

PBPA Podcast Transcript
Real Estate, Real Impact: Accepting Donations of Property
(21:18 minutes)



[00:00:00] **Sireesha:** So a longtime supporter of your nonprofit has offered to donate land to your organization? Great. Or is it? While these gifts can be incredibly valuable, they also come with unique set of legal and financial considerations. To help us unpack the complexities, I'm joined by attorney Scott Lasseter and William Stone, who will guide us through risks, responsibilities, and best practices for nonprofits accepting donations of real estate.

Hello and welcome to the PBPA Podcast. In each episode of the PBPA Podcast, we explore legal questions relevant to Georgia nonprofits. I'm your host Sireesha Ghanta, Counsel and Education Director at the Pro Bono Partnership of Atlanta. PBPA strengthens our community by engaging volunteer attorneys to provide nonprofits with free business legal services. We provide numerous free resources via our website, including articles and webcasts specific to Georgia nonprofits and their business legal concerns. We also provide direct legal services to our clients. For more information on client eligibility requirements, to apply to be a client or to access our vast learning center, visit our website at pbpatl.org. Before we jump into this episode's topic, keep in mind that this podcast is general information, not legal counsel, contact your attorney for guidance on your nonprofits' specific situation.

William Stone is an associate at cost in Atlanta. His practice focuses on both federal and state controversies. I am thrilled to have two experts to share their expertise on real estate donations with our nonprofit audience. Thanks for being here today, William and Scott.

[00:02:27] **William:** My pleasure. Yeah, thanks for having us.

[00:02:30] **Sireesha:** So my first question is, what questions should a nonprofit ask ITSELF before accepting such a donation? Scott, let's start with you.

[00:02:44] **Scott:** Sure. And for the audience my normal lens is the environmental side of a real estate transaction, but I've been involved in enough, both on behalf of private clients and on nonprofits, to know that really the first step is that a level above the environmental question, it's really: is the organization, does it have the capacity to take on this? And I say that because acquiring real estate is a discipline and an activity that not all organizations are well suited to do. And so before deciding whether or not this is something that would be good for the organization, you need to really figure out does the organization have the capacity to take on this task?

Is the organization's leadership aligned on doing this? And does the organization understand just at a very basic level what its authority is to do this transaction. Who has to approve it? Who gets to sign documents, for example what authority they have? All those basic questions need to be worked out before you even begin to decide in a particular property. Is the right one to take? It's real important for the organization to figure out why it wants to have this property.

It's wonderful when donors want to give you something of value, but the organization really needs to figure out what is it that it wants to do with this? Is it, for example. A property that's useful for the mission of the organization or for the nonprofit, such as a headquarters building or is it otherwise useful for the mission. If it's not be used for the mission of the nonprofit?

Is this a financial donation? Do you intend to turn around and sell it, liquidate it, and then use the proceeds for the organization's mission or if it's an income producing property, do you intend to keep it in this current condition? Answering those questions upfront really important to know what the due diligence for this exercise is gonna look like.

[00:04:44] **William:** Yeah. And I think to Scott's point, an important point there, he brought up: income producing. Is it unrelated to your organization's goals? You might have UBI questions. And depending on what else your organization has going on, it may be an impact that you're unwilling to take on because of that. So there's definitely thought there as well of - just because you get offered a donation doesn't necessarily mean you want to take it.

[00:05:09] **Sireesha:** Those are excellent points. And I'd also suggest that a nonprofit also look towards its gift acceptance policy. Hopefully they have a gift acceptance policy and that will help provide some guidance to an organization in terms of what to take into account if they're looking at accepting a donation of real estate. And following that as a guideline to help them determine whether or not to move forward with accepting the property.

[00:05:36] **William:** And a little plug for your organization here. We've helped different nonprofits draft these. So if you don't have one, it's probably something you wanna look into having because it does help determine, or at least give you a roadmap as to the type of donations you want to accept. And then there's some that you just don't want to accept, and that's typically outlined in those as well. And it's something I've helped with and I'm sure done a lot of those here. So if you don't have that, I think it is an important piece for a nonprofit.

[00:06:06] **Sireesha:** And William, what questions should a nonprofit ask the donor about the property?

[00:06:14] **William:** I think there's a few questions. The first one that pops to mind is do they own the property outright? Are they making a donation, that they're giving the fee simple to the property? Do they have a mortgage attached to it? What restraints does the property have on it? Does it have easements? Does it have uses leases? What is the case there? And depending on the answer, those questions you may have follow-up questions, if the property's currently leased, when does that lease come up? If you have easements or other uses what are those?

I think those are the main questions, and depending on those answers would lead down other roads potentially. If they own it outright and fee simple and it's just a donation of the property, it's pretty straightforward if there's some other things to it. I think there's more to it. Maybe, for example, if you own part of a unit in a building, right? What, how does that work? Do you have an HOA that you have to deal with. Do you have all these other things? And to Scott's points, does the organization wanna undertake some of these issues that come with those things?

[00:07:13] **Sireesha:** I'd also like to mention the use of the property. A nonprofit should ask the donor, clarify with them whether or not there's a specific intent that the donor has in mind for the property, or can the donated property be used for whatever's the best purpose, best fit for the

nonprofits need, and also see if your donor would be open to signing a gift agreement, preferably with an indemnity.

And that's a good segue into our next question about due diligence. Scott, what sort of additional due diligence would be advisable.

[00:07:52] **Scott:** Absolutely. So environmental due diligence, which is only one piece of the overall due diligence process, but a very important piece normally begins with something known as a phase one environmental assessment. The term phase one merely means that this is an assessment that doesn't involve collecting environmental samples, but rather it's based on the history of the property, its regulatory status and a visual inspection of the property to determine whether there are any indicators of an environmental issue whether a nonprofit needs to do a formal.

Environmental assessment that would qualify for various state and federal standards is a question that needs to be analyzed. Sometimes it's really not necessary. Sometimes the property is small enough and its history is clear enough that's not necessary. To do a full blown phase one, as we would call it, but it's always essential to do a baseline environmental evaluation to be sure what you're getting into on the environmental side. And again, that's just one piece. There's also the title question, I bet William will be able to say something about.

And then a third area, which is, it's the property condition. Aside from whether or not you have an environmental problem aside, whether or not you have clean title or the donor is able to give you clean title, there's also a question: Are there holes in the roof? Are you taking on basic maintenance obligations? They're gonna wind up being worse than the value of the property or overtax the nonprofit's ability to pay attention to these things. Again, most nonprofits aren't in the business of owning real estate. Taking on long-term maintenance obligations may really be more than it's worth the organization doing.

[00:09:39] **Sireesha:** And I'd like to mention, in addition to those maintenance obligations, there are insurance costs. Will your organization be able to cover those insurance costs as well?

[00:09:52] **William:** Yeah. And as the tax guy here, you also have property taxes associated with it. So that's another thing to look into and something to think about.

[00:10:00] **Sireesha:** That is an excellent point that you bring up because if the property is not going to be used to advance the organization's charitable mission, then they'll probably have to pay property taxes on it. Whereas if you use the property to further your charitable mission, you would be able to seek an exemption on property taxes.

[00:10:23] **Scott:** And William, you probably can speak to this better than I can, but there's also a question that we would call entitlement, which is the legal right to do whatever it is that the organization wants to do. That'll depend on whether the organization intends to use this piece of property for its mission or turn around and sell it.

But being sure that the property is, for example, zoned or they're not other land use restrictions that would complicate whatever the nonprofit wants to do.

[00:10:50] **William:** Yeah, I think a good example of that, when you talk zoning, would be if you get a raw piece of land potentially donated to you and you think, great, we can put our organization's headquarters here. This is gonna be awesome. Maybe if it's not zoned for that use, you would have to go through the process of getting it zoned. That obviously comes at a cost. Some places it would be easier than others potentially, but the current, what it's designated for, what it's zoned, it is part of the use.

And then again, going back to if it is an income producing property, you get something and you're gonna use it. You need to think about your 501C3 status related to your organization and how that income will affect it. Does it further the mission? Is it unrelated? Do we plan on having a blend? Is it going to be unrelated at the beginning and we're gonna move it into being furthering the mission. So there, there is a lot to think about depending on the type of property you receive as well.

[00:11:43] **Scott:** And then one other you can call this due diligence, or you might even call this an earlier question to ask. When I'm dealing with nonprofits or I sit on some boards that have been through the process of acquiring real estate.

One real important question is to evaluate the reputational implications of acquiring the real estate. Those can be both good and bad. I can give you several examples of nonprofits in Atlanta, for whom the real estate that they now occupy, the ownership of that real estate and where it's located becomes iconic.

It becomes a central part of their mission. The Habitat Restore is a great example, that's owned by. The Atlanta Habitat Organization, the Trees Atlanta Organization, which is right next door to Atlanta Habitat, is another site that the ownership of that spot matters to the organization.

So that can be positive, but it also can be negative in the sense that. If there are either environmental consequences or even non-environmental challenges that the property has, such as problems with a tenant or problems with zoning or problems with neighbors those have reputational implications that maybe the nonprofit doesn't want to be involved in.

So it's real important to evaluate whether those reputational risks might outweigh whatever benefits you get from the property.

[00:13:05] **William:** And that's a good point. Going back to my example of the raw land. If you have a park that everyone really likes and you want, you need a headquarters your group does and you're getting this piece of property, but you're gonna have to get something rezoned and it's gonna hurt the community it's in. And that's gonna have a negative impact. Even though you need that headquarters, maybe the hit to your reputational. Your reputation within the community isn't worth taking that property and then trying to get it zoned to have a headquarters no matter the need of said headquarters.

[00:13:36] **Sireesha:** Those are all fantastic considerations that you guys mentioned there. Scott, now let me ask about one thing that you mentioned about: tenants. What should a nonprofit do if they're accepting or looking to accept a property that is currently occupied with tenants?

[00:13:56] **Scott:** Yeah. So there's several different disciplines that need to be brought to bear on that question. Yeah you obviously need to evaluate the leases themselves to understand the the

terms of the lease, whether or not those terms match up with the mission of the organization and again, match up with the purpose for which the organization is taking this property: is it income producing? Does it intend to convert this property to a mission related use? Does it intend to sell the property? Those existing leases will be critical in all three of those arenas. You also need to evaluate what is it that these tenants do? Even if the leases are fine, do the things that the tenants are doing in property owned by the nonprofit match up with or pose reputational risk to go back to that term for the organization. Or they merely, they could just simply be either complimentary or conflicting, even if there's not truly a reputational risk. One could imagine, I won't try to come up with a good hypothetical, but you could imagine there being types of uses in a building that might be conflicting or complicating for a nonprofit or alternatively that might be complimenting.

So those are all important questions to ask with regard to tenants. And maybe a related point is to understand what those tenants want and need. That's an important question, and then tying it back to our opening observation about is the organization ready for this separate from the legalities of the lease.

Separate from aligning the use of the property for those reputational concerns. Being a landlord is tricky. Being a landlord is something, some people are really good at being landlords. Some organizations are really good at being landlords, others aren't. I will say to the world right now I'm not the guy to be your landlord. That's not something I'm any good at. And if you're not good at it, life is too short to do that. If you're good at it, it's great. So understanding those things are really important if you're taking on tenants.

[00:16:05] **William:** And to being the landlord. The question of do you wanna be a landlord? There's a follow up question. Can you afford to be a landlord? To Scott's point earlier, you get something donated to you and the roof has a leak in it, and it's a big building, so now you've got a \$70,000 expense to replace the roof. Is that something that the organization would want to take on?

You have other issues come up? Being a landlord is great in theory. In practice - there is a lot of headaches, I guess you could say, that come from the maintenance and what happens. So not only do you want to be a landlord, can you be a landlord.

[00:16:40] **Sireesha:** And I'll also make a reference as William you referenced, before: UBIT. For our nonprofit listeners, if you're going to become a landlord you're generally exempt from paying income taxes. But keep in mind, once you start getting rental income, depending on the situation, that could be taxable. So that's one more consideration to keep in mind.

And now, William a question for you about, for the donors. Their intent of donating property is usually for the federal income tax deduction. Can a donation of real estate be considered a charitable gift?

[00:17:19] **William:** Yes. So a lot of my work is around defending charitable donations and a lot of it is real estate. So yes, when someone donates real estate, they can take a deduction equal to its fair market value. That typically, you'd want to get an appraisal over \$5,000, you are forced to get an appraisal. There's all rules and everything that we won't get into on this podcast for. A person looking to donate - they definitely should check those. But the ability to get a deduction for the donation is available if you meet certain criteria.

[00:17:53] **Sireesha:** And from the nonprofit's perspective, who's potentially accepting that donation of real estate, they don't really need to worry too much about this. That's up to the donor, right?

[00:18:03] **William:** No, at the end of the day it's on the donor's tax return, right? So the appraisal that they end up getting and the deduction they take, and the conversations they have with their own CPAs and advisors and whoever it may be the nonprofit will not be a part of those conversations and really shouldn't be.

The nonprofit will be required for the donor and they'll expect to get a CWA, a contemporaneous written acknowledgement of the donation. And typically, that just explains that no goods or services from the nonprofit were given for the donation. So that's really their only aspect in terms of the tax deduction for the donor. They provide this, the CWA to the donor.

[00:18:48] **Sireesha:** You have both provided such great insight for our listeners that will hopefully reduce any unpleasant surprises or negative consequences for nonprofits looking to accept a real estate gift. To close out, I would like to ask you each, what is the one, most important tip or takeaway that you would want our listeners to hold onto, after listening to this episode?

[00:19:17] **William:** I'll go first and let Scott close it out. I think a theme that you may have seen emerge is - just because something, someone offers you a donation doesn't mean you have to take the donation. And you really need to look at your organization and decide whether that donation furthers your own mission and how it impacts that mission and do you want to take it.

And that is the initial step, the most crucial step. And once you make that decision, then you can move forward with all the things that Scott and I have talked about. But you have to make that initial determination of, it's great that this person's offering me a donation, but is it a donation that we should accept as an organization?

[00:20:00] **Scott:** Yeah. And I'll build on that by saying I think that the number one thing I would say is that there should be no automatic answers with regard to real estate. There should be no automatic yeses and there should probably be no automatic nos because oftentimes of donation of real estate can be mission transformative.

And exploring. Whether or not it's possible is certainly something to do, but you definitely need to be sure that you're taking it step at a time and getting all the ducks in a row.

[00:20:28] **Sireesha:** Thank you, Scott and William, for sharing your time and expertise with us today.

We hope that you found this episode of the PBPA Podcast to be informative and helpful. We add new episodes every month with short conversations about general, yet important legal information for Georgia nonprofits. Remember that this is not legal counsel. Talk to your attorney about your organization's specific concerns. Thanks for tuning into the PBPA Podcast. And to all nonprofits listening out there, thank you for all the good work you continue to do in our community.