes and confirms that a real estate gift is pliable and can be structured to meet the specific needs of a donor (along with CGAs, CRTs and Retained Life Estates). The nonprofit would remit the sales price back to the donor. Usually this is accomplished after the nonprofit is able to secure a buyer for the donated property. Otherwise, it would be forced to use working capital, to cover the purchase price and holding costs.

If the donated property contains a mortgage, the transaction is also considered a Bargain-Sale transaction. The gain on the transaction would be the sales price or the mortgage amount minus the allocable portion of the donor's basis, as noted in questions 34 & 35 above.

39

What does a remainder interest gift look like?

Such a gift occurs when a donor irrevocably transfers real estate (personal residence or farm) to the nonprofit with the retained right to use and occupy the property for a specific term. The term is usually measured by the life of one or more individuals — usually the donors. It can also be for a certain term of years. This type of gift is easy to effectuate. The donor transfers title to the nonprofit today, while reserving the right to occupy the property.

This arrangement is preferred by a nonprofit because it receives an immediate irrevocable gift. A donor, who is considering a testamentary devise, may not follow through or could change the original, intended beneficiary under their will. The point to remember is that a gift via a testamentary devise provides no guarantees.

The tax deduction to the donor is the net present value of the charitable remainder interest. This is determined by: The fair market value of the property (including improvements) on the date of transfer; the fair market value of depreciable improvements (straight line method) on date of transfer; the estimated useful life (relating to use of the property, not just the measuring lives) of the depreciable improvements; the salvage value (the value that remains after its useful life is determined, which is generally 45 years for residential property) of these improvements; the measuring term of the life estate; and the applicable federal midterm rate (the interest component for the present value formula). When the life estate no longer exists, title to the property is transferred to the charitable beneficiary by operation of law. Accordingly, the exact timing of the expiration of the life estate may not be known, but the certainty of the gift is etched in stone.

The charitable deduction will be higher when the land value exceeds the value of the structures located on the land. Land cannot be depreciated.

A gift of a retained life estate on a property subject to a mortgage has a different mortgage rule than we have heretofore seen. It seems that the IRS has taken the position that the amount of the debt would be subtracted from the fair market value of the property and the resulting present value would be based only on the equity remaining. Therefore it is not a prudent idea to have debt on property with a retained life estate.

Typically the net present value of the remainder interest is deductible against 30% of the donor's adjusted gross income (as are most gifts of appreciated real estate) with a 5 year carryover.

Because the life tenant has use and control over the property for a period of time, it is important that a detailed agreement between the donor and the nonprofit spell out with utmost specificity, the rights and obligations of the parties. This agreement should cover the following issues:

- Real estate taxes
- Minor and major repairs
- Capital improvements
- Utilities

- Subtenants of life tenant
- Remainder interest acceleration
- Dispute resolution procedure, etc.

While much of the agreement is negotiated, the life tenant is generally responsible for the expense outlays required to be paid during the time the life tenant/donor enjoyed the use of the property. The agreement should also cover some important and key contingencies. Sometimes the life tenant/donor can no longer live in the home. Therefore contingencies for a subtenant, acceleration of the remainder interest and/or sale of the property should be made.

If a subtenant is contemplated, the agreement will address inspection rights and subtenant approval. If the life tenant seeks to make an additional gift by accelerating the remainder interest (contributing the life interest), a new appraisal will be required. If all the parties agree to a sale of the property, the proceeds will be apportioned according to the present value of each interest. In this situation, the life tenant will realize some capital gain because the transaction will become a Bargain Sale.

40

What is a Charitable Gift Annuity (CGA)?

With such a gift, one can receive guaranteed payments for life. A donor transfers cash or property (which must be converted into cash) to a nonprofit in exchange for the tax-exempt organization's promise to make fixed payments (annuity) to one or two annuitants during their lifetimes. This gift is really composed of separate binary parts: (1)A gift and (2)the purchase of an annuity. A CGA is a bargain sale where the sale portion is represented by a part of the annuity payments. The maximum number of annuitants is limited to two people. The payments can either be deferred or immediate and be made on an annual, semi-annual, quarterly or monthly basis. This is perfect for those folks who have not done appropriate financial planning. A CGA provides an immediate charitable tax deduction in the year the property is transferred. This type of gift works best with older donors because the tax benefits increase as the donor's life expectancy (pursuant to the IRS tables) decreases. The gift annuity cannot be payable on more than two lives. Also, annuity payments made to two annuitants will reduce the income tax charitable deduction as such payments are expected to last longer than if a single annuitant was receiving payment. A key decision an annuitant will have to make concerns the selection of the Applicable Federal Rate (AFR). A higher AFR reduces the annuity payments while increasing the amount of the gift.

It is inappropriate for most nonprofits (referring to small nonprofits which make up the overwhelming number of 501(c)(3)s in the United States) to offer such a gifting arrangement. A charitable gift annuity becomes a general obligation of the charity, regardless when the donated property is actually sold.

Coordination of payments and disposition of the property is at a premium. There is no room for error. Accordingly, many states have additional reserve requirements that tax- exempt organizations must follow before they can issue annuities. In the event that the sale of the real estate does not bring in sufficient funds to cover the annuity payments, the organization is responsible and fully liable to make up any shortfall.

A majority of tax-exempt organizations use the rates on their annuity schedules suggested by the American Council on Gift Annuities. The rates are generally based upon the age and the number of annuitants. Some of the larger nonprofits set their own rates in compliance with state law. An annuity that accompanies debt-encumbered property would require a certain amount of gain to be recognized in the contribution year.

It should be noted that a portion of the annuitant's payment is taxable as ordinary income and the balance is considered a return (tax free) of principal.

41

What is a Charitable Remainder Trust (CRT)?

When speaking about lifetime income opportunities, a charitable remainder trust is another option that could be considered.

A Charitable Remainder Trust (CRT) is an effective tool for a donor who wishes to receive seven key benefits: Avoidance of capital gains tax on contributed property; an income stream; an exemption from capital gains when real estate in the trust is sold; a current charitable tax deduction that equals the present value of the remainder interest to the nonprofit; an exemption on gain from proceeds from the sale that are invested; property is out of estate and any generated income can purchase additional life insurance (a wealth building tool).

A CRT cannot be a grantor trust. A grantor trust is one where the grantor (the individual creating the trust) retains certain powers. These include the power to revoke, amend or terminate the trust. The term of the trust is measured by the life of the beneficiary or for a term not to exceed 20 years.

Typically a CRT makes annual payments to named income beneficiaries at a noted percentage of its value. Each year the value of the corpus will be restated as the market value of the trust's corpus fluctuates over time.

The two salient requirements of all CRTs is that the annual payout rate must be a minimum of 5% of the trust asset (cannot exceed 50%) — referred to as a *Standard Charitable Remainder Unitrust* or SCRUT — and that the remainder left to the nonprofit must be at least 10% of the trust corpus at time of trust creation.

The donor's charitable deduction is a result of the (1) value of the property in the trust, (2) the amount of annual payments and (3) the duration of those payments. For example, the charitable deduction will be smaller if the payments last for a longer period of time (multiple income beneficiaries) and the annual payments are also larger.

While the trust is not subject to taxation, distributions to the income beneficiaries will cause these distributions to be subject to taxation in the following order:

Ordinary income; capital gain; tax–exempt income and then return of capital.

Charitable remainder unitrusts come in different iterations, shapes and sizes — to meet specific situations. Sometimes, a trust cannot make the standard payout which must be at least 5% of the values of the trust. To account for this, a *Net Income Charitable Remainder Unitrust* will be created. This type of trust will usually contain an additional provision whereby any deficiency can be made up at a later time, thus the *Net Income with Markup Charitable Remainder Unitrust*. The goal of these trusts are really for capital appreciation until such time as the beneficiary may need income distributions. When unmarketable assets (real estate) are placed into trust, it will typically go into a *Flip Charitable Remainder Unitrust*. The trust will flip to a SCRUT once the real estate can be sold.

A *Charitable Lead Trust* is also a very effective planned giving tool. Sometimes, such a trust is also referred to as a reverse CRT. This trust makes the initial payments or "lead" payments to one or more charities for a period of time and the remainder of the trust is paid to individual beneficiaries after payments are made to the charitable beneficiaries. A significant difference here is that *Charitable Lead Annuity Trusts* (CLATs) or *Charitable Lead Unitrusts* (CLUTs) are not subject to the 5% payout requirement and 10% remainder interest rule as discussed above.

One final and rather salient note about UBIT (unrelated business income tax) and trusts: If a CRT has any income that is subject to UBIT during its tax year, it will be responsible for a 100% excise tax on all its income. This is very important to remember.

42

A donor wishes to fund a Charitable Remainder Trust, Charitable Gift Annuity or Retained Life Estate with mortgaged real estate. What options should be considered?

If possible, the donor can pay off the mortgage debt with other assets— then fund the CRUT, or CGA or retained life estate with the real estate without the mortgage. It should be pointed out that even with a CRT, where all income from the trust can be contaminated by UBIT, the 5 & 5 exception still would apply. This notwithstanding, the prevailing thought is to avoid placing debt financed property into a trust, just to be on the safe side.

43

Why do religious institutions resist receiving Section 8 property as a gift?

Section 8 HUD housing provides wonderful dwelling opportunities for low-income tenants. Typically these tenants share a wide variety of cultural, religious and working backgrounds. Because of the wide range of backgrounds, the religious organizations have generally been quite reluctant to take ownership and engage in management responsibilities of these complexes. Clearly, adverse public relations issues would ensue, should the tenant mix and composition be reconfigured. Such a reconstitution would contravene HUD guidelines. Furthermore, Section 8 properties are hard to finance and existing mortgages have certain lock-in provisions that will not permit new owners to refinance or pay off the balances before maturity. If repairs are required, such funds would have to come from the tax-exempt organization's operating account.

44

Does a donor get to use the full basis amount as a deduction in a bargain-sale transaction when the market value in an appraisal is less than the cost basis?

Let's assume the following facts:

- Current Market Value and Appraised Value: $1,000,000
- Bargain Sale amount: $200,000
- Basis of Property: $1,200,000

A donor cannot take both a charitable deduction and a capital loss.

The donor would receive a charitable contribution of $800,000. The result would be the same for residential and investment property.

45

What statements from a potential donor could indicate an intent to make a gift of real estate?

Although many people are not aware that real estate gifting is a viable option, we live in an age where many folks want to leave a legacy and be a *force for good* in their community. Therefore, we believe that indications like the following should be followed up in earnest:

- We have a vacation home but it is far away. We hardly use it anymore.
- We have a second home. The upkeep is pretty expensive. The kids want no part of the home. They're satisfied with the memories of the good times while they were growing up.
- Now that the children are grown and have lives of their own, we've decided to downsize and put the home on the market.
- My uncle left me several properties that I don't know what to do with.
- I need to move to an assisted living facility and need to put my home on the market.

46

Why are gifts of conservation and façade easements controversial?

There is no clear guidance as to what constitutes such an easement besides the desire to create open space preservation. Overzealous donors have rushed in with overbroad interpretations.

Generally, a charitable deduction is permitted for the diminution in value after the easement is placed upon the property. Ascertaining the value of the property after the restriction is placed upon the real estate is difficult at best.

Façade easements are a subset of conservation easements under the Internal Revenue Code. Façade easements focus upon the preservation of *certified historic structures*, which are listed in the National Register of Historic Places. Here the donor is promising not to do certain things to the property. The property is not being *donated* in the typical way.

The IRS will look at each of these gifts under a microscope.

You may have noticed that these easements are also an exception to the partial interest rule discussed in questions 22 & 36.

47

Which is better: CGA or CRT?

Although this is a question that is often expressed, one is not better than the other. While both provide income to the donor and a residuum to the nonprofit, each has its place and constraints. The needs of the donor remain determinative. However, in some instances, it is also important for the organization to be mindful of the guidelines spelled out in their *gift acceptance policy*.

The number of payment beneficiaries is also an important consideration. A CGA could only have a maximum of two. A CRT could have more than that.

If the donor wishes to benefit more than one nonprofit, then a CRT would be the right choice. A CGA, because of its structure, has one charitable beneficiary.

Donor control could be another factor. Typically the donor receiving an annuity has no control over the gift. A donor under a CRT could be the trustee until the property is sold.

CGA payouts are known and can be optimized with a deferred annuity or with a step annuity (bundling of an immediate annuity with any number of smaller deferred annuities with successively later payment dates). The annuity rates are determined by the American Council on Gift Annuities. CRT rates are determined by the nonprofits. CRT payouts are also known at inception.

Payouts will last for the life of the annuitants. Payouts to the beneficiaries or beneficiary of a trust will last for 20 years or the lives of the beneficiaries.

As mentioned in Questions 13 and 40, smaller nonprofits will be prohibited from providing a Charitable Gift Annuity, because of its complexity and potential liability, as the annuity becomes a long-term obligation of the nonprofit.

CRITICAL RESOURCES

10 Powerful Marketing Oriented Questions to Address With Your Development Team

1. If there was a way to increase your potential donor base would you be interested in having a discussion about this?

2. Would you be interested in learning how to use a tool box of new ideas that will cause more money to flow into your charity/non-profit?

3. Would you like to discover how you can easily meet key professional influencers who have the ability to sway your donors?

4. Instead of continuing to do what is familiar, would you like to learn about a new "sweet spot" that will help you become even more productive?

5. Did you know that a donor's resistance to an idea is really due to a lack of clarity?

6. If a donor offers real estate, and you say "No thank you"- do you understand that you are running the risk of alienating that donor?

7. In order to captivate the donor's interest , do you know how to simplify complex ideas?

8. Can you adequately describe the components of a real estate gift?

9. The biggest fear for all concerned are chain of title issues. Do you know that these issues can be legally avoided?

10. Did you know that there are legally permissible techniques to avoid UBIT and mortgage traps when real estate is donated?

10 Powerful Marketing Oriented Questions to Address With a Donor

1. Is the family self-sufficient?
2. How would you feel if you could wave a magic wand to make the world/your neighborhood a better place?
3. If you had the ability to change something, what would you change?
4. What has stopped you from donating to your favorite charity before?
5. What questions do you have for me about the donation process?
6. Would you be open-minded to learning about the donation process with the goal of making a donation?
7. Before you make up your mind about donating real estate, what do you want to know?
8. Did you know that most people who have donated real estate, were initially apprehensive about making such a gift, until they became educated about the process?
9. Can you imagine what your friends will say when you tell them that you just eliminated or reduced your capital gains tax liability?
10. When would be a good time to start learning about the benefits of real estate donations?

10 Technical Questions to Ask a Donor

1. Who has title to the property?
2. What type of real estate are you interested in donating?
3. Are there existing leases? If so what are the terms?
4. What type of property is adjacent to the subject property?
5. What is the percent of ownership being donated?
6. Are you interested in reserving a retained life estate?
7. Do you wish to realize your cost basis along with your real estate donation?
8. Do you wish to make an outright gift?
9. Would you like to benefit from financial planning through a CGA or CRT?
10. Has your property or the adjacent properties been contaminated with toxic waste of any kind?

Quick Quiz! Real Estate Donation: 47 Critical Questions

(by Dennis Haber and Chase Magnuson)

1. **Why is it important to calculate basis?**
   A. To determine cost for tax purposes
   B. It's not important as basis doesn't matter in real estate gifting
   C. To determine the gift deduction in certain types of gift arrangements
   D. Both "A" and "C"

2. **What counts as dealer property?**
   A. Property held for more than a year
   B. Property held for less than a year
   C. Property not held for investment purposes
   D. Both "B" and "C"

3. **What percentage of AGI may an individual take for their charitable gift donations?**
   A. 10%
   B. 30%
   C. 50%
   D. 75%

4. **What percentage of corporate income may be offset by a charitable gift deduction?**
   A. 10%
   B. 30%
   C. 50%
   D. 75%

5. **Which of the following qualifies for a charitable gift donation?**
   A. Timber
   B. Water rights
   C. Mineral rights
   D. All of the above

6. **What is the IRS designation for a public charity?**
   A. IRS #561
   B. AOL
   C. 501 (c) 3
   D. Section #1031

7. **Donors may split their donations among how many charities?**
   A. 1-4
   B. 4-7
   C. 7-11
   D. All of the above

8. **Donation of a personal residence may be used for both a retained life estate and a charitable gift annuity arrangement.**
   A. True
   B. False

9. **International properties qualify as gift donations.**
   A. True
   B. False

10. **Realtors are normally paid fees by the charity.**
   A. True
   B. False

11. **Who must obtain a qualified appraisal to receive the benefit from a gift donation?**
   A. The charity
   B. Title Company
   C. Donor
   D. None of the above

12. **Donation of property held for less than a year might avoid capital gains tax.**
   A. True
   B. False

13. **Debt encumbered property can be donated.**
   A. True
   B. False

14. **A simultaneous closing may be used to transfer ownership of a donated property.**
   A. True
   B. False

15. **A Realtor may earn more than one type of fee in a single donation transaction.**
   A. True
   B. False

16. **How many charities are there in the United States?**
   A. 100,000
   B. 350,000
   C. 750,000
   D. 1,600,000

These real estate donations qualify for a charitable gift deduction:

17. **Farms/ranches** [T] [F]
18. **Condo in Rome or Paris** [T] [F]
19. **Medical building housing doctor's practice** [T] [F]
20. **A lot in Florida** [T] [F]
21. **Cabin in Pennsylvania** [T] [F]
22. **A 17% ownership interest in apartment complex?** [T] [F]

23. **A donor has what period of time in which to use a charitable deduction?**
   A. One year
   B. Two to five years
   C. Six years
   D. None of the above

24. **Which of these open-ended questions might open a donation discussion with your client?**
   A. What are your plans for your next step with your investment property?
   B. Have you ever considered a gift of real estate?
   C. Did you know that your real estate equity could provide a lifelong income stream?
   D. All of the above

25. **What do the donors get from a gift of real estate?**
   A. Released from property management issues
   B. A chance to see the donations impact upon a charity, lower the value of their estate and prevent family feuds.
   C. None of the above
   D. All of the above

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NOTES

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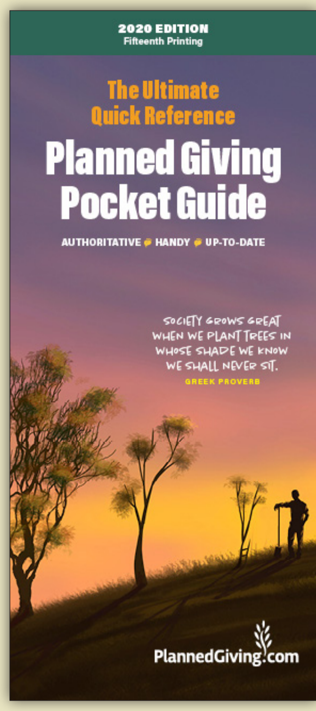

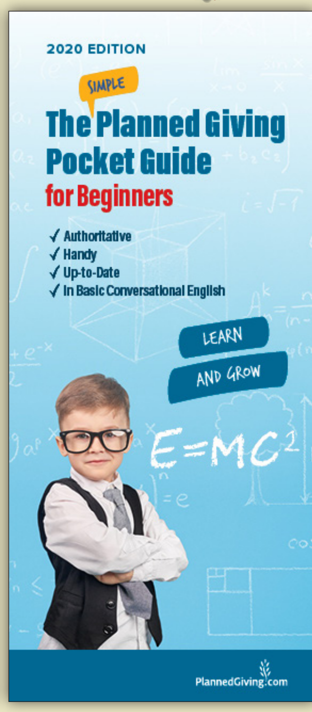

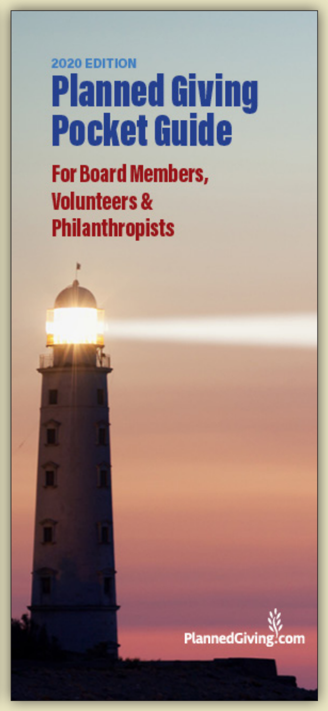

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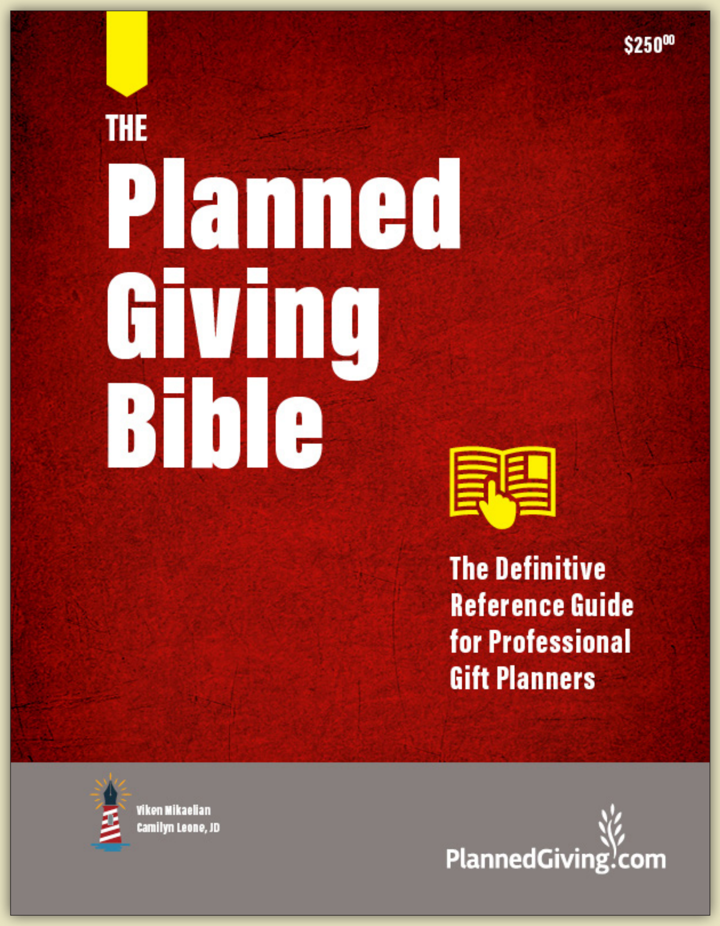

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About The Authors

Dennis Haber, Founder of Haber Consulting Group, Inc.

Dennis works with and helps donors, charities and buyers nationwide navigate the real estate donation process. He has co-authored the seminal book on real estate donations with Chase Magnuson entitled ***The Secret Power Behind Real Estate Donations***. He has also been published in ***Planned Giving Tomorrow***, a resource to the non-profit world.

Dennis Haber is a lawyer with over thirty years' experience in the real estate and mortgage industries. He had represented clients in a wide variety of commercial and residential transactions. He is also a real estate broker and real estate investor and has been published in the ***New York Law Journal***.

His new book, ***Don't Play with Fire: How to Keep Your Greatness From Going up in Flames***, provides the sure-fire power to clobber life's obstacles, conquer the negativity echo, and crush self-doubt. Dennis is also A Ziglar Legacy Trainer and Coach and DISC human behavioral consultant. Inspirational behavior, even in non-profits, leads to sustainable and transferable accomplishments that permits staff and the organization to exceed their goals.

Chase Magnuson, Chief Financial Officer at Realty Gift Fund

Over the last twenty years Magnuson has observed the nonprofit world and the real estate industry crashing into each other. The charities need to raise money, but are either reluctant or prohibited by policies to accept real estate donations. The real estate industry lacks the understanding of the options open to their client offered through gifting arrangements. Donors who wish to expand their philanthropy through real estate gifts rather than cash find the process frustrating. He and Dennis Haber have provided solutions and counseling services to smoothly bridge the gap between the two huge economic giants in the U.S., both through their book ***The Secret Power Behind Real Estate Donations*** and this new publication.