

UNITED WAY FOUNDATION REAL ESTATE GUIDELINES

GENERALLY: Charitable contributions of real estate may provide excellent opportunities for donors wishing to contribute to the United Way of South Hampton Roads Foundation (“the Foundation”) and affiliated agencies. Real estate can include personal residences, residential rental properties, commercial properties and raw acreage.

Real estate gifts also involve potential risks. These risks include, for example, the potential assumption of loans or other obligations/exposures related to the property. Additionally, real estate cannot be liquidated in the same fashion as stocks, bonds and other liquid assets. In order to insure that gifts of real property are properly underwritten to determine the value of the gift and to eliminate unacceptable risks, all such gifts are subject to a thorough investigation. Final acceptance of Real Estate Gifts will be made by the Board of Trustees.

Although all risks must be properly assessed, the donor should feel that the gift is valued and appreciated. Every effort should be made to limit the demands and expenses imposed on the donor. The United Way of South Hampton Roads is sensitive to the donor’s desire to minimize the costs associated with a donation of real property. It may be possible to defer certain out of pocket expenses, such as surveys, professional inspections, full appraisals or environmental studies until the Board has agreed to accept a property based on preliminary information. The Board’s acceptance of a gift may then be conditioned on the donor providing additional items prior to conveyance of the property.

Under Virginia law, any contract relating to real property must be in writing in order to be enforceable. Just as contracts to sell real estate must be in writing, gifts of real property should be made pursuant to a written agreement based on a form promulgated by the Committee. This agreement will clarify who will be responsible for closing costs (e.g. clerk’s fees, transfer fees, lender fees, survey fees, title insurance fees, appraisal fees) as well as whether taxes, insurance, rents and other matters will be pro-rated or will pass gratis. It will also clarify whether there are any conditions which must be met prior to acceptance of the gift (e.g. further environmental study, termite inspection, moisture inspection, professional inspection, survey, or the provision of documentation previously requested but not provided).

UNDERWRITING ISSUES: The following underwriting issues must be addressed through a case by case review of all potential real estate gifts;

Value – The value of the gift must be determined by a professional appraisal. Once the value of the property is determined, it is important to understand the amount of debt, if any, secured by the property. If the donor’s equity in the property net of debt is not sufficient, it may not be possible to sell the donated property, pay all commissions, closing fees and other transfer costs, and realize net funds for charitable purposes.

Debt – If the property is subject to a mortgage which is to be assumed, it must be confirmed that the loan is assumable and that the loan will not be due upon the transfer of the property by the donor. Details regarding the mortgage must be obtained such as whether the interest rate is adjustable, whether there are any balloon payments due, whether any prepayment penalties will be incurred if the loan is paid off, whether the loan is current, and what balance remains payable on the loan. Documentation between the donor and the Foundation must address responsibility for loan transfer fees and whether escrow accounts will pass gratis or will be pro-rated.

Physical Condition – The property must be inspected to determine its physical condition. Any deferred maintenance needs to be considered in determining the value of the gift. Depending upon the nature of the property being donated, an inspection by a representative of the Foundation may be sufficient, or a professional inspection may be appropriate. A termite and moisture inspection should generally be obtained for residential structures.

Leases – If a rental property is being donated, information must be obtained regarding all tenants, the amount of rents paid and any deposits for which the property owner may be liable to tenants. The documentation between the donor and the Foundation should address whether rents will be pro-rated at the time of settlement or whether they will pass gratis.

Survey Matters – A survey of the property may reveal encroachments on or off of the property to be donated or other physical conditions which impair the value of the property or which may restrict the Foundation's ability to convey the property to a third party. The determination of whether an existing survey is sufficient, a new survey needs to be performed or whether no survey will be provided, depends upon the nature of the property being donated.

Title Matters – The title to the property must be examined to confirm that there are no mortgages, deeds of trust or other liens on the property except those to be assumed or taken “subject to” as part of the donation. The title examination will also confirm whether taxes on the property are current or are owed for prior periods. The Gift Acceptance Committee can determine whether a title insurance policy must be purchased based on a number of factors including the value of the property to be donated, whether debt is to be assumed and whether a subsequent transfer of the property will subject the charity to potential liability under deed warranties.

Environmental – Real Property may contain environmental hazards such as underground storage tanks and toxic wastes which adversely affect property value and which may subject the Foundation to liability as owner. Information regarding current and former uses of the property must be provided to the Gift Acceptance Committee which will determine whether a Phase I or other environmental study must be obtained.

Market Conditions – If the property is being donated so that it can be sold by the foundation, a determination must be made whether the property is readily saleable and how long a holding period is expected. An analysis must be made as to the cost of holding the property and the risks and benefits of property management.

Condominiums – In addition to the normal underwriting requirement for real property, steps must be taken to confirm the amount of any condominium dues payable and whether the dues are current at the time of donation.

Gifts of Interests in Entities – If the gift is of an interest in a corporation, partnership or limited liability company which owns real estate, the Gift Acceptance Committee may require additional information.

UNDERWRITING DOCUMENTATION: Some or all of the following should be submitted to the Gift Acceptance Committee prior to acceptance of a gift of real estate by the Board;

- Written statement from donor outlining the purpose and terms of the gift;
- Map showing location of property;
- Legal description of property;
- Evidence of ownership (deed or title policy);
- Existing survey of property;
- List of improvements;
- Copies of rent roll, current leases and an accounting as to all rents and deposits (for rental properties);
- Proof of payment of taxes and condo or association fees, if any;
- Commitment for title insurance naming United Way of South Hampton Roads Foundation as proposed insured;
- Recent appraisal and IRS for 8283 signed by appraiser if value declared exceeds \$5,000;
- Existing environmental report of property usage history, outlining prior usage of property (further studies may be required);
- Physical inspection report – made by a representative of United Way of South Hampton Roads Foundation (professional inspection may be required); and
- Copies of any and all contracts relating to the property, such as leases, contracts with vendors, laundry machine operators, etc.

THE UNITED WAY OF SOUTH HAMPTON ROADS REAL ESTATE ACCEPTANCE COMMITTEE:

The Foundation will identify competent and impartial real estate attorneys, appraisers, agents, and other parties to serve as the Committee. The Committee will, on an *ad hoc basis*, review the underwriting documentation and advise the trustees as to the acceptability of the gift. Following a review of the information provided by the donor and the Committee, the trustees will make a decision to accept or reject the proposed gift based on the potential of the property to produce an acceptable

return or to contribute directly to approved programs of the Foundation and/or its affiliates. The trustee's acceptance will be evidenced by a written agreement to be executed by the donor specifying any conditions to be satisfied before a deed is accepted.