GIANT, IMPORTANT DISCLAIMER: WE AREN'T GIVING LEGAL, TAX OR FINANCIAL ADVICE. PLEASE SEEK YOUR OWN COUNSEL FOR ANY DONATIONS. MANY OF THESE QUESTIONS ARE OPEN TO SOME INTERPRETATION, ARE GENERAL IN NATURE OR ARE UNIQUE TO A PARTICULAR JURISDICTION. <u>ASSUME ALL ANSWERS ARE WRONG UNTIL YOU/YOUR DONOR CONFIRMS WITH HER/HIS ADVISOR.</u>

Q & A from "Donating Commercial Real Estate: Trends, Tricks, Traps and Travel" <May, 2024>

Have you seen an uptick in commercial real estate since the pandemic when many people moved out of cities?	Pretty much the same volume - so many of these assets have been owned a long time so have depreciated basis down to zero or close to it. So, there are still a number of transactions in this space.
For residential real estate that currently has tenants, will Dechomai issue paperwork to have them vacate or do you sell with a contingency that the buyer keeps the renter. IE the charity only wants the money from the property sold.	We generally do both - there is asking them to vacate (but some have leases and some don't), forcing them to vacate (they are in default on the lease) through an eviction (fun, fun, fun), and in other cases the value is maximized with a long term, good paying tenant if the primary market are other investors (assuming the current rent is at market rates). This is where a VERY good realtor is valuable to know whether tenants should stay in place or not.
Is there a difference in valuation-for-charitable-deduction for property depreciated by straight line and by accelerated?	The value is the same, but the deduction may have to be reduced dollar for dollar (under ordinary income reduction rules) assuming they took accelerated depreciation up to where straight line would have been.

Do you have a due diligence checklist you can share for different types of property?	We have a number of these checklists in our [Charitable Gifts of Noncash Asset book (3rd Edition).] You can download for free on our website or buy a hardcopy through Amazon.
The old joke out here in wine country: do you know how to make a small fortune in the wine business? Answer: Start with a large fortune.	You can take out "wine country" and substitute "airlines," "restaurant" or "stock day trading"!
Do you ever do any "matching" of non-cash donors to charities? Specifically, if a donor is wishing to donate a piece of commercial real estate (office), but has not yet identified a charity, and a charity is looking for the same kind of real estate for its own use (i.e. not for sale/liquidation, but to occupy) - do you ever facilitate that kind of situation? Or is it typically that a charity brings their own donor, whose commercial real estate gift they'd like to liquidate or manage for ongoing cashflow?	Almost always the latter. We do get inquiries like the former occasionally though!
In WA State - they highly favor the tenant and really put the landlords in problematic circumstances. Almost crazy what can be gotten away with there.	And California... I think we had to pay $25K to buy out a tenant who wasn't paying anything and that took months. It's vital to check how "dug-in" a tenant is in these tenant-friendly states (New York is another).
The owner of commercial real estate that serves as a historic B&B/hotel (a large parcel and building complex) wants to give my University (1) the right (at no charge) to use the property in furtherance of its mission (as a retreat and/or for teaching purposes), and (2) provide the University with at least a partial income stream from the operations of the facility. The University does not want to take on any financial obligation, and wants to avoid any legal exposure/liability. In principle, the donor is in agreement. What would be the best way to structure this gift to avoid the aforesaid exposure, and minimize or eliminate possible UBTI? Have the current owner create	This fact set might warrant a call given the complexity. The key questions will be: Will the donor irrevocably give some of the real estate (or is just the USE of the property? And then what type of actual realistic annual income will be split with the university? I might be simpler to give the university rent free use and then just have the donor donate each year. It would need to be significant annual income (like $100Kish), in my view, to warrant heavy legal and tax structure/complexity. And assuming no debt here as well.

an LLC (or S corp., or C Corp???), and transfer an (economic (voting??)) interest to the University – such that the University can realize a dividend (passive??) income stream – and separately be given the right to use (lease for free?) the property (or portion thereof) in furtherance of its mission?	
Who keeps the income during the holding period?	The charity/donor advised fund. Whoever owns the property keeps income AND must pay for expenses. Sounds easy but sometimes donors accidentally pay expenses (auto pay or unknowingly) or even get income - this can be very bad on audit where the IRS could take the position that the gift wasn't complete. ALL threads between the donor, property and charity must be cut.
Keeping in mind that rent free use alone is not a deductible contribution.	Yes, the IRS has been clear on that point!
Unless donor pays expenses as a gift without asking for a charitable receipt.	Not sure what this is in reference to - if for holding period expenses, the donor can always make an unrestricted donation and receive a receipt/deduction. But it shouldn't be specific to the expense itself.
If donors pay accidentally - charity can reimburse donor with appropriate documents.	Generally, yes.
Does the "five & five" work in the case of debt encumbered property in a CRT?	Yes, but that rule means the debt-encumbered property must be sold by the CRT within ten years and must not have any new debt placed on the property (thanks to Reynolds Cafferata for his article on this subject).

So, you are saying if you pay the donor a fair rate that is ok for them to manage and be paid.	If they don't agree to do it for free, then yes, typically we do an independent comp study because DAFs are subject to potential excess benefit transactions. So as Ryan said, this provides us HOPEFULLY with objective cover that it was at market rate. Additionally, we often can sell these properties to related parties, including the donor, based on an independent updated FMV appraisal as well.
Have you done a webinar regarding property with debt in the past? I would like to watch.	Multiple times and March was the most recent. You can see our past 45 or so webinars on https://charitablesolutionsllc.com/webinars/