The December 15th (Sort Of) Outright Real Estate Gift

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At some point in your fundraising career, you will be asked to pull a rabbit out of a hat. You will deal with a donor who wakes up on December 15th with a burning desire to establish a $1M lead trust, or to establish a charitable remainder trust with mutual funds, or make an outright gift of real estate. And in the eager donor's mind, these should all be easily doable for your charity by year end – after all, you've got two whole weeks to pull it off!

While we can't guarantee a successful mutual fund transfer into a CRT after December 15th (we're magicians, not miracle workers), we do have a suggestion for handling the last-minute, year-end, Hail Mary pass of an outright gift of real estate.

Outright gifts of real estate are fraught with complications. Charities need to do substantial due diligence (brownfields?) and their finance offices need to be willing to carry the liability of the property on their books until the property sells. This includes any insurance and maintenance, and if the property is difficult to sell, there can be a significant financial outlay for the charity.

A donor who is adamant about a charitable deduction this year and cannot be persuaded to give another asset could be accommodated with a short-term flip trust of which they are the first trustee (this last part is critical). The short-term of the CRT will generate a partial charitable deduction in December based on the appraised value of the property, and once the property is sold in the new year, the donor can surrender their life income interest producing a second deduction. In the instance of a December gift, the short-term flip trust also offers the opportunity to divide the benefit of a charitable deduction for a gift of real estate between two calendar years, allowing for a small stretch of the deduction's usability.

For example, say a donor comes to you on December 15th with a vacation home appraised for $500,000, and they want to give it to your organization as an outright gift. Instead, if the donor were to deed the property into a five-year term flip CRUT (for which the donor is also the trustee) using a 4% discount rate, the donor would receive an initial deduction of approximately $389,355.

As the initial trustee of the trust, the donor would control the sale of the property. If the flip triggering event is when the assets in the trust are liquid, then the trust will not pay out income to the beneficiary until the house is sold.

Once the real estate is sold, the trust will flip to a standard payout at the end of the calendar year. So, if your donor is worried that they will earn taxable income from the trust, they can be consoled that little to no income should be paid out in the first year, even if the property sells in January.

For the next step in this gift plan, the donor would elect to surrender their life income interest in the charitable remainder trust.

Using the same example of a vacation home worth $500,000, if the CRT were able to quickly sell the property for $510,000, even after paying out 6% in combined realtor fees and transfer costs, the trust's principal would be a respectable $479,400. If the donor then surrendered their income interest in the trust on March 15th, the value of their additional charitable deduction using a 4% discount rate would be $101,417.

The total of the two deductions would be $490,772. There's clearly a 5% haircut on the amount the donor could have received from an outright gift deduction. But the haircut may be worth it to a donor determined to complete the gift by the end of the calendar year.

The deduction for the gift of the real estate into the CRT could be taken for up to 30% of the donor's adjusted gross income in the year of the gift, which is the limitation for gifts of appreciated long-term assets. The deduction for the voluntary severance of the CRT could be taken for up to 30% of the donor's adjusted gross income, as a gift of life income interest is treated as a gift of a capital asset. And naturally, the donor would avoid any capital gains tax that would have been due if they sold the property themselves and then contributed the cash proceeds to your charity.

Your donor may decide that this is not the magic bullet they were hoping for, but they should certainly appreciate the efforts you made to present a gift plan that gets them 95% of what they wanted. And that's better than a rabbit or a hat.