

ESTATE PLANNING

Gifts of Real Estate, with Restrictions

Early in my charitable planning career my employer was offered a donation of islands on Georgian Bay. Surrounding the 100-year-old family cottage were sheds, cabins and boat houses. The donors had a vision: it would be a children's camp.

It was a stunning property. Valuable, despite the sagging, mouse-infested buildings. But this gift by will was contingent and restricted. It would be a children's camp, or nothing at all. The gift never happened.

Looking back, I feel the donors' palpable regret and disappointment. They were in the late 70s. They loved those islands. It was unbearable to see the cottage sold, torn down, desecrated.

The charity, however, had no need of the islands or a camp. It had no funds to develop or operate the facility. We suggested, tentatively, that it could be sold and the funds used for the charity's core mission. Regrettably, the donors thought we were rude and greedy.

Real Estate Restricted to Use

Since that first experience, I have met a number of well-intention donors with

similar dreams. What dreams? A Victorian rooming house, well, mansion, for a humane homeless shelter. An artist's cottage for a writer's retreat. A country estate for a university campus. A farm for an animal sanctuary. A heritage house for a museum.

These donors were all deeply invested in their vision and property. As a result, they have a hard time understanding the practical issues for the receiving charity. Sometimes the charity already exists, and, of course, has other programs. Sometimes a new charity had to be created to carry out the purposes. Either way, the operational challenges were significant.

All property donations require a contingency plan. During the planning process, it's best to address the monetary value of the property and the core mission of the charity. This discussion is essential, and just the start.

Due Diligence Questions

Here's some practical questions for donors, gift planners, lawyers and charities to consider:

1. What is best charity to hold the property and carry out the intended purpose?



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2. How will ongoing programs be funded?
3. What are the zoning issues?
4. Are there capital improvement costs?
5. How much are taxes, insurance, programs, and maintenance?
6. What happens after the first 20 years? Who will run the programs? Will there be a need?
7. Is there any plan to make additional donations, in addition to the real estate?
8. Is there a gift agreement? If so, does it include a variation of purpose clause so the property can be sold?
9. If the property is sold, how will the funds be used?

Good charitable estate planning involving real estate starts with frank discussion. It's important to recognize the cost and responsibility associated with big dreams and special properties.

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