



Gift & Estate Planning

Stewarding the Giver **and** The Gift™ >>

GIVING REAL ESTATE

If you own property and wish to make a charitable gift to ministry, you may find giving real estate to be a wise way to accomplish your goal. Someone who donates real estate that has been held for more than one year is generally entitled to an income tax deduction equal to the full fair market value of the contributed property. Also, the donor can avoid the capital gains tax on the appreciated portion of the property that would have been taxable if the property were sold. Saving future potential estate taxes and probate costs associated with the property are other possible benefits. Not to mention, giving real estate is often an effective way to make a substantial gift to the Kingdom without dramatically impacting your current cash flow!

Whether you are thinking about making a gift of real estate as part of your estate plan or during your lifetime, we welcome the opportunity to talk with you about ways to structure the gift that will enable you to faithfully steward this important and valuable resource entrusted to you by God.

“I want to leave my real estate to charity after my death.”

Leaving your real estate to charity after your death can be a significant eternal investment in the lives of future generations through the ministries you choose to support. In concept, this can be accomplished simply by including a distribution instruction in your will (or revocable living trust) directing your executor (or trustee) to distribute the property to the charity of your choosing. You should, however, contact the ministry prior to meeting with your lawyer to ask if the ministry has specific policies or procedures concerning accepting gifts of real estate.

Accepting gifts of real estate has become an involved (and sometimes risky) process for charities in recent years due in part to the increased government scrutiny and regulations concerning environmental problems. Because of the significant liability risk for the charity when accepting a gift of real estate, some charities are simply unable to accept the gift. Some charities will accept the real estate gift only after required inspections and reporting have been completed. Some charities actually prefer the gift of real estate be gifted to an outside conduit fund created for the charity through a professional charitable foundation. In this instance, the foundation will accept the real estate for the charity and then distribute the proceeds to the charity once the real estate has been sold. This type of arrangement allows the charity to “accept” gifts of real estate without risk and without devoting the internal resources necessary to carry out proper due diligence, effectively hold the property and eventually liquidate it. Whatever the charity’s policies may be, it is in your best interest to contact the charity in advance to learn how best to structure your will or trust to accomplish your giving objective.

Another important consideration to evaluate when making a gift of real estate through your estate plan is the tax saving possibilities the gift may have if made properly. A gift of real estate made directly to a charity upon your death through your will or trust can qualify for the estate tax charitable deduction and, thus, avoid estate taxes. However, if you are interested in receiving an income tax charitable deduction today for the charitable gift you plan on making after death, you may want to investigate the benefits of giving the “remainder interest” in your home or farm while keeping a “life estate” for yourself. In this type of gift arrangement, you keep the full rights and duties of ownership for your home or farm for the rest of your lifetime. Upon your death, the property will then pass to the charity you designated.

Example: Martha is in her mid-70’s and wants to live in her home for the rest of her lifetime and then have the home be given to Focus on the Family upon her death. The home is currently valued at \$225,000.

	Deferred Gift Made Through Last Will and Testament	Current Gift Made Through Life Estate Arrangement
Estate Tax Deduction	Property is included in her taxable estate, but she receives an offsetting charitable deduction equal to the fair market value of the property on her death	Property is included in her taxable estate, but she receives an offsetting charitable deduction equal to the fair market value of the property on her death
Income Tax Deduction	No income tax deduction	Martha receives an approximate \$140,000 current income tax deduction to reduce her current income tax liabilities

As you can see, in the right situation, a current gift of the remainder interest in your home or farm could be a desirable arrangement to reduce your current income taxes while also accomplishing your after-death gift of the property to charity.

However, please be cautioned that if you do not have other significant asset holdings apart from your home or farm, a life estate arrangement is probably not advisable in your situation. As with any gifting strategy, you should consult your attorney and professional financial advisors before entering into a life estate arrangement.

“I am going to sell my real estate, and I want to make a charitable gift with the proceeds.”

When people sell their appreciated real estate, they often owe significant income taxes due to Federal and State capital gains tax and, in some cases, depreciation recapture. If this describes your situation, you may be interested in learning how you could reduce your tax liability and redirect those dollars to Kingdom-building ministries.

The concept is simple. Rather than selling your real estate and then giving a portion of the after-tax sale proceeds to ministry, you may wish to consider the benefits of making a gift of a partial interest in your real estate to the ministry *before* you sell the property. You would receive an income tax charitable deduction for your gift of the real estate interest. When the property is later sold, the portion owned by the ministry is generally sold tax free. Although you will still be taxed on the portion of the property you did not give to ministry, you may use the charitable deduction generated by the partial interest you gave to charity to help reduce your tax liability.

Example: Tom and Susan have several acres of unimproved real estate in an area of expanding urban development. Though they estimate the property is worth \$850,000 today, they acquired it decades ago for only \$50,000 (their tax basis). They plan on selling the property and making a gift of 20% of the sale proceeds to their favorite ministries.

Scenario	“Gift” to Government (Taxes*)	Gift to Charity	Income Tax Deduction	Value of deduction to taxpayer*	Combined benefit for family
A. Sell asset then gift 1/5 proceeds	\$168,000	\$170,000	\$170,000	\$69,700	\$ 512,000 - net sale proceeds +\$ 69,700 – deduction value \$ 581,700 – total benefit
B. Gift 1/5 asset before sale	\$134,400	\$170,000	\$170,000	\$69,700	\$ 545,600 - net sale proceeds +\$ 69,700 – deduction value \$ 615,300 – total benefit

* Assumptions: Taxpayers subject to capital gains tax rates (Federal 15% - State 6%) and personal income tax rates (Federal 35% - State 6%)

By gifting 20% of the real estate to charity *before* the sale of the property, Tom and Susan reduced their taxes by \$33,600 and could either give those savings to Kingdom ministries or keep them for their personal use.

What if my real estate has decreased in value since I acquired it?

If your property has decreased in value since you acquired it, you should generally sell the property first and then make a charitable gift of the proceeds. When you sell depreciated property, you establish a capital loss that you may be able to deduct from your taxes. Furthermore, when you make a charitable gift of the sale proceeds, you generate a charitable deduction that can also be used to reduce your taxes. If, however, you gave the depreciated real estate to charity prior to selling it, you would be unable to take advantage of any capital loss deduction even though your charitable deduction is limited to the depreciated fair market value of the property at the time it was given to charity.

What if I have a mortgage (or other indebtedness) secured by my real estate?

If the property is mortgaged, benefits for gifting the real estate may still be obtained, but special consideration should be given to how the property is given. In general, when appreciated real estate is given to charity, neither you nor the charity is taxed on the appreciation of the gifted property interest. However, if the real estate is encumbered with debt, the gift is treated as a “bargain sale” for tax purposes and a portion of the appreciation would be taxed to you as capital gain.

Is it advisable to already have a buyer arranged before giving my real estate to charity?

While it is generally advisable to have the property in marketable condition prior to making a gift to charity, entering into negotiations with a potential buyer prior to making a gift to charity can result in negative tax outcomes. If you have already negotiated a sales arrangement with a potential buyer prior to giving the real estate interest to charity and the charity then sells the property to this buyer, there is a risk that the sale transaction will be treated as a prearranged sale by the IRS. Should that happen, you would be taxed on the entire gain resulting from the sale based upon the IRS’s declaration that the charity was a mere conduit for carrying out your prearranged sale. For your protection, the charity should enter into independent negotiations with the buyer subsequent to your gift to the charity. The degree of risk for the IRS declaring the property sale to be a prearranged sale varies from situation to situation. For this reason, your attorney needs to advise you how best to protect your tax position if any discussions have occurred with a potential buyer prior to making a gift of your real estate to charity.

Will I need to get an appraisal?

Yes. For any gift of real estate exceeding \$5000 in value, you will need to get a qualified appraisal to substantiate your charitable deduction. A “qualified appraisal” is defined in the United States Treasury Regulations. Full details regarding the qualified appraisal

requirements should be discussed with your tax professional. However, in general, the appraisal must:

- Be prepared by a qualified appraiser;
- Describe the appraiser's background, education and experience;
- Disclose the fee arrangement for the appraisal services;
- State the gift date;
- Provide the fair market value of the property on the gift date; and
- Be obtained no earlier than 60 days before the date of the gift and no later than the day before the due date of the income tax return on which you are reporting the gift.

In addition to obtaining a qualified appraisal, you will need to file an "appraisal summary" on IRS Form 8283 with your federal income tax return in order to claim your charitable deduction.

Can you help me better understand how a gift of real estate would work in my case?

To receive a personalized analysis of how a gift of real estate may help you wisely accomplish your giving objectives, please contact us at (800) 782-8227. We welcome the opportunity to talk with you, and we will gladly send you a personal proposal for you to discuss with your professional tax advisor and legal advisor.

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