

Gifts of real estate: Watch every step

We're hearing from more and more attorneys, accountants, and financial advisors that your clients are expressing interest in giving real estate to charity. This is wonderful news!

You're certainly aware that gifts of [real estate](#) to a fund at the Community Foundation, just like gifts of other long-term capital assets, can be extremely tax-efficient. That's because your client is typically eligible for a charitable deduction based on the fair market value of the property. Because the Community Foundation is a public charity, when it sells the donated property, the proceeds will flow into the fund free from capital gains tax.

To achieve the best tax outcome and overall charitable result, though, it's critical to undertake a careful process along the general lines of the following (depending of course on the specific situation):



–First, you'll need to determine that the real estate is a long-term capital asset (held for more than one year). That may sound obvious, but we've talked with advisors and their clients in the past about a potential gift of real estate and it turned out that the property was only recently purchased. The fair market value deduction (versus cost basis deduction) is available only for a long-term capital asset.

–Next, you'll want to work with the team at the Chester County Community Foundation to structure a donor-advised or other type of fund to receive the asset, if your client does not already have a fund in place. The deductibility rules are different for real estate gifts to a public charity (such as a Community Foundation fund) versus a private foundation. Again, clients may not be aware of the pitfalls here. Sometimes we meet with advisors whose clients are very close to transferring real estate to a private foundation, which could be devastating in terms of missed tax savings.

–You'll need to verify that the property is not subject to a mortgage or other debt. Transferring encumbered property triggers important considerations with potentially significant tax consequences. The lender might not even allow a transfer in the first place. If you're dealing with commercial property, you'll also need to check to be sure that the property is not subject to "recapture" if your client has previously taken depreciation deductions.

–You will need to determine whether the property produces income and discuss this with the Community Foundation. Income-producing real estate can potentially trigger "UBIT" (unrelated business income tax) for the Community Foundation. Although there are exceptions and strategies to minimize UBIT's impact, it's important that this issue be dealt with up front.

–You may need to work with the Chester County Community Foundation to determine whether an environmental audit is required for the property.

–Verify that the client has not entered into any discussions about an imminent sale of the property. Even if the Community Foundation will sell the property shortly after receipt (so that the proceeds can flow into the donor-advised or other fund to support the client’s favorite causes), your client cannot have pre-arranged this sale. Doing so could trigger the IRS’s step transaction doctrine and wipe out the tax deduction.

–Importantly, ensure that the client obtains a qualified appraisal to determine the fair market value of the property. This is critical to obtain a tax deduction, and the appraised value must be reported to the IRS on a Form 8283 in strict [compliance](#) with the IRS’s rules.

–Finally, transfer the property with the appropriate legal documents, including a deed.

Whew! That’s a lot! The bottom line here is that gifts of real estate can be a wonderful tool for both your client and the charities they want to support through their fund at the Chester County Community Foundation. Our team can help you through the process, every step of the way. We have professionals in house, as well as on-call experts with whom we work regularly, to ensure that your client’s real estate gift is handled without a hitch, opening the door to bring their charitable goals to life.

For more information, contact the Chester County Community Foundation:

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The team at the Chester County Community Foundation is a resource and sounding board as you serve your philanthropic clients. We understand the charitable side of the equation and are happy to serve as a secondary source as you manage the primary relationship with your clients. This newsletter is provided for informational purposes only. It is not intended as legal, accounting, or financial planning advice.