GIFTS OF REAL ESTATE: Issues and Ideas

Northern California Planned Giving Council

May 2, 2016

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- S Corporation
- Partnership / LLC

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I. UNDERSTAND THE ASSET

Real Estate Is Held In Many Forms

A. Outright Ownership

B. C Corporation

Gift of stock

Gift of corporate assets – deduction is limited to 10% of taxable income. Gift of "substantially all" assets is treated as a sale (Regulation Section 1.337(d)-4).

C. S Corporation

Gift of stock – while a charity can be a shareholder, a CRT cannot (IRC Section 1361). Also, all income, pass-through and gain on sale, will be UBI (IRC Section 512(e)).

Gift of corporate assets – deduction flows through to shareholders, subject to limitations.

D. Partnership/LLC

Gift of partnership interest – tax attributes flow through to owners.

Gift of partnership assets – deduction flows through to partners.

II. DOES THE CHARITY WANT THE ASSET?

Due Diligence

The amount and kind of due diligence depends upon the asset in question.

The amount and kind of due diligence may depend upon the charity in question.

See attached *sample* information on real estate gifts.

Gift Acceptance Policy

A charity's GAP should, among other things, address what kinds of assets and gift vehicles the charity will consider accepting.

Who in the organization decides whether real estate is acceptable?

What information is required to make a decision? (See checklist attached.)

How will costs of maintenance, upkeep, insurance, taxes, and debt service be handled?

USE A CAREFULLY DRAFTED GIFT AGREEMENT

If you are going to take the gift, know what the "deal" is and get it documented.

Particularly problematic issues include:

- purpose restrictions, and whether donor has any right to redirect or sue if restrictions are not met;
- naming (and un-naming) rights;
- confidentiality; and
- how costs are to be charged.

III. IF THE CHARITY DOESN'T WANT THE ASSET….

You don't have to accept a gift – not only can you decline a gift as it is being offered, but a beneficiary may disclaim any interest, in whole or in part, by filing a disclaimer. There are both state law rules on disclaimers and federal tax law rules (IRC Section 2518).

GENERAL CALIFORNIA RULES (PROBATE CODE SECTION 275)

The disclaimer must be in writing, identify the creator of the interest, describe the interest being disclaimed, and state the disclaimer.

With whom the disclaimer must be filed depends upon the situation: the Probate Court (for bequests under a will), the trustee of a trust, the person responsible for distributing the interest, the person having possession of the asset, or the creator of the interest.

Note a beneficiary cannot disclaim an interest after he/she/it has accepted the interest.

A disclaimer is effective if it is filed within a "reasonable time" after the beneficiary acquires knowledge of the interest. In the case of certain types of interests, there are special rules that provide when a disclaimer is conclusively presumed to have been filed within a "reasonable time".

IV. IF THE CHARITY WANTS THE ECONOMIC VALUE OF THE ASSET, BUT NOT THE ASSET

What if you really want the economic value inherent in that run-down, toxic-waste laden building?

SHORT TERM CRT

Consider having the donor contribute the asset to a 5% net income CRT with the donor serving as trustee and a 3-year term. The liability remains with the donor (now serving as trustee). The donor hopefully sells the property promptly, and invests the proceeds until the trust termination date.

Donor's deduction is approximately 85% of the building value.

How short a term can you use? IRC Section 664(d)(2)(A) refers to payments continuing for "a term of years" (not in excess of 20 years).

How do you minimize income back to donor after the property is sold? Use a net income payment form, have the donor invest for growth and not income, and include the charity as an income beneficiary.

An alternative: use a more traditional long-term CRT, and have the donor give his income interest to charity after the asset is sold, and then collapse the trust. See Rev. Rul. 86-60.

HAVE DONOR GIVE TO A SINGLE-MEMBER LLC

Consider having the charity form a limited liability company (LLC). For state law (*e.g.*, liability) purposes, the LLC should be respected as a separate legal entity unless a litigant can "pierce the corporate veil". As such, a liability incurred by the LLC (due to it having accepted toxic real estate) should be limited to the Lilac's assets – not the charity's.

For tax purposes, however, an LLC is classified under the so-called "check-the-box" regulations (Treasury Regulation Sections 301.7701-2 and -3). The check-the-box regulations provide, in general, that a single-member LLC may choose to be taxed as a corporation, or as a branch or division of its owner (in which case its separate legal existence is disregarded for federal tax purposes).

A single-member LLC that does not elect to be taxed as a corporation is "disregarded as an entity separate from its owner". This means that the activities of a disregarded entity "are treated in the same manner as a sole proprietorship, branch, or division of the owner". These regulations do not limit the scope of the federal tax purposes for which a disregarded entity will be ignored.

Finally, in Notice 2012-52, the IRS acknowledged that the disregarded treatment applies for purposes of IRC Section 170, and stated that contributions to a LLC wholly owned by a charity would be treated as a contribution to the charity. The IRS noted that the charity is the donee for substantiation purposes, and "encouraged" charities to disclose that the LLC is wholly owned by the charity and thus disregarded.

USE AN ACCOMMODATION CHARITY THAT IS MORE COMFORTABLE WITH "DIFFICULT" ASSETS.

For example, The Dechomai Foundation, Inc. (full disclosure – Dechomai is a client).

V. ENCUMBERED PROPERTY ISSUES

A gift of encumbered property to a charity or a CRT generates several tax issues.

BARGAIN SALE

Relief of the debt is treated as sales proceeds (Regulation Section 1.1001-2(a)). Donor's basis is allocated between the "sold" portion and the "gift" portion (see IRC Sections 1011 and 1001).

SELF- DEALING – PRIVATE FOUNDATIONS AND CRTS

A transfer of property subject to a mortgage is deemed to be a sale between the donor (a disqualified person) and the private foundation or CRT; it is thus a prohibited transaction, and an act of self-dealing under IRC Section 4941 (see Regulation Section 53.4941(d)-2(a)(2)). There is an exception if the lien was placed on the property more than 10 years prior to gift.

UNRELATED BUSINESS INCOME ("UBI")

Generally, "passive" income such as interest, dividends, rent from real estate, and capital gains are not treated as UBI (IRC Section 512(b)). However, if the asset generating that income is debt-financed, a portion of the income will be UBI (see IRC Section 514). A property is deemed to be debt-financed if the charity incurred debt in acquiring or improving the property, or if the property was acquired subject to a mortgage or similar lien.

There is an exception to this rule, commonly known as the "5/5/10 rule" (IRC Section 514(c)(2)(B)): if a charity receives property by gift subject to a mortgage, but the mortgage was placed on the property more than 5 years before the gift, and the property was held by the donor more than 5 years before the gift, then the property will not be treated as debt-financed for 10 years (unless the charity assumes and agrees to pay the debt or makes any payment for the equity in the property).

UBI in the year of sale used to be "fatal" to a CRT, as it caused CRT to lose tax-exempt status on all income for the year. Under the Tax Relief and Health Care Act of 2006, however, the CRT is now taxable only on the UBI – not all sources of income – but at a tax rate of 100% (IRC Section 664(c)). Watch out for state law, however – California has not conformed to this change!

GRANTOR TRUST – CRT

The IRS held in Private Letter Ruling 9015049 that if a CRT pays the debt of the donor, that payment causes the trust to be a grantor trust, and thus be disqualified as CRT under IRC Section 677 (see Regulation Section 1.677(a)-1(d)). There is general agreement that this rule does not apply if the debt is non-recourse (which is rarely the situation), because non-recourse debt is not a "debt of the donor". However, if the debt is recourse, the CRT must not pay any part of the debt.

SOLUTIONS FOR GIFTS TO CRTS

1. Pay off the debt, either by using liquid assets or borrowing against another property. Donor then contributes only a portion of the property to the CRT and retains the balance. The donor can then use the after-tax sales proceeds on the retained portion to replenish the liquid assets (or payoff the replacement debt) used to payoff the original debt.

2. *If* the debt is non-recourse *and* satisfies the 5/5/10 rule, it may be possible for the CRT to receive and sell the encumbered real estate, as the Grantor Trust and UBI issues are not present. Note that the Bargain Sale and Self-Dealing issues still need to be considered.

3. *If* the debt is recourse but satisfies the 5/5/10 rule, consider having the donor contribute a share of the encumbered property and retain the balance. The donor then agrees to pay the full debt from his share of the sales proceeds, and indemnifies the CRT against having to pay any share of the debt. Most practitioners believe this approach generally works. The issues fall as follows:

    - Does the "hold harmless" approach resolve the Grantor Trust issue? The answer appears to be "yes", because the CRT will not pay any debt of the donor.

    - Does the "hold harmless" approach resolve the Bargain Sale issue? The donor is not "discharged" from any debt, as he pays all of it – there *should* thus be no bargain sale treatment.

    - Does the "hold harmless" approach resolve the Self-Dealing issue? The CRT is not taking property and assuming a mortgage. Query, however, whether it is still taking the property subject to a mortgage (see discussion below regarding UBI).

- Does the "hold harmless" approach resolve the UBI issue? Maybe not – the property transferred is still "subject to a lien", which is the language used in IRC Section 514, regardless of the indemnification agreement. Further, in *Harold Tidler v. Comm'r.*, 53 TCM 934 (1987) the Tax Court noted (in a similar situation) that the property in question was subject to a debt, regardless of an indemnification, because the lender was not bound by the indemnification and could take the property from charity. Thus, the 5/5/10 rule must be satisfied.

VI. REAL ESTATE GIFT IDEAS

PARTIAL INTEREST IN A PERSONAL RESIDENCE TO CRT

A. Use of the Charitable Deduction and IRC Section 121

Donors (75 & 75) are ready to sell long-time principal residence worth $1,500,000 (basis $250,000). A sale would generate $750,000 of capital gains (after IRC Section 121 exemption).

Consider transferring one-third to a 6% CRUT:

CRUT sells its one-third free of tax
Gift generates a charitable deduction of $220,000
Donors sell their two-thirds:

Proceeds	$1,000,000	
Basis	- 167,000	
Sec 121	- 500,000	
Charitable	- 220,000	– subject to AGI limitation
Net Gain	113,000	

B. Co-Tenancy and Self-Dealing Issue

Does transferring a partial interest in property, especially rental property, to a CRT in advance of a sale give rise to a "use" by the donor-disqualified person of the CRT's undivided property interest? A disqualified person who hung art co-owned with a private foundation in her home was found to be using the foundation's undivided property interest in GCM 39770.

However, in PLR 9651037, the Service ruled that a private foundation's and a disqualified person's co-ownership as tenants-in-common of income-producing real property was not self-dealing.

C. The "Move-Out" Problem

It is clear that if the donor continues to live in the property post-gift to the CRT, it will be considered the transfer to, or use by or for the benefit of, a disqualified person of the income or assets of the CRT (IRC Section 4941(d)(1)(E)). Donor thus has to move-out prior to gift.

REAL ESTATE FOR A CHARITABLE GIFT ANNUITY

A. Risks to the Charity

The charity is taking a big risk – it has to fund the annuity for life, as well as fund the reserve trust required by law, but has "only" an interest in the property. Further, the property may not sell for the appraised value, which is an issue if the charity issues the annuity based on the appraised value. Further, net proceeds will be reduced by selling costs.

The charity will often offer a rate lower than the ACGA rates, to help offset some of the risk, and may consider a one-year deferred CGA to help with cash flow.

B. Tax Issues

If the property is the principal residence, the $500,000-250,000 exclusion is available to offset gain flowing through on the CGA 1099.

California now has a $3\frac{1}{3}$% withholding tax on the sale of many types of property (with exclusions for principal residences, property sold at no gain, sales by exempt organizations, etc.). See R&T Code Sec. 18662. The buyer or escrow agent is to withhold the tax, and remit to the FTB. Treated as an estimated tax payment by the seller.

How does this work with CGAs – withholding a fraction of every annuity (as an installment sale) is an administrative nightmare, and withholding all the tax from the first payment(s) may not satisfy the Department of Insurance. Consider having the donor "front" the funds for the withholding.

REMAINDER INTEREST IN A PERSONAL RESIDENCE FOR A CHARITABLE GIFT ANNUITY

A. The Idea

Donor transfers a remainder interest in a residence or farm, reserving the right to live there for life, and gets paid an annuity based on the value of the remainder interest. This combines two different charitable gift techniques.

B. Life-Estate Remainder Gift

Donor gives a residence or farm to charity, reserving the right to live in the property till death. Generates an income tax deduction for a portion of the property's value (*i.e.*, the value of the remainder interest calculated under IRS tables). See IRC Section 170(f)(3)(B)(i).

Residence means personal residence, but not necessarily primary residence. Vacation home thus qualifies, but rental property does not. Farm means land used for the production of crops, fruits, agricultural products, or sustenance of livestock.

Donor, as life tenant, remains responsible for upkeep, insurance, taxes, etc.

Gift is implemented with a grant deed to charity, reserving the life estate, and an agreement between the parties setting forth rights and responsibilities.

C. Charitable Gift Annuity

A contract between the charity and the donor. Annuity is backed by the charity's assets, as well as a reserve trust required by the Insurance Code (in California). Donor gets an income tax deduction equal to the present value of gift to charity (approximately one-half of the amount gifted). Rates (set by the American Committee on Gift Annuities) are attractive to older donors.

D. Combine the Two Gift Vehicles

The 77 year-old donor gives a remainder interest in her residence (worth $700,000) to charity in exchange for a CGA. Remainder interest is worth $470,000 – that is the property given for the CGA. Annual annuity (at 6.6%) is approximately $31,000. CGA is taxed as (approximately) $8,000 ordinary, $14,000 capital gains and $8,000 tax-free. Note that it appears that the donor can take her IRC Section 121 exclusion to exclude the capital gain portion of the annuity. Charitable contribution deduction is approximately $219,000.

So…donor gets to live in her house for life, gets a $31,000 annuity for life, and an income tax deduction of $219,000.

E. Cautions

The charity is obviously taking a big risk – it has to fund the annuity for life (as well as fund the reserve trust required by law in California) and has "only" a future interest in the property in exchange. The charity will often offer a rate lower than the ACGA rates, to help offset some of the risk. The charity also has to have some comfort that the property will not drop in value, either due to market conditions or lack of upkeep by donor/tenant.

Donors have to understand that they now own less than 100% of their home. In fact, as they age, they own (actuarially) less every year. If the donors need to move out at age 90, they own only approximately 20% of the house's value. If they need to sell the property, they will receive only 20% of the proceeds. Occasionally a charity will agree to sell and reinvest a portion of the proceeds into a new, less expensive residence, on the same "life estate remainder" basis.

THE CHARITY TENANT CASE

A charity that wishes to buy a building should propose using a CRT. The owner contributes the building to the CRT, the charity purchases the building from the CRT, and ultimately get its "purchase money" back when the CRT terminates.

Form of Payment – Cash allows effective use of a unitrust. Promissory note provides fixed payments to the CRT. May work best with an annuity trust. With a unitrust, annual valuation of note required. If note increases in value (due to lower interest rates), unitrust payment increases even though note payments do not.

Trusteeship – The charity generally should not be initial trustee because of state law self-dealing and fiduciary duty issues. Long-term, however, charity should consider being trustee or having input into trustee selection.

Designation of Remainder Beneficiary – Donor will want right to amend, initially (in case charity doesn't purchase). When charity purchases, it should secure irrevocable remainder interest.

VII. GIFT COMPLETION ISSUES

WHEN IS THE GIFT COMPLETE?

Basic Federal Tax Law Rules

Regulation Section 1.170A-1(b) says a contribution is made at the time delivery of the gift asset is effected. The general application of this rule often involves the question: "When did the donor relinquish dominion and control over the gift asset?"

Real Property and Tangible Personal Property

Delivery of tangible personal property usually requires an actual transfer of possession. In some cases, constructive delivery can be shown (*TG Murphy,* TC Memo 1991-276). Gifts of real estate require the delivery of a formally executed and acknowledged (notarized) deed.

WHEN IS IT TOO LATE TO GIVE?

Traditionally, gift planners believed that a sale could be taxed to the donor under the assignment of income doctrine if, at the time of gift, there was a binding obligation to sell, or the donee could be compelled to sell (*Palmer v. Comm'r.*, 62 TC 684 (1974), aff'd on other grounds 523 F.2d 1308 (1975), and Rev. Rul 78-197).

The Ninth Circuit, in *Ferguson v. Comm'r.*, 174 F.3d 997 (1999), imposed a more subjective test: was the sale, at the time of gift, "practically certain to occur"?

The IRS got its hand slapped for arguing the "practically certain to occur" test in *Rauenhorst v. Comm'r.*, 119 TC No. 9 (2002). The Tax Court said that the IRS could not take a position inconsistent with its published guidance (*i.e.*, Rev. Rul. 78-197). The IRS Chief Counsel subsequently instructed IRS litigation attorneys not to take positions contrary to published guidance (Chief Counsel Notices 2002-043 and 2003-14).

CAN YOU SELL THE GIFT ASSET IMMEDIATELY?

What if the donor wants to give you an asset, but you do not want to accept unless you "know" you can sell it promptly. Having the donor identify a buyer and enter into a binding sale agreement with him/her prior to the gift results in the donor being taxed on the gain (see *Palmer v. Comm'r.*, 62 TC 684 (1974), aff'd on other grounds 523 F.2d 1308 (1975), Rev. Rul. 78-197).

Consider having the charity identify a potential buyer prior to the gift, and enter into a "put" agreement with the buyer. Under the "put", the charity has the right to force the buyer to buy the property at a stated price – but the buyer cannot force the charity to sell. The charity will likely have to pay the buyer some amount before the buyer will agree to be obligated to buy.

At moment of gift, the charity cannot be compelled to sell, as it has power to exercise the put or not. Plus, the donor did not negotiate the put and did not assign "his" income.

This put idea is similar to a gift of property that is subject to a right of first refusal. The IRS issued several PLRs in the early 1990's concluding that such a gift did not violate the rule set forth in *Palmer* and Rev. Rul. 78-197, as the donee charity cannot be compelled to do anything – it is only if donee charity decides to sell that any obligation becomes enforceable. See also PLR 201012050 on the gift of LLC interests subject to an option to buy.

THE APPRAISAL RULES

A. Need for an appraisal

The appraisal rules apply to gifts of property where the deduction claimed exceeds $5,000. No deduction is allowed unless the donor: obtains a qualified

appraisal from a qualified appraiser; attaches an appraisal summary to the tax return on which the deduction is first claimed (i.e., the Form 8283); and maintains the records described above for gifts of property. IRC Section 170(f)(11)(E) modifies the previous rules of Regulation Section 1.170A-13(c)(5) regarding "qualified appraisals" and "qualified appraisers" (see Proposed Regulation Section 1.170A- 17).

No qualified appraisal, and only a partial appraisal summary, is required for gifts of publicly traded securities or non-publicly traded stock not exceeding $10,000 in value.

If the claimed deduction is over $500,000, the donor must attach a copy of the appraisal to his/her return.

B. Timing

A qualified appraisal must be signed no earlier than 60 days before the date of gift, or later than the due date of the taxpayer's tax return on which he/she first claims the deduction. It must have an effective date no earlier than 60 days before the date of gift, or later than the date of gift.

C. Information

Regulation Section 1.170A-13(c)(3) (and Proposed Regulation Section 1.170A-17) sets forth a long list of information that must be included in the appraisal, including:

1. Description of the property,
2. Date of gift and effective date of the appraisal,
3. Terms of any agreement relating to charity's use or sale of property,
4. Statement that appraisal is for tax purposes,
5. Value and valuation method, and
6. Qualifications of the appraiser.

IRC Section 170(f)(11)(E) and the Regulations now require that an appraisal be conducted "in accordance with generally accepted appraisal standards", be made by a "qualified appraiser", and not involve an appraisal fee that is based on the appraised value of the property.

Proposed Regulation Section 1.170A-17 requires that the appraisal contain a specific declaration by the appraiser acknowledging that he/she may be subject to penalties for valuation misstatements. It also requires that if the donor contributes a partial interest in property, the appraisal must be of the partial interest.

D. Qualified appraiser

A "qualified appraiser" is now defined as someone who:

1. Regularly performs appraisals for compensation;

2. Has verifiable education and experience in valuing the type of property being valued (meaning he/she has either earned an appraisal designation from a recognized professional appraiser association or has met minimum education and experience requirements set forth in the Proposed Regulations);

3. Understands he/she may be subject to penalties for aiding and abetting the understatement of tax;

4. Is not the donor, donee, or any party to the transaction in which the donor acquired the property;

6. Is not any person employed by or related to one of the above parties;

7. Is not someone primarily used by one of the above parties who does not perform a majority of his or her appraisals for other persons; and

8. Has not been prohibited from practicing before the IRS at any time during the three-year period ending on the date of the appraisal.

NOTE: The Appraisal Rules Are NOT Optional.

Hewitt vs. Comm'r., 109 TC 258 (1997), aff'd 98-2 USTC P50,880 (1998) The Hewitts gave stock in their tax service (!) company to their private foundation and their church. The stock was "thinly traded", with almost 500 different shareholders. The Hewitts did not obtain an appraisal – they used the average trading price for the stock in bona fide, arm's length transactions. The IRS *conceded* that the value the Hewitts used was in fact the stock's FMV! The Court said that Congress intended the appraisal requirement to be mandatory. No appraisal = no deduction.

Mohamed vs. Comm'r., TC Memo 2012-152 (2012). Mr. Mohamed claimed a $20 million deductions for gifts of real estate to a CRT. He completed the form 8283 himself, and attached his own valuations of the real estate (he was a certified real estate appraiser). He didn't sign the "Declaration of Appraiser" section of the form 8283, as it required a declaration that the appraiser was not the donor. The IRS challenged the deduction in its entirety on the grounds that Mr. Mohamed had failed to comply with the substantiation rules. Despite the fact that subsequent independent appraisals and sales by the CRT showed that Mr. Mohamed's values were probably too low, the IRS won. No appraisal = no deduction.

PROCEDURES FOR ACCEPTING REAL ESTATE
(Note: this is a sample only)

1. The charity should complete a profile of the property, including (i) address of the property; (ii) assessor's parcel number; (iii) a description of all improvements on the property; (iv) a copy of the deed; (v) a copy of the current year's tax bill; (vi) a list of encumbrances and leases; and (vii) any other information that would be relevant to the charity.

2. The charity should consider the cost of acquiring, maintaining, and eventually selling a property before accepting a gift. Factors such as significant environmental hazards, structural defects, or unusually high maintenance expenses could negate the value of an offered gift of property. In additional to environmental hazards, discussed below, the following factors should be considered:

a. present market value;

b future market value (appreciation potential);

c. costs of acquisition (*e.g.*, legal fees, reports the charity agrees to pay for, etc.);

d. encumbrances;

e. zoning and use restrictions;

f. maintenance and repair expense;

g. loan principal and interest expense;

h. property taxes (and, if the building is to be retained, whether property tax exemption can be obtained);

i. if the property is to be sold, marketing, sales commission, and closing costs; and

j. expected income from leases.

3. Acceptance of debt-encumbered property should be determined on a case-by-case basis. The existence of a mortgage or encumbrance will trigger "bargain sale" treatment to the donor. As to the charity, the property will be treated as "debt-financed property", a portion of the income from which may constitute unrelated business taxable income (note there is an exception for property if it has been held by the donor for more than 5 years and the debt is more than 5 years old).

4. All real property gifts should be carefully reviewed for undisclosed contingent liabilities. Note that liability for environmental contamination or toxic waste may be imposed upon any organization in the chain of ownership, even if the damage or contamination occurred prior to their ownership. This "innocent liability" may be avoided by showing reasonable efforts were made to ensure the property was free of contamination prior to acceptance.

In managing environmental liability, the safest policy is to have an outside professional perform an environmental audit prior to acquiring any interest in land. An exception can be made where: (i) the property is very unlikely to be contaminated, (ii) a staff member has inspected the property and determined there is no basis for concern, (iii) the staff member has researched prior ownership and has obtained a government records search showing no basis for concern, and (iv) the seller has given representations and warranties regarding environmental contamination. However, securing a Phase I environmental audit prepared by a qualified professional both assures a more reliable source of information and shows a high level of due diligence. In certain cases a donor may be required to state in writing what the donor knows about the environmental condition of the property and/or to execute an indemnity agreement.

5. All leases should be reviewed. Leases that base rent upon the net income of the tenant's operations may trigger unrelated business taxable income.

6. The donor should retain independent legal counsel for the gift.

7. A current independent appraisal and a preliminary title report should be obtained, preferably at the donor's expense, to confirm value and ownership of property.

8. The charity should independently consult with a real estate advisor as to marketability.

9. A survey should be obtained, preferably at the donor's expense, if there are any questions regarding boundaries, easements, or access to the property.

10. The charity should secure adequate insurance coverage for the property.

INFORMATION TO OBTAIN PRIOR TO ACCEPTING A GIFT OF REAL ESTATE

(Note: this is a sample only)

Basic Information

The donor shall provide basic information including:

- the address and legal description of the property;
- assessor's parcel number;
- a description of any and all improvements on the property and income and expense information;
- a copy of the deed;
- a copy of the current year's tax bill;
- a description of known or suspected environmental contaminants;
- a list of mortgages and other encumbrances on or secured by the property; and
- any other information which would be relevant to the charity, including all information necessary for preparation of IRS Forms 8282 and 8283.

Survey

The charity may request a donor to provide a survey before accepting the property. A survey may be necessary, for example, if survey markers are not visible on undeveloped land or if there are known boundary disputes. It may be necessary to obtain a title policy covering boundary lines in lieu of a survey.

Preliminary Title Report

The donor shall provide the charity with a current preliminary title report on the property, including copies of all documents shown as exceptions to title on the report.

Market Determination

The charity shall consider an appraisal on the property prepared by a qualified real estate appraiser and a Comprehensive Market Analysis (CMA) prepared by a real estate broker qualified for this purpose. If there is significant divergence between the appraisal and the CMA, the charity shall make a further analysis.

CRITERIA FOR DETERMINING WHETHER TO ACCEPT THE REAL ESTATE GIFT

General Criteria

The charity shall consider the cost of acquiring, maintaining, and selling a property before accepting a gift of such property. Factors such as significant environmental hazards, structural defects, ownership disputes, and potential tax liabilities generally reduce the value of an offered gift of property. The charity shall determine whether or not an offered gift of property will be accepted based upon recommendation of the Executive Committee.

On-Site Inspection

One or more representatives, agents, or employees of the charity shall make an on-site inspection of the property prior to acceptance of the gift. The charity may retain a licensed contractor or civil engineer as appropriate to inspect the property and render an opinion as to its condition.

Analysis of Holding Costs and Costs of Sale

The charity shall evaluate the holding costs and prospective sales cost of the offered property on the basis of an analysis of all relevant factors including, but not limited to, the following variables:

- Present market value,
- Future market value (appreciation potential),
- Costs of acquisition,
- Encumbrances,
- Zoning and use restrictions,
- Maintenance and repair expense,
- Loan principal and interest expense,
- Property tax, unrelated business income tax, and other tax expense, and
- Marketing, sales commission and closing costs

Donation Agreement and Grant Deed

To accept the donation, there must be a written donation agreement indicating the donor's irrevocable donation of the gift and its purpose and containing, in the opinion of the charity's legal advisors, appropriate representations, warranties, and releases in favor of the charity. The donor's entire right, title, and interest in the property should be conveyed to the charity by Grant Deed.

Hazardous Materials and Other Environmental Considerations

Prior to acceptance of real estate, the charity shall require an initial environmental review of the property to ensure that the property has no environmental damage. In the event that the initial inspection reveals a potential problem, the charity shall retain a qualified inspection firm to conduct an environmental audit.

The following are examples of some types of prior uses that indicate a need for an environmental study prior to acceptance: (i) underground fuel storage (such as gas station and vehicle fleet servicing); (ii) chemical and manufacturing plants; (iii) dumps; (iv) medical/dental facilities; (v) dry cleaners; and (vi) agricultural operations.

In addition, in the case of properties with the potential for environmental contamination, the charity shall obtain a Phase I report on the property:

- If such report is clean, the property may be accepted.
- If a Phase I report is not clean, the charity shall obtain a Phase II report. If the Phase II report is clean, the property may be accepted subject to the recommendation of the Executive Committee.
- If the Phase II report is not clean, then the charity may elect to accept the gift if the downside liability risk (and potential remediation costs) is substantially less than the value of the gifted property. Such decision shall be based on the recommendation of the Executive Committee.