



This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.

ACCEPTING A CHARITABLE DONATION OF REAL ESTATE

By Sarah Whitmarsh, Georgia Power Company

This article provides basic information on whether a Georgia nonprofit organization should accept a charitable donation of real estate, including some of the important questions to ask when considering accepting a donation.

A. Can a donation of real estate qualify as a charitable gift?

Yes, if the donation meets certain requirements. A 501(c)(3) tax-exempt nonprofit organization may accept gifts of real estate. The donor of the gift may qualify for a federal income tax deduction, and it is this potential tax benefit that is often a motivating factor for any donor making a gift of real estate to a charitable organization. For a real estate donation to qualify as a charitable contribution under the Internal Revenue Code (the "I.R.C."), the nonprofit organization receiving the gift (the "donee") and the donor making the gift must meet the requirements set forth in Section 170 of the I.R.C. There are many factors to be considered in determining whether a charitable donation will result in a tax deduction for the donor. For example, for the donation to be potentially tax-deductible, the donor must donate the donor's entire interest in the property. If the donor only donates a portion of a building that the donor owns or only allows the donee to occupy the building and does not transfer the property, then the donation is not tax-deductible. The donor and donee should consult their own tax attorneys or advisers when considering any charitable donation.

B. What questions should a nonprofit ask before accepting a real estate gift?

Before committing to acquire any interest in real property, even if property is acquired by gift rather than purchase, it is important to understand the terms of the proposed transaction and to conduct a thorough investigation of the property in an effort to unearth and understand all responsibilities, liabilities, costs and benefits that will come with ownership of the property in question. Known as "due diligence," the process can take 90 days or more to complete for a review of improved real property.

The typical due diligence review for real property can be broken down into a few broad categories as described below. Also included below are some examples of questions to be asked and information to be reviewed before committing to accept a donation of real property. A real estate attorney should be consulted for advice with respect to the particular property and the proposed transaction, and a real estate

Dated: 11/5/2014

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management company can be hired to manage the due diligence process. This list is by no means exhaustive.

1. Terms of the Proposed Transaction – What real property will be given (for example, will it be a donation of a whole parcel or some portion of a parcel)? What type of real property interest will be given (for example, will it be a fee simple estate or some lesser interest in the property)? When will the donation take place (for example, must the donation take place immediately if at all because of a looming tax deadline, or will the donation take place at some point in the near or distant future)? Will the donation be an “as is” conveyance, or will the donor be willing to remedy any issues or problems with respect to the property prior to closing?
2. Title and lien review – Does the donor actually own the property? Are there any easements, leases or other restrictions of record burdening the property? Are there any liens or notices regarding ongoing lawsuits filed against the property? Are there any loans on the property to be paid off at closing? Have the taxes been paid on the property? Engage a local title agent to examine the applicable real estate and lien records. Ask a real estate attorney to review the title/lien examination results and to assist with resolving any issues.
3. Property value review – What is the property worth? The value of the donation to be accepted is determined by a property appraisal (see Section C below). The donor will likely obtain an appraisal for the donor’s tax deduction purposes. Obtain a copy of the donor’s appraisal for review and for use in documenting the donation of real property (see Section D below), and consult a tax attorney or advisor with respect to any property valuation questions or issues.
4. Governmental/zoning compliance review – What is the current zoning status of the property? What other local ordinances apply to the use of the property? Check with local government offices to determine zoning (including whether there are any zoning violations) and to confirm that there are no outstanding citations with respect to the property for violation of any local laws/ordinances. Make sure that the proposed use of the property is permitted. Ask a real estate attorney to assist with resolving any issues.
5. Survey review – What are the exact boundaries of the property to be conveyed? Where are improvements and utilities located? Are there any

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encroachments such as fences or driveways? Is the property located in a flood zone? Engage a licensed surveyor to survey the property, and consult a real estate attorney to discuss any issues shown on the survey.

6. Contract/lease review – Are there any contracts, leases, licenses or easements on the property that will remain in place following closing? What are the obligations under those agreements? Are there any current defaults or breaches under any of those agreements that will not be resolved prior to closing? Request for review a copy of all existing contracts, leases, licenses and easements in effect with respect to the property. Ask a real estate attorney to assist with the analysis of those agreements and to help resolve any issues.
7. Utilities/services review – Is the property currently served by all necessary utilities? Are there any utility easements burdening the property? Check with applicable utility companies for this information.
8. Inspection of any improvements/buildings – Are the structures or improvements on the property in need of significant repairs or renovations? Are there any building code violations? Have the property inspected by an experienced building inspector.
9. Environmental review – Are there any environmental issues with respect to the property? For example, does the roof, insulation or other portions of any structure on the property contain asbestos; have any underground storage tanks been used at the property; and were any dry cleaners, gas stations or other potential users of hazardous substances former tenants at the property? To answer these questions, it is usually essential to engage an appropriate environmental consultant to conduct an environmental site assessment of the property. Ask an environmental attorney or real estate attorney to assist with resolving any issues.
10. Corporate entity review – Does the donor have necessary corporate authority to convey the property as a charitable donation? Is the donating entity in good standing with the Secretary of State's office? Ask the donor to provide evidence of corporate authority/approval to donate the property and check with the Secretary of State's office to confirm good standing.

Once the due diligence review is completed, discuss any issues or problems with the donor. Often issues identified during the due diligence period can be worked out as a matter of course, but in many cases they may uncover significant issues that may stop

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the donation. The donor may elect to resolve some of the issues or may only wish to donate the property in its “as-is” condition, where the donee must elect either to refuse the donation of the property or accept the donation with all unresolved issues and problems. Armed with so much information regarding the property, a more informed decision can be made on whether to accept the property or pass on the proposed donation. If the decision is made to accept the property, ask a real estate attorney to assist with a proper transfer.

C. How is fair market value determined?

Assuming the due diligence turns up no major issues, the next question will be the value of the property. Fair market value is the amount which a willing buyer would pay a willing seller for property when both have reasonable knowledge of the relevant facts regarding the property and neither party is under any compulsion to buy/sell. The donor is responsible for the determination of the value of the donated property. As required by the IRS, all real estate donations with a value of \$5,000 or more require the donor to obtain a qualified appraisal. The donor should provide a copy of the qualified appraisal to the donee.

D. How should a nonprofit document and report a donation of real estate?

The value of the real property donation is determined and provided by the donor based on the donor’s qualified appraisal. The donee must provide a written acknowledgement for each donation of real property as required by the I.R.C., and the donee must also complete certain other IRS tax forms. A tax consultant or attorney should be consulted for advice with respect to tax documents necessary to accept a donation of real property. Every piece of real property is uniquely complex, and every transaction involving real property is uniquely complex. When real property is at issue, it is especially important to always consult an attorney to help with your particular situation.

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