

## Financial/Estate/Tax Planning Considerations for Top Ten Non-Cash Asset Contributions

Asset Type	Various Forms	Unique Issues and Potential Traps	Planned Gift Issues	Additional Comments
<b>Real Estate</b> <i>Deduction: FMV</i>	Residential, commercial, domestic or foreign, leasehold/life or remainder interest	Environmental liability, holding period management, accelerated depreciation, negative basis, debt (note "5-and-5 UBTI exception"), pre-arranged sale	Ideal for FLIP-CRUT, difficult for CRAT and CGAs because of marketability	Real estate represents nearly 50% of privately held wealth, estimated at twice the entire stock market. Yet only 2% of all charitable gifts are real estate.
<b>Closely-Held Stock</b> <i>Deduction: FMV</i>	C-Corp or S-Corp	Thin to non-existent market, difficult valuation, self-dealing without independent appraisal, pre-arranged sale, S-Corp UBTI issues	Ideal for FLIP-CRUT with no known liquidation event – other vehicles work for corporate redemption or market sale	Private company contributions are very popular prior to a market sale. S-Corp gifts to a trust are tax-effective prior to sale or to a corporation if held.
<b>LLC Interests</b> <i>Deduction: FMV</i>	Tax status may be corporate or partnership	Same as Closely-Held and characteristics of underlying assets and potential capital calls, multiple shareholders/assets difficult	Same as Closely-Held	Charities usually want the LLC interest for liability protection. Multiple shareholders make this option difficult.
<b>Partnerships</b> <i>Deduction: FMV</i>	General, Limited or Operating	May be difficult or expensive to appraise, characteristics of underlying assets, general partnerships have full liability, partnerships with negative basis	Limited partnerships are particularly good funding assets for Lead Trusts.	For LLCs and Partnerships, appraisal discounting may apply.
<b>Life Insurance/ Annuities</b> <i>Deduction: Lesser of Adjusted Cost Basis or FMV</i>	Paid-Up and Non-Paid Up Life Insurance – Variable or Fixed Deferred Annuities	Non-paid up policies, "Stranger-Owned" or premium financed, or gifts with policy loans are more difficult. Paid-up whole life policies work well. Annuities trigger gain upon transfer.	Life insurance is an excellent life-time or testamentary gifts (through beneficiary designation). Annuities are only attractive as testamentary gifts because of IRD.	Life insurance can be an excellent wealth replacement tool for any planned or outright gift. Premiums can be paid with appreciated property.
<b>Mineral Interests</b> <i>Deduction: Varies</i>	Oil/Gas Working or Non-Working Interests, Timber, Other Minerals	Valuation difficult, tax law very complex and state rules may govern (e.g., timber).	Very difficult but possible.	These assets are typically held in partnerships or LLCs so those rules apply as well.
<b>Restricted Stock</b> <i>Deduction: FMV</i>	Section 144 or 145	Appraisal requirement, lock-up period	Restricted stock can easily be used for just about every planned gift	Restricted stock should be coordinated with an experienced broker.
<b>Stock Options</b> <i>Deduction: Varies</i>	Qualified (ISOs) or non-qualified	"In-the-money" option transfers trigger gain to the donor at ordinary income rates at the time of gift.	ISOs can be excellent funding assets provided they are exercised and then held for over a year.	Qualified replacement stock from an employer retirement plan/ESOP can work well for both outright and planned gifts.
<b>Collectibles/Art</b> <i>Deduction: Basis for non-related use/FMV for related use</i>	Art, coins, antiques	Valuation, insurance, storage, transaction costs, complex structures like private operating foundations are sometimes uses	Tangible property work fairly well for nearly all forms of planned gifts – cost basis deduction is an issue however. Testamentary gifts are ideal.	New PPA 2007 rules severely tighten partial interest art gifts. Capital gains taxes remain at 28% federal so there is an extra tax benefit in tangible property donations.
<b>Intellectual Property</b> <i>Deduction: Varies</i>	Patents, royalties, copyrights  Revenue or non-revenue producing	Valuation cost, disposition process	Work best as testamentary gifts to receive step-up in basis.	2004 Act reduced attractiveness of patent/royalty gift to basis.

***This table has general information and should not be relied upon as tax, legal or financial advice.***

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## Gift Acceptance/Management/Disposition Considerations for Top Ten Non-Cash Asset Contributions

Asset Type	Liability/Cost Exposure	Risk Management/ Due Diligence	Acceptance Issues	Staff Role	Disposition Alternatives
<b>Real Estate</b>	Environmental, UBTI, liens, IRS penalties, accident claims, up-front due diligence expense, on-going holding costs, remediation or improvement cost, time-to-reward ratio, fiduciary risk	Indemnification letter, environmental audit, survey, BPO or appraisal, insurance, site inspection with pictures, determine property's history, develop sales plan - review all deeds, lease agreements, rental agreements, inspection reports, donor should complete disclosure checklist citing any known issues, outsource to another charity	Conflicts of interest, valuation, self-dealing, implied or expressed restrictions	Tax substantiation – 8283/8282, due diligence, change insurance/utilities, execute transfer documents, donor communication, audit preparation, manage disposition <u>Note: One person should manage all illiquid assets.</u>	<ol style="list-style-type: none"> <li>1. Hold (not usually recommended)</li> <li>2. Sell to private buyer (unrelated party)</li> <li>3. List with broker</li> </ol>
<b>Privately-Held Stock/LLC/Partnerships</b>	Capital calls, indemnification clauses, lack of control with minority gifts, UBTI and specific issues related to underlying property	Indemnification letter, independent appraisal, review financials if appropriate, develop sales plan, review all entity documents	Thin to non-existent market, difficult valuation, self-dealing without independent appraisal, S-Corp UBTI issues	Tax substantiation – 8283/8282, due diligence, execute transfer documents, donor communication, audit preparation, put stock certificate or assignment document in safe. Check in with company annually to see if there has been any material change.	<ol style="list-style-type: none"> <li>1. Sold back to entity</li> <li>2. Sold in open market transaction</li> <li>3. Sold to private unrelated buyer</li> </ol>
<b>Life Insurance/Annuities</b>	Virtually none except as it relates to complex foundation-owned, charity-owned and investor owned contracts – so split interest gifts are allowed.	IRS has listed a number of reportable transactions – be cautious to comply with reporting requirements. Also review the illustration or policy being considered and have a memo outlining the donor's premium paying responsibilities and the charity's options for non-compliance.	Work with agent to illustrate any non-paid up (universal or variable life policies) at 2% under the current crediting rate.	Tax substantiation – 8283/8282, due diligence, execute transfer documents, donor communication, audit preparation, manage policies annually to determine health. Put donor in contact with a qualified insurance appraiser.	<ol style="list-style-type: none"> <li>1. Usually held to death</li> <li>2. Cash surrender to company</li> <li>3. Reduce paid-up</li> <li>4. Sold to life settlement companies</li> </ol>
<b>Mineral Interests/Intellectual Property</b>	None other than potential capital calls	More than any other asset, having a well-designed sales plan prior to acceptance is critical	Marketability, appraisals	Tax substantiation – 8283/8282, due diligence, execute transfer documents, donor communication, audit preparation	<ol style="list-style-type: none"> <li>1. Hold (not recommended unless strong income payments)</li> <li>2. Sold via broker</li> <li>3. Sold privately</li> </ol>
<b>Restricted Stock/Stock Options</b>	Post-contribution loss possibilities during restricted or holding period	Review all restrictions and option agreements	None	Tax substantiation – 8283/8282, due diligence, execute transfer documents, donor communication, audit preparation	Sold with broker as soon as restriction is lifted
<b>Collectibles/Art</b>	None other than post-contribution holding expenses	Review history of collection, document with pictures	Work with broker /appraiser to assess value prior to acceptance	Tax substantiation – 8283/8282, due diligence, execute transfer documents, donor communication, audit preparation, insurance, storage	<ol style="list-style-type: none"> <li>1. Auction sale</li> <li>2. Private buyer</li> <li>3. Broker</li> </ol>

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## Additional Readings for Non-Cash Assets

### Real Estate

1. Planned Giving Design Center – Technical Report on Real Property (<http://www.pgdc.com/usa/item/?itemID=60165>)
2. Gifts of Real Estate – (<http://www.pgdc.com/usa/item/?itemID=23747>)
3. Gold in the ground: A Practical Guide to Developing and Accepting Gifts of Real Estate, Myerberg, Neal - Journal of Gift Planning, Volume 10, Number 2, June 2006 , pp. 11-43(33)
4. Real Estate Gifts--Beyond the Basics, Carovano, J.; Nash, Anne Journal of Gift Planning, Volume 7, Number 3, 1 September 2003 , pp. 5-41(37)
5. Contributing Mortgaged Property to Charity, Peebles, Laura – (<http://www.pgdc.com/usa/item/?itemID=27287> )

### Closely-held Stock/LLC/Partnerships

1. Planned Giving Design Center – Technical Report on Privately-Held Interests (<http://www.pgdc.com/usa/item/?itemID=60431>)
2. Gift Partnering with Entrepreneurial Donors, Ticconi, Peter Journal of Gift Planning, Volume 4, Number 3, 1 September 2000 , pp. 11-33(23)
3. Charitable Gifts of Subchapter S Stock: How to Solve the Practical Legal Problems, Hoyt, Chris (<http://www.pgdc.com/usa/item/?itemID=24792>)
4. Tax Saving Opportunities for Charities Owning Subchapter S Stock, Peebles, Laura (<http://www.pgdc.com/usa/item/?itemID=25732>)
5. Issues to Consider When Making and Accepting Gifts of Restricted Stock, Franklin, J and Shevlin, D (<http://www.pgdc.com/usa/item/?itemID=28116>)

### Life Insurance/Stock Options/Collectibles/Intellectual Property

1. Life Insurance: The Good, The Bad and the Ugly, MacNab, JJ Journal of Gift Planning, Volume 5, Number 1, 1 March 2001 , pp. 17-44(28)
2. Charitable Gifts of Life Insurance, Clontz, B and Brink, M. (<http://www.pgdc.com/usa/item/?itemID=27962>)
3. Navigating Stock Options and Other Stock Rights, Ott, D. and Lew, R. (<http://www.pgdc.com/usa/item/?itemID=27235>)
4. Planned Giving Design Center – Technical Report on Intangible Property (<http://www.pgdc.com/usa/item/?itemID=60379>)
5. Planned Giving Design Center – Technical Report on Tangible Property (<http://www.pgdc.com/usa/item/?itemID=60229>)

### Gift Acceptance/Management/Disposition

1. Understanding and Drafting Non-Profit Gift Acceptance Policies, Miree, Kathryn (<http://www.pgdc.com/usa/item?itemID=26663>)
2. The Hazards of Unmanaged Life Insurance Policies, Barney, A. (<http://www.pgdc.com/usa/item/?itemID=27755>)