

REAL ESTATE DONATIONS

47 CRITICAL
QUESTIONS



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.

Table of Contents

| | |
|---|-----------|
| Introduction by: Viken Mikaelian | iv |
| How to deepen your knowledge of real estate gift giving and just about anything else | v |
| The Questions..... | 1 |
| What are the benefits of a real estate donation?..... | 1 |
| Does a nonprofit have to take title to the donated gift?..... | 1 |
| Why are step transactions and prearranged sales prohibited by the IRS?..... | 2 |
| Can a simultaneous closing be considered a step transaction or prearranged sale by the IRS? | 3 |
| How important is the appraisal in the real estate gifting process?3 | |
| Can the nonprofit pay for the appraisal? | 4 |
| Why does a nonprofit board member need to be especially involved and engaged in the real estate gifting process? | 4 |
| What is the interplay between IRS form 8283 and IRS form 8282? .5 | |
| Limited liability companies are ubiquitous today. Can they be used as a gift- giving vehicle? | 6 |
| How can Realtors, under a simultaneous closing protocol, list the real estate when the nonprofit does not own the property ?..... | 7 |
| Why are nonprofits reluctant to accept gifts of real estate? | 7 |
| Why should nonprofits change their focus to accept such gifts?..... | 8 |
| So what would you do if a donor calls up your tax-exempt organization to donate real estate? | 9 |
| 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?..... | 10 |
| What technique is used by a majority of nonprofits when accepting gifts of real estate? | 10 |
| What are the liability reduction and avoidance strategies that can be used to protect the nonprofit from the basket of liabilities it may encounter? | 11 |
| What is UBIT? | 12 |
| In what way does the Internal Revenue Code affect gift giving? | 13 |
| What 5 questions should the planned giving officer ask the real estate donor? | 13 |
| What are the basic requirements of a gift of real estate? | 14 |
| What are the most repeated myths about real estate gift giving? | 14 |
| Can leased space be the subject of a real estate donation?..... | 15 |
| What advantages does the donor receive when real estate is donated rather than sold? | 15 |
| Does corporate America donate unwanted real estate? | 16 |

| | |
|--|-----------|
| Why is the annuity rate lower when an annuity is funded with real estate? | 16 |
| What document can one review to discover important facts about a nonprofit? | 17 |
| Why shouldn't your usual real estate contacts be used as the main connection point to discuss a charitable donation? | 17 |
| Is the fear of environmental liability under CERCLA (Compensation Environmental Response Compensation Liability Act) stopping nonprofits from accepting real estate gifts? | 18 |
| What does a nonprofit need to know about the Americans with Disabilities Act? | 19 |
| Does a Donor unduly risk their charitable deduction by imposing conditions on their gift? | 20 |
| What is the difference between a private foundation and a public charity? | 20 |
| Is it possible to mitigate naming rights misunderstandings? | 21 |
| Can a nonprofit accept debt-encumbered property? | 21 |
| What are some basic charitable gift-giving rules? | 22 |
| What is a simple way to determine gain on debt encumbered property? | 23 |
| What is the Partial Interest Rule? | 23 |
| Should an attorney board member offer legal assistance to a donor, who is making a gift to the organization? | 24 |
| What is a Bargain Sale Gift? | 24 |
| What does a remainder interest gift look like? | 25 |
| What is a Charitable Gift Annuity (CGA)? | 26 |
| What is a Charitable Remainder Trust (CRT)? | 27 |
| 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? | 28 |
| Why do religious institutions resist receiving Section 8 property as a gift? | 29 |
| 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? | 29 |
| What statements from a potential donor could indicate an intent to make a gift of real estate? | 30 |
| Why are gifts of conservation and façade easements controversial? | 30 |
| Which is better: CGA or CRT? | 31 |
| Resources..... | 34 |
| 10 Powerful Marketing Oriented Questions to Address With a Donor | 34 |
| 10 Powerful Marketing Oriented Questions to Address With Your Development Team | 35 |
| 10 Technical Questions to Ask a Donor | 36 |

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
PlannedGiving.Com
Success@PlannedGiving.com

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 convey 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.



A MAGAZINE FOR FUNDRAISERS WHO "GET" IT.

Marketing Tips and Leadership Strategies Delivered Straight To Your Mailbox Every Month

plannedgiving.com/gt
800-490-7090



Stuart

Camilyn

Scott

Meredith

Brian

We Like to Talk!

Great Speakers. Great Topics.

Need a nationally known speaker for your next event? You can't get better than Viken and the rest of our Philanthropy experts.

With a sense of humor, they deliver it all in a lively, engaging manner—a refreshing alternative to the typical vanilla presentation. (You know, the kind that are dry enough to put a cat on speed to sleep.)

Packed with practical ideas to help your members raise more and larger gifts, *today*.

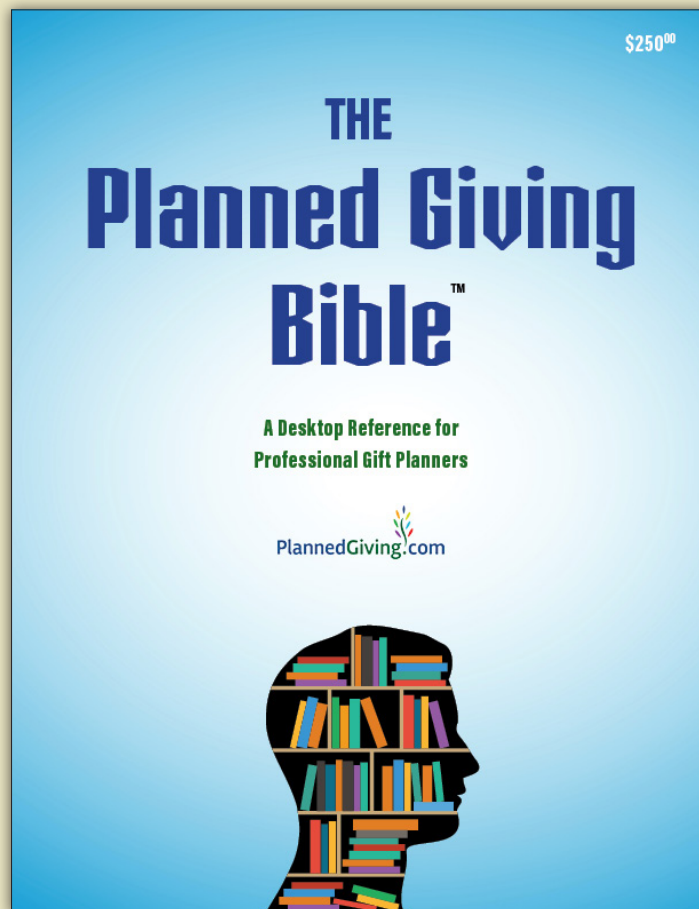
Complete presentation outlines and bios at:
PlannedGiving.com/seminars

PlannedGiving.com

new



PlannedGiving.Com/guide



PGBible.Com
Available Summer 2019