Q&A What Should We Think About Before Accepting a Donation of Real Estate?

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Q: A business in our community just contacted us and wants to donate a building to our nonprofit Community Action Agency (CAA). The business wants to complete the donation by the end of the month. What issues should we consider before accepting the donation?

A: While a donation of real estate sounds like a great opportunity – especially if your CAA is tight on space – it is important not to rush to accept the gift. Owning real estate can involve significant expenses and potential liability. Therefore, your CAA should conduct the same degree of due diligence before accepting a gift of real estate as it would if it were buying the property.

It is also important to be aware of IRS reporting requirements associated with non-cash gifts in a case where the donor seeks to claim a charitable contribution deduction for the donation.

Due Diligence

Potential environmental liability is one of the biggest drawbacks of acquiring real estate, whether through a gift or otherwise. Under the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), an owner of real property may be liable for environmental clean up of the property even if the owner was not involved in or did not actually know of environmental contamination on the property. The cost of environmental remediation may be enormous. Therefore, it is critical that, before accepting the donation, your organization obtain an independent environmental inspection of the property, as well as information and documents relating to past use of the property and its environmental condition.

Your CAA should work with a real estate attorney in your state to conduct due diligence on environmental and other issues before deciding whether to accept the donation. If the donation still seems attractive after the due diligence is conducted, your organization's board should vote on whether to accept the donation. If the board votes to accept the donation, the attorney may then ensure that the deed to the property is transferred to your organization and recorded properly.

In conducting due diligence, your organization should consider issues such as:

- The value of the property.
- Whether the donor has clear title to the property, or for example, whether the property is being transferred subject to any mortgages, liens, or easements (your organization should have a title search done and obtain title insurance).
- As noted above, whether there are any potential environmental problems with the property.
- Whether all taxes have been paid on the property.
- If your organization is planning to use the property:
    - Whether the property is in a good location and is properly zoned for the use your organization plans to make of the property.
    - If changes are required to make the property suitable for your organization's planned use, the approximate cost of those changes and what source of funds your organization would use to make those changes. If your organization plans to use federal grant funds, it is important to check before acquiring the property whether the funds can be used for that purpose.
- If your organization is planning to sell the property rather than use it for its own operations, what the market is like for the property (for example, how long might it take to sell the property).
- The amount of "carrying costs" associated with the property, such as taxes (look into whether your organization would be subject to those taxes or would be exempt from real estate taxes because it is a 501(c)(3) organization), insurance, maintenance and security and whether your organization has the funds to cover those costs (and, if it

is planning to cover those costs from federal grant funds, whether the carrying costs are an allowable use of those funds).

- Whether any violations of state, local or federal law exist on the property.
- Whether the donor has made any contractual or other commitments to others regarding the property.
- Whether the property is the subject of litigation or threatened litigation.

Keep in mind that there will be costs associated with conducting due diligence (e.g., attorneys' fees, environmental inspection fees, title search fees etc.) and additional fees if your organization decides to accept the donation (e.g., title insurance, transfer fees etc.). Be sure your organization has funds to pay for these fees.

IRS Requirements and Gift Acceptance Policies

Donors seeking to claim charitable contribution deductions for certain noncash donations must complete IRS Form 8283, "Noncash Charitable Contributions." In the case of a noncash donation valued at more than $5,000, the IRS requires that the donor obtain an independent appraisal of the property and that the donee organization (e.g., your CAA) complete and sign Part IV of Form 8283 acknowledging receipt of the gift. Before submitting the form to your CAA for acknowledgment, the donor must fill in the donor's name and identifying number and, in Section B, Part I, line 5, column (b), a description of the property. A representative of your organization authorized to sign your organization's tax returns or specifically authorized to sign Form 8283 should sign the form and return it to the donor. The donor is then required to give a copy of the fully completed Section B of the form to your CAA.

If your organization sells, exchanges or otherwise disposes of the contributed property reported on Form 8283 within three years of the date of the gift, it will need to file IRS Form 8282 "Donee Information Return" with the IRS within 90 days of the disposition and provide the donor with a copy of the completed Form 8282.

Your CAA will need to report the donation on its IRS Form 990 by answering "yes" on Part IV, Question 29 and by completing Schedule M. Information on the donor and the donation must also be included on the Form 990's Schedule B, "Schedule of Contributors." Depending on the circumstances, there may be other places on the Form 990 where disclosure of the donation is required. Your CAA should consult with its tax preparer about this.

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Form 990 Schedule M also asks whether the organization has a gift acceptance policy that requires the review of any non-standard contributions. Such a policy is not required, but your board should consider adopting a policy that sets out the procedures for acceptance of real estate gifts and other property and gifts on which donors have placed restrictions.

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