# Hope for a Better World

A Creative Estate Planning Newsletter for friends of Ananda

# Land !!!

## *They're not making it anymore!*

Land or real estate has always been one of mankind's most precious and treasured possessions. More wars have been fought over land rights than for any other reason. For most Americans the real estate which they own will be their single largest lifetime purchase and the most valuable asset in their estate.

70-80% of the total wealth in the United States is represented by land, land resources and real estate improvements. Little wonder, then, that gifts of real estate represent the greatest potential for charitable giving in the nation.

### Catch 22

Because real estate has had such phenomenal appreciation over the last 25 -30 years, many Americans have found themselves preparing for retirement in the proverbial "Catch 22" proposition: they need to sell their real estate for retirement income but they are reluctant to sell their real estate because of the long-term capital gains tax they will have to pay. What made real estate so attractive as an investment in the first place - high capital appreciation - now makes real estate a pricey asset to sell.

Fortunately, it also makes real estate the most advantageous asset to use as a charitable gift, both as an outright gift and as a deferred gift. The ***taxation*** of long-term capital gains discourages outright sales and the ***avoidance*** of long-term capital gains tax encourages charitable giving.

### A Choice of Partners

When it comes to disposing of real estate, owners have a choice of partners - the state and federal government or their favorite charities. If they choose their taxing bodies as partners, they get to keep the proceeds of the sale after commissions, other selling costs and the capital gains taxes are paid. If they choose their favorite charities as partners, they keep the principal minus selling costs intact for generating income, shelter current income with the charitable deduction, avoid capital gains taxation *and make significant gifts to their favorite charities*. Owners/potential donors have the task of deciding with which partner they are better off.

***Let's compare.*** For purposes of illustration, the donors are ages 70 and 67; their combined state and federal tax bracket is 30%; their vacant land has a cost basis of $20,000 and a fair market value of $200,000; the suggested gifting arrangement is the Charitable Remainder Unitrust.

| | Sales/Reinvest | CRUT |
|---|---|---|
| Land Value | $200,000 | $200,000 |
| Minus sales commission | $20,000 | $20,000 |
| Minus closing costs | $4,000 | $4,000 |
| Minus LTCG tax(15%) | $27,000 | -0- |
| Plus tax savings | -0- | $14,072 |
| Available for investment | $149,000 | $190,072 |
| Annual income at 7% | $10,430 | $13,305 |
| Annual difference | -0- | $2,875 |
| Lifetime difference | -0- | $63,250* |
| Gifts to charity | -0- | $176,000* |

**assumung a joint life expectancy of 22 years and the invested principal remaining constant.*

**Conclusion:** It can be more blessed to give than to pay long-term capital gains tax on the sale of real estate. While donors' heirs, admittedly, may receive less inheritance the charitable way, the donors have received so much more over their life expectancies that they can afford to make up the projected shortfall to their heirs with lifetime gifts or other creative measures.

## Other Creative Measures

For America's charities to maintain a high level of services in the 21st Century, creative measures must be sought and used. Their partners in these charitable endeavors - their donors - will also have to seek and use creative measures to fund these services *or else these services may not be present for their children and grand-children.*

The following questions and answers deal with the issues of using real estate to help endow the future of our charitable services.

**Q. What are some of the difficulties in making gifts of real estate?**

**A.** Someone once described the giving of real estate as walking a tight rope over a pit of alligators - **you have to be very cautious how you proceed.**

Besides giving evidence of clear title, a qualified appraisal must be sought, EPA tests possibly taken and, if the property is used to fund a lifetime gift, it must be readily marketable. These costs are the donor's responsibility, although there are instances in which these can be shared by the donee charity.

Because a gift of real estate is usually valued over $500, the donors must also complete IRS Form 8283 or the charitable deduction might be lost. If the charity sells the property within two years of receipt, it must file IRS Form 8282.

The brightest red flag in gifts of real estate is the mortgage. If a mortgage still remains on the property, the donor may be better off paying the mortgage, freeing the property of debt and then gifting the property. Regardless, if a mortgage exists, the counsel of a qualified real estate attorney *definitely* is needed.

**Q. What are the benefits of giving real estate?**

**A.** A donor may be "land rich, and pocket-book poor," a not uncommon situation in these years of steady appreciation. Very often the real estate will have a very low cost basis. Selling the property means triggering the long-term capital gains tax. At today's rates this means that 15% of the appreciation is lost to the tax man.

Donating the property outright to a charity or to a charitable gifting arrangement "washes" the long-term capital gains. If the donor needs some principal back, a "bargain sale" could be worked out, with the charity purchasing the real estate for a price below fair market value. The difference between the qualified value and the sale price is the charitable contribution.

Sometimes the sale price is the donor's cost basis in the property, i.e., the donor has given away the "fruit" of the tree and kept the value of the tree. Sometimes the sale price is arrived at by figuring out how the charitable deduction would offset the long-term capital gains tax due.

Essentially, using real estate to fund a gift means unlocking the value of the property so that it benefits both the donor and the charity which represents his/her values.

**Q. Can a donor give the property to charity and still enjoy its use during his/her lifetime?**

**A.** There are two ways to accomplish this:

1. to devise the property to charity in your will;
2. to give title of the property to charity subject to your right to live in the property for your lifetime.

The latter procedure is called ***"Retained Life Estate"*** and is not as complicated as it sounds. In fact, it's preferable to leaving the property to charity in one's will because the house doesn't stand vacant during the probate process. While the donor is still responsible for all the costs of home ownership, a positive cash flow is generated from the charitable deduction attributable to the gift.

### Further Information

For information on how you can "put your house in order" and have your estate plan firmly "grounded" (pun intended), send for your complimentary copy of ***A Guide to Planning Your Will*** and/or ***Planning for the Future***. Simply return the enclosed card, or call or email the Janaka Foundation office at:

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We look forward to hearing from you!