

**DONATING FOR THE ADVANCEMENT  
OF AFFORDABLE HOUSING ON  
MARTHA'S VINEYARD**

**A SUMMARY OF TAX AND  
OWNERSHIP BENEFIT**

**AFFORDABLE HOUSING NEEDS ON  
MARTHA'S VINEYARD**

A study conducted in 2001 determined 1000-1500 new units of rental and ownership housing would be needed in order to prevent the mass exodus of year-round Islanders. Rental and ownership housing is not affordable for moderate to middle-income residents. The Island cannot function without the middle class – our nurses, teachers, police, builders, electricians, shopkeepers – and our seasonal community cannot function without their services either.

Affordable housing is not a temporary problem. It will not go away in the future unless we provide perpetually affordable rental and ownership opportunities. The Island Housing Trust offers a permanent solution. Using a 99-year renewable ground lease, the Trust holds land in perpetuity, so any opportunity we create now will be available for future generations. As a community we've put a tremendous amount of time and energy into land conservation. Now let's save our people.

**TAX BENEFITS OF DONATING REAL  
ESTATE OR RESTRICTIONS FOR HOUSING  
PRESERVATION**

Income tax and estate tax advantages have encouraged many property owners to pursue housing preservation opportunities. The tax implications of your transaction will depend on the value of your gift, your financial circumstances, and the tax rules in effect at the time, and other factors. Where substantial dollars or the future of your property is at stake, you should always consult with an experienced attorney or qualified tax advisor before giving, or making bargain sales of property or restrictions.

**If you fit one or more of the following categories, you may find donating real estate attractive:**

- You want to build a new house on your property and want to see your existing house put to good use;
- You are committed to permanent preservation of your property for a charitable good;
- The value of your property has appreciated greatly and its sale would result in high capital gains taxes;
- You own property, perhaps a vacation retreat, that you or your heirs no longer wish to use or maintain;
- You have a substantial net worth and wish to reduce the estate tax burden for your heirs.

**BASIC TAX PRINCIPLES**

A few basic principles should be remembered when you consider making a conservation gift.

1. Where the gift of property or interest in land meets IRS criteria for deductibility, donors are permitted an income tax deduction on their federal income tax return for the gift, subject to certain limitations and substantiation requirements described below.
2. Qualified property gifts made during the donor's lifetime or by will also remove the donated property from the donor's estate, thereby reducing his or her federal estate and therefore, estate taxes.
3. The recipient of the gift must qualify under IRS rules. Qualified recipients are governmental agencies and religious, charitable, educational and scientific organizations that have been determined to be tax-exempt under Section 501(c)(3) of the Internal Revenue Code.
4. If a partial interest in a personal residence or farm (for example, a remainder interest) is donated, it must meet very specific IRS standards for deductibility.
5. In the case of bargain sales, the cost basis of the property must be correctly apportioned between the sale portion and the gift portion of the transaction.

6. Each claim of a charitable deduction on an income tax return must be properly acknowledged in writing by the recipient.

### **INCOME TAX DEDUCTIONS**

The IRS limits the maximum annual charitable deduction you can take against your income. Generally, for a gift of appreciated property (which includes most gifts of property), the amount you can deduct from your income in one year is limited to 30 percent of your adjusted gross income. If the value of your gift exceeds that level, you may carry forward the excess contribution for up to five years, applying the 30 percent limit each year.

There is an alternative to the 30 percent limitation. You may claim as a deduction only the property's cost basis (at the time you took ownership). In this case, an annual deduction of up to 50 percent of the adjusted gross income is allowed, with any excess carried further for an additional five years.

### **DONATING REAL ESTATE OR RESTRICTIONS FOR HOUSING PRESERVATION**

#### **FREE AND CLEAR DONATION**

Donating real estate to a private, non-profit housing organization or to a public housing agency is the most straightforward method of permanent housing preservation. It transfers ownership and management responsibilities to the organization or agency, thereby ending the burden of property taxes. Donation of real estate as a charitable contribution provides maximum income tax and estate tax benefits and avoids capital gains tax on any gain on the property. You may donate land or your house during your lifetime or upon your death as you direct in your will. You may donate an entire property, your entire interest of a portion of a parcel, or an undivided interest in a parcel. In the event you would like to support the affordable housing effort, but do not wish for your property to be used to create affordable housing, the Island Housing Trust can contract to sell the donated property and use the proceeds to finance other projects.

### **DONATING REAL ESTATE BY WILL OR TRUST**

Many properties have been donated to housing organizations or agencies by will – also known as bequest, testamentary gifts, or devises. Although you receive no income tax benefit and continue to be responsible for property taxes during your life, donating real estate by will can significantly reduce the tax burden faced by your heirs, ensure preservation of your real estate while allowing you to enjoy the benefits of full ownership during your lifetime, and finally allows you to re-write your will at anytime or remove the donation if your financial situation or intentions change.

### **SALE AT FAIR MARKET VALUE**

While selling real estate at its fair market value to a housing organization or agency may be ideal from the property owner's point of view, funds are rarely available for such a purchase. A sale at full market value may not be as desirable as it may seem at first glance. Capital gains taxes for investment properties and transaction costs can cut deeply into sale proceeds and revenues, particularly for property owners in higher tax brackets or those selling highly appreciated property.

### **BARGAIN SALE**

A bargain sale is a sale to a charitable organization or governmental agency at less than fair market value. The difference between the fair market value and the sale price to a qualified buyer is considered a tax-deductible charitable contribution for federal income tax purposes. The charitable deduction is taken in the year of the sale, and unused portions of the deduction can be carried over for five subsequent years. The deduction can be used to offset up to 30 percent of annual income. The capital gain from the sale will also be reduced, for both federal and state purposes, by the reduced price. When combined with other savings, including a broker's commission, the landowner may achieve nearly the same after-tax financial return as from a fair market value sale, while also providing a substantial public benefit.

### **INSTALLMENT SALE**

In an installment sale, the seller accepts a series of payments over time rather than one lump sum. An installment sale may benefit an owner by spreading income and taxable gain over several years, subject to special tax limitations.

### **DONATION OR SALE OF AN AFFORDABLE HOUSING RESTRICTION**

One of the best ways of protecting perpetual affordability while retaining ownership is to donate a permanent affordable housing restriction. You retain full ownership and ability to sell or convey the property, by deed or will, through gift or sale, to a family member or to anyone else. Such a sale or conveyance will always be subject to the terms of the affordability restriction document that subordinates any mortgage on the property. In effect, that document becomes part of the deed to the property. The restrictions must be accepted by the recipient agency or a qualified housing organization, which is then legally empowered to monitor and enforce this agreement.

These permanent restrictions are authorized by Massachusetts' law (M.G.L. Chapter 184, Section 31-33) to limit the use of all or part of the property or restrict the resale price to occupancy by persons, or families of low or moderate income in either rental housing or home ownership. Affordable housing restrictions under Massachusetts law requires approval by the Department of Housing and Community Development (DHCD) when held by a government agency, and when held by a charitable corporation or trust requires the additional approval of the town's selectmen or town meeting. Donation of such a restriction is not tax deductible.

### **RECYCLING HOUSES**

Instead of demolishing your house in order to build anew, you may want (or be required in Edgartown under current zoning by-laws) to donate your house to the Island Housing Trust to be moved. Many Island houses have been donated and moved for affordable housing. In many cases property owners have donated back the tax benefits received from the donated house, which has funded the house move to a suitable parcel of land.

### **RETAINING A LIFE ESTATE AND DONATING A REMAINDER INTEREST**

This technique allows you to donate real estate during your lifetime, while reserving the right for yourself, and other persons you specifically designate, to continue using the property during your and their lifetimes or for a shorter period of years. When you and those you have specified

either die or release their life interests, the recipient assumes full title and control over the property.

The value of the gift for tax purposes is determined by subtracting the value of the reserved life estate or term of years from the appraised fair market value of the property. These values are determined from IRS actuarial tables based on average life expectancies. The holder of a reserved life estate continues to be responsible for property taxes until the recipient obtains full title to the property.

### **DONATING UNDIVIDED INTEREST**

To take advantage of the potential charitable donations generated by a large gift, donors may spread the gift over two or more years by donating a series of fractional portions, called undivided interests. These are not separate parcels, but are share of the whole, say 10%, 20%, 30%, etc. This technique allows you to tailor the size and number of charitable deductions to the amounts you can use from year to year, given your tax situation.

### **OTHER INTERIM TECHNIQUES**

Sales or gifts of property or of undivided interests in property are usually intended to be permanent. However, a property owner may prefer a short-term approach, even without the income and estate tax advantages available when permanent gifts are made.

### **LEASE UNDER RENTAL CONVERSION**

The Dukes County Regional Housing Authority, with funding from the Island Affordable Housing Fund, has a program that provides homeowners with incentives to lease their property year-round to income eligible Island families and individuals.

### **WHERE TO BEGIN?**

We suggest that you call Philippe Jordi at the Island Housing Trust at (508) 693-1117 to discuss your property and the options available to you.