



## **OPTIONS FOR TRANSFERRING LAND**

### *A BRIEF GUIDE*

This short guide summarizes various options for landowners interested in transferring land to another person, group, or community. Landowners who are particularly interested in transferring ownership to nonprofit land trusts, indigenous tribes, and community-based organizations will find this guide most useful.

Because we have written this guide with landowners in mind, we also provide a brief consideration of the advantages and disadvantages of each option from that perspective. Having said that, we think it is essential that landowners consider their own goals as well as the goals and needs of the party or community to whom they would like to transfer land.

Four key questions to consider as you read through this guide focus on the *financial* and *use* needs of the parties.

1. What are the **financial needs** of the transferring party?
2. What are the **financial needs** of the receiving party?
3. What are the **use needs** of the transferring party after the transfer?
4. What are the **use needs** of the receiving party after the transfer?

The land transfer mechanisms covered in this guide include:

- Full Value Sale
- Charitable (Bargain) Sale
- Full Donation
- Donation of a Remainder Interest
- Revocable Transfer on Death (Lady Bird Deed)
- Donation by Bequest
- Sale or Donation of an Easement

**In any situation, we strongly recommend that you seek individualized tax, legal, and estate planning advice to determine which of these options is best suited to your circumstances. Laws vary from state to state, so having appropriate counsel where the land is located is critical.**



## **Full Value Sale**

This is likely the kind of transfer of ownership that most people are familiar with. In this scenario, the landowner sells to the buyer at a price determined by a third-party appraisal. The buyer pays the full value and receives title to the property. For many people, including nonprofits and other community-based organizations, a full value sale is not an affordable option. However, there are ways to make this option more affordable by delaying payment in two ways.

1. **Installment Sale:** An installment sale allows the buyer to make payments over several years at intervals and amounts that are agreeable to both parties. The landowner would retain title to the property until the final payment. The parties could agree to provide the buyer with use of the land at any point during the payment period, including at the first payment or after payment has been made in full.
2. **Seller Financing:** Alternatively, the landowner could provide seller financing, meaning that title immediately transfers to buyer, and in exchange, the landowner gets a promissory note in which the buyer promises to pay the landowner over time, with or without interest. A deed of trust is recorded on the property to secure payment of the promissory note.

### **Advantages of this option:**

- Fee simple ownership of land gives the buyer the greatest ability to fulfill their mission and ensure secure tenure over the long term.

### **Disadvantages of this option:**

- The landowner will have to pay income tax on the capital gain if the land has appreciated in value since it was originally purchased.
- This is the least financially feasible option for buyers, particularly nonprofit organizations with a limited budget and limited capacity to raise capital.
- An installment sale may limit the buyer's uses of the land until the transfer is complete.



### **Charitable (Bargain) Sale**

A charitable, or bargain, sale occurs when the landowner sells land to a *tax-exempt nonprofit* organization for less than market value. This kind of sale makes the land more affordable to the buying nonprofit, and can offer tax deduction benefits to the selling landowner. The parties can also use the **Installment Sale** or **Seller Financing** options discussed above in this situation as well, if affordability is still a concern for the nonprofit buying the land.

#### **Advantages of this option:**

- The difference between full market value and the sale price can qualify the landowner for an income tax deduction and capital gains tax reduction for that portion of the value. This can offset the income taxes and capital gains taxes the landowner will incur from the sale of the property, after reducing ordinary income.
- If the land has significantly increased in value since the seller purchased it, this option can offset a large amount of the resulting capital gains liability for the increased value.
- The nonprofit buyer will be more likely to afford the purchase price of the land.

#### **Disadvantages of this option:**

- The landowner does not realize the full income from the market value of the property.
- This may not be the best strategy if the landowner would otherwise qualify for public benefits in the next several years. Recently transferred assets like land can negatively impact eligibility for benefits.



## **Full Donation**

This is the simplest way to transfer land to another party and is the most affordable option for receiving nonprofits or community-based organizations to advance their mission to protect, preserve, and steward land in the long term.

### **Advantages of this option:**

- Fee simple donation to an eligible tax-exempt organization would give the landowner the greatest immediate income tax benefits, sometimes for the full appraised value of the land, in addition to relief from property taxes, and potential estate tax benefits.
- The receiving party would not require financing in order to receive the land.
- The land would be immediately available to the receiving party.

### **Disadvantages of this option:**

- The landowner does not realize the full income from the market value of the property.
- This may not be the best strategy if the landowner would otherwise qualify for public benefits in the next several years. Recently transferred assets like land can negatively impact eligibility for benefits.



### **Donation of a Remainder Interest**

If the landowner would like to donate the land to an eligible tax-exempt nonprofit organization but retain the ability to live on the land during their, or their family members', lifetime, they can donate what is called a "remainder interest" in the land while retaining what is called a "life estate."

#### **Advantages of this option:**

- Full transfer to the receiving party will occur immediately upon the landowner's death. Upon the landowner's, or their designated family members', death, this kind of transfer avoids the expense and delay of probate.
- The landowner may be able to receive an immediate income tax deduction for the value of the property that was donated (determined by an appraisal).
- This may be a good option for landowners who receive public benefits. The state can make a claim for repayment of these benefits against an estate and place a lien on property after death. However, because donating a remainder interest is irrevocable, the property will not be part of the estate at death.
- The land will not be subject to capital gains tax on appreciated value.
- The property will not be part of the donor's taxable estate, where the donor (and/or the donor's spouse) are the only life tenants.

#### **Disadvantages of this option:**

- The landowner will need to pay the property taxes on the land while retaining use of the property.
- The landowner does not realize the full income from the market value of the property.
- The receiving party would not require financing in order to receive the land.
- Without another agreement, the land will not be immediately available for use by the receiving party.



### **Revocable Transfer on Death Deed (Lady Bird Deed)**

Lady Bird Deeds, which are only available in some states, are similar to deeds described above that create a life estate and donate a remainder interest, except that Lady Bird Deeds are revocable, meaning that the landowner can, during their lifetime, revoke the transfer. This gives more control to the landowner, but can put the receiving party in an uncertain position. Lady Bird Deeds are available in California until 2021, unless legislation is introduced to extend the law.

#### **Advantages of this option:**

- Transfer of title will occur immediately upon the landowner's death, so the donation will not be subject to the expense and delay of probate.
- The land donation will not be subject to capital gains tax on appreciated value.
- The landowner can revoke the deed at any time during their lifetime.

#### **Disadvantages of this option:**

- Because the deed is revocable, the landowner does not receive an income tax deduction available with other land donations.
- Without another agreement, the land will not be immediately available to the receiving party.
- The receiving party would not require financing in order to receive the land.
- This kind of transfer does not provide reliable certainty to the receiving party since the transfer can be revoked during the landowner's lifetime.



### **Donation by Will or Living Trust (Bequest)**

A landowner can donate land in a will or through a revocable living trust. Both strategies allow the landowner to retain full use of the land during their lifetime.

#### **Advantages of this option:**

- Reduces estate or inheritance taxes.
- Can be changed or revoked at any time during landowner's lifetime.
- The receiving party would not require financing in order to receive the land.

#### **Disadvantages of this option:**

- The landowner will still be responsible for paying property taxes for the entire property during their lifetime.
- Without another agreement, the land will not be immediately available to the receiving party.



### **Agricultural, Conservation, or Cultural Easement Donation**

An *easement* is an agreement between the landowner and a third party that affects the landowner's rights on the land covered by the easement. Easements are generally recorded on the deed of the property and are therefore permanent. Conservation, agricultural, and cultural easements are specific kinds of agreements that can be entered into with eligible organizations or tribes that can also qualify as a charitable contribution if donated by the landowner.

- A *conservation easement* permanently restricts uses on the land that interfere with the ecological conservation of that land.
- An *agricultural easement* permanently protects farmland by setting limitations on the use of the land.
- A *cultural easement*, available in some states, grants indigenous communities certain access rights to lands for continuing and preserving cultural heritage.

Easements can be sold or donated. The party holding the easement cannot also be the party that holds title to the land.

#### **Advantages of this option:**

- The landowner can retain ownership of the land and convey the land to their heirs.
- If the easement meets IRS criteria, the landowner may be able to deduct the value of any donated portion of the easement up to 50% of their adjusted gross income, or 100% if they are a farmer, for up to 15 years.
- Affirmative easements (those requiring certain uses) can increase the value of the easement and reduce the overall value of the land, making it more affordable if the easement is sold instead of donated
- In addition to an income tax deduction, the easement may reduce property taxes and estate taxes.

#### **Disadvantages of this option:**

- Easements do not convey an ownership interest in the land to the party holding the easement. This may not align with the intent of either or both parties.
- Easements can be expensive to enforce, thus creating a financial liability for the easement-holding party.
- Easements, alone, do not preserve long-term affordability of land, because an easement only reduces the relative market value of the land, but does not immunize the land value from increasing through speculation and other market forces.