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Charitable gifts of real property

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As the end of the year approaches, many turn their attention to charitable giving. Because a significant portion of personal wealth is often comprised of real property, such property can be an important component of charitable giving and estate planning.

Gifts of real property to a charitable organization may take a number of forms. For example, real property can be donated to a charitable organization as an outright gift or as part of planned giving. A charity will consider many issues when receiving real property; for example, title issues (such as whether there are defects in title, liens or other restrictions, or easements affecting use or sale), environmental issues, and carrying costs. The charity must also consider whether it will hold or sell the donated property. This will depend, in part, on whether the real property is compatible with the organization's charitable use, whether it will generate unrelated business taxable income, and the development potential and marketability of the property.

Charities may wish to reduce their exposure by directing the gifted real property to a separate entity affiliated with the charity. In Mass., if a charity uses an LLC for this purpose, it may risk losing its property tax exemption. Indeed, the Mass. Appellate Tax Board held that three Delaware LLCs, each with a Tenn. 501(c)(3) organization as its single member, were not entitled to property tax exemptions because the LLCs were not corporations or trusts, as required by M.G.L. c. 59A § 5, cl. 3.

Provided that these issues are adequately addressed, a gift of real property can be a rewarding opportunity for both the charity and the donor.

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