

FOR REFERENCE: TYPES OF REAL ESTATE AND COMMON ISSUES

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Type	Comments
Residential real estate	Single family homes – perhaps the most common type of real estate asset owned by individuals – may be used as an outright gift, a retained life estate gift, a bargain sale, or to fund a charitable remainder unitrust or gift annuity. Watch for condition of the home, marketability, outstanding debt, taxes, insurance, and general maintenance.
Condominium, town home	Condominiums give owners an absolute interest in the interior of the unit, but a shared interest in the common areas. There are fees assessed to owners to cover the cost of maintenance of the shared areas. In addition, owners must pay taxes, insurance, and general maintenance costs of the owned property and are subject to special assessments levied by the owner's association. Town homes are generally a fee simple interest, but units may share common walls and may assess fees shared by all owners for any common costs.
Rental home	Rental homes may be a single family or duplex residential home. Always check the lease terms (length and obligations) transferred with the rental that will bind the charity.
Apartments	First check the ownership of the apartments to determine if the property is owned in the individual's name or in the name of a corporate entity. Request multi-year statements of income for apartments to determine cash flow, percentage occupancy, expenses, and similar factors. Check lease terms; check marketability; and be prepared for the possibility of unrelated business taxable income.
Vacation home	Vacation homes—especially those that have been in the family for years – make great gifts. They generate expenses for donors, may no longer be used, and can be given outright or turned into an income stream through a charitable remainder unitrust or a charitable gift annuity.
Commercial real estate	Commercial real estate is generally problematic for several reasons. First, the property may be severely depreciated, affecting the amount that can be deducted by the donor. Second, there may be a marketability issue. Third, the property may be subject to leases or other long-term arrangements. And fourth, if occupied, may generate unrelated business taxable income.
Farmland	Farmland represents a large asset for many families. Check lease agreements on the property, marketability, expenses, structures, and other related issues before acceptance. Be aware of joint interests in farmland that have been passed down for generations.
Timber	Timber is a commodity – timberland is real estate with a primary use of generating timber. Determine where the timber crop is in terms of maturity, the market for timber, the costs to maintain the property, and be prepared for the possibility of unrelated business taxable income.
Oil and gas	How is the property owned? Many oil and gas interests are owned in partnership or limited partnership form. (Beware of accepting a general partnership interest and its attendant liability.) What type of royalties should you expect over the next five to ten years? Ask for the royalty statements before acceptance. Be aware of the potential for unrelated business taxable income. Is the property interest readily marketable?
Undeveloped lot	Undeveloped lots— especially those in a developed city— may be ripe for development or may be the former site of a gas station or dry cleaners. Do your homework to determine the history of the lot, check zoning for development, check marketability, and other due diligence.
Undeveloped property—open land	Undeveloped land that is not farmland, timberland, or other specialty purpose may be hunting property, a potential lake site, or simply holding the world together. Conduct an environmental inspection, check marketability, check zoning (if applicable), and consider costs to hold the property. Consider the possibilities of conservation easements.

FORMS OF REAL ESTATE PROPERTY INTERESTS

Note. This table provides a description of the most basic forms of real estate ownership. Forms of real property interests are governed by state law. Always check the law of your state to determine the applicable standards.

Type of Ownership	Description
Full Ownership	
Fee Simple Absolute	The most complete form of ownership; continues forever until conveyed.
Fee Simple Defeasible	Fee ownership, subject to a condition precedent or condition subsequent.
Fee Simple Determinable	Ownership ends upon the happening of an event, and the property reverts to the owner. For example, a donor makes a gift to the school board so long as the property is used for school purposes; if not used for school purposes, the property will revert to the donor.
Fee Tail	Ownership passes through lineal descendants; while possible to continue forever, ownership ceases when there is a generation without lineal descendants. This form of ownership is recognized only in Delaware, Maine, Massachusetts, and Rhode Island.
Partial/Shared Ownership Interests	
Tenancy in Common	Undivided interests in the whole (equal or unequal shares).
Joint Tenancy with Right of Survivorship	Equal undivided interests during the life of the tenants; when a tenant dies, that interest passes in equal shares to the remaining tenants.
Community Property	Under the laws of community property states (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington; Wisconsin has similar laws), property acquired during marriage is owned equally by both spouses.
Tenancy by the Entirety	In some non-community property states, property purchased during marriage is owned by the husband and wife as tenants by the entirety. The property cannot be sold by the husband or wife individually during the marriage. The parties become tenants in common if the marriage is dissolved.
Condominiums	An exclusive right to own, occupy, sell, or transfer a specific unit, coupled with an undivided interest in the real and personal property in the common areas.
Life Estates	The right to occupy, use, and control the property for a stated life or other measuring term; at death, the life estate owner's rights in the property are extinguished.
Remainder Interests	The ownership of the full fee interest in real property subsequent to a life owner's rights in the property.
Indirect Ownership Interests	
Partnerships	Real estate may be owned by a partnership, which passes through the character and amount of income, losses, and liability to partners. If an owner is a limited partner, liabilities may be limited to a stated amount. Debt-financed property can generate unrelated business taxable income.
Corporations	Corporations may also own real estate; owners hold stock in the corporation (either C or S) rather than direct interests in the real estate.
Limited Liability	A limited liability company—an entity defined by state law—can operate as a partnership (passing through the character of the income, losses, and liabilities) or as a corporation. If it operates as a partnership, watch out for unrelated business taxable income.
Real Estate Investment Trusts	Real estate investment trusts (REITs) are publicly traded companies that own, trade, and manage real estate. Most income and gains pass to shareholders of the company, but it is possible to generate unrelated business taxable income.
Irrevocable Trusts	Irrevocable trusts—trusts with terms that cannot be altered—for individuals or for charitable interests may hold or receive property. Use extreme care when transferring real property or a real property interest to a charitable remainder trust, since any unrelated business taxable income in a year will cause the trust to lose its tax-exempt status for the year.
Life Estates	The right to occupy, use, and control the property for a stated life or other measuring term; at death, the life estate owner's rights in the property are extinguished.
Revocable Trust	Management tools that place title to property in a trustee but leave equitable ownership in the assets and the income from them in the trust owner/beneficiary—can hold real estate.