

GIFTS OF REAL ESTATE

Outright Gift of Real Estate

Your client may give real estate directly to a specific nonprofit, a Community Foundation, or your client's fund at a Community Foundation, subject to that organization's Gift Acceptance Policy.

When your client makes an outright gift of real property held for more than a year, your client obtains an income tax charitable deduction equal to the property's full fair market value. This deduction lets your client reduce the cost of making the gift and frees cash that otherwise would have been used to pay taxes. Your client also avoids tax on any long-term capital gain.

If your client doesn't already have a fund at a Community Foundation, the proceeds from the sale of the property can then be used to create the fund of your client's choosing at the Community Foundation. This is an extremely tax efficient way to set up a Donor Advised Fund.

Charitable Remainder Trust Funded with Real Estate

When real estate is to be contributed, a net-income charitable remainder unitrust (NICRUT) or a net-income with make-up provision charitable remainder unitrust (NIMCRUT) with a "flip" provision is preferred. Until the property sells, payments to beneficiaries are limited to the trust's net income, but beginning on January 1 following the year of the sale, the beneficiaries start receiving a stated percentage of trust assets. The trustee can invest the sales proceeds for total return because payments can be made from realized gain and capital as well as from interest and dividends. In the event that the donor wants to review and accept purchase offers, the donor could be the initial trustee and then resign in favor of an institutional trustee or a Community Foundation following the sale.

Gift of a Remainder Interest in a Personal Residence

The donor deeds the property (which must be either a personal residence or a farm) to a specific nonprofit, a Community Foundation, or your client's fund at a Community Foundation, reserving the right to occupy and otherwise use the property for life or a term

of years. Even though initially the charity receives only a partial interest, it will eventually become the fee simple owner, so long as the Organization and the holder(s) of the life estate(s) do not decide to sell the property to a third party prior to the expiration of the life estate(s).

The term “personal residence” includes a principal residence, a vacation home, condominium, or stock in a cooperative apartment provided that, in all instances, the property is used by the donor as his or her personal residence.

In addition to the deed conveying the property, there should be a contract addressing responsibility for the actual and potential expenses of maintaining the property. The costs of real estate taxes, liability and casualty insurance, utilities, maintenance and minor repairs are customarily borne by the life tenant(s).

The donor is allowed income and gift tax charitable deductions for the value of the property minus the value of the life estate. The lower the charitable midterm federal rate (CMFR), the larger the charitable deduction will be.

It is possible to leave only a fraction of the remainder interest to charity. (See Rev. Rul. 87-37.) A person who wants to divide the value of a home between a charity and children might choose to do this.

Bargain Sale of Real Estate

A bargain sale is a transaction in which a donor knowingly sells property to a charity for less than its appraised fair market value with the intention of making a charitable gift. Assuming applicable requirements are met, the donor is allowed an income tax deduction for the difference between the appraised value and the bargain sale price. The donor is taxed on the gain attributable to the sale portion and avoids tax on the gain attributable to the gift value.

*Please note that the information contained herein is not intended to provide specific legal or financial advice and should not be relied upon as a substitute for such professional advice. Leave 10 Kitsap encourages you to seek professional legal, estate planning and financial advice before deciding on a course of action.