Do You Have a Policy for Real-Estate Gifts?

If not, it's time to create one. Here's a sample to follow.

By Eliza Solender

In a tough economy, nonprofits need to seek donations other than the usual appreciated stocks and personal checks. Increasingly common are donations in the form of real estate. According to a survey by Community Foundations of America (www. cfamerica.org), nonprofits are finding that their donors' biggest assets aren't their stock portfolios but their houses and other property.

But as lucrative an opportunity as property can be, these transactions are littered with potential pitfalls that can endanger an unprepared organization. For example, environmental contaminates can make the property unusable and unsalable, cost huge sums to remediate, or make the organization liable for violations. Any one of those costs could fell an otherwise financially-stable charity.

With that caution in mind, any organization accepting charitable gifts should have a written policy and procedure for accepting gifts of real estate. If the donor and recipient do their homework ahead of time, they stand a better chance of creating a win for both.

A Sample Policy to Smooth Your Way

Each organization should craft its own policy with the aid of its lawyers, real-estate professionals, and accountants. What follows is a model you can use to build your policy, with important points to keep in mind.

(Insert Organization Name)
Gifts of Real Property Policy and Procedures

Purpose:

To define the policies for accepting gifts of real property to *Organization*

Policy:

It is the policy of *Organization* to accept gifts of real estate if, upon analysis, it can be shown that (1) the potential gift may result in financial gain to *Organization*, or (2) *Organization* may gainfully utilize the property for one or more of its programs.

Responsibility:

Preliminary analysis of the potential gift is the responsibility of the Manager of Development and the

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Development staff. Acceptance of gifts is subject to the approval of the Executive Committee of *Organization*.

Guidelines:

1. Gifts of a nature that would be inconsistent with the goals, objectives, and image of *Organization* will not be accepted.

2. Gifts of real estate are ordinarily acceptable only after it has been determined that no reasonable possibility exists that the property could be contaminated by hazardous waste or mold. An initial inspection of the property shall be made by *Organization*. The investigation shall include both a physical inspection of the property and an investigation of the existing and previous ownership and use of the property. If, after the inspection, it is determined there is a substantial likelihood the property is contaminated by hazardous waste or has had water damage, the property will not be accepted at that time and consideration will be given to having an EPA Phase One environmental assessment performed. The expense of the assessment must be borne by the donor unless the Executive Director approves an exception.

3. All gifts of real estate will be evaluated in light of debt, insurance requirements, homeowners' association fees, and other carrying costs as to the advisability and value of accepting the gift. Properties with debt will not routinely be accepted except with an independent appraisal and only if the debt amounts to less than 50% of the value established by the appraisal.

4. A determination will be made whether there are any restrictions, easements, liens, or other title issues that could substantially impair the value or marketability of the property.

5. An independent qualified appraiser will be retained to establish the fair market value of the property. The appraisal will establish the donor's charitable gift value, give *Organization* a reasonable value at which to carry the asset on its books, and establish a reasonable asking price for the property. The expense of the appraisal must be borne by the donor unless the Executive Director approves an exception.

6. If the property will not be retained for use by *Organization*, it will be listed for sale with a licensed real-estate broker as soon as possible. *Organization* will attempt to realize a sale with a purchase price no less than the appraised value of the property, but is not bound to do so. Factors such as high taxes, sizable debt, or other carrying costs may dictate that the property be sold as quickly as possible for a price less than the appraised value. If this is the case, the donor will be so informed.

Get the donor to agree that the restriction will hold for only a certain amount of time.

7. All documents will be subject to legal review prior to accepting the property. The cost will be negotiated with the donor.

8. If the donor wishes the gift to be used to fund a charitable trust or to be given as part of a planned giving program, legal counsel specializing in estate planning will be retained by *Organization* to assist in the gift process and enable *Organization* to accept the gift.

Procedure for the Evaluation and Acceptance of Real Estate:

1. A donor indicates to *Organization* an interest in making a gift of real estate. Real estate could include land, apartment buildings, retail centers, office buildings, condominiums, single family dwellings, or mineral interests.

2. A representative of *Organization* schedules a visit with the donor.

3. The donor is informed that the following information about the property will be needed:

a. Legal description of the property, including address or location, directions to the site, and method of access;

b. Copy of the donor's vesting Deed;

c. Copy of recent property tax statements;

d. Name of the owner(s), percentage of ownership, and type of ownership;

e. Terms of debt, if any, and whether *Organization* will be expected to assume the debt;

f. Survey or plat, if available;

g. History of use of the property;

h. Information about the costs of owning and operating the property (e.g., property taxes, utilities, maintenance, and insurance) and, if income producing, net operating results of the property for the past two years;

i. Copies of any insurance policies;

j. Rent roll and current leases, if applicable;

k. Zoning status of the property, including any restrictions in use, any enforcement violations, or proposed condemnation;

l. Copies of any service agreements;

m. Copies of any existing environmental assessments; and

n. Copy of a recent appraisal, if available.

4. A representative of *Organization*, along with a real-estate professional, will visit the property to perform a visual site inspection, take photographs, and make an initial assessment of the marketability of the property. Any obvious environmental hazards will be noted and a recommendation made whether or not to pursue the potential gift any further.

5. If the recommendation is to pursue the potential gift, a qualified firm shall perform an EPA Phase One assessment. Based on the results of the Phase One assessment, a Phase Two assessments may be required. The donor may be requested to provide funding for the assessments.

6. A title commitment will be obtained to review current ownership

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of the property and to determine if there are any defects in the title.

7. A zoning verification letter will be obtained from the appropriate governmental authority.

8. When there are buildings on the property, there must be an inspection of the mechanical systems, electrical systems, plumbing, and structure. Cost of the inspection will be negotiated with the donor.

9. The donor will be informed that a qualified appraisal is required to establish the fair market value of the property. The donor is responsible for obtaining the appraisal and for reporting the donation to the IRS on form 8283 for gifts valued in excess of $5,000.

10. Whenever possible the donor will be asked to absorb the costs for the transfer of ownership to *Organization*. These costs include title insurance, preparation of the Deed of Trust, recording costs, and legal fees charged by the title company. In addition, *Organization* will not bear the cost of a commission or fee payable to a broker with respect to the transfer of the property to *Organization*.

11. A report and recommendation will be prepared for the Executive Committee, including a budget representing total costs of ownership for the period of time *Organization* expects to own the property. The budget should include taxes, insurance, utilities, maintenance, debt service, fees and permits, advertising, commissions, legal fees, closing costs, and all other costs incurred in obtaining, owning, and disposing of the property. The budget will be used to project the net proceeds to *Organization* expected from the final disposition of the property.

12. Final acceptance of the gift is the responsibility of the Executive Committee of *Organization*.

13. After the transfer of ownership to *Organization* is completed, the property will be listed immediately with a qualified broker unless the gift is for a specific purpose deemed necessary by *Organization*. *Organization* will reserve the right to sell the property at a later date should the intended purpose no longer be appropriate for *Organization*. If property is sold within a two-year period, *Organization* must file a Form 8282 with the IRS disclosing the sales price.

Other Things to Consider

You may also need to address some of the following issues:

Distance: Gifts of real estate located far away from the organization can be very challenging. If the property is large, it may be worth the effort and expense required to perform due diligence, manage it, and sell it. This is a decision to be made on a case-by-case basis by each organization.

Gifts to multiple charities: In some cases, a donor may wish to make a gift of a specific property to several charities, sometimes in unequal percentages and sometimes naming one of the organizations as managing authority to act on behalf of the other charities. Each charity will need to decide how comfortable it is with this type of gift. A large organization usually won't accept such a gift unless it is the managing owner.

Liability: A charity may want to consider placing any gift of real estate in a Limited Liability Corporation (LLC). By doing so, the organization limits its exposure to potential liabilities involved in ownership, particularly if there are any potential hazardous-materials issues.

Roll-back taxes: When land designated as "agricultural use" is sold to a user to develop residential lots or a commercial development, the property is subject to roll-back taxes. In many states, when the property-tax designation is changed to a new use, the tax rate may be rolled back five years. This can be a sizable sum and is typically negotiated when selling the property.

Smaller donations: Consider avoiding real estate such as lake lots, trailer park lots, lots in planned communities, and time-shares. Most of these have values of less than $5,000 and are in locations inconvenient to the charity. These gifts may not be worth the effort to evaluate, acquire, and sell.

Restrictions: Sometimes donors will give property with conditions or restrictions and reversionary interests. If the condition is not satisfied or the property ceases to be used for its intended purpose, it reverts back to the donor or the donor's heirs.

Say, for example, that a donor gives an organization several acres of land "on condition that the organization constructs a new facility costing more than $500,000." When the required amount is spent, the organization should immediately obtain an acknowledgment from the donor stating that the condition has been met and record that acknowledgment in property records. Years later, when the organization wants to sell the property, it has proof for the title company that it has fulfilled the condition.

A restriction should be limited to a number of years. Suppose, for instance, that a donor requires that donated land be used "only for playing fields." What if, 30 years later, the organization needs to use that land for a new facility? What if the donor has died and can't remove the restriction? It's better to get the donor to agree now that the restriction will hold for only a certain amount of time.

Use Your Policy

Once you have a real-estate-gift policy in place, you're ready to actively solicit gifts of real estate. One gift of a house with sale proceeds of $100,000 will make the entire process worth the time and effort. For more information on accepting gifts of real estate, visit www.solenderhall.com. ■

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