When the Land Is Free

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A gift of real estate has more potential than most gifts to become a liability for an organization. A not-for-profit needs clear policies for evaluating and accepting such gifts.

The telephone rings. It is a prospective donor offering you a piece of real estate — ostensibly worth far more than your typical contribution.

What do you do?

If you are a typical not-for-profit executive, your impulse will be to accept the gift. Who would turn down such a "valuable" donation?

However, as many charities have learned the hard way, accepting real estate without subjecting the gift to a rigorous evaluation process is unwise.

Of course, subjecting a gift to such a process is more easily said than done. How do you ask important questions about the potential gift without offending the donor? Moreover, should you need to decline the offer, how can you do so without destroying a donor relationship?

When you get such a call, you will be better prepared if your organization has in place firmly established policies and procedures for accepting gifts of real estate.

Policies give you clear guidelines to help you determine whether a gift would be an asset or a liability for your organization. Also, with the weight of organization policy behind you, you will be less likely to offend donors when you ask questions about the potential gift. Plus, turning down a gift is less insulting if you can blame it on objective criteria.

Written policies for evaluating and accepting real-estate gifts give your organization several additional safeguards. They reduce the risk of environmental liability arising from property ownership. They decrease the risk that political pressure from strong personalities or departments will dominate your planned-giving efforts. They convince board members, worried about lawsuits, that you have sound policies for gift acceptance.

As you work to establish these policies at your organization, here are five suggestions to keep in mind:

1. Always inspect the property

Every organization should have a firm policy against accepting real estate without a thorough inspection of the property. You would never purchase property sight unseen. Why would you accept it as a gift without knowing what you are getting?

Real estate has more potential than most gifts for becoming a liability. For example, imagine accepting a gift of property only to discover that your organization now owns a crack house.

An inspection will tell you whether you can use the property and give you an idea of its marketability. In addition, you will find out whether any environmental hazards are visible.

2. Obtain initial documentation

In addition to your inspection policy, a prospective donor should provide you with the following information to help in your evaluation:

- the location, a survey, and a legal description of the property;
- the names of any co-owners and their percentage of ownership;

- copies of recent tax statements, including appraisals;
- information on any current leases or contracts outstanding on the property;
- a brief description of the property's current use;
- a current, independent appraisal and preliminary title report, preferably at the donor's expense, to confirm the property's value and ownership;
- the most recent operating statements, including income and expenses.

If your donor is unwilling to provide this information, or is reluctant to have you inspect the property, say that, while you appreciate the gesture, your policies will not allow you to accept the gift.

3. Do an environmental assessment
When inspecting the property, use a standard checklist — including an environmental site examination list — to ensure that you obtain adequate information.

Also, send your prospective donor a "prior uses" questionnaire to help you learn if any earlier utilizations of the property exposed it to contamination.

After you have completed your site inspection and reviewed the completed questionnaire, you must find out whether a formal environmental assessment is necessary. This step is crucial, because liability for environmental contamination may be imposed on any person or organization in the chain of ownership, including a not-for-profit organization. You must be able to show that your organization made reasonable efforts to ensure that the property was uncontaminated.

If you discover contamination, do not accept the property until any required clean up is completed, and you receive written confirmation of that fact from the appropriate state and federal regulatory agencies.

If you find no evidence that the property is contaminated, and you decide to accept the gift, require that all appropriate assessments are completed.

4. Find out if the gift has strings
Once the donor has agreed to the inspection and has provided you with the information you require, find out if the donor intends to make an outright gift — or does the gift include conditions, stipulations or obligations?

Make sure your policies include the steps to take if a donor offers your organization a planned gift.

If the prospect attaches strings to the gift that violate your policies, you now have an easy way to decline the offer.

5. Be prepared for the second phase
Once a proposed gift has passed your initial inspection, you will need policies outlining additional steps to take before it's a done deal.

Using your own written policies, you should be able to answer these questions:

- Will your organization accept debt-encumbered property?
- If so, under what conditions?
- If the gift is an improved property or includes buildings, will you hire experts to inspect the structure and mechanical systems?
- How and when will you obtain assistance from real-estate professionals to evaluate the property and its marketability?
- Is it your policy to sell any property you receive as soon as possible? (If so, disclose this to potential donors.)
- Who in your organization must approve the acceptance of real estate gifts?

For a not-for-profit organization, donated real estate can be either a blessing or a headache. Established policies and procedures protect both the organization and the donor.

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