Jeffrey Frye - Fri, 6/12/2026 - 16:05

We get a fair number of inquiries from clients regarding testamentary gifts. For bequest intentions, we typically talk about the need to discount the gifts – both from the perspective of assessing the probability of the gift actually being made AND from the perspective of estimating the present value of a future amount. With testamentary life income gifts, however, there are additional questions and points of concern. The donor is contemplating the eventual establishment of a gift that will provide income to someone else after the donor's death. That means the calculations for a testamentary charitable gift annuity or testamentary charitable remainder trust are predicated upon multiple layers of assumptions.

Please note, we're not going to be talking about different calculation methods or any of the more technical aspects of testamentary planned gifts – those points are worthwhile, but they are part of a different conversation. Instead, we are going to focus on the considerations that need to be raised *in conjunction* with the process of running calculations. What are the circumstances leading up to the donor contemplating a testamentary life income gift? What are the methods by which the donor's wealth is to be distributed? What are the characteristics of the overall estate? How many direct and outright distributions will take precedence over the funding of a life income gift? These are just a few examples of important considerations for the donor seeking to plan his or her estate.

Those of us in the business of planned giving work with donors to determine the types of gifts that make the most sense for those donors. We talk about gift amounts and other important aspects, but the subset of gifts known as testamentary gifts are subject to a very specific qualification and limitation: NOTHING HAPPENS UNTIL SOMEBODY DIES. That is a powerful phrase and a significant limitation. We can talk about potential future gifts from the donor and the donor's estate, but it is all speculative until the donor's death has occurred. Regardless of the type of gift or its complexity, we can't be sure of anything until the donor dies.

At the start of the discussion regarding testamentary gifts, we listen to the donors as they provide critical pieces of information regarding their overall wealth and the estimate of what will end up in their estate. Right from this very beginning, we need to remember that we will never know all of the relevant details about their wealth.

This is not to say that we don't trust what the donors tell us – we know that they are trying to convey the information that is needed for us to help them with gift planning. But they may not think about certain pieces of information that will be critical in the realization of those gifts after their deaths. And certainly, in this age of high concern over the security of personal information, the donors are not going to share information that is particularly sensitive. This means we are starting the conversation already knowing that we will not have all the information we need to help the donor achieve the best disposition of their wealth after death.

It's also important to acknowledge the uncertainty of a particular person's mortality. No one knows when they are going to die, and too often, gift planning professionals acquiesce to the donor's inclination of speculating about the specific timing. While it is true that we have lots of mortality tables to consult, and a plethora of other information regarding life expectancy, it's really all just a fancy crap shoot. An 80-year-old donor, seemingly in the best of health – someone who enjoys the benefits of all the "right" co-variables to long life (socially connected, sensible dietary practices, physically active), can die unexpectedly tomorrow from a heart attack or stroke. And a 90-year-old donor who is living with diabetes and COPD –who lives alone, is socially isolated, drinks to excess, and smokes when he can hide it – can live another 10 or 15 years. In the end, no matter how much logic one attempts to apply, it is still just a guess. People die when they die.

And of course, tied to the futile idea of estimating someone's remaining life, we never know how much of the donor's wealth will be used simply to live the next 5 or 10 or 20 years. It's striking how often conversations are initiated because a donor has $500,000 or $1,000,000 in their IRA; from a distance, it would seem likely that a significant portion of that balance could be transferred to a charitable organization upon the death of the owner. But we never know how much of that IRA will be used simply for the donor to continue living the lifestyle to which they have become accustomed. The donor might be in excellent physical and mental health at the moment, but those balances are rapidly depleted when it becomes necessary for the donor to move into an assisted living facility.

All of this is not intended to throw cold water on the donor's intention to leave significant amounts of their wealth to nonprofit organizations upon their demise; we are simply making the case that much caution is needed when converting these conversations into a recorded gift expectation on the books of the charity. We will always give donors the benefit of the doubt – we assume they are operating under

the best intentions – but there is a tremendous amount of uncertainty around the estimation of how long a donor will live and how much of their wealth will flow to their estate.

So, we have extensively covered the concerns and limitations on the donor's best intentions for testamentary gifts, and how the charity needs to take a measured and careful approach to estimating what will be realized eventually. But we think it's equally important to have a frank conversation about what happens AFTER the donor dies. Even if the donor gives us all the information we need during their final years – and even after the donor works with legal and estate planning professionals to document their gift intentions – the reality of the settling of estates is another HUGE variable that will affect how much the charity receives and WHEN the charity receives it. This is not really about what should be said in the conversation with the donor in his or her final years, but rather, what the gift professionals and others at the charity need to understand about testamentary gifts in real life.

We in planned giving like to talk about estate planning, because that's where the donor's interest lies, and careful estate planning should lead to the best disposition of the donor's wealth after their passing. But in reality, we must remember a critical limitation in the business of settling estates: most of the distributions from a person's estate are ultimately decided by the Executor of the estate.* We cannot emphasize this too much. To be fair, there are some testamentary gifts that are governed by authorizations and designations signed by the donor during life – such as beneficiary designations on life insurance policies and retirement plans. There is a high degree of certainty that, if the donor designates a favorite charity as the beneficiary of his or her IRA, that money will, indeed, be transferred to the charity at some point through some kind of legal and administrative process. But when the donor's intention is for the establishment of a life income gift, for the benefit of one or more persons, all the planning in the world may NOT lead to the outcome intended by the donor.

Here is something we hear all the time: the donor wishes to establish charitable gift annuities for her children upon her death. The donor is in her mid-seventies and has a number of challenging medical issues. But the donor's children are only in their forties at present. What happens if the donor dies tomorrow and there is enough money left in the IRA to establish each of those gift annuities? Is the charity going to write gift annuities for two people in their forties? The answer is, almost certainly not. While there is always an outlier, generally speaking American nonprofits that

are in the business of writing gift annuities are going to have a minimum age at which gift annuity payments can be made. We frequently see minimum age requirements of 60 or 65 or even 70 years old.

What happens when there is such a major disconnect between what the donor intended and what the charity is allowed – and willing – to do? The answer is that the charity must collaborate with the Executor to arrive at a compromise solution. If the minimum age for payments is 65, the Executor and charity need to agree on deferred gift annuities for each of the kids, set up to start payments when each of them reaches age 65. This touches upon another aspect of planning for testamentary gifts that doesn't get enough attention: while all the pieces may be in place regarding the donor's intentions and the charity's ability to issue gift annuities, the actual gift annuities ARE NOT CREATED until the donor dies and the Executor is settling the estate. The question frequently comes up: does the donor sign the gift annuity agreement as part of the estate planning process? The answer is NO – the donor cannot sign the agreement during her life because the gift annuity is not being created during her lifetime. The gift annuity is created after the donor's death, and the Executor signs the gift annuity agreement.

This is an important detail, and the same goes for charitable remainder trusts (CRT). All the conversation and planning in the world does not create the testamentary charitable remainder trust – the CRT is created AFTER the death of the donor. The Executor works with the charity to some extent, but more specifically, the Executor works with the presumed Trustee of the trust. First, the trust must be created by the Executor and an attorney who is familiar with charitable remainder trusts. Once the trust is executed, the Executor will arrange for the distribution of assets from the estate (or IRA) into the trust. The Trustee accepts responsibility for the management and administration of the trust, and the Trustee will convey the necessary information to the beneficiary(ies) of the trust.

Given the complexity of the process that must occur after the donor's death, and given the possibility that the final resulting life income gift may be quite different from what was intended by the donor, we recommend a fair degree of caution when discussing testamentary life income gifts with a donor. It is important to communicate to the donor all the aspects that can be discussed in advance, but it is equally important for the gift planner to disclose those details that cannot be promised in advance. Sometimes the donor wants to know what the payout rate would be for the kids from CGAs established by the donor's estate, but without

knowing the date when the gift annuities will be established, it is impossible to know their payout rates.

Taking it a step further, we don't even know if the charity will be issuing gift annuities at the time of the mother's death – or even if gift annuities will be allowed in their current forms when the death occurs. To play the other side of the conversation, if the donor names the charity as the beneficiary of her IRA, but the Executor and the charity are unable to agree on the terms of the gift annuities, the money could end up being transferred to the charity as an outright gift. We're not even going to speculate on how the probate court might override any of that. Suffice to say, (almost) anything can happen to the money once the death occurs and the estate is being settled.

People say there are no guarantees in life, but truly, there are no guarantees after life, either. Donors can engage in long and extensive gift planning conversations with the charities close to their hearts, and gift planners can do everything right to secure the realization of the gifts according to the donor's intentions and instructions. But sometimes the donor's life circumstances turn out starkly different from everyone's expectations, and then the Executor must do their best to distribute what is actually left according to current conditions and realities. The best intentions are no guarantee of the outcomes the donor desires. We can only provide the best guidance possible when the conversations take place, and then we must wait to see how things turn out in the long run. It is best not to exaggerate how much the donor can control after their death. Many factors will bear on the outcome.

**In this article, we use the term of "Executor" to indicate the person responsible for settling the donor's estate, but in reality, there are many different titles used across the country. Some states and jurisdictions use the term "Administrator," while others use the term "Personal Representative," to name two of the most popular terms.*

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