NONPROFITS: DONATIONS

Who Would Run Away From a Big Charitable Gift? You Should . . . Sometimes.

08.04.15 | Linda J. Rosenthal, JD

In *What Happens When A Huge Donation Begins to Smell?* (April 2, 2015) *FPLG Blog,* we told you about "tainted donors." Two of the most infamous scoundrels, Bernie Madoff and Allen Stanford, made huge gifts to charities before their misdeeds were discovered. The recipients had to make difficult decisions about whether to keep or divest themselves of the ill-gotten money.

But what if the scary part of a prospective charitable contribution is not the person making the gift, but the gift itself?

Toxic Gifts

It happens all the time, and experienced board members, staff, and fundraisers generally know when to run away – and not look back.

But not always!

In the early '80s, a leading charity in the Midwest was thrilled to receive a gift of two paint factories – until the Environmental Protection Agency came calling. The two properties were declared Superfund sites. It cost the organization more than $2 million to settle liabilities under CERCLA.

Real Estate

Wealthy donors frequently offer to donate real estate to their favorite causes, but these "… gifts are some of the most dangerous for a charity."

Two issues crop up frequently: "environmental liability [like the example above] and practical issues related to disposition of the property."

Here's an example: A new donor gave a foundation related to an educational institution a house and lot purportedly valued at $50,000. But there was a squatter on the premises, making the property unsellable, even after a 50% drop in price. The group had little choice but to donate it over to a next-door church.

Just a few questions that should be considered before accepting a real estate gift are:

- Is the property marketable?
- Is the property useful for the exempt purposes of the nonprofit?
- Are there deed or other restrictions on the property or its use?
- Are there unduly high expenses like mortgages, insurance, or property taxes – or some other special expense due to the uniqueness of the real estate?

If the real property donation will create unnecessary or unworkable problems, or will channel away focus from the organization's exempt purposes or squander resources, then it's probably a good idea to turn it down.

Personal Property

There can be problems, as well, with donations of personal property

A wealthy alumnus gave his alma mater the gift of a 53-foot Hatteras, docked in Florida. The school was surprised to receive large harbormaster's bills and high costs to insure the boat for replacement and liability value. It took over 2 years to sell the boat, at half of the expected resale price. This amount was further reduced by the carrying costs for this period.

Of course, charitable gifts of personal property come in many forms in addition to boats and cars; for example: securities, works of art, antique furniture, coin and stamp collections, jewelry, equipment – even livestock! And some donations are not full or outright gifts, but relate to remainder interests in real property as well as oil, gas, and mineral rights.

Each of these categories includes benefits as well as risks or obligations, and must be considered carefully.

Gift Acceptance Policies

An important way to anticipate and address potential problems with prospective gifts is to carefully consider and adopt a written "gift acceptance policy". Indeed, Schedule M of Form 990 (Non-Cash Contributions) specifically asks the filing organization if it has a gift acceptance policy in place. That Schedule must be submitted by nonprofits that received: (a) more than $25,000 in non-cash contributions; (b) donations of artwork or historical treasures or similar assets; or (c) gifts of qualified conservation contributions.

Even if an organization is not required to file Schedule M, having a gift acceptance policy in place well in advance of accepting any non-cash contribution is a good idea. Creating the policy encourages the organization's board and staff to carefully review the experiences of other nonprofits and development professionals, gain insight into potential problems with various categories of gifts, and evaluate which types of gifts should and should not be accepted. "It should be a collaborative process involving the planned giving staff, the organization's director or president, the board's committee responsible for oversight, and the professional advisory committee or advisor."

A good policy will help set out issues concerning the types of gifts that are acceptable or unacceptable as well as procedures and requirements for receipt, tracking, and handling of non-cash donations.

Conclusion

Non-cash charitable contributions can be welcome gifts or serious disasters. Careful advance planning, including the creation and adoption of a comprehensive gift acceptance policy, is a must. And it's a good idea to post that policy on the organization's website – to forestall difficult and awkward situations that can only result in hard feelings or loss of the future goodwill and support of key donors.

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