

How Charities Can Provide Down-Payment Assistance to First-Time Homebuyers

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Anyone currently trying to buy a home in the United States is keenly aware of the low inventory of available homes and record-high prices. The current home-buying environment is especially challenging for low-income, first-time homebuyers who may have difficulty making a sizeable down payment, and these difficulties may be especially pronounced for persons who are Black, Indigenous or people of color. To help first-time homebuyers successfully buy homes, for-profit and nonprofit entities have recently announced significant efforts to provide down-payment assistance.

All organizations described in Section 501(c)(3) of the Internal Revenue Code (charities) must be operated to benefit the public and not to provide impermissible benefits to private individuals other than members of the charitable class that the organization serves. A charity wanting to help individuals by offering a down-payment assistance program should be sure to structure its program so that it is consistent with the organization's 501(c)(3) status. This post outlines some of the key considerations for charities establishing a down-payment assistance program:

1. **Make assistance available exclusively to persons and families with financial need.** The IRS has approved use of standards set by the Department of Housing and Urban Development (HUD) to determine whether applicants qualify as low-income individuals. It may be acceptable to use other methods to ensure that all recipients are members of a charitable class who have financial need.
2. **Consider recipients' ability to repay the loan.** A down-payment assistance program that the IRS blessed in Revenue Ruling 2006-27 collected employment information and financial history from borrowers to ensure that they would qualify for a mortgage but for the lack of a down payment. Charities should avoid facilitating a loan that the borrower will not be able to afford.
3. **Consider habitability.** Charities should establish a process to ensure that they do not provide down-payment assistance in connection with an uninhabitable property.
4. **Evaluate sources of funding.** The IRS looks favorably on charities that attract financial support from an array of foundations, businesses, and members of the general public (as opposed to a small number of donors). This helps ensure that the organization is "not beholden to any particular donors or other supporters" and not operated to benefit private interests.
5. **Maintain broad eligibility criteria.** Charities that provide assistance to a broad segment of the public with financial need, as opposed to persons with a relationship to a particular company or family, are more likely to qualify for 501(c)(3) status.

6. **Carefully structure the grant-making process.** The organization approved in Revenue Ruling 2006-27 structured its grant-making processes so that the persons selecting the grant recipients did not know the identity of the party selling the home or the identity of any real estate agent, developer, or other party who may receive a financial benefit from the sale. This helps ensure that the program is operated to benefit financially needy persons and not the other parties.
7. **Refuse charitable contributions contingent on the sale of homes.** Charities should not receive contributions that are contingent on the sale of a particular home nor should they receive a payment or fee in connection with a grant recipient's purchase of a home. Receipt of these payments would generally suggest that a substantial purpose of the program is to benefit private individuals with an interest in the sale. Payments earmarked to benefit a specific individual are not tax deductible as charitable contributions.
8. **Monitor lobbying activities.** Like other organizations, 501(c)(3) organizations can advocate for housing reforms—and many do so. However, lobbying activities may not be more than an insubstantial part of a charity's activities (or must be within the limits established by Section 501(h) for organizations that have elected to be governed by that Section).
9. **Consider offering personal financial educational activities and programs.** In addition to providing down-payment assistance, charities may also want to conduct educational activities to help individuals prepare for the financial responsibilities of homeownership. The IRS has recognized these educational efforts as charitable activities. If a charity conducts these activities, it should consider whether it will become subject to Code Section 501(q), which imposes limits on the fees that an organization may charge and requires the organization to maintain a certain board composition.

Overall, a charity desiring to assist low-income individuals and families by establishing a down-payment assistance program should carefully evaluate how to best structure its program in accordance with the requirements and limitations outlined above.

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