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Legal Minute

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# Charitable Donations of Real Estate: Too Good to be True?

*Tyree Collier, Thompson & Knight, LLP*

Donations of real estate have become increasingly popular during the last few years. This legal minute reviews the rules regarding donations made to nonprofits that are 501(c)(3) public charities and not private foundations or private operating foundations.

## What questions should a nonprofit ask before accepting a real estate gift?

A nonprofit should think carefully before accepting donations of land. Staff and board should ask the following questions when approached by a potential donor:

- Does the nonprofit have any use for the property?
- Are there any restrictions on the use of the property?
- What are the taxes on the property?
- If the nonprofit plans to sell the property, what are the current real estate market conditions?
- Does the donor have clear title to the property?
- Are there any existing or potential liens on the property?
- Does the property have any environmental problems?
- How is the property zoned?

## Do donations of real estate qualify as charitable gifts?

Yes. A 501(c)(3) tax exempt nonprofit may accept gifts of real estate and the donor may take a tax deduction on their federal income taxes. In order for a real estate donation to qualify as a charitable contribution under the Internal Revenue Code (IRC), the nonprofit receiving the gift and the donor making the contribution must meet the requirements established in Section 170 of the IRC.

## What types of real estate qualify as a donation?

Any type of real estate can be donated to a public charity, including undeveloped vacant land, homes and other residential property, and commercial property. A donor may give property that the donor currently owns or may donate the land by will when the owner dies.

Generally, the donor must donate all of the ownership of the real estate. See I.R.C. §170(f)(3). A contribution of only the use of real estate is not deductible as a charitable contribution under Section 170.

## What amount of the donation is deductible?

Generally, donors may deduct the fair market value of the real estate if the donor has owned the real estate for more than one year and if the owner does not hold the real estate for sale to customers. See I.R.C. §§ 170(e)(1)(A), 170(b)(1)(C)(iv), and 1221(a). Depending on the donor's individual circumstances, the amount deductible in a given year may be less than the fair market value, with the excess deduction carried forward and taken in subsequent years. See I.R.C. §§ 170(b)(1)(G).

For other real estate donations, a donor's deduction is calculated by a different method. See I.R.C. § 170(b)(1)(C)(iii).

## What happens if a nonprofit buys real estate for less than fair market value?

A bargain sale of real estate occurs when a person makes a contribution to a public charity by selling the charity property at a price that is intentionally set below its fair market value. The donation is equal to the amount by which the property's fair market value exceeds the bargain sale price paid by the 501(c)(3) organization. See I.R.C. § 170(e)(1) & (2). A bargain sale also occurs if the nonprofit assumes an existing mortgage on the property and the mortgage assumed plus any amount paid by the nonprofit is less than the fair market value of the property. The amount of the mortgage is treated as part of the sales price of the property. See Treas. Reg. § 1.1001-2(a).

## How is fair market value determined?

Fair Market Value of a property is the price a willing knowledgeable buyer would pay a willing knowledgeable seller when neither has to buy or sell. The donor is responsible for the determination of the value of the donated property. Factors considered in determining the fair market value of real estate include: sales of comparable properties, capitalization of property, and replacement cost. All real estate donations with a value of $5,000 or more require the donor to obtain a qualified appraisal. See Form 8283 Instructions and IRS Publication 561 for more information. A nonprofit should not fill out the appraisal form or inflate the value of the gift.

## How should a nonprofit document and report a donation of real estate?

The value of the real estate donation is provided by the donor based on the qualified appraisal obtained by the donor.

**Written Acknowledgement:** A nonprofit must provide a written acknowledgment for each donation of real property. The written acknowledgment should contain: 1) the name of the charity; 2) a description of the real estate donated; 3) the date and location of the contribution; and 4) a statement about what, if any, goods or services were provided by the charity to the contributor in return for the contribution. See I.R.C. § 170(f)(8) & (17); Treas. Reg. § 1.170A-13(a)(1) and (b)(1).

**Form 8283:** Form 8283 provides a summary of non-cash gifts including their value. The value of the donation determines which sections of Form 8283 must be completed. Donors who donate real estate valued at $5,000 or more must complete Section B of Form 8283. If the real estate is worth $500,000 or more, the donor must also attach the appraisal to Form 8283. See I.R.C. § 170(f)(11)(C); Treas. Reg. § 1.170A-13(c)(1) and (c)(2)(i). I.R.C. § 170(f)(11)(D). The nonprofit must complete Part IV of Form 8283 and sign the form to verify that the property was donated.

**Form 8282:** When Section B of Form 8283 is required, the nonprofit organization must complete and file Form 8282 if it sells, exchanges, or otherwise disposes of the donated property within three years of the date of receipt. Form 8282 includes information detailing the amount received from a sale of the real estate, which the IRS uses to compare to the claimed fair market value that was deducted by the contributor.

## What is considered a qualified appraisal?

Treas. Reg. § 1.170A-13(c)(3) sets out the detailed requirements for an appraisal document to be treated as a "qualified appraisal." The appraisal document must:

- be prepared, signed, and dated by a "qualified appraiser";
- be related to an appraisal made no earlier than 60 days prior to the date of the donation or no later than the due date of the donor's income tax return;
- be prepared in accordance with generally accepted appraisal standards (see **www.appraisalfoundation.org** for more information);
- include all the required information, including a detailed description of the property and any agreements between the donor and the nonprofit regarding use of the property; and
- not involve a prohibited appraisal fee.

## Who is considered a qualified appraiser?

A "qualified appraisal" can be provided only by a person who satisfies the requirements for a "qualified appraiser." See I.R.C. § 170(f)(11)(E). To meet the requirements, an appraiser must:

- have earned an appraisal designation from a recognized professional appraiser organization or have met minimum education and experience requirements established by the Treasury regulations;
- regularly perform appraisals for which he or she receives compensation;
- be licensed or certified for the type of property being appraised in the state in which the appraised real estate is located;
- be able to demonstrate experience related to the type of property being appraised; and
- have not been barred by the IRS within the three years preceding the appraisal.

## Best Practices

The nonprofit should evaluate each potential gift according to an existing gift acceptance policy. At a minimum, the policy should address the following issues:

- the types of gifts that the organization accepts;
- the investigation required for each gift; and
- the documentation and reporting requirements for each gift.

## Useful Resources

- IRS Publication 561, Forms 8283, and 8282 at **www.irs.gov**
- **http://www.cof.org/files/Documents/Legal/Gifts_of_Tangible_Personal_Property.pdf**
- **http://www.hansonbridgett.com/docs/press_room/hb_in_the_news/GiftsOfRealProperty_Oct-2006.pdf**