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Charitable bequests - charitable gifts made by will - are by far the greatest source of funds from planned gifts. It is commonly held that roughly four fifths of all funds raised through planned gifts are in the form of bequests.

Among the reasons that bequests are the predominant source of planned gifts is that they occur after the donor no longer needs the assets to meet his or her own needs. Consequently, the donor has all remaining assets available for giving to charity and heirs. Bequests are also completely revocable and modifiable prior to the donor's death, which gives the donor the flexibility to change the terms of a charitable bequest, or revoke it entirely, at any time for any reason. These factors allow donors to be comfortable directing assets to charity in their will that they might not be comfortable donating in an irrevocable manner during life.

The financial uncertainty of the past two years has led many gift planners to focus on promoting bequests in response to would-be donors who have become nervous about making irrevocable gifts. While donors can change their mind, research has shown that well over 90% of bequest intentions become realized bequests. Hence, fundraisers can have confidence that once in the will few donors will remove a charitable bequest later in their lifetimes, especially if they are stewarded well by the charity.

Gifts at Death That Are Not Bequests

There are several other ways for donors to make charitable gifts upon death. These methods are known collectively as *gifts by beneficiary designation*. These gifts boast the same attractive attributes noted above, but since they are not made through the donor's will (or living trust), they are even simpler for the donor to put in place. All of these characteristics make these giving options well worth promoting, especially during a period of financial nervousness.

Here are some options:

IRA and Qualified Retirement Plan Designations - A donor can designate that a charity receive all or a portion of what remains in an IRA (regardless of the type of IRA) or in most qualified retirement plans, such as 401(k) and 403(b) plans. The custodian of the account simply furnishes the donor with a beneficiary designation

form that can be completed and returned to the custodian. Typically, there are additional tax benefits to donating these sorts of assets that are discussed in more detail below.

Insurance Product Beneficiary Designations - These types of products include life insurance policies of various kinds and commercial annuity contracts. The donor simply completes and returns to the insurance company a form designating that a charity receive all or a portion of the death benefit associated with a life insurance policy, or the remaining contract value associated with a commercial annuity.

Pay on Death and Transfer on Death Accounts - A “pay on death” account involves the donor instructing a bank to pay to a charity all or a portion of what remains in an account when the donor dies. A “transfer on death” account entails the donor giving essentially the same instruction to a brokerage firm with regard to investments held in the account at the time of the donor’s death. The particulars of each arrangement will depend on the bank or brokerage firm in question.

Charitable Fund Designations – Donor advised funds sponsored by financial firms, such as the Fidelity Charitable Gift Fund, Vanguard Charitable Endowment Program, and Schwab Charitable Fund, have become popular vehicles through which many wealthy donors make their annual gifts. Billions of dollars reside in these funds. Among the options for the donor of one of these accounts is to recommend in advance (on a form provided by the account manager) that lump-sum grants to specified charities be made from any balance remaining in the account upon death. As long as your organization is a qualified 501(c)(3) charitable organization at the time of distribution, the account manager is sure to follow the deceased's recommendations.

Unlike the other bequest-like options described above, there are no tax benefits to recommending a lump-sum grant from what remains in a donor advised fund. The donor gets an income tax deduction when he or she creates or adds to the fund, but there are no further tax benefits when distributions to charity are made out of the fund, whether while the donor is alive or after the donor has died. In this case, the donor's motivation must be purely an interest in supporting an organization's mission.

Gift Considerations

The likely donors for these bequest-like gifts will generally have the same profile as

those who make bequests through a will. Be sure and include a description of gifts by beneficiary designation in all of your general planned giving materials and donor conversations. One approach to marketing beneficiary designations is to emphasize bequests, but then allude to other arrangements that share many of the characteristics of a bequest.

An alternative would be to promote specifically just beneficiary designations (as a group), highlighting their ease of arrangement in addition to the bequest-like benefits. In some instances, organizations have promoted a particular type of beneficiary designation, in recognition of the fact that some, such as gifts of assets remaining in an IRA, will be more common and entail different considerations than others, such as donor advised fund designations. This approach would be most advisable with retirement assets, which can hold quite a sizeable portion of a donor's wealth and are a particularly tax-wise source of gifts (see discussion below).

Since many donors are not aware of this way to make a charitable gift, your marketing might center on the theme of hidden treasures that donors can use to leave a legacy. Promotion among current legacy society members might be particularly productive – they already have the passion and desire to leave a legacy. If you inform them about this gift option, they may choose to supplement the estate gift they have already arranged in order to leave a larger legacy using assets they may not have previously considered.

Given the similarity with bequest gifts, much of the same recognition and stewardship accorded to bequest donors will also apply in the case of a donor who makes a gift by beneficiary designation. You certainly want to include them as members of your legacy society and be in touch with them on a regular basis.

Generally, all of these bequest-like gifts are even easier to arrange than bequests, as the documentation is simpler and less formal than a will or a living trust agreement (or than a codicil or similar amendment of such a document). This is true with respect both to making the initial arrangement and to modifying or revoking the arrangement (provided – as in the case of a bequest – that the donor still has adequate legal capacity at the point any change is made). For its part, a charity will typically find any of these gifts to be easier to administer, in that distributions are not subject to the delays and potential complications associated with the probate process. Of course, upon receipt of its gift, the charity will still have the same ongoing stewardship responsibilities in terms of carrying out the donor's wishes.

Give “Income In Respect of a Decedent” Assets to Charity First

Donations of IRA and qualified retirement plan assets feature a tax benefit typically not applicable in the case of bequests. This will be so for any asset containing “income in respect of a decedent” or “IRD” for short. If the donor was either the owner or beneficiary of something that would have been a source of payments taxed to him or her as ordinary income, then that asset is an IRD asset. If, upon death, others then become entitled to receive these previously untaxed amounts, they must pay income tax on the IRD received.

Most distributions from an IRA made after the IRA owner has died are examples of IRD with respect to every dollar distributed. The only exceptions are distributions from a Roth IRA or distributions attributable to contributions of after-tax dollars made by the decedent to some other type of IRA. The same holds true for most qualified retirement plans. In the case of certain commercial annuity contracts, some of what is distributed will be IRD, with the rest being nontaxable principal.

The good news for charities is that by virtue of their tax-exempt status, no income tax will be due on any IRD they receive. This means that if a donor’s estate plan calls for benefiting both individuals and charities upon death, it is most efficient from a tax standpoint to use IRD assets (to the extent they are available) to make charitable gifts and to earmark other assets for individuals.

For example, if a donor wants to leave $25,000 to your organization and $25,000 to a daughter, it’s generally preferable for the donor to leave assets such as IRA funds to your organization, with other assets, such as cash or securities, left to the daughter. While the opposite approach would be equally beneficial to your organization, it would be less beneficial to the individual by the amount of income tax the daughter must pay on the IRD assets received.

An additional feature that distributions of IRD to charity share with bequests is deductibility of the distributions for estate tax purposes. Given the likelihood that fewer and fewer estates will be subject to estate tax in the years to come, however, it is the income tax benefits of distributing IRD to charity that should receive primary emphasis in promotional materials and conversations with donors.

Not all donors are aware of the significant tax considerations associated with IRD assets, so charities need to keep up, and perhaps even step up, their efforts to spread the word.

Note: In the case of an IRA, what a charity is usually designated to receive is a percentage of the assets remaining in the IRA when the donor dies. While it is also possible to designate a particular sum (provided the IRA continues to hold at least that amount by the time the donor dies), estate planning lawyers generally advise that the sum be expressed as a fraction, the numerator of which is the sum itself and the denominator of which is the total value of the IRA.

Despite all of the forgoing, there can be times when it is advisable for the donor’s estate to be the recipient of IRD. Normally, this will result in the IRD being taxable to the estate. Fortunately, it is possible for a donor’s will to direct that the administrator of the estate draw first on IRD assets in making any charitable bequests. Such language will generally allow for the IRD to be recognized by the charitable beneficiaries, rather than by the estate. Here is an example of language a will might contain:

- “To the fullest extent possible, this gift shall be paid out of ‘income in respect of a decedent’ as that term is defined in the Internal Revenue Code. If such ‘income in respect of a decedent’ as valued for U.S. estate tax purposes is insufficient to pay this bequest, then it shall be paid to the extent necessary out of the general assets of my estate.”

Conclusion

There are a number of attractive bequest alternatives available to donors who wish to make a charitable gift upon death. Charitable organizations would do well to make their supporters aware of these alternatives and encourage their use. Properly promoted, they hold the potential to be a substantial source of charitable donations for your organization.

While IRA beneficiary designations and the other bequest-like gifts are fairly easy to arrange, a donor should – as always – be encouraged to consult with his or her advisors regarding the appropriateness of a contemplated charitable gift in terms of the donor’s overall estate plan. A donor advised fund recommendation is probably an exception to this rule, as there are no tax implications to making the recommendation.

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