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Affordable Housing Alert

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Bargain sale — A tax-efficient tool for nonprofit-owner negotiations in the post-COPA environment

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A bargain sale helps nonprofits compete in the open marketplace by allowing property owners to combine a cash sale with a charitable donation, generating a unique tax benefit for the seller.



What's the impact?

- With the Community Opportunity to Purchase Act vetoed, nonprofits and owners must now negotiate voluntarily without legislative mandates.
- Properly structured, a bargain sale can deliver cash and a charitable deduction tied to the property's fair market value to the owner, and a credible path for nonprofit buyers to bridge funding gaps.
- Success depends on clear donative intent, a qualified appraisal, and proper IRS documentation.

The recent mayoral veto of New York City's Community Opportunity to Purchase Act (COPA)—a local law that would have granted nonprofits the first chance at purchasing certain multi-family

properties—has focused attention on “voluntary” dealmaking between nonprofits and property owners. Without a law requiring nonprofits to have a first option on the purchase of some buildings, the priority must now shift to finding creative incentives for private owners to negotiate with nonprofits voluntarily.

As nonprofits seek to acquire property without the benefit of COPA, they should emphasize the benefits of the “bargain sale”—a powerful, often overlooked tax tool capable of unlocking value for both sides. Tucked away in the opaque Internal Revenue Code (Section 170), bargain sales combine a standard cash transaction with a charitable gift. This unique strategy warrants serious consideration and is ripe for the current market as we enter the era of what we call the “voluntary nonprofit-owner negotiations.”

What is a bargain sale?

A “bargain sale” is a transaction in which a seller transfers property to a nonprofit for less than its fair market value (FMV). In this structure, the charity pays cash for a portion of the property's value, while the remaining value (the “discount”) is treated as a charitable contribution by the seller.

Generally, the gift amount is the excess of the FMV over the cash price paid. If the transaction is structured and substantiated correctly under charitable contribution rules, this amount may be tax-deductible.

Why bargain sales work in voluntary nonprofit-owner negotiations

It is not a secret that doing business with a nonprofit can sometimes mean that the deal will take longer, and generally, it is unlikely to be a quick, all-cash transaction. In New York City, where nonprofits are still looking to enter into transactions with owners in the private marketplace, the bargain-sale framework can make nonprofit offers more competitive by offering unique value. Below is a summary of these benefits:

- / **Tax optimization:** Any discount on the market sales price given to the nonprofit can be treated as a charitable contribution for income tax purposes. Gain is recognized only on the portion of the property treated as sold for cash, rather than the full market value.
- / **Net outcome:** Because the seller receives a charitable deduction and pays tax on a smaller gain, the after-tax proceeds can be competitive with (and in some cases superior to) a conventional sale at a higher gross price.
- / **Mission alignment:** This structure allows owners to support a mission-aligned nonprofit while still receiving a considerable cash payment. It is particularly useful when a nonprofit is the preferred buyer but lacks the funds to match for-profit offers.

How nonprofits can make offers more attractive

Nonprofits can use the bargain-sale structure to stretch limited capital and win competitive deals by offering a tax benefit that for-profit buyers simply don't have to offer. Below is a summary of the key elements of a bargain sale that nonprofits should highlight under a voluntary nonprofit-owner negotiation:

- / **Strategic structure:** Propose a simplified, credible offer: a cash price the nonprofit can fund or promptly finance, paired with a clearly documented charitable gift component.
- / **Educating the seller:** Nonprofits should present the economics clearly, outlining the mechanics of the deduction and showing how the "net" benefit to the seller compares with higher market offers.
- / **Certainty of closing:** By obtaining a timely, independent appraisal under IRS rules to validate FMV and proposing a ready-to-close timeline, nonprofits can position themselves as reliable buyers to sellers who may be looking to close quickly.

Critical considerations for sellers when contemplating a bargain sale

To preserve the tax benefits of a bargain sale, strict adherence to IRS substantiation rules is required, which means sellers must ensure full compliance to benefit. Below is a list of key considerations for sellers wishing to engage in a bargain sale transaction:

- / **Documenting intent:** Charitable intent (donative intent) must be established prior to the sale. It should be explicitly stated in the purchase and sale agreement or a contemporaneous letter of intent.
- / **Qualified appraisal:** The seller must obtain a qualified independent appraisal to substantiate the FMV. This appraisal must meet specific timing constraints relative to the contribution/sale date. Crucially, this appraisal must be current to satisfy IRS requirements, meaning it generally must be dated no earlier than 60 days before the closing date. If the appraisal predates this window, it is invalid for IRS purposes and would require an update.
- / **Required forms and acknowledgment:** The seller should secure a written acknowledgment from the nonprofit at closing that explicitly states the amount of cash paid. This specific disclosure, along with a fully executed Form 8283 (Noncash Charitable Contributions), must be submitted with the seller's tax return to substantiate the deduction.
- / **Professional guidance:** Charitable deductions are subject to percentage limitations and strict substantiation rules. Engage experienced real estate and tax counsel early to ensure the transaction is documented correctly from the term sheet through closing.

How a bargain sale works for voluntary nonprofit-owner negotiations

OWNER PERSPECTIVE

- / **The scenario:** An owner holds a multifamily building with an appraised FMV of \$4 million. A nonprofit, seeking to preserve affordable housing, offers a purchase price of \$2 million.
- / **The result:** The \$2 million difference is treated as a charitable gift. Capital gain is recognized only on the \$2 million sale portion (with basis allocated proportionately). The owner receives \$2 million in liquidity plus a potential tax deduction on the \$2 million gift, subject to applicable limitations.

NONPROFIT PERSPECTIVE

- / **The scenario:** A nonprofit identifies a property worth \$5 million but has a maximum budget of \$2 million.
- / **Strategy:** The nonprofit offers a \$2 million cash price, supported by an independent appraisal to show the market rate and the benefit of the charitable contribution for the remainder of the value. By documenting the seller's intent to contribute the remaining \$3 million value, the nonprofit acquires the property within budget. The seller accepts the below-market purchase price in exchange for immediate payment and the tax benefits associated with the \$3 million deduction.

Takeaways

While the COPA veto was a setback for advocates, bargain sales remain a powerful tool for nonprofits to compete in the NYC real estate market. When presented correctly, this structure highlights a unique value proposition for selling to them rather than a private buyer. Bargain sales are a useful tool that could make some voluntary nonprofit-owner deals possible, especially since some of these assets may not sell at the full appraised value to begin with. The seller receives a significant tax deduction not available in a regular sale, while allowing nonprofits to acquire real estate that might otherwise be out of reach. The bargain-sale structure bridges the gap between an owner's financial objectives and a nonprofit's capital constraint. Success depends on accurate valuation, clear donative intent, and precise legal documentation.

Nixon Peabody stands ready to represent owners and nonprofits on bargain sale transactions, having seen first-hand how this tool can make otherwise out-of-reach deals possible.

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