

## GUIDELINES FOR ACCEPTANCE OF GIFTS OF REAL ESTATE

- I. **Title:** Real Estate Gift Acceptance Guidelines
- II. **General:** Establishing guideline procedures for the acceptance of gifts of real estate to *The Community Foundation of the Ozarks, Inc.* is important for the protection of the donor, and the *Community Foundation*, and those soliciting the gift. Unlike gifts of cash or publicly-traded securities, gifts of real estate require specialized effort in both development and management. A review of these guidelines should be made regularly by the Board of Directors of the *Community Foundation*.

Gifts of real estate are desirable where such gifts are given in support of the Foundation's programs and where, in most cases, the proceeds rather than the property itself, are to be used to further Foundation's goals.

All gifts of real estate must have an appraised fair market value of at least \$10,000.

- III. **Definition:** Gifts of real estate come in many types, usually somewhat complex in nature, having a number of financial ramifications for the donor and the *Community Foundation*. Questions regarding real estate gifts should be referred to the President and CEO.

IV. **Real Estate Gift Types:**

- A. Land - Developed, Undeveloped
- B. Rental property
- C. Personal home
- D. Apartments
- E. Motels/Hotels
- F. Businesses/Commercial Property
- G. Vacation homes/condos
- H. Other

V. **Basic Methods of Real Estate Giving:**

- A. **Outright Gifts** - If all gifts of real property were ranked from the best possible gift, the outright gift of land with no encumbrances would rank as the best. (The gift with the most problems might be in unrelated income property which the organization or individual had trouble selling).
- B. **Life Income Situations** - A donor gifts a piece of property which is sold or put in a trust to provide a life income to the donor.

- C. **A Life Estate Contract** - A donor gives his/her residence to the Foundation but continues to live in it during his/her lifetime.
- D. **Bargain Sale** - A donor sells property to the *Community Foundation* for less than the full fair market value. The donor's deduction is approximately equal to the difference between FMV and the sale price.

#### VI. Varieties of Real Estate Gifts:

- A. **Outright Gift of an Entire Interest** - Any gift of property for which the donor retains no incidence of ownership. This may include property where the use of the property or proceeds is designated or restricted by the donor to ongoing programs of the Foundation.
- B. **Gifts of a Partial Interest** - Any gift where any incidence of ownership is retained by the donor. A gift of a partial interest occurs under a life income agreement such as a charitable trust, or where there is a life estate retained by the donor.
- C. **Real Property Gifts to an Endowed or Current Use Fund** - Any gift of real property, for which the proceeds are designated by the donor for inclusion in an endowed or restricted current fund managed by the *Community Foundation*.
- D. **Real Property Gifts to the Unrestricted Fund** - Any gift of real property for which no purpose or recipient is specified by the donor and which will be held with proceeds from the sale increasing the unrestricted fund.

#### VII. Considerations to Accepting Gifts of Real Estate:

- A. *An outright gift is not always as outright as it appears.*
  - 1. A donor may make a gift of real property because he has recently received a high appraisal which induces him to make the donation and take the charitable deduction.
  - 2. An income property can present a number of difficult problems.
    - a. The *Community Foundation* must decide whether or not it has the desire, interest and ability to manage the property for whatever length of time it takes to sell it.
    - b. An income property may be subject to taxation as unrelated income and this should be considered before acceptance.

**B. *Real property gifts with an encumbrance can sometimes present special problems.***

1. If the property produces income, the *Community Foundation* must weigh the amount of income it receives against the ongoing cost of the encumbrance.
  - a. In addition, the income itself can be a problem if the property requires considerable time, attention, and management.
  - b. The location of property also has a bearing upon its supervision and management. Obviously, property located in another city can be almost impossible to manage without professional assistance, cost and time.
  - c. As the ramifications of new laws requiring environmental impact studies develop, new responsibilities on the part of the donor and the need for extreme care to be utilized on the part of the *Community Foundation* require such transactions be reviewed with the help of a variety of experts.

**VIII. The Development Steps:**

**A. Confirmation of Donor's Interest -**

Confirm the donor's interest in proceeding with the proposed gift which may be contingent on the value or other factors. Insist that the donor review the proposal with his/her financial advisor.

**B. Qualified Appraisal -**

Request that the donor furnish an appraisal on the property by an appraiser acceptable to the Foundation.

**C. Secure Title Insurance -**

Because, when a property is sold the buyer(s) will require proof of marketable title, title insurance at the expense of the donor should be secured before accepting any real property. The amount of title insurance should equal the purchase price the donor paid for the property or the amount of a current appraisal, whichever is more appropriate.

\*Correction of Defects in the title - If defects are found in the title, the *Community Foundation* reserves the option of requiring correction of such

defects, at the donor's expense, or to rescind the contract, without any cost to the *Community Foundation*. Also, if the *Community Foundation* takes possession before the closing of the title, defects found in the title are not waived.

**D. Property Inspection and Analysis Information -**

Physically inspect the property and make arrangements with the donor to obtain any additional specific information that will be needed to complete the gift property analysis. (Deed, environmental audit, mortgage information, potential ADA non-compliance situation, rental agreements, etc.)

**Environmental Hazards-**

Prior to acceptance of legal title, Donor will provide a Phase I environmental audit, and such other information as the *Community Foundation* may request.

**E. Taxes and Assessments -**

Be certain all taxes and assessments for previous years have been paid in full and are not merely being paid on the deferred payment plan. Determine if taxes and assessments are to be apportioned for the calendar year to the date of closing. To avoid expense to the *Community Foundation*, the agreement should be written whereby the donor has responsibility for the calendar year.

**F. Property Insurance -**

Determine if existing insurance policies are to be assigned to the Foundation. If so, a copy of the policy should be obtained and a binder indicating the amount of coverage and expiration date. If not, the *Community Foundation's* President and CEO must be informed of the acquisition so the property can be included under the Foundation's blanket policy and also under the *Community Foundation's* liability policy.

**G. Gift Agreement -**

The gift agreement should state the terms under which the property is being donated which should include the date of delivery of possession to the *Community Foundation*. Agreements on property being donated with retained interests must be reviewed by legal counsel and the President and CEO of the *Community Foundation* prior to the *Community Foundation's* acceptance by its Board of Directors.

## **H. Notification of Business Services -**

Upon the completion of a gift of real estate, the Community Foundation's President and CEO should be furnished with all original documents to determine if procedures have been completed.

## **IX. The Gift Analysis Steps:**

### **A. Physically Verify Condition of the Property -**

The President and CEO of the *Community Foundation* or their representative will personally inspect each gift property and complete a thorough analysis of each gift including:

Assess the character of the property in relationship to the area and surrounding properties.

Determine the physical condition of the improvements and amenities. As nearly as possible, try to determine compliance with the Americans with Disabilities Act (ADA). Ascertain if public authorities have issued any order requiring repairs to building(s). It may be necessary to secure an opinion from a contractor or from an inspector for ADA compliance if a major problem is suspected.

Observe any apparent liabilities such as unfenced swimming pool or other potential hazards.

During the physical inspection, note the names and numbers of real estate brokers who have neighboring properties listed or offices in the immediate area.

In the case of distant property, it may be possible to enlist the assistance of another institution or a local broker to perform the physical inspection and report the findings.

### **B. Verify Current Fair Market Value -**

Fair market value is best defined as: The price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.

While appraisals prepared by qualified appraisers are required in connection with gifts of real estate, these appraisals are prepared for income tax purposes and reflect a professional opinion usually based on historical data or "best use." These

appraisals may or may not reflect the price at which the property can currently be sold.

A real estate broker who is marketing similar properties in the area should be asked for a current market analysis. Brokers will generally do this hoping for an opportunity to list the property.

If the market analysis indicates a price less than the appraisal or donor's expectation, the analysis should be reviewed with the donor.

**C. Determine Marketability -**

Once the value has been established, the *Community Foundation* must be concerned with marketability. Other factors such as the availability and type of financing, community development plans, geological factors such as environmental impact as well as economic conditions will all affect marketability.

Unlike cash gifts, there will be expense to the *Community Foundation* connected with acquiring, holding and selling real property. Acquisition costs are not generally a concern unless a bargain sale is involved. If a mortgage is to be paid off, back taxes or assessments are due, a third party interest must be purchased, or other acquisition costs are involved, these should be set forth accurately in the gift analysis.

If the property does not produce an income, the encumbrance can be a greater problem.

Equally important to the *Community Foundation* will be the costs to hold the property for sale. These costs may include property taxes, mortgage payments, insurance, utilities, security, maintenance, association and membership fees. An assumed holding period of 18 to 24 months is recommended.

If a property is being accepted subject to a mortgage, a written statement must be obtained from the lender regarding the present balance and terms of the loan and the lender's agreement to transfer the loan.

A gift which costs the *Community Foundation* until it is sold may not be worth accepting. Frequently, the donor can be persuaded to make whatever payments are necessary until the property is sold or at least for a given period of time.

**D. Assess the Effect of Rental Agreements -**

In the case of income property which is being rented at the time of the gift, a copy of the rental agreement(s) should be analyzed and attached to the gift

evaluation. Particular attention should be paid to whether or not the *Community Foundation* will be bound by the agreement. If so, the terms of the agreement will be extremely important in determining cash flow, management and marketability. Whether or not the property is subject to rent control should be determined.

**E. Analyze Transfer Documents -**

It is absolutely necessary that legal counsel in cooperation with the real estate agent and title insurance company prepare and review all legal documents. No commitments should be made without legal review.

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