

Looking A Gift Horse In The Mouth: Receiving Gifts Of Real Estate

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For charities, it's not wise to accept real estate gifts on impulse. The best way to be prepared is to establish policies and procedures for accepting gifts of real estate from a prospective donor.

The telephone rings and a prospective donor offers you a "valuable" piece of real estate worth far more than your typical contribution. If you are like most executive directors, your immediate impulse is to accept the gift. As many charities have learned the hard way, it's not wise to accept real estate gifts on impulse. The best way to be prepared is to establish policies and procedures for accepting gifts of real estate before you get that telephone call. Then, you can better determine whether the gift would be an asset or a potential liability.

But how do you ask important questions without offending the donor? And how do you decline such an offer without losing a friend for your charity?

Having written policies for evaluating and accepting gifts of real estate provides several safeguards:

Minimizes the risk of environmental liability arising from ownership; Reduces the possibility of offending wealthy donors and other contributors; Decreases the risk of politics and/or strong personalities or departments dominating your planned giving efforts; and, Satisfies increasingly vigilant board members about operational policies for gift acceptance policies to protect against lawsuits.

Having written policies also gives you more confidence to ask questions when approached with a potential gift. The following suggestions will help you establish policies for receiving gifts of real estate. These include:

SITE INSPECTION:

Your charity should have a firm policy that it can not accept real estate without first inspecting the property. The primary reason for this inspection is to assure you that there are no environmental hazards visible on the property. Additionally, an inspection assures you there are no other barriers to the property's marketability and tells you whether you would have a preliminary interest in the property. For example, you probably would not want to receive a "crack house" as a gift. And, it's a good idea to take some photographs so you can provide them to the board of directors.

INITIAL DOCUMENTATION:

After explaining your inspection policy to a prospective donor, assuming he or she is amenable, you should ask the donor to provide you with the following information to help you locate and evaluate the property.

1. A survey of the property;
2. Legal description of the property;
3. The address and (if necessary) a detailed description of the location of the property to help your representative find it;
4. The names and percentage ownership of any co-owners;
5. Copy of recent tax statements, including appraisals;
6. Information on any current leases or contracts outstanding on the property;
7. A brief description of the current use of the property.

If your prospective donor is not willing to provide this information or is unwilling to allow you to inspect the property, this would be sufficient cause to tell the prospect that you appreciate his or her generosity, but will be unable to accept the gift. It is easier to say no to a gift because of policy constraints.

ADDED CONDITIONS:

Assuming a prospective donor is agreeable and eager for you to proceed, ask a few more questions. Does your donor intend to make an outright gift, or are there any conditions, stipulations or obligations to the donor attached to the gift? Again, by having policies in place, if the prospect has "strings" attached to the gift which violate any of your policies, you have an easy way to walk away from the gift.

PLANNED GIFTS:

If a condition of the gift is that your prospect wants to use his or her real estate to fund a charitable trust, this raises other questions. If you do not have a planned giving program at your charity,

you would want your policies to spell out what steps you would take if a planned gift was offered. Some charities retain legal counsel specializing in estate planning or a planned giving consultant, so they can take advantage of an unsolicited planned gift. If your prospect is interested in a planned gift, ask if the property is debt-encumbered. Even if this is an outright gift, your charity should have policies outlining what amounts of debt, if any, are acceptable. You should also clearly define how and when to obtain assistance from real estate professionals to evaluate the property and its marketability.

The answers to these questions set out above, copies of relevant documents and a drive by inspection of the property should provide you, your board of directors or the executive committee with enough information to decide whether they wish to pursue the gift any further. The charity must consider the benefits and the costs of accepting a gift, including any potential liability. At a minimum, the charity will incur some expenses in obtaining the property and ongoing expenses until the property is sold.

BEFORE CLOSING:

If the proposed gift passes all initial guidelines, you need policies outlining the steps needed to close a gift, making sure all issues have been discussed among all parties. Typical policy issues include:

Will your staff use an "inspection checklist" to make sure that you get adequate information on the property when it is inspected? If so, what will this checklist include?

Will you have an "environmental questionnaire" or "checklist" if your inspection goes well? This is crucial to determine whether there are environmental hazards not visually apparent in your inspection. Because liability for environmental contamination may be imposed on any person or organization in the chain of ownership, it is necessary that your charity show that reasonable

efforts were made to ensure the property was free of contamination to avoid "innocent liability." Your charity should anticipate commissioning a Phase One environmental study of the property and a Phase Two study of the property should any problems be identified. Your organization should not accept a property until any required clean up is accomplished and written confirmation of that fact received from appropriate state and federal regulatory agencies.

Will debt-encumbered property be accepted? If so, under what conditions and who will make the determination?

For improved properties or properties with buildings, will you hire experts to inspect the mechanical systems and structure?

Will it be your charity's policy to sell any land received as a gift as soon as possible? If so, donors should be made aware that you will immediately market the property.

A current independent appraisal and preliminary title report should be obtained, preferably at the donor's expense, to confirm value and ownership of the property. (Your charity should also advise the donor to comply with IRS Form 8283 reporting requirements for gifts of real estate in excess of \$5,000 in value.) What individual (s) or group (s) will approve the acceptance of real estate gifts?

By having policies in place, you can feel comfortable that you are protecting your charity and your donor when you decide to accept a gift of real estate. You will also have concrete reasons to reject some gifts, keeping you from decisions based on emotions or your current financial situation.

Receiving donated real estate can be a gift or a headache for your charity. Establishing policies and procedures will ensure that the gift you accept truly benefits your organization and builds good relationships with new and established donors alike. □