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CONFERENCE PAPER

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Partnership for Philanthropic Planning

Are You Prepared for the Recovery in Real Estate Gifts?

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Real estate gifts to life income arrangements can greatly enhance the value of a planned giving program. They tend to be larger than gifts of marketable securities and can help diversify a charity's gift flow when investment markets are faring poorly.

As real estate markets have improved over the past few years, real estate gift activity is also picking up. Now is the time for development and finance professionals to consider whether their organizations are positioned well to take advantage of prospective gifts of residential, rental, commercial and farm property. This paper discusses donor motivations for making real estate gifts, the management of risks associated with accepting, managing and selling real estate, as well as concerns surrounding real estate-funded charitable trusts, including the selection of a trustee.

Donor Motivations for Making Real Estate Gifts

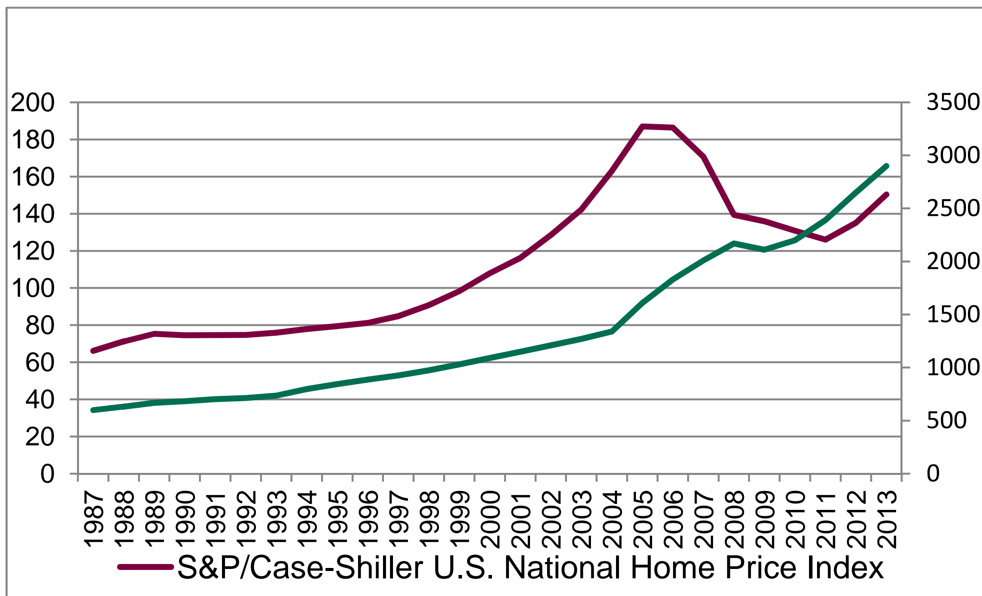
While the financial motivations for making life income gifts of real estate are basically the same as for making gift of other assets (i.e., avoidance of capital gains tax; income tax charitable deductions; creation of an income stream, etc.), donors often have personal motivations unique to real property. For example, an owner of rental property might no longer wish to put in the time and expense of managing it. The owner of a commercial property might find that the "right buyer" has finally come along. A would-be donor of residential property might feel that the market has now recovered sufficiently to provide an appropriate tax deduction

for her gift. Sometimes the owner's need or desire to move, for professional or personal reasons, can be the impetus for a gift.

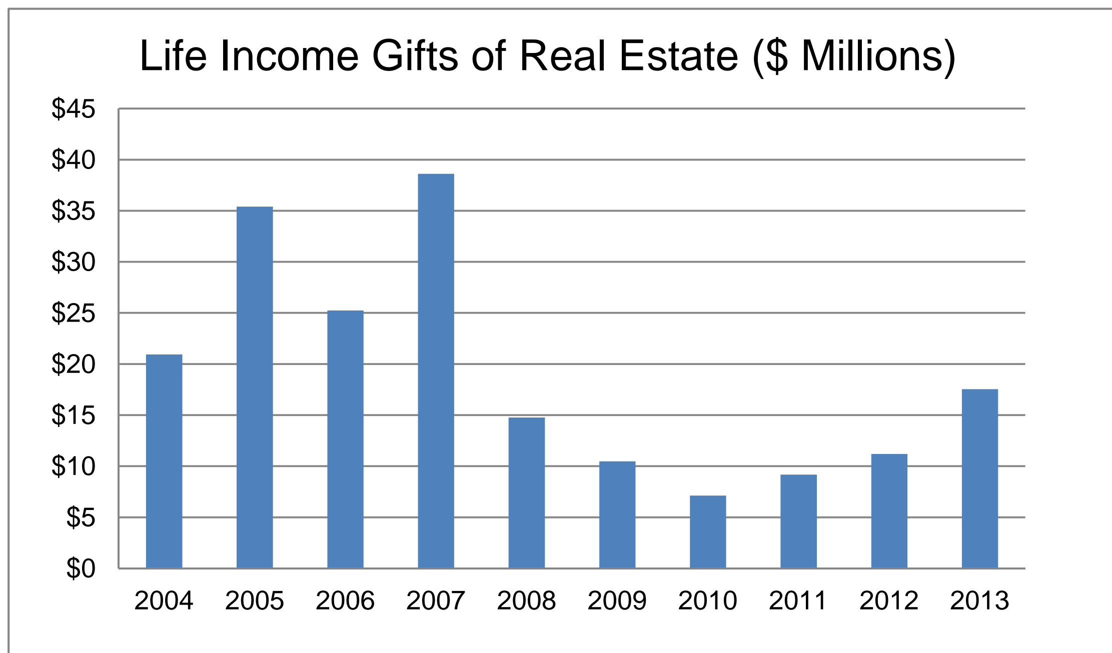
In each of these scenarios, some factor outside the charity's control has caused it to be the right time for a charitable gift of real estate. Because the impetus for a charitable gift of real property can be unpredictable and unique to each donor, it is important for charities to be prepared to take advantage of these opportunities when they arise, and to consistently get the word out that gifts of real estate are of interest.

Real Estate Values (and Real Estate Gifts) Are Improving

As the following chart indicates, residential real estate values declined precipitously from their peak in 2006, bottoming out in 2011, but have been on a steady increase nationwide since that time. Farm values, by comparison, did not experience the same decline but have been on an almost uninterrupted increase for decades.



As residential real estate prices have recovered over the past three years, so have real estate-funded life income gifts to many Kaspick & Company clients:



If we are in the beginning of a "recovery" in real estate-funded charitable gifts, charities should position themselves to take advantage of this situation, not just through marketing, but by putting in place (or updating) policies and procedures to help manage the risks attendant to the acceptance, management and sale of real property. Appropriate policies can help to put everyone at the charity (development, finance and legal staff) on the same page, working together to accept worthwhile gifts of real estate and to weed out the properties likely to generate problems in terms of environmental liability, marketability or cash flow.

Managing Risks Associated with Real Estate Gifts

Despite their benefits, life income gifts of real estate present unique management challenges for charities. Charities accepting real estate gifts - in particular those accepting real estate to fund charitable trusts or gift annuities - should consider how best to manage the

marketability and cash flow risks associated with real property gifts, both before and after the gifts are made.

Managing Marketability Risk

A chief concern for a charity accepting real estate is the ability to sell the property in a timely manner for a reasonable price. The gift planner should become familiar with the property prior to the gift in order to identify any unusual characteristics, such as deferred maintenance, environmental contamination, zoning restrictions, structural damage, or title problems that could affect the property's sale. These property issues are far more easily addressed prior to the gift being made.

When marketability is a concern, it is important to discuss the sales process with the donor, and the range of outcomes he or she is willing to accept. For example, how would he or she feel about dropping the price if the property does not sell within a certain period of time? Or what about renting the property to provide liquidity for carrying costs? Properly setting expectations is critical to establishing a strong long-term relationship with the donor.

The charity trustee should conduct its own market analysis of the property prior to the gift in order to establish a reasonable listing price and to estimate as accurately as possible the length of time the property will be on the market.

The preferred gift vehicle for most gifts of real estate is a "flip" charitable remainder unitrust (flip CRUT). Prior to the sale, the trustee need only pay to the beneficiary the trust accounting income, if any. Once the property has sold and the trust has flipped to become a

standard unitrust, the investment portfolio can be managed for total return. (Flip CRUT operation and investment is discussed in greater detail below.)

When real estate is used to fund a charitable gift annuity, the charity should obtain its own appraisal and be conservative in setting the terms of the contract. For example, some organizations accept real property to fund only deferred gift annuities to provide time to sell the property prior to the commencement of annuity payments. They also negotiate payout rates lower than the ACGA-recommended rates to help defray real estate carrying costs. It is sometimes possible for a charity to pre-negotiate the sale of donated real estate with a buyer who is “waiting in the wings.” The donor should not pre-negotiate the sale in order to avoid creating a legally binding contract prior to the gift, and thus being required to recognize the capital gain.

When using a flip CRUT, many charities ask the donor, who usually has greater familiarity with the property and strong feelings about the selling price, to serve as trustee until the property has sold. Being able to control the sale is an attractive feature for many donors. It also keeps the charity out of the property management and marketing business, and potentially avoids misunderstandings between the donor and the charity. And, it enables the charity to avoid the risk of serving as trustee of a property that could have environmental issues.

Marketability concerns are brought into even sharper focus after the gift has been made and liquidity is needed to cover ongoing carrying costs or unexpected expenses. Sometimes the charity must be patient and allow the real estate market to recover. In other situations, the charity needs to take proactive steps. Options include reducing the asking price, renting the property on an interim basis, or in particularly difficult circumstances, perhaps auctioning the property.

In a time of weak real estate sales and increasingly tight credit markets, a charity might consider taking back a promissory note from the buyer to help close the sale. Seller financing should not be entered into lightly; a charity should carefully scrutinize the buyer's creditworthiness before entering into such an arrangement, and consider negotiating a balloon payment in three to five years. This approach provides time for credit markets to improve, but keeps the charity from acting as lender over the long term. A charity should exercise caution in taking over trusteeship from a donor of a trust that holds a promissory note in case the promissory note defaults and the property has environmental contamination.

In anticipation of the possibility of seller financing, some charities recommend the use of flip trigger provisions in trust instruments that call for the trust to flip upon the *later* of the sale of the real property or the complete satisfaction of any seller financing. This avoids a scenario where standard unitrust payments must be made when a promissory note obligor is having difficulty making payments.

Managing Cash Flow Risk

Real estate ownership entails maintenance, insurance, utility, administration (e.g., accounting services), and property tax costs, all of which require access to cash or other liquid assets. Anticipating cash flow needs before the gift is made is an important element of good gift planning. A charity should complete a detailed cash flow analysis, gathering information about the ongoing costs of managing the property as well as income the property will produce. The charity should review copies of any leases, taking note of expiration dates and escalation clauses. In the case of a commercial property, reviewing financial information about any tenants is also advisable.

Especially in difficult economic times, consider asking the donor to contribute liquid assets to the flip CRUT at the time of the gift. Some charities also ask the donor to sign a letter of understanding that, among other things, makes it clear that the donor might need to contribute additional funds in the future. The objective is to set expectations properly up front.

Not all cash flow needs can be anticipated in advance of the gift, even with the most thorough analysis. If unanticipated cash flow problems arise prior to the sale, a charity might need to consider other alternatives such as renting the property. One cash flow solution that can seem obvious, but which is actually quite problematic, is for the trust to borrow money to meet expenses. This can cause the trust to have debt-financed income for unrelated business income tax (UBIT) purposes. If the borrowing occurs in the tax year the property is sold, a portion of the realized gain on the sale could be taxed at a 100% tax rate, typically a disastrous outcome.

Neither the donor nor the charity should pay trust expenses directly, as this could be considered a loan to the trust, which could raise UBIT issues. While not an ideal solution, the charitable remainderman might consider purchasing an undivided fractional interest in the real estate from the trust in order to provide liquidity. (This is not a self-dealing transaction because the charity is a not a "disqualified person" under the tax law.) In this case, the charity should obtain an appraisal of its interest to be certain it is paying an appropriate price and will be fairly compensated when the charity joins with the trust to sell the entire parcel.

Finally, under the Revised Uniform Principal and Income Act of 1997, enacted in 42 states, trustees may establish working capital reserves for business activities held in trust and for which they maintain separate accounting records. This can, for example, allow a trustee of a trust holding agricultural or rental property to retain a reasonable amount of the income earned in a

given tax year in the trust as a working capital reserve rather than paying it out to the income beneficiary. The reserve can then be accessed to meet liquidity needs in a subsequent tax year.

Using Real Estate to Fund a Charitable Trust

A gift of real estate into a charitable remainder unitrust can help the donor avoid capital gains taxes, qualify for an income tax charitable deduction, receive lifetime income, and provide for the future of a favorite charity. Funding a trust with real estate, however, is significantly more complex than funding it with cash or marketable securities. The major steps involved in making such a gift, significant related responsibilities (for both donor and charity), and special tax rules that must be followed, are discussed below.

Before The Gift

Property Due Diligence. If the donor were selling his or her property to a private individual, one would expect the buyer to go through an appropriate due diligence process. A charity will want to do the same if it is to be named as trustee of a trust holding real estate. The due diligence process typically includes an inspection of the property, a review of its title, and an investigation into its marketability. In many cases, the charity will arrange for a "Phase I audit" to ensure that there are no environmental liabilities connected with the property. If repairs or improvements are recommended to improve the property's salability, the charity should discuss these with the donor in advance. Note that all outstanding mortgages generally must be removed prior to funding the trust in order to preserve the tax benefits associated with the gift.

Drafting the Trust Document. Many charities will provide a draft charitable remainder unitrust document and work with the donor and the donor's attorney to be certain the document reflects the donor's intent. While a charity's planned giving officer can also estimate tax benefits,

it is very important that the donor's own tax advisor confirm the income and transfer tax consequences of establishing the trust. The planned giving officer can also illustrate the impact of the choice of payout rate on the trust beneficiary's income stream over time and on the value of the remainder gift to charity.

Once the document is executed and the trust funded, the trust cannot be amended except to comply with changes in the tax law. For this reason, it is important to for the trust instrument to provide the trustee with appropriate flexibility in dealing with the real estate. For example, the trustee should be given the power to allocate expenses of the trust between income and principal at the trustee's discretion. This provision will sometimes enable the trustee to increase the income paid to the income beneficiary immediately after the real estate is sold.

Choosing a Trustee. In many cases, the charity will serve as trustee of the unitrust. It might also be desirable, however, for the donor to serve initially as trustee until the property sells. This would allow the donor to negotiate the sale of the property. If considering this option, the charity and donor should discuss carefully the duties of a trustee, as well as actions to be avoided, to help to ensure that the trust is managed properly from the beginning. (This subject is discussed in greater detail below.)

Funding the Trust. Once the trust instrument is signed, title to the property can be transferred to the trust. The donor's attorney must prepare the actual deed. (If the charity is named as trustee, the planned giving officer should supply the formal name that should appear as grantee.) Please note that under most states' laws, the gift to the trust is complete when the deed is delivered to the trustee. In order to avoid being taxed personally on any capital gain inherent in

the property, it is very important that the donor not legally commit to sell the property prior to delivery and acceptance of the deed.

After the Gift

Claiming the Tax Deduction. If the donor wishes to claim an income tax charitable deduction for a real estate gift in trust, he or she must obtain a "qualified appraisal" of the property not earlier than 60 days prior to the date of the gift, and not later than the due date (including extensions) of the federal income tax return on which the donor will claim the deduction. Donors, appraisers, and advisors should refer to IRS Notice 2006-26 and Treasury Regulation 1.170A-13(c) to ensure that the appraisal meets the detailed requirements of the tax law. Both the appraiser and the trustee of the unitrust must sign IRS Form 8283, which the donor must attach to his or her tax return. If the donor is serving as the intial trustee, then the donor will need to sign Form 8283 in his or her trustee capacity.

Because the donor (or others named in the trust instrument) will receive an income from the trust, an income tax charitable deduction will be allowed only for a portion of the value of the gift. The deduction for a given year is generally allowable up to 30% of the donor's adjusted gross income. Any unused deduction can be carried over for up to five additional years. As noted above, the donor should always consult his or her tax advisor on the deductibility of charitable gifts.

Payment of Real Property Expenses. Nearly all real estate is subject to ongoing expenses such as property taxes, utilities, insurance, etc. After the property is deeded to the trust, it is the trustee's legal responsibility to pay these expenses from trust assets. Income from the property might or might not be sufficient to cover these expenses. The charity should ask its

donor to agree to contribute liquid assets to the trust (either at the time of the contribution of real estate or on an as-needed basis) to pay expenses that exceed property income. Each such transfer is treated as an additional gift, providing the donor with the ability to claim an additional income tax deduction.

Please note that if the charity were to pay these expenses directly, this could be characterized as either a loan to the trust or a gift to the trust, either of which could endanger the tax benefits associated with the gift. Many charities prepare a Letter of Understanding to be signed by the donor and the charity prior to the gift. This letter outlines the specific responsibilities that the donor and the charity each have with respect to the funding of the trust and the administration of the trust until the property is sold. Payment of property expenses after the trust is funded is one of the items generally covered in such a Letter of Understanding.

Sale of the Real Property. After title to the property has been transferred to the trust, the trustee will market the property. (Responsibility for handling the sale is often spelled out in the Letter of Understanding.) If the property is sold within three years of its contribution to the trust, the trustee is required to report the sales price to the IRS on Form 8282. If the donor chooses to serve as the initial trustee, the donor will typically resign upon the sale of the property in favor of the charity as successor trustee. The charity will then perform all trustee duties for the balance of the term of the trust.

Trust Payments to Income Beneficiaries

After the real property has been deeded to the trust, any income produced by the real estate (reduced by expenses chargeable to income) will be paid out of the trust as beneficiary payments to the extent it does not exceed the unitrust percentage rate. Once the real estate is

sold by the trustee, the net proceeds will be invested in a portfolio of financial assets. In today's interest rate environment, the net dividends and interest from these financial assets is very often less than what is produced by rental real estate. The donor might look to the charity's planned giving officer, when the charity is serving as trustee, to provide an estimate of the income to be paid out during the balance of the calendar year in which the property is sold. (The donor should discuss with the drafting attorney as to whether the trust instrument should allocate post-contribution capital gains as income during this period.)

Beginning on January 1 of the year after the real estate is sold, the trust will "flip" from a net income unitrust to a standard unitrust. From that point forward, trust payments will no longer be limited to dividends and interest, but will be equal to the payout rate times the net fair market value of all trust assets on the valuation date (usually the first day of the calendar year). As such, the trust should be prudently invested in an appropriately diversified portfolio intended to grow the value of the trust corpus over time.

Donors as Trustees of Real Estate Gifts

Many charities prefer to serve as trustee of charitable remainder trusts established by their donors, since this arrangement allows the charity to be involved in gift-structuring decisions (i.e., to have input during the drafting of the trust instrument and regarding the funding assets); to tailor administrative and investment services to suit the needs of CRTs and their beneficiaries; and to communicate regularly with donors to help steward and build strong, long-term relationships.

When a trust is to be funded with real estate, however, some charities prefer that the donor serve as the initial trustee. As trustee, the donor (who knows the property best and might

have strong personal feelings about it) is empowered to oversee management of the property and sale of the real estate from the trust. Typically, after the property's sale the donor would then resign in favor of the charity as successor trustee.

When Should the Donor Be the Initial Trustee?

There are a variety of circumstances in which the donor and/or the charity might feel that the donor should serve as initial trustee:

Avoidance of Environmental Liability. Both state and federal environmental laws can require owners of real property to participate in the cost of cleaning up property contaminated with toxic substances. Depending upon the type and extent of contamination, these costs can range from a few thousand dollars to millions of dollars. If the charity agrees to serve as trustee, it enters into the chain of title and therefore opens the door to potential legal complexities and expenses, and possibly direct financial liability. Because of this risk, many institutions prefer to have the donor serve as trustee until the real property is sold.

Lack of Time for Proper Review. Occasionally, a donor will propose a new gift late in the year, wanting to complete it before year end. When real estate is the gift asset, timely completion of a proper review is difficult. A sound assessment of the property for gift acceptance purposes goes beyond an environmental review. It includes inspecting the quality of the title, ascertaining the condition of the property, identifying any needed repairs, and arranging for property and liability insurance on the property. When the donor serves as trustee, the charity does not assume the potential risks associated with a hurried or haphazard review of the property.

Lack of Institutional Expertise and Resources. Serving as trustee is a big job, and when real estate is involved, the job gets bigger. If the charity does not have the expertise to

review the property for gift acceptance purposes, to oversee management of real estate or negotiate its sale, it is likely not ready to serve as the initial trustee of a real estate-funded trust. While large charities might have real estate management expertise that can be tapped elsewhere in the institution, smaller organizations often must either hire outside expertise or rely upon an informal network of alumni and friends that have the required background to help. If none of these options is available to the charity, the best alternative could be for the donor to serve as trustee until the real estate has sold.

Donor Knowledge and Desire to Control the Sale. Sometimes, the donor has a particularly strong desire to negotiate the sale of gifted real property. In such a case, the gift might not happen at all if the donor does not serve as initial trustee. Aside from the desire to be in control, sometimes the donor has intimate knowledge of the property that might make him or her uniquely qualified to manage the property and negotiate its sale. Serving as initial trustee allows the donor to utilize his or her greater familiarity with the property to manage and sell it on behalf of the trust.

Charity's Role When the Donor is Trustee

While some donors might be interested in serving as trustee, few have any desire to become involved with the details of trust administration. If the charity is going to serve as successor trustee after the sale, the charity should remain engaged to monitor the activities of the donor/trustee—from the planning of the trust, to the sale of the property, to the filing of proper trust tax returns.

Assuming this role requires a high degree of initiative and involvement from the planned giving officer. When the institution is serving as trustee, the responsibility for monitoring trust

activity and ensuring proper information flow usually rests with the finance or business office. When the donor is initial trustee, it is the planned giving officer who sits at the fulcrum of the process. With alertness, advance planning, and a few well-placed words of advice, the planned giving officer can save the donor and the charity from frustrating and sometimes costly errors.

The following areas are worthy of particular attention:

Pre-Arranged Sale. If the donor/soon-to-be-trustee is actively marketing the property, it is all too easy to become committed to its sale prior to deeding it to the unitrust. This can result in the disastrous outcome of the capital gain being taxed to the donor personally, while the sale proceeds are locked inside the irrevocable unitrust, unavailable for payment of the tax.

Remember the acid test for determining whether the donor has gone too far down the road toward a sale: *there can be no legal obligation for the sale of the property at the time it is contributed to the trust*. Determination of what constitutes a legal obligation is a matter of state law. Usually that obligation arises with the signing of a purchase-and-sale agreement, but check local law to be certain.

Improper Payment of Expenses. During the post-gift and pre-sale period, the donor/trustee will need to be careful that trust assets are not used to pay for personal expenses, a violation of the self-dealing prohibitions of IRC Section 4941. For instance, if a single check from the trust is used to pay property taxes on multiple parcels, some of which are in the unitrust and some of which are not, a self-dealing transaction has occurred and a penalty tax is due. The donor/trustee must also avoid incurring debt (e.g., to improve rental property for sale). The presence of debt could generate unrelated business taxable income, which is taxable to the trust

at a confiscatory rate of 100%—another disastrous outcome if the sale of the property occurs in the same year.

Seller-Financing. A donor/trustee may be quick to take back a note on the sale of the property. This can create problems later on. When the charity becomes successor trustee, it may have the unpleasant fiduciary obligation to enforce the note, including re-possessing the property. Seller-financing should not be entered into lightly.

Poor Recordkeeping. The many activities associated with planning the gift—and with managing, marketing and selling the property—make it easy for the donor/trustee to let sound recordkeeping practices slip. This can create a last-minute rush to gather needed data for annual tax return preparation. It can also lead to surprises in the amount of income to be paid from the trust because of unanticipated expenses, or misunderstandings as to whether expenses will be allocated to principal or income.

Organizing for Success

If it has been determined that the donor will serve as initial trustee, what steps will help ensure a positive outcome--one that maximizes the advantages of this approach and minimizes its pitfalls?

Minimum Level of Property Assessment. Even though the charity will not serve as initial trustee, it is a mistake to dispense with all reviews of the property. Future problems with the property (e.g., litigation or lack of marketability) could involve the charity as successor trustee, and might consume significant organizational resources. It is a good idea, therefore, for the charity to determine what minimum review it will perform to provisionally accept the successor trusteeship upon sale.

A good assessment should take into account the specific nature of the property (e.g., residential property in an established neighborhood versus commercial property in an area of mixed industrial and business use). Consider using checklists of issues that can be discussed with a donor (a sample list of issues by property type is contained at the end of this paper).

Drafting Considerations. The donor should be willing to commit to resigning as trustee immediately upon the sale of the real estate. This is typically done in a separate letter of understanding rather than in the trust instrument. The trust instrument should either provide for the appointment of the charity upon the donor's resignation (or failure to serve), or provide that the charity as remainderman will have the right to appoint anyone, including itself, as successor trustee. The latter option may serve as a further protection because it clarifies that the charity will not automatically succeed to the trusteeship if problems with the property are discovered later.

Planning for Recordkeeping. Two main options exist to provide for effective recordkeeping during the period before the sale of the real estate in a trust:

> In the case of income-producing real estate, a property manager might be employed. The manager typically deposits all rents and other cash receipts, pays all expenses, and sends a net amount to the donor/trustee along with a statement itemizing the income and expenses. All of this information is vital for the correct preparation of tax returns and the proper calculation of income payments to the trust beneficiary.
>
> If the donor is personally managing the property, he or she should open a checking account in the name of the trust so that all cash receipts and expenses are run through one account. This will help prevent improper payment of expenses and also

provide a transactional record. The donor should also prepare quarterly schedules of cash receipts and disbursements, and keep copies of important supporting documentation such as copies of leases, tax bills, insurance binders, etc.

In summary, there are many occasions when it may prove advantageous for the donor to serve as the initial trustee of a gift of real estate, with the charity prepared to serve as successor trustee after sale of the property. Success in this approach requires a cooperative donor and a planned giving officer willing to be involved in monitoring trust activity. When the process is managed well, the result can be an excellent gift that contributes meaningfully to the charity's mission.

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ISSUES COMMON TO ALL GIFTS OF REAL ESTATE				
Ownership Structure	Sole ownership; joint ownership; tenancy by the entirety; tenants in common; held in a trust, partnership or corporate structure? Any restrictions on sale or transfer (e.g., rights of first refusal, approvals by condominium associations or co-operative boards, leases that terminate on transfer)?			
Value/Marketability	Owner's estimate, appraisals, realtor's market assessment, property tax valuations etc.; are there deferred maintenance issues? Will repairs enhance the marketability or can the property be appropriately sold "as is"? Are there any potential or pending assessments?			
Pre-Arranged Sale	Has the property been listed with a real estate agent? Is the property under any contractual obligations to sell?			
Unrelated business taxable income (UBTI)	Are there any first or second mortgages? Other debt? When was the debt incurred? Are any related business services conducted on the property (e.g., laundry, vending machines, parking fees, storage fees)?			
Environmental Issues	Are there any environmental issues visually detected in the site visit or other issues noted on a Phase I or Phase II environmental audit review?			
Donor Expectations for Disposing of Property	Does the donor want the charity to hold the property until the market improves? Does the donor want to control the sale of the property? Are there any expectations as to how the charity/trustee will dispose of the property (timing, potential buyers, etc.)?			
	Primary Residence or Vacation Home	**Land or Farmland**	**Residential Rental**	**Commercial**
EXAMPLES OF ISSUES UNIQUE TO EACH PROPERTY TYPE	• Is the residence a major asset of the donor's estate – is the value relative to their overall estate appropriate for an irrevocable gift? • What are the donor's plans for moving out of the residence? ("You can't live in your unitrust!") Does the donor need funds from the sale of the property for living expenses or an entrance fee into a retirement community? • Has the donor discussed the gift of the residence with his or her family – are there family expectations in conflict with the gift? • Is the vacation home rented? Has it been depreciated (Section 1250 gain)? Does the donor use a property manager?	• Is the land developed or undeveloped? • What are the plans for the surrounding areas – is it in "the path of progress"? • Are there any access or easement issues (regarding the gift property or adjacent properties) that need to be considered? • If farmland, what does the donor want to give, i.e. the land, the crops, livestock, machinery, etc.? • Are there any mineral or water rights issues to be considered? • Understand the farm operation (e.g., existing tenant farmer agreements) • Will the transfer of the property to a CRT (and its later use) affect real estate taxes? • Explore more deeply the donor expectations on how the farm will be sold.	• What type of property does the donor own? (e.g., Single family home, condo, multi-family home, apartment building) • Does the donor manage the property or does he or she use a property manager? • What is the current tenant situation? Is the property fully rented, length of the leases, problem tenants, etc.? • What is the dollar amount of the gross rents? Amount of expenses? Net rent? • Security deposits should follow the property into the trust • Need depreciation schedule • How will the estimated CRT payments compare and does the donor understand how the cash flow will compare post-gift?	• Is the property leased? Are the lessees disqualified persons (self-dealing)? Fixed rents or percentage of profits (UBTI)? • Is the property held in a pass-through entity like a partnership or LLC? Is it in a corporate structure and if so, is it a C Corp or S Corp? • If the real estate is owned in a business structure, what is the actual "business" conducted? Mere holding of real estate assets? Or is there a trade or business being conducted • If the real estate is owned in a business structure, is the business giving the real estate (CRT must use a term of years)? Or is the donor giving the business interest (S-Corp shares not allowed into a CRT)?