

MANAGE THE RISK AND REAP THE REWARDS OF REAL ESTATE GIFTS

PLANNED GIVING ROUNDTABLE ORANGE COUNTY

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PRESENTED BY

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REAL ESTATE AS AN ASSET CLASS

...should be considered in advancement of the mission of your organization while assisting your donor(s) in meeting their philanthropic goals. Residential and investment real estate can represent a significant portion of an individual's wealth and it should be considered a viable asset for both outright and deferred charitable gifting. Granted real estate gifts often have risks and complications, but properly structured they can provide many benefits for the donor and donee. Come and learn how to prepare yourself, your organization and your donors, the value of real estate gifts.

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TODAY IS A LIMITED GENERAL OVERVIEW OF GIFTS OF REAL ESTATE

- The material contained herein is not intended to be legal or accounting advice, one should seek competent counsel prior to implementing any of the items discussed.

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CONSIDER

- 30% + Nations Wealth held in Real Estate Assets
- Greater than U.S. publicly-traded stocks (NYSE, NASDAQ, etc.)
- 15K Gifts of RE in 2016 **\$2.1M** average FMV vs Securities average **\$92K** (www.irs.gov/statistics)
- challenges of RE gifts have been reinforced by the prevalence of real estate gift “horror stories” (I know a few)
- There are many successful RE gift stories (I know many)
- Today I am hopeful you and your organization will be open to reconsider gifts of RE

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BUILDING WEALTH WITH RE

- Successful RE Investors hold accumulated wealth its just not liquid
- For many, repositioning appreciated real estate assets, especially when another 1031 exchange appears impractical, is a dilemma with multiple tax consequences.
- Gifting real estate to heirs through the estate plan can present challenges.
- Introducing charitable alternatives to holders of appreciated real estate assets as part of the financial and legacy plan can make many individuals and families philanthropic and grateful to their team of planning professionals

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CASE STUDY

- Bob & Roberta age 73 and 74, income of \$115,000 including pension and SS
- State taxes of \$9,000 and property tax of \$4,200 (SALT \$10K limit); \$8,500 gifts to charity
- Total itemized deductions, \$21,700

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CASE STUDY, CONTINUED

- Total itemized deductions under the new law are limited to \$10k for SALT
- No value from deducting their Charitable gifts as total deductions are less than the standard deduction of \$26,600 (both are over 65).
- Their actual taxes will go down ...more money left to reinvest or gift ?
- Their charitable giving will remain same as they are committed donors

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WHAT IF THEY FUND A LIFE INCOME PLAN?

- **Fact finding reveals** under productive asset on their balance sheet, current yield \$5,445 (1.65%)
- Vacation Condo, basis \$36,000 FMV \$330,000 (Family / VRBO)
- Funds 5% Joint life CRUT average income \$16,699 to LE
- Charitable deduction \$154,790

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TAXPAYER, CONTINUED

- Itemize deductions going forward
- Fulfills income peace of mind and ultimate philanthropic goals achieved
- Surprised how happy they are with trust in place
- Named Church and DAF as Beneficiary for family engagement
- Do you offer donor advised endowments at your organization?

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BENEFITS REALIZED

- Heirs Disinherited?
 - Option to fund Wealth Replacement Trust FBO heirs with tax savings
 - Redesign CRUT to pay income for life or 20 the longer ...how often do you offer this?
 - Trade off, tax deduction reduced to \$115,649
 - Family Advised Endowment = Values transfer
 - **peace of mind...priceless!**

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BENEFITS REALIZED

- Asset diversification, repositioned without taxation
- Charitable income tax deduction saves $(154,790 \times 33\% = \$51,082)$
- Greater cash flow at 5% vs 1.65%
- Income taxed favorably, 4 Tier System; ordinary, capital gain, tax exempt, principal in that order

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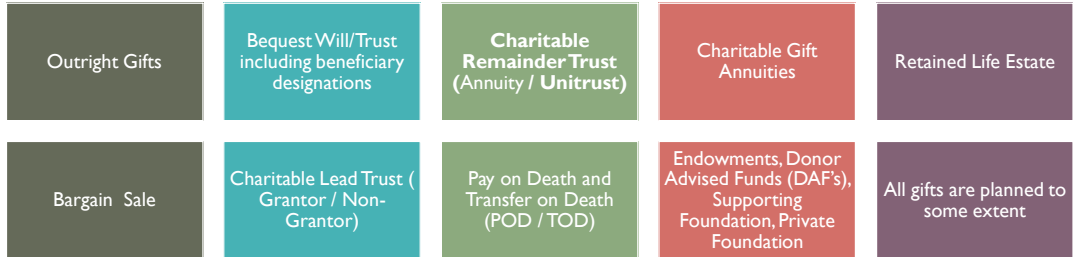
GIFTS OF RE JUST TOO COMPLICATED ...NOT IF YOUR WILLING TO ADDRESS

- Will you be able to sell and convert to program support (cash)?
- Finance ask ...operating cost pending successful sale
- Risk management and environmental
- Need, Policies & Procedures and possible 509(a)(3) to hold RE
- Its rare that a RE gift come in "out of the blue".
- Most RE gifts are the result of prospect cultivation, professional reputation, marketing ...Story telling
- Educated RE professionals can be beneficial team players.

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CHARITABLE TOOLBOX INCLUDES



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CHARITABLE REMAINDER TRUST

- **Charitable Remainder Annuity Trust –(CRAT)** must pay a fixed dollar / percentage, at a minimum of 5%, not less often than annually, of the fair market value of the assets at funding, to one or more persons alive at the inception of the CRAT. The income is fixed for the life of the trust regardless of investment returns and no additional contributions allowed.
- **Charitable Remainder Unitrust –(CRUT)** must pay a fixed percentage, at a minimum of 5%, of the net asset value of the trust assets, revalued annually, not less often than annually, to one or more persons alive at the inception of the trust. Additional contributions are allowed. Multiple format options are available; Standard, Net Income, Net Income with Make-up, Net income Flip, Net Income with Make-up Flip. Does the word **flexibility** come to mind?

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CHARITABLE REMAINDER TRUST – INCOME OPTIONS

- **Life only** – one or more lives, pay for life of M&M, Consider one could fund the CRT to pay M&M for their life, upon the death of the survivor, to their 2 children for their life.
- **Term of years** – maximum 20 – pay M&M for term then to one or more public charity(s)
- **Life or term the longer of** – pay M&M for life or term which ever is longer
- **Life or term the shorter of** – pay M&M for life or term which ever is shorter
- **Caution:** CRT's must have a remainderman value of 10% or more of the value at inception, a CRAT must also pass the 5% probability test in order to qualify in todays low AFR rate what once worked doesn't today.

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REAL ESTATE HAS MANY FORMS

- Personnel Residence
- Condominiums
- Multi family (duplex, apartment house, multi family, etc.)
- Office / Commercial / Industrial
- Undeveloped land
- Mobile Home (mobile home is personal property)
- Farm, Ranch, Timber, Oil & Gas
- Time Shares, Vacation homes, etc.
- Mobile Home and RV Parks

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KNOW THE ISSUES
THE FOLLOWING ARE SOME BUT NOT ALL YOU MUST CONSIDER

- How is title held
- Valuation and substantiation (environmental issues)
- Appraisal by 3rd party and filing of 8283
- Mortgaged Property (old & cold rule, better just to move it)
- Fractional gifts / Discounts (Partial interest gifts)
- Prearranged sale
- UBIT (laundry room)
- Self Dealing (tenant is daughter)
- Structuring the gift (Outright, in trust, remainder interest PR)

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HOW IS
TITLE
HELD?

- Community property, separate property
- Partnership (GP, LP)
- Limited Liability Company (LLC)
- Tenants in Common
- Corporation
- Etc.

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Gift?

Keep?

Sell?

Bob & Sharon have rental real estate and are faced with a dilemma that everyone ultimately must come to terms with, do we...

Let's explore some of the options available to Bob & Sharon our Property Owner of Investment real estate (1031 Property):

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Outright Sale

Bob & Sharon, Age 76 and 74, Sell their Building



\$1,000,000

Mr. and Mrs. Property Owner invest net proceeds at 6.0% TR paying themselves 5% = annual income of \$32,225

<u>Results</u>	
Cost Land	\$75,000
Cost Building	100,000
Accumulated Dep.	(100,000)
Adjusted Basis	75,000
FMV, land and building	\$1,000,000
Federal Tax Liability if sold:	
Proceeds	\$1,000,000
Less Cost 7.2%	(72,000)
Less Adjusted Basis	(75,000)
Gain	853,000
Section 1250 Gain	\$100,000
Tax S&F (35%)	(\$35,000)
Capital Gain	\$753,000
Tax S&F (33%)	(248,490)
Total Tax Liability if sold	\$283,000
Selling costs	(\$72,000)
After tax cash proceeds	\$644,510

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Charitable Remainder Trust Scenario #1

**Bob & Sharon
Gift their
Building to
their CRUT,
retaining a 5%
income for life.
Local Trust Co.
as trustee.**



**Bob & Sharon (77 & 75)
Property Owner Receive:**

- **Income of \$611,234* over their 14 yr. joint lifetime;**
- **Income tax deduction of \$510,210 shelter income from all sources, a planning opportunity.**
- **Gift to charity \$1,053,863**
- **avoid initial taxation of \$283,000.**

***Trust earns 6.0 % net of fees and expenses.**

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Charitable Remainder Trust Scenario #2



\$1,000,000 in a Charitable Remainder Trust with income to Bob & Sharon for their life then to their two children for their life (4 Life Trust).

\$1,584,127 Income 32 yr.

\$207,790 Income Tax Deduction

**\$68,570 tax savings
33% S&F**

Loss of the Marital Deduction, some gift tax filings due. Under current law no tax consequences.

**Charitable Legacy
\$1,268,290 to one or more public charities.**

*** Endowment an additional legacy**

***trust earns 6.0% net of fees and expenses.**

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Charitable Remainder Trust Scenario #3

Bob & Sharon Gift 50% of their Building to CRUT and 50% to a CRUT for their children.



\$1,000,000

\$500,000 (50% UDI) to a Charitable Remainder Trust with income to Mr. and Mrs. P.O.**

- Bob & Sharon receive:**
- Income of \$311,196 over their lifetimes; 6% TR
 - Income tax deduction of \$255,105. (Tax savings 33% \$84,150)

\$500,000 (50%UDI) to fund a CRUT with income to Children for 20 yrs.**

- Children receive:**
- Income of \$472,647 20 yrs.; 6% TR
 - Income tax deduction of \$182,989 for Parents. (Tax savings \$65,001)
 - Present value of gift \$317,011*

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Charitable Remainder Trust Blended gift & walking around money Scenario #4

Bob & Sharon Gift 50% UDI to a Charitable Remainder Unitrust , 25% Outright to Charity and sell the remaining 25% UDI



\$1,000,000

\$500,000* to a CRUT with income to M&M Property Owner

- M&M Income receive:**
- Income of \$311,196 over their joint lifetimes;
 - Income tax deduction of \$255,105. (Tax savings 33% \$84,104)

\$250,000* Outright gift To fund Family named Endowment or DAF at Community Foundation

- Bob & Sharon have facilitated a true blended gift!**
- Some giving while living (public charity(s) or DAF) and could engage family in a values base giving;
 - Deductions offset the taxability of portion sold
 - *Valuation discounts and sales cost not illustrated but they would apply

\$250,000* cash from sale of UDI

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EVERY CHARITY CAN DETERMINE

- Major Gift Officers cross training
- Its own risk tolerance for various types of real estate gifts
- Develop acceptance policies and procedures
- Consider the legal structures for acceptance
- Develop and define referral relationships
- Explore options for anything the charity is uncomfortable accepting.
- Partners in success, Board, finance, Title Insurance & Real Estate (residential, commercial, multi family) Professionals,, Appraisers

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Instalment Sale, AKA Seller
Cary Back



Deferred Sales Trust



Delaware Statutory Trust

ALTERNATIVES ...THAT YOU SHOULD KNOW

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RESOURCES

- Community Foundations
- Planned Giving Design Center (PGDC.com)
- Robert F. Sharp Jr. May Issue of Trust and Estates, “Gifts of Non-cash assets—A Phoenix Rising from the Ashes of Recession”
- Realty Gift Fund, Chase Magnusson (realtygiftfund.org)
- Charitable Solutions Inc., Byron Clontz
- www.irs.gov

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THANK YOU

BE MORE CURIOUS THAN CERTAIN!

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