

Red River Valley Estate Planning Council

Gifts of Real Estate

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INTRODUCTION

- Definition of a “White Elephant”
- Review Practical Considerations

TITLE & ENVIRONMENTAL

- Commitment for Title Insurance
- Phase I Audit
- Standard ALTA Survey

DUE DILIGENCE

- Written Contracts Regarding the Property
- Tax Statements
- Government Permits and Licenses
- Unresolved Claims and Disputes

DUE DILIGENCE

- Title Policies, Surveys and Soil Tests
- Drawings, Plans and Specifications
- No Oral Contracts and Agreements

ZONING & BUILDING CODES

- Government Approvals for Use
- Determination Prior to Closing

PROPERTY TAX EXEMPTION

- Public Cemeteries, Schools and Hospitals
- Academies, Colleges, and Seminaries
- Churches and Houses of Worship
- Institutions of Purely Public Charity

INSTITUTIONS OF PURELY PUBLIC CHARITY

1. Helpful to Others Without Expectation of Material Reward.
2. Whether Profits are Distributed to Private Interests.
3. Whether Dividends are Paid to Private Interests.

INSTITUTIONS OF PURELY PUBLIC CHARITY

4. Whether the Organization is Supported by Material Contributions
5. Whether Benefits and Services are Provided at Reduced or No Cost: Whether the Organization Lessens the Burdens of Government
6. Whether the Class of Beneficiaries is Restricted or Unrestricted

OWNERSHIP and USE

- No Exemption Allowed if Non-Exempt Use is Substantial
- Pro Rata Exemption Between Exempt Use and Non-Exempt Use
- De Minimus Non-Exempt Use may be Disregarded

FILING REQUIREMENTS

- Initial Statement of Exemption
- Re-filing Every 3 Years
- Special Rules for Churches and Colleges

BARGAIN SALES

- Part Gift and Part Sale
- Donation Equals Difference Between Fair Market Value and Sale Price
- Agreement Concerning FMV

VALUATION & SUBSTANTIATION

- Deduction Equals Fair Market Value
- Appraisal Requirements
- Form 8283
- Form 8282

TAXATION OF RENTS

- Generally Rental Income is not Subject to Unrelated Business Income Tax (“UBIT”)
- Exemption does not Apply if Services are also Provided
- Exemption does Not Apply if Property is Debt-Financed
- Exemption does Not Apply to Parking lot Revenues

TIMESHARES & CONDOS

- Partial Interest Rules
- Property Taxes and Association Fees

GIFT ACCEPTANCE POLICY

- Identify a Bona Fide Purpose in Accepting the Gift Apart from the Intent to Accommodate the Wishes of a Valuable Donor
- Gift-Purchases Require the Use of a Standard Purchase Agreement

GIFT ACCEPTANCE POLICY

- Undertake the Same Degree of Due Diligence Concerning the Ownership and Use of the Property as the Organization Would Undertake if it were Purchasing the Property
- Determine Whether the Property will be Subject to Real Estate Taxes, Assessments and Association Dues

GIFT ACCEPTANCE POLICY

- Do Not Accept a Gift of Property that is Subject to a Mortgage, Lien, or Other Encumbrance
- Gifts Subject to a Reserved Life Estate Must Include an Obligation on the Part of the Life Tenant to Pay All Expenses Connected with the Real Property During the Life Tenancy

GIFT ACCEPTANCE POLICY

- Identify a Bona Fide Purpose in Accepting the Gift Apart from the Intent to Accommodate the Wishes of a Valuable Donor
- Gift-Purchases Require the Use of a Standard Purchase Agreement

GIFT ACCEPTANCE POLICY

- Do Not Offer Any Opinion Concerning the Fair Market Value of the Property
- The Donor is Responsible for Obtaining and Paying for a Qualified Appraisal
- Acknowledge Receipt of the Property Only on a Properly Completed Form 8283

GIFT ACCEPTANCE POLICY

- Do Not Accept a Gift of a Condo or Timeshare Unless the Condo or Timeshare Will Be Retained by the Organization in Furtherance of its Exempt Purposes
- Do Not Acknowledge as a Charitable Gift the Use of a Condo or Timeshare

QUESTIONS?