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GREGORY L. COLVIN
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STEPHANIE L. PETIT
NANCY E. McGLAMERY
ERIC K. GOROVITZ

STEVEN CHIODINI - OF COUNSEL
MATT CLAUSEN - OF COUNSEL

235 MONTGOMERY STREET • RUSS BUILDING, SUITE 1220 • SAN FRANCISCO, CALIFORNIA 94104
TEL: 415.421.7555 • FAX: 415.421.0712 • WWW.ADLERCOLVIN.COM

MEMORANDUM

TO: Clients and Friends

FROM: Erik Dryburgh and Brigit Kavanagh

DATE: February 9, 2016

RE: Appraisal Requirements

This memorandum summarizes the requirements an appraisal must meet in order to be a "qualified appraisal" within the meaning of Section 170(f)(11)(E).[1] In general, a donor must obtain a qualified appraisal in order to take an income tax deduction for a charitable contribution of property exceeding $5,000. This memo addresses the requirements of a qualified appraisal, the criteria for determining who is a "qualified appraiser," and the need to attach an appraisal summary to the donor's tax return.

I. QUALIFIED APPRAISAL

A. To be a qualified appraisal, a document must:

1. Be made not earlier than 60 days prior to the date of the contribution, and be received by the donor no later than the due date (including extensions) of the return on which the deduction is claimed;

2. Be prepared, signed, and dated by a qualified appraiser (see II below);

[1] The Pension Protection Act of 2006 (H.R. 4) amended Section 170(f)(11)(E) to add new statutory requirements for a "qualified appraisal." This memorandum covers the statutory requirements and existing, pre-H.R. 4 regulations on qualified appraisals, and IRS Notice 2006-96 which provides transitional guidance. However, final regulations have not yet been issued to interpret the new provisions on qualified appraisals enacted in 2006. When final regulations are issued, the requirements for a qualified appraisal may change.

3. Not involve an appraisal fee which is based on the appraised value of the property; and

4. Be conducted in accordance with generally accepted appraisal standards. An appraisal prepared in accordance with the Uniform Standards of Professional Appraisal Practice, as developed by the Appraisal Standards Board of the Appraisal Foundation, will meet this requirement. (Additional information about these standards is available at www.appraisalfoundation.org.)

B. A qualified appraisal must include the following information:

1. A description of the property that sufficiently identifies the property that was appraised as the property that was (or will be) contributed;

2. In the case of tangible property, the physical condition of the property;

3. The date (or expected date) of the contribution;

4. The terms of any agreement relating to the use, sale, or other disposition of the property contributed, including the terms of any agreement or understanding that restricts or earmarks donated property for a particular use;

5. The name, address, and identifying number of the qualified appraiser and of any entity or person who employs or engages the qualified appraiser;

6. The qualifications of the qualified appraiser who signs the appraisal, including the appraiser's background, experience, education, and membership, if any, in professional appraisal associations;

7. A statement that the appraisal was prepared for income tax purposes;

8. The date on which the property was appraised;

9. The appraised fair market value on the date of contribution;

10. The method of valuation used to determine the fair market value, such as the income approach, the market-data approach, and the replacement-cost-less-depreciation approach; and

11. The specific basis for the valuation, such as specific comparable sales transactions or statistical sampling, including a justification for using sampling and an explanation of the sampling procedure employed.

II. QUALIFIED APPRAISER

A qualified appraiser is an individual who meets the following criteria:

A. Regularly performs appraisals for compensation;

B. Is qualified to make appraisals of the type of property being valued, according to qualifications described in the appraisal, and demonstrates verifiable education and experience in valuing the type of property subject to the appraisal;

C. Has either:

1. Earned an appraisal designation from a recognized professional appraiser association. The designation must be awarded on the basis of demonstrated competency in valuing the type of property for which the appraisal is performed.

or

2. Has otherwise met minimum education and experience requirements to be set forth in IRS regulations. Final regulations have not been issued to date, but the IRS issued transitional guidance to define the minimum qualifications:

a. For real property appraisals, the appraiser must be licensed or certified for the type of property being appraised in the state where the donated real property is located.

b. For other types of property, the appraiser must (A) have successfully completed college or professional-level coursework that is relevant to the property being valued, (B) have obtained at least two years of experience in the trade or business of buying, selling, or valuing the type of property being valued, and (C) fully describe, in the appraisal, the appraiser’s education and experience that qualify the appraiser to value the type of property being valued.

D. Understands that an intentional overstatement of the value of the property described in the appraisal may subject the appraiser to civil penalty for aiding and abetting an understatement of tax liability;

E. Is not the donor, donee, or any party to the transaction in which the donor acquired the property;

F. Is not any person employed by or related to one of the above parties;

G. Is not someone primarily used by one of the above parties who does not perform a majority of his or her appraisals for other persons; and

H. Has not been prohibited from practicing before the IRS at any time during the three-year period ending on the date of the appraisal.

III. APPRAISAL SUMMARY

In addition to obtaining a qualified appraisal, the donor must attach an "appraisal summary", which must be signed by both the appraiser and the donee, to his/her income tax return for the year in which the deduction is claimed. The IRS has provided Form 8283 for this purpose. (The IRS updated Form 8283 in December 2006; the appraiser's declaration in the updated form includes many of statements described in Section I.B above.) If a deduction of more than $500,000 is claimed, the donor must also attach the qualified appraisal to his/her return.