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In Arranging a Real Estate Gift, Use All the Tools at Your Disposal

By Dennis Bidwell

Sometimes I'll read an article on real estate gifts that suggests only one workable gift structure involving real estate – a charitable remainder trust, or perhaps making the gift by bequest, or maybe a bargain sale. I also see from time to time conference presentations that emphasize just one gift type.

These single-solution approaches trouble me. They are often made by someone representing a financial firm that makes their money by managing and investing CRTs, or by a law firm looking to build its estate planning practice, or by an organization in the business of managing donor advised funds.

These presentations may be good marketing opportunities for the organizations or firms involved, but they do not represent in my view what should be considered best practices in real estate gift planning. I believe such presentations promote one-size-fits-all solutions, skipping over the importance of first understanding the nature of the problem to be solved.

I consider it the responsibility of those of us in the gift planning arena – whether representing individual charities, law firms, consulting practices or financial firms – to devise gift structures that best addresses the facts and circumstances of the prospective donor, consistent with the policies of the prospective done charity.

I have seen charitable remainder trusts proposed where the donor never expressed any interest in receiving payments in exchange for their gift. (It turns out they were totally content with an outright gift.) I have seen a property-funded charitable gift annuity proposed when the donor would actually prefer receiving a lump sum of cash that they invest themselves. (In other words, a bargain sale or a fractional interest gift would have been a simpler and more appropriate solution.) I have seen bequests involving property encouraged without giving any consideration to the advantages of a retained life estate arrangement instead. I have seen a bargain sale proposed when essentially the same thing could be accomplished (without requiring upfront purchase funds from the non-profit) with a fractional interest gift.

I have found that a little gentle probing about what the donor’s objectives are in considering the gift will generally reveal the parameters within which the gift should be structured. How important is avoiding or minimizing capital gains tax? Do they want some cash back, or are they in position to make an outright gift? How much are they motivated by simply unburdening themselves of the property and turning over to someone else the responsibility for selling it? If they want cash back, would they prefer it as a lump sum or as a stream of payments? How important is an income tax deduction? Do they have the capacity to soak up such a deduction? Are they hoping to continue living in/using the property?

Careful listening, stimulated by a few guiding conversational questions, should be the starting point in devising a real estate gift solution that is tailor made to fit the circumstances of the donor and their property, while fitting within the gift policy constraints of the recipient organization. There are lots of tools available for use by the gift planner dealing with a real estate situation. There’s no excuse for not using all of them, where appropriate. Starting with an assumed solution in mind seldom serves the interests of either the donor or the charity.