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Some bequests are more equal than others. Although the terminology may vary a bit, there are basically three different types of bequests: pecuniary (in which a sum of money is given), specific (in which a particular asset is given), and residual (in which all or a portion of the donor's estate is given *after* taking into account pecuniary and specific bequests, along with the payment of debts and expenses of the estate).

Many seasoned institutional gift planners are partial to residual bequests. While they are definitely happy to have their organizations receive a fixed amount of money or a certain asset, there can be some drawbacks associated with either of these two types of bequests.

What's not to like about cash?

The problem with a pecuniary bequest is that unless a donor revises it, the amount remains static even though in the meantime the size of the donor's estate may have increased in value significantly. Of course, the opposite can also occur. If a donor's estate shrinks considerably over the years, what may have been intended to be a relatively modest (in comparison with the size of the donor's estate) gift to charity could end up taking a big bite out of what remains for any residual beneficiaries of the estate – who might well include close members of the donor's family. In the most extreme circumstances, there might even be nothing at all left for such beneficiaries. Either outcome, but especially the latter, could leave those at the charity feeling uneasy.

What's wrong with this bequest?

Assume a donor's will leaves to a charity "the entirety of my holding in the stock of XYZ Company as of the date of my death." The primary potential shortcoming of this gift is that by the time the donor dies, he or she may no longer own any XYZ Company stock. In this event, and unless the will or revocable living trust instrument includes an alternative provision for the charity, the organization will receive nothing. Similarly, if the stock has declined in value significantly or if the donor has disposed of some of it during the balance of his or her lifetime, the impact of the gift might be diminished.

Yum: Leftovers!

In light of the foregoing considerations, there are two distinct advantages a residual bequest can have over other types of bequests. First, it is fundamentally a fair arrangement. The charity's fortunes rise and fall in proportion to those of any other residual beneficiaries. In particular, this means the charity does not benefit at the expense of children or other surviving family members who were close to the donor and to whom the donor has left a portion of his or her residual estate. If instead such persons are made the beneficiaries of pecuniary bequests, their inheritance is largely guaranteed, with the charity and any other residual beneficiaries left to share whatever remains. In fact, it is possible for the same person to receive both a pecuniary bequest (and/or a specific bequest) and a portion of the residual estate. Mixing and matching can also be achieved with thoughtfully crafted contingency clauses that ensure a charity will receive a certain benefit only under specific circumstances.

Of course, a residual bequest can still result in a charity receiving a bit of a windfall. As noted below, this will happen if the estate grows in size without any adjustment to the beneficiary provisions of the will or revocable living trust instrument. Again, any other residual beneficiaries will also receive correspondingly larger gifts.

A second reason residual bequests are popular with charities is that, in the experience of gift planners who have been in our field over a long period, donors often die wealthier than they thought they might when they last updated their estate plan. This can happen if a donor's lifestyle – and health, which is admittedly an important yet difficult-to-gauge variable – work to keep his or her expenses at a modest level later in life and if investments are carefully made and monitored. In addition, donor advisors often gravitate toward counseling their clients to consider leaving to charity a portion of the residue of their estates, again citing the fairness rationale.

Respect the residue

Unfortunately, PG Calc too often encounters promotional materials that tout "percentage bequests" but fail to be clear that what's involved is a percentage of the *residual* estate, not simply "the estate." Similarly, sample bequest language will sometimes fail to honor this important distinction. If, in turn, a donor's lawyer is not alert to the difference, the will or revocable living trust instrument can create confusion about how the estate is to be distributed.

Same principle, different application

As most gift planners know, distributions upon death from non-Roth IRAs and qualified retirement plans can be even more appealing to donors than bequests, in terms of not only the ease with which the gift is arranged and but also the attendant tax benefits. In this context, percentage designations as to what remains in the account at death are far easier than pecuniary designations for the account's custodian to administer, plus they have the same advantages as residual bequests.

Conclusion

What's best for any donor will ultimately be a matter for him or her to determine in consultation with his or her lawyer and other advisors. Still, this does not preclude a charity from actively encouraging residual bequests, perhaps by featuring them prominently in marketing materials and regularly profiling residual bequest donors, both at the expectancy stage and once their lives have ended.

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