A win for all sides involved: Giving gifts of real estate

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Frequently, corporations, foundations and individuals are faced with the dilemma of holding real estate they no longer want. An alternative is giving it to a charity. The charity could sell the property free of taxes. It is "free" money to them. It sounds easy, but a potential donor must consider the following questions:

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Why not hold on to the property?

What are the risks of continuing to hold onto the property? The most obvious is a decline in market value.

While less dramatic than a drop in marketability, another risk is that the costs to hold the property may increase so that it is no longer worthwhile to hold it.

What are the costs of continuing to hold the property?

The interest rate on the related debt or the property tax rate may go up. Insurance must be maintained even if the property is in a remote area. Improved or income producing property requires maintenance, liability insurance and property management and leasing expertise. Raw land must be monitored to avoid illegal dumping. Land within the city limits must be mowed and kept free of debris.

What is the value of the property to the donor and the prospective charity?

A sophisticated charity will ask for certain items prior to making a final decision to accept any gift of real estate. These items can include:

- A brief description of the property's current use;
- A survey of the property;
- A legal description of the property;
- The names and percentage ownership of any co-owners;
- Copies of recent tax statements, including tax appraisals;
- Information on any current leases, outstanding contracts, operating statements and amount and terms of any debt;
- Copies of any engineering or environmental studies.

An appraisal by a qualified appraiser is necessary for the charity and is required by the IRS for noncash contributions over $5,000 to support the value of the donation.

What are the tax implications?

Generally, gifts of appreciated property are deductible to the extent of the fair market value of the asset. The amount of the deduction depends on the type of property. If the sale of the property would give rise to ordinary income or to a short-term capital gain (e.g., inventory or property held less than a year), donors can deduct the fair market value of the property less the amount that would ordinarily be recognized as ordinary income. Otherwise, donors may deduct the fair value of the property on the date of the gift. Donors must consult their tax counsel to fully understand other tax implications that require specific paperwork from both the donor and the charity.

What are the additional costs and considerations when donating real estate?

The donor must be prepared to pay some or all of the costs associated with closing any real estate transactions. In addition to the appraisal and the other items discussed above, these may include:

- An updated survey;
- Additional engineering or environmental studies;
- Title insurance;
- Legal fees.

Moreover, some organizations will not accept property unless the donor is prepared to remain liable for any debt and contribute funds required for the on-going maintenance or management of the property until it is sold.

How does the donor find the right charity for its property?

In most cases, charities want the proceeds from a sale of real estate to further their charitable purposes. In these cases, the charity will immediately sell the property, raffle it or swap it for a more desirable property. If the donor wishes to see a more long-term use of the property, the donor must choose the charity carefully.

Individuals might select the charity that holds a personal interest.

Perhaps they are already contributors, past board members or know key individuals associated with the charity. Foundations and corporations might select charities that have similar missions or interests.

Suppose the charity approaches the donor first?

Often a charity looking for property will ask the owner of a desired property to donate the property or sell it at a price substantially below market value.

Corporations, foundations and individuals face the dilemma of holding real estate they no longer want. An alternative is giving it to a charity. The charity could sell the property free of taxes. It is "free" money to them.

In both instances, the donor and the charity must go through the same due diligence process. Costs involved in performing studies, obtaining a survey and title insurance are typically negotiable in this situation and the donor should explore this with the charity.

Is the donor truly a candidate for giving away real estate?

Donating real estate works best when the donor's primary motivation is charitable and personal tax benefits are secondary. If the donor views this process as "just another business deal" chances are that the many steps required will prove too frustrating or cause resentment against the charity, especially if the transaction develops problems. When everyone performs his or her job responsibly and thoughtfully during the donation process, a win for everyone is almost guaranteed.

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