Morgan Stanley

Primer on Planned Giving

Planned giving has become an increasingly important area of fundraising for nonprofit institutions, sometimes accounting for more than half of new capital campaigns.

From the direct advantages of income, gift and estate tax deductions to the unique characteristics of gift annuities and split interest trusts, planned giving offers a range of vehicles to suit diverse financial situations and objectives and that often permit donors to consider even larger charitable gifts than they might have made.

What is a "planned gift"? A planned gift is a mediated gift — that is, a gift a charity receives through or by means of some agency, such as a will, contract or trust. On the simpler end of that range, bequests represent probably the most popular form of planned gift, along with making charities beneficiaries of life insurance policies or gifting the policies themselves. Toward the more complex end, there are gift annuities and life estates — the one giving up a sum of money in exchange for a lifetime income, the other giving up ownership of a home in exchange for the right to live in that home for one's lifetime. And, finally, there are the complex trust entities — pooled income funds, remainder trusts and charitable lead trusts.

Almost all 501(c)(3) charitable organizations can offer donors the same array of vehicles. In the often fierce competition for donor dollars, your organization must distinguish itself from the host of other organizations

What Is a "Planned Gift"?

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Since the income to donors from planned gifts often lasts a lifetime, your organization has the opportunity to strengthen this attachment through superior stewardship.

competing for the attention of donors. To accomplish this, your planned giving program should maintain the highest degree of excellence in the areas of stewardship, marketing and gift administration. Your planned giving program must also have well-conceived gift acceptance, investment management and ethical guidelines. Most important, it is your organization's ability to inspire prospective donors to support your mission that will determine the ultimate success of your planned giving program.

Starting a Planned Giving Program

Here are some reasons why you should consider initiating a planned giving program, or look for ways of "retooling" an existing planned giving program to make it more effective:

TAKING ADVANTAGE OF THE GREAT "WEALTH TRANSFER." Experts forecast that approximately $59 trillion will change generational hands between 2007 and 2061, making it the greatest transfer of wealth in U.S. history.[1] As much as $6.3 trillion will be left to nonprofits through bequests with an additional $20.6 trillion going to nonprofits through lifetime giving, and planned giving will be a major conduit through which this wealth will pass.

STRENGTHENING RELATIONSHIPS WITH DONORS. Planned gifts tend to be larger than annual gifts. Consequently, planned gifts tend to promote a higher degree of donor attachment to your organization. Since the income to donors from planned gifts often lasts a lifetime, your organization has the opportunity to strengthen this attachment through superior stewardship. As donors lose family and friends over the years, your organization may come to represent an anchor in their lives. This allegiance may spawn additional gifts.

FUNDING AN ENDOWMENT. Does your organization's mission encompass long-term projects that need funding? Do cyclical markets affect the level of annual giving? Have donations declined due to the death of donors? Will your organization's operating costs keep rising? Is your organization in competition with other charitable organizations for donor dollars? Is your organization dependent on private and/or government grants?

If the answer to any of these questions is "yes," remember that planned giving is an effective means of funding an endowment. An endowment enhances a charitable organization's financial stability and enables the board of directors and trustees to make and implement long-term plans.

BUILDING A PHILANTHROPIC FAMILY TRADITION. Planned giving enables donors to express their values while transferring wealth. For example, in the process of receiving income from a planned gift, family members have the opportunity to learn to appreciate the donor's affinity for your organization's mission. In fact, planned giving may be the catalyst for encouraging a new generation of donors to support your organization.

Staffing

Who will be responsible? Will it be a department? A person? Part of a person?

RESPONSIBILITIES. In order to tackle these questions, your organization should undertake a programmatic needs and resources assessment to gauge how a planned giving program can best achieve your mission with the resources available.

First you need to recognize and accept that planned giving requires resources. It can't be done for nothing—it can't even be fully outsourced!

Some responsibility always remains with the organization. When you assess the areas of donor solicitation, stewardship, staffing, gift administration and marketing, you can evaluate your potential or actual programmatic strengths and weaknesses. You should also solicit the opinions of present and former staff members, donors, volunteers of all ages and consultants. Once the

The discussion, commentary and examples in this Primer sometimes suggest, illustrate and refer to the potential tax advantages of various forms of charitable gifts and are intended for informational purposes only. Potential tax advantages may arise from the allowance of a deduction for income, estate or gift tax purposes and are generally controlled by the provisions of Internal Revenue Code Section 170 (income tax), Section 2055 (estate tax) and Section 2522 (gift tax) as well as the applicable regulations under each of these Sections. Additional support for the discussion items may also be found in Internal Revenue Service Publication 526, Charitable Contributions and Publication 561, Determining the Value of Donated Property. The laws cited here can be complex and their application to any situation or individual taxpayer must be considered in light of the specific circumstances applicable to that particular taxpayer. In this regard each person should consult with their own independent legal and tax advisors to assess the applicability of any matter discussed here to their own situation.

[1] "A Golden Age of Philanthropy Still Beckons: National Wealth Transfer and Potential for Philanthropy," Havens and Schervish, 2014.

results are in, your organization's board of trustees will be in a better position to make decisions regarding commitment of resources: the size of staff, recruiting and compensation.

SIZE OF STAFF. Staff size varies from organization to organization. At the outset, you may begin a planned giving program by simply including an article in your newsletter or on your website about the mechanics of leaving a bequest to your organization. Something on this scale can be done easily by "part" of a person. As your planned giving program expands beyond bequests and includes IRAs, retirement plans and other complex assets such as charitable gift annuities and trusts, marketing and administration will become more complex and time consuming. With the decision to offer charitable gift annuities and pooled income funds, it will become increasingly necessary to dedicate at least a "whole" person to your program. Eventually, as your organization solicits more donors, markets your planned giving program, administers gifts in-house and offers consultative services to donors, it may be necessary to organize a planned giving department.

RECRUITING. Begin the recruiting process by identifying the knowledge and skills—or "core competencies"—that the employee will need to fulfill his or her role in your planned giving program. For example, the "core competencies" of an estate planning attorney, i.e., knowledge of trusts and estates law, gift administration, real estate issues, etc., dovetail well with the functions of a planned giving professional. An attorney may lend credibility to your organization and introduce your organization to other professionals. Of course, attorneys are expensive. Consider other less expensive candidates with similar "core competencies" in trusts and estate work. Often, major gift experts also have sufficient backgrounds in many areas of planned gifting.

COMPENSATION. The salaries of planned giving professionals have risen in recent years due to competition in the field and the beginning years of the "great wealth transfer." Traditionally, planned giving professionals in certain areas have commanded higher salaries. In general, the hierarchy has been healthcare, education, advocacy, religion and art.

RELATIONSHIP TO OTHER DEPARTMENTS.

1. Development office. Typically, the Development Office oversees annual giving, endowment and capital gifts campaigns, and major gifts. Annual giving is relatively short-term; but capital campaigns and endowments can offer great opportunities to emphasize planned gifts. Your planned giving program should consider "piggybacking" with these traditional fundraising campaigns for the following reasons:

- First, a campaign's sense of urgency tends to close planned gifts. Oftentimes donors procrastinate in setting up estate plans, and a campaign may prove to be the catalyst for spurring a donor to make a planned gift. It is, we would say, "mission-intensive."
- By requiring donors to complete gift valuation forms, campaigns serve the purpose of uncovering the potential for planned gifts.
- A campaign is a terrific platform for educating prospective donors about planned giving.

Your organization may offer donors the opportunity to create endowed funds, usually distinguished by the name of the donor or the donor's family. These funds can be marketed as opportunities to honor the living or in memoriam of the deceased. An endowed fund generally fulfills a specific purpose, such as awarding special scholarships. Given the sum of money it takes to establish an endowed fund, a donor may very likely utilize a planned gift, thereby leveraging his or her commitment to your organization with the potential tax advantages associated with planned giving.

Tips

"Outsourcing" various elements of your planned giving program may help reduce the need to hire additional staff or pull staff from other areas of your organization. Instead of performing the administrative and investment functions of a charitable gift annuity program, for example, you might consider "outsourcing" these functions to a reputable financial services firm. Various marketing efforts can be outsourced as well. Your organization's board of trustees should determine whether outsourcing is a cost-effective solution to your staffing needs.

Your organization may decide to limit administrative duties in other ways. Your organization may opt, for example, not to serve as trustee of charitable remainder trusts, or, at a minimum, outsource the administration to a reputable financial services firm. This might save your organization the burden of performing the initial trust review, asset valuation, annual tax reporting requirements, distributions and other duties of an administrator or trustee. On the other hand, serving as trustee may mean stronger ties with donors, so the pros and cons of limiting fiduciary duties need to be considered carefully.

Tips

Grantmakers Salary and Benefits Report published by the Council on Foundations is one available source of information regarding salaries of various planned giving professionals in different regions of the country. To order a copy of the latest edition of the *Grantmakers Salary and Benefits Report*, contact the Council on Foundations at **800-673-9036** or visit www.cof.org.

Think "outside the box" for compensation strategies. For example, consider whether remote home office or "flex" time are viable options for your staff, or portions of your staff. Creative bonus arrangements also may help attract the kind of professionals you want.

Upwards of half of capital campaign gifts result from planned giving.[2] Planned gifts are often deferred gifts whose value is not realized until the donor dies. Therefore, in assessing a campaign's success, such gifts should not be valued at face value, but discounted based on the length of time that will elapse before your organization receives the gift. Current gifts and deferred gifts should be tracked separately, and a deferred gift should never be represented as a current gift. Your organization may be able to run a report on your charitable tracking software program that calculates the expected future results of your planned giving efforts. This report will be useful when discussing your program's success with your board at an annual meeting.

2. Business office. Planned giving is process-oriented, with its success based on long-term relationships with donors. Your planned giving program may yield few short-term benefits.

Although your organization might be the income recipient of a charitable lead trust, for example, planned gifts generally take time to mature. Your business office will have to devote the resources to sustain a successful planned giving program, and the costs may not be recouped until later.

Your organization's business office has several ways of evaluating the performance of your planned giving officers. Following are some of the more common methods:

Dollars raised per year. This method measures the dollars raised by a planned giving professional. This is not an exact measurement since some gifts are revocable, and discounted values should be assigned to deferred gifts. The most "revocable" of all gifts are bequests through a will. It is important to keep in constant communication with your donors, and particularly those who have identified their testamentary intent. Not only will careful stewardship uncover new bequests and enable you to keep a more accurate tally of bequests in the "pipeline," but reinforcing your organization's mission may keep donors from switching their bequests from your organization to another.

Multiple of salary-plus-benefits. Using this method, a planned giving professional's dollars raised are measured by a multiple of his or her compensation. For example, an educational institution might expect a planned giving professional to raise three to four times his or her salary-plus benefits within the first three years on the job.

Cost-per-dollar-raised. This method measures the cost of raising funds. The planned giving professional's salary is included with other fundraising costs and compared to the dollars raised. Obviously, this is a large bias, since large charities with streamlined planned giving operations tend to have lower cost-per-dollar-raised figures than smaller organizations with less well-developed planned giving programs.

Number of prospect meetings. This method measures the level of outreach done by your organization's planned giving staff. Prospect call reports are useful in tracking the life of a gift from initial donor contact to the actual receipt of the gift. The yardstick behind this is that, while you cannot guarantee results, you can mandate activities. And the right prospecting of the right activities usually brings desired results. One might also develop more creative ways to evaluate your planned giving program's success. For example, you might schematize the process of attaining a planned gift into stages—prospecting, educating the donor, possibly communicating with the donor's attorney or financial advisor, and closing the gift. Moving from one stage to another in the "pipeline" should be documented in the planned giving officer's log, and can be used for evaluative purposes.

Program Support

SOFTWARE. Every effort must be made to ensure the accuracy and efficiency of the administration of your planned giving program. Nothing is more aggravating to a donor, for example, than receiving a late charitable gift annuity income check.

Fortunately, there are software programs that support a wide range of administrative functions.

Tie to donor/prospect management. Gifts should be tracked from initial donor contact to realization of the gift. The progression is usually recorded on a spreadsheet. Software, readily available on the market, can make recording this progression a seamless process.

[2] "Who Says You Need Planned Giving in a Campaign? We do!" PG Calc, 2012.

IMPORTANT

It is important for a planned giving professional not to assume the role of the donor's "attorney" or give the appearance of assuming the role. Although planned giving professionals may disseminate information such as charitable gift annuity potential tax illustrations and trust scenarios, they should always encourage a donor to seek independent legal counsel. To avoid any confusion with respect to charitable remainder trusts, your organization may want to adopt the policy of sending prototype charitable remainder trust forms directly to donors' attorneys and not to donors themselves.

Gift inventory. Gifts need to be recorded and assigned a face value or a discount value. Like the tie to donor/prospect management function, this information is generally recorded on a spreadsheet. The software noted previously has this capability. It is critical for proper asset liability matching and for determining whether your planned giving program is paying for itself to use discounted values, based on gift expectancies.

Tax deduction information/various strategies. Your planned giving professional should be able to calculate the potential tax ramifications of various gift planning strategies. One type of software enables the user to calculate various tax consequences associated with a gift, as well as the present and future value of a gift.

Gift scenarios. If your planned giving program includes charitable remainder trusts, pooled income funds, charitable lead trusts and/or charitable gift annuities, your planned giving officer needs to be able to illustrate individual gift proposals and compare different strategies.

Administration. You may decide to perform the administrative functions associated with certain gift vehicles in-house. Certain softwares advertise that they can be used to administer charitable gift annuities and pooled income funds, respectively. Alternatively, you may decide to outsource these functions to a reputable financial services firm.

LEGAL. Your planned giving program needs to have the services of an attorney at its disposal for several important functions.

Consultative. Your organization's board of trustees has a duty to protect the assets of your organization. Legal counsel can be useful in providing this protection. For example, an attorney may be called in to review a prospective gift of closely held stock or stock subject to a buy-sell agreement and gifts of real estate.

Filing for charitable gift annuities/pooled income funds. Your organization may want to retain an attorney to review any applications that must be filed with a state agency, e.g., the Department of Insurance. Examples include applications for establishing a charitable gift annuity program or a pooled income fund.

Contract agreements and other prototype documents. An attorney should be retained to review documents such as charitable gift annuity donor applications and charitable remainder trust forms.

Donor meetings. Donors may be interested in supporting your organization but do not have counsel experienced in charitable giving. Your organization should maintain an updated list of local estate and charitable planning attorneys to whom donors can be referred.

Marketing: "The Message Is the Medium"

MARKETING YOUR MISSION.

Before devising a marketing strategy for your planned giving program, it is important to sit back and remember that a donor's chief reason for making a gift is usually to support the mission of your organization. Consequently, your organization's mission statement must be extremely persuasive and well-understood by your board of trustees and staff. Can you speak about the mission of your organization for five minutes? For 10 minutes? It is important that you are able to articulate your organization's mission clearly and convincingly. Marketing planned gifts is integrally related to marketing your organization's mission:

1. Identify and solicit existing and new donors and prospects. Marketing planned gifts gives donors an opportunity to "raise their hands," thereby enabling your planned giving staff to follow up with further communications. Any direct mailing or brochure should include a response card. In addition, marketing planned gifts is a way to educate the general public about your organization's mission and about planned giving vehicles. A knowledgeable

Tips

A minimum of three (3) attorneys should always be recommended in order to enable donors to choose an attorney on their own accord — who most closely fits their personalities and needs — and to avoid the appearance of (legal) association with a single attorney.

Tips

Does the organization follow government regulations if it holds 501(c) (3) nonprofit status and 170 charitable status with the Internal Revenue Service? Does it file any required tax filing and state or city licenses to solicit funds? Does it publish and/or make available upon request an annual report or current financial statement?

"Themes" are used extensively in marketing materials. For example, consider writing an article on "year-end giving" or "tax changes," and discussing how planned giving can play a role in achieving the donor's financial goals. Gifts of long-term appreciated assets, made in lieu of a sale followed by a gift, may be even more attractive, allowing your donors to avoid more potential capital gains.

public is more apt to be the source of new gifts, of repeat gifts, and of new leads.

Before implementing a marketing strategy, divide your prospective donor base into segments. These segments might include past and present donors, board members and volunteers, staff (past and present), people who have been helped by your organization, referrals from board members, volunteers, and allied professionals, e.g., attorneys and certified public accountants who are involved in the planned giving process.

2. Create awareness — brochures and newsletters. Written marketing materials, such as brochures and newsletters, are excellent mediums for introducing planned giving concepts to prospective donors. Not only can these materials educate prospective donors about planned giving vehicles and potential tax benefits, but they also can reinforce your organization's mission. Personalize your written marketing materials as much as possible. For example, ask donors to write about their planned gifts and the satisfaction they have experienced, and incorporate these testimonials into your marketing materials. And, obviously, the better you know your prospects and donors, the better you can "target" materials to market segments.

National media advertising. Using the national media to market your planned giving program can be an effective way of reaching a large number of people. However, it is usually quite expensive. Moreover, since the people you reach are not apt to know much about your organization's mission, respondents will most likely be more interested in the potential tax advantages associated with planned giving than with supporting your organization's mission.

Heritage Society. A Heritage Society is composed of donors who have indicated that they have left a bequest to your organization in their wills or trusts. Organizing a Heritage Society is important for several reasons. First, bequests — by their very nature — are revocable. Consequently, it is in your organization's best interest to keep Heritage Society members in your good graces. Second, desire for some recognition is a deeply embedded part of our human nature. Recognize their generosity by inviting them to Heritage Society dinners, inscribing their names on a plaque, publishing their names frequently in programs, etc. Also, in light of the interest that Heritage Society members have shown your organization, they are excellent candidates for future capital campaigns and planned gifts. Remember — a current gift is always better than a deferred one. Direct marketing efforts toward this segment of your donor base.

Seminars. Seminars are an effective way of introducing prospective donors to the concepts of planned giving. Instead of focusing entirely on planned giving, the seminar may encompass a broader topic, such as estate planning. A guest attorney or certified public accountant could be invited to participate. Professionals lend an objective sense of credibility to the seminar, and it gives them an opportunity to raise their visibility with the public. Their appreciation for being given this platform can work in your organization's best interest when their clients are making estate planning decisions.

Events. Events can serve multiple purposes. For example, an event can be a venue for promoting your organization's mission and educating the attendees about planned giving. Events such as dinners for Heritage Society members and lunches for volunteers are ways of showing your appreciation to those who have donated time and money to your organization, but you can also use them to try to attract additional gifts through education.

Website. Set up a planned giving section on your organization's website. For starters, include an easy-to-understand description of how to leave a bequest to your organization. Be sure to include your organization's legal name. Update your website on a regular basis. Once you have established a planned giving website, include it on your letterhead and on all of your marketing materials. Perhaps include links to other websites that can offer information regarding charitable giving techniques and tools. Linking to a website that offers a charitable calculator may be a useful resource to a donor interested in calculating his/her potential income tax deduction for a gift made to your organization.

Professional relationships. Professionals—such as attorneys, certified public accountants, bank trust officers, etc.—all play important roles in planned giving. Such professionals are in a position to recommend your organization when prospective donors are planning to do serious estate planning. Moreover, if you invite professionals to your seminars, they will have the opportunity to learn more about planned giving concepts, and be in a better position to pass this knowledge on to your prospective donors. Consider establishing an Advisory Council comprising such professionals.

CREATE A MARKETING STRATEGY.

Establish a set of objectives and devise a marketing plan to meet those objectives. A set of objectives, for example, might be the following: "We want to achieve a 20 percent increase in donor gifts over the next 18 months." To accomplish this goal, consider how you can use all of the marketing tools at your disposal most effectively. Analyze the preferences of your target audience. If you are writing letters to friends of trustees, for example, who should sign the correspondence? The director of development? The executive director? Similarly, if baby boomers are your target audience, what is the most effective way of contacting them? Direct mail? Personal calls? Website? Obviously, your objectives need to be tied to the resources available to your planned giving program. The lower the amount of resources, the smaller and simpler the objectives.

Consider the financial needs of the target audience you are trying to reach. If you are contacting people in their 30s and 40s, a pooled income fund might be an attractive planned giving vehicle. You should consider drafting a brochure that describes the potential benefits and mechanics of a pooled income fund as part of your marketing strategy.

RESTRUCTURE SERVICES (AS NECESSARY) TO SUPPORT PLANNED GIVING.

Initiating a planned giving program can be as simple as airing a radio announcement or sending a digital newsletter about leaving a bequest to your organization. In terms of overall success, however, the more resources your organization devotes to your planned giving program, the more effective it will be. Before hiring new staff, review your present staff to determine whether anyone can "cross over" to perform planned giving marketing functions.

MARKETING AUDIENCE: USING THE BOARD OF TRUSTEES TO RAISE INTERNAL VISIBILITY AND AWARENESS.

Your organization's board of trustees is an excellent source for tapping planned gifts. Ask each board member to consider making a bequest or other planned gift. This request should be done in private and on an individual basis. A tally of your board's level of financial commitment should be reflected in your organization's planned giving report. Board members should also be asked to solicit planned gifts from friends and acquaintances.

Tips

Consider including planned giving news items in your organization's magazine, alumni publications and annual reports. Such venues are free and will reach an audience that is familiar and supportive of your organization's mission.

In light of the rich potential of planned gifts from and through your board of trustees, consider organizing a planned giving seminar for board members only. The more educated your trustees are about planned giving, the more likely they will include your organization in their estate plans, and the more effective they will be at explaining planned giving to their friends.

The Range of Planned Gifts

STARTING WITH THE BASICS. A planned gift is a charitable gift that is integrated into the donor's overall financial and estate plans. Generally, the most effective planned gifts tend to be gifts of appreciated property. This is because the greater the gift's appreciation, the greater the potential charitable deduction to the donor and the lower the "net" cost of gifting by the donor. A gift of appreciated property to charity directly may allow the donor to avoid capital gains tax and may qualify for an income tax charitable deduction.

1. Wills and bequests. A bequest is a gift that is transferred after death by will or trust. A bequest may be in cash, marketable securities, tangible personal property or in a percentage of the residue of the donor's estate. The donor's estate is reduced by the full fair market value of a charitable gift as a result of the estate tax deduction, thereby potentially reducing the impact of the federal and state (if applicable) transfer tax on the donor's estate.

Tips

Encourage donors to remember your organization in their wills.

Encourage donors to make your organization a beneficiary of a life insurance policy. Assuming the donor retains some control over the policy, such as the right to change beneficiaries, the donor may not receive an income tax charitable deduction, and the proceeds may be included in the donor's gross estate. However, that portion earmarked for your organization may qualify for an estate tax charitable deduction.

IMPORTANT

Any charitable gifts of life insurance made within three years of death will cause inclusion in the donor's gross estate. However, with partial interest gifts, the estate would likely receive a full charitable deduction.

2. Life insurance. Life insurance can make an excellent charitable gift. The substantial leverage involved in insurance affords the donor the capability of gifting a significant amount for a relatively small cost. A donor has several options in making a life insurance gift:

- A donor can give a fully paid-up life insurance policy or a single premium policy to your organization;
- A donor can give your organization a life insurance policy where premium payments are still being made. In order for the donor to qualify for up to a 50 percent deduction against adjusted gross income (AGI), the donor must continue to make contributions directly to your organization, which, in turn, uses the contributions to pay premiums to the insurance company. Should the donor pay premiums directly to the insurance company on behalf of the charity, the donor may qualify for a deduction for up to 30 percent of the donor's AGI. Any future gifts to you by the donor may be deductible; and
- A donor can give your organization a brand new policy with no premiums paid in. Although this gift will not qualify for an income tax charitable deduction, any future premiums paid by the donor may be deductible.

3. Large gifts for capital campaigns. Donors can make large gifts of cash, stock and/or mutual funds in order to support your organization's capital campaign. Capital campaigns are often utilized to raise a significant sum of money within a short time frame, often for specific needs. In addition to supporting your organization, a donor may be able to take a substantial income tax charitable deduction. Assuming that the gift is cash and that your organization is a public charity, the donor may be able to deduct up to 60 percent of his or her AGI. Gifts of long-term appreciated property offer potential deductions of up to 30 percent of the donor's AGI.

4. Restricted and control stock. Federal securities laws place restrictions on the sale of restricted and control stock under Rule 144 of the Securities Act of 1933. Rule 144 imposes certain conditions on the sale of restricted or control stock. Two of those conditions include: First, prior to a sale, there is, depending on the circumstance, either a six-month or a one-year holding period requirement calculated from the date of payment in full. Second, the amount of securities sold during any three-month period may not exceed the greater of one percent of the shares outstanding, or the average weekly trading volume of the shares during four calendar weeks preceding the sale, whichever is greater. There are additional restrictions on manner of sale, notice of sale and the company's compliance with "adequate current public information."

The gift of control or restricted stock has the effect of placing the donee, i.e. the charity, "in the shoes of" the donor. If the donor was required to sell the securities under Rule 144, the charity is generally required to do so as well. The charity is permitted to "tack on" its holding period to that of the donor in determining whether the applicable holding period requirement of Rule 144 has been met.

In addition to Rule 144, other resale restrictions might apply to shares subject to Rules 145, 701 and shares registered pursuant to an S-1 or S-3 Prospectus.

5. Closely held stock. Closely held stock is generally not publicly traded, and can be problematic as well. It may include issues of C and S corporations, as well as LLC and LLP units. Your organization's acceptance of a gift of closely held stock may have certain undesirable tax consequences, e.g., the stock may generate unrelated business taxable income, and you should consult with your legal and tax advisors.

6. Mutual funds. Gifts of mutual funds do not have the marketability issues associated with restricted stock and closely held stock. However, like stock/bonds held by the donor's broker or banker, advise the donor to allow plenty of time to complete the gift. For IRS purposes, the gift of a mutual fund is not considered completed until it appears in your organization's account. (Ordinarily, a donor should have his mutual fund company direct his or her shares to your designated account.)

7. Real estate. A donor can make a contribution of real property to your organization. Real estate can be donated as an outright gift, a life estate, a bequest or part of a bargain sale. State law determines whether a gift of real estate is consummated at the time the donor delivers a deed for the property to your organization or if recording the deed is required to make the transfer a completed gift. Recording the deed is always a wise idea in order to reflect true title of the property.

For the reasons discussed in the gift acceptance policy section, an environmental review should be conducted prior to accepting a gift of real estate. The most common issues are valuation and substantiation, unrelated business taxable income, mortgaged property and the excise tax on self-dealing.

8. Retained life estates. A gift of a retained life estate is one in which the donor retains for life the possession or enjoyment of the property. Examples include gifting a personal residence or farm to your organization while maintaining the right to live there for the duration of the donor's life.

9. Tangible personal property. A donor can contribute gifts of tangible personal property to your organization. Items of tangible personal property include artwork, furniture, clothing, jewelry and automobiles. If the donated property is long-term capital gain property and related to the purpose or function of the charity, the donor's potential income tax charitable deduction is typically equal to the fair market value of the property. Otherwise, the deduction is limited to the donor's basis. Finally, if the donor of art is also its creator, the potential income tax charitable deduction is limited to the donor's basis.

10. IRAs. Generally speaking, income in respect of a decedent ("IRD") is an inherited payment that would have been taxable income to the decedent had the decedent received it before he or she died. IRAs generate IRD on which the successor beneficiary is obligated to pay income tax. Consequently, IRAs may be appropriate for non-probate charitable transfers because (i) neither the donor's estate nor heirs will have to pay income taxes on the IRD if the IRA is bequeathed directly to your organization; and (ii) any recipient tax-exempt charitable organization generally will not have to pay income taxes on the IRD. If a charitable remainder trust is utilized, the income taxes on the IRD will generally be deferred by the noncharitable income beneficiary(ies) over the CRT's payout period. Individuals should speak to their legal and tax advisors before naming a charitable organization as their IRA beneficiary.

Tips

If your organization takes out a loan against the accumulated cash value of a life insurance policy, you need to remember that the "indebtedness" created will cause the policy to be treated as debt-financed property. Consequently, any income resulting from the reinvestment of the loan proceeds will be treated as unrelated business taxable income. The donation of a deferred annuity to your organization would result in the immediate recognition of income on the donor's part. The value of the contract in excess of the donor's cost basis would be considered ordinary income to the donor. However, the donor may be able to take an income tax charitable deduction for the full value of the annuity contract. Discuss with your tax or legal advisors.

If your organization receives a gift stock from a company officer, director or controlling shareholder, whether or not the stock bears a restrictive legend, or shares which bear a restrictive legend or are registered under a Prospectus (even if the donor is not affiliated with the Company), check with the donor or the Company's counsel as to whether there might be any resale restrictions.

Tips

If a donor is considering making a testamentary charitable bequest, discuss the potential benefits of utilizing an asset that generates IRD, such as IRAs, 401(k) plans, nonqualified stock options and annuities. Given the high taxes imposed on the retirement plan assets, a donor may be able to make a "cheaper" charitable bequest using IRD assets instead of non-IRD assets.

Encourage the donor to talk to their tax or legal advisor about receiving an income tax charitable deduction and not have to recognize any capital gains inherent in the original gift because all such gains will ultimately be realized by your organization. The income tax charitable deduction is calculated by subtracting the present value of the income interest (using the three-year average rate of return of the trust) from the fair market value of the gift.

A pooled income fund (PIF) is designed to accommodate an unlimited number of donors, so by its very essence, the PIF does not present an individual donor with the opportunity to tailor design the terms of the trust document. For example, unlike a CRT, a donor to a PIF does not have the opportunity to choose the amount of his or her payout. One of the potential benefits of a PIF over a CRT is that the PIF can accept a smaller amount of securities than what is generally practical for funding a CRT.

UNDERSTANDING THE POTENTIAL TAX RAMIFICATIONS FOR DONORS.

Your planned giving professional should not render legal advice, nor should he or she provide tax advice. However, your organization needs to be cognizant of the tax effects associated with planned giving, make donors aware of these and provide the proper tax documentation to the donor for tax-deductible purposes pursuant to the IRC. Consider consulting with your tax or legal advisors about the potential tax or legal issues discussed throughout this piece to determine what may or may not impact your organization.

1. Timing of the charitable deduction. A gift may be deductible in the year in which title to the gift passes from the donor to your organization. In practical terms, this generally happens when the gift is delivered to your organization. When a gift is delivered through the mail, the United States Postal Service is considered the agent of your organization. Consequently, the date of the gift is usually the date the gift is postmarked. (Remember: Actual possession by your organization of the gift is not necessarily a requirement of passing title. However, the donor must give up custody, control and management of the property in order for the gift to be considered a "completed" gift.) A gift of money by check may be deductible for the year in which the check is mailed or otherwise delivered to your organization. Consequently, a check made out and mailed by year's end may be deductible in the year it was written, even though the check does not clear until the subsequent year.

2. Donor's income tax charitable deduction. A number of nuances must be addressed before computing charitable deductions, and donors should always be encouraged to review their own particular situation with their tax advisor. For example, will the donor's deduction be based on the fair market value or cost basis of the gift? Is the gifted property long-term capital gain property, short-term capital gain property or ordinary income property? To what use is your organization going to put it? Will the "related" use or "unrelated" use rules apply? Finally, once these questions have been answered, the proper percentage limitation can be applied. In general, if the gift is money, ordinary income property or short-term capital gain property, the donor's deduction may not exceed 50 percent of his or her AGI. If the gift is long-term capital gain property, the deduction may not exceed 30 percent of his or her AGI in that year. (In either case, we assume the recipient is a public charity.) The charitable deduction rules can be complex and confusing. Therefore, the donor should be advised to discuss with his or her own tax advisor or attorney.

SPLIT-INTEREST GIFTS. Split-interest gifts have within them two interests: an up-front interest and a remainder interest. A donor might be entitled to all or a portion of the income and/or principal of gifted property. For example, a donor with an up-front interest might receive 5 percent of the fair market value of property that is actually generating income equal to 9 percent of its fair market value. An income tax charitable deduction may be available to the donor of a remainder interest or up-front interest to your organization. For example, the donor of a remainder interest may be entitled to receive any such deduction in the year in which the gift of such an interest in the property is made, even though your organization does not take that remainder interest until the donor's up-front interest has expired.

Under federal law, a donor generally may not take an income tax charitable deduction for a split-interest gift to a trust unless the trust is in the required form. The three types of split-interest trusts that may qualify for deductions are pooled income funds, charitable remainder trusts and charitable lead trusts. (Note, however, that there are some split-interest gifts that do not require the use of a trust, e.g., a charitable gift annuity.)

The three types of split-interest trusts that may qualify for deductions are pooled income funds, charitable remainder trusts and charitable lead trusts.

1. Charitable remainder trusts. Unlike pooled income funds and charitable lead trusts, a charitable remainder trust (CRT) is a tax-exempt entity. Consequently, as long as the CRT does nothing that jeopardizes its tax-exempt status or triggers excise taxes, any activity within the trust is free of taxes. A CRT must provide for a specified payout, at least annually, to one or more beneficiaries (at least one of which is not a charitable organization) for life or for a fixed term of no more than twenty (20) years with an irrevocable remainder interest to be held for the benefit of, or paid over to, charity(ies). This noncharitable payout, based on the value of assets in the CRT, is largely the choice of the donor. However, there are certain limits imposed by law. The minimum payout, for example, must be 5 percent, and the maximum cannot be greater than 50 percent. In practice, the maximum payout rate may depend on the life expectancy(ies) of the noncharitable recipients—because your organization's remainder interest must be at least 10 percent of the original fair market value of the assets when contributed to the CRT. When the noncharitable interest terminates (usually at the death of the donor or the later death of the donor and spouse if there are dual noncharitable beneficiaries), whatever is left in the CRT (i.e., the remainder) is distributed to the charity(ies) specified in the trust document.

There are different types of CRTs. For example, a charitable remainder annuity trust (CRAT) offers an annual payout, based on a fixed percentage of the initial net fair market value of the property, whereas a charitable remainder unitrust (CRUT) offers an annual payout equal to a fixed percentage of the net fair market value of the trust assets, valued annually. Additionally, CRTs may offer an immediate payout or payouts that are deferred until some future point in time. (Variations of the CRUT include Net Income CRUTs (NICRUTs) or Net Income with Make-up CRUTs (NIMCRUTs), including a NIMCRUT with a "flip" feature, allowing it to become a standard CRUT at some future date.)

2. Charitable lead trusts. By establishing a charitable lead trust (CLT), the donor provides your organization with fixed payout for a period of time, following which the remainder interest is distributed to noncharitable beneficiaries, such as the donor's children. The donor selects the term of the CLT—it can be any number of years or the life of the donor or spouse—and the donor selects the payout to charity without any government-mandated minimum or maximum. The CLT is not tax-exempt. The manner in which a charitable lead trust is taxed depends on whether the CLT is a grantor CLT or a nongrantor CLT. In very general terms, the donor of a grantor CLT is treated as its owner for income tax purposes.

Consequently, the donor is responsible for paying taxes on the income generated by the CLT. However, the donor may receive an immediate income tax charitable deduction on the charity's up-front interest in the trust. The donor of a nongrantor CLT is not treated as its owner. Thus, the donor does not receive an income tax charitable deduction for his or her contribution to the CLT, but does not have to pay tax on the income generated by the CLT. Moreover, the nongrantor CLT may be entitled to an income tax charitable deduction for each payment made to charity.

3. Pooled income funds. The pooled income fund ("PIF") is a trust in which a number of donors "pool" their gifts, rather than a trust that receives its donations from a single source. The gift is "split" into an income interest held by one or more persons, and a remainder interest held by one or more charitable institutions. In practice, the donor usually contributes cash or marketable securities, which in turn are commingled with similar gifts from other donors. The donor, or the donor's designated income beneficiaries, receives a proportionate share of the income earned by the whole trust—essentially the dividends and interest it has earned, exclusive of any realized capital gains. In this respect, it is very similar to a mutual fund. Given that a PIF is not a tax-exempt trust, income distributions are taxable to the donor. Upon the termination of the donor's (or designated beneficiaries') income interest, the value of the share resulting from that donor's initial gift is transferred to your organization.

4. Charitable gift annuities. A gift annuity is a contract under which your organization, in return for a transfer of cash or other property, agrees to pay a fixed sum of money at stated intervals (not less than annually) for a period measured by one or two lives. The annuity rates are based on the age(s) of the annuitant(s). The donor may receive an income tax charitable deduction equal to the difference between the amount contributed and the present value of the annuity payments. Your organization may spend a portion of the contribution immediately, provided it retains sufficient reserves to satisfy the requirements of certain regulated states where it may be registered. Many charities, however, keep the entire contribution in reserve until the sole or surviving annuitant dies (and carry the discounted value on their books as an unavailable gift).

A. Immediate—An immediate gift annuity begins paying the annuitant(s) at the end (or the beginning) of the payment period immediately following the contribution. Quarterly payments at the end of the quarter are most common.

B. Deferred—A deferred gift annuity begins paying the annuitant(s) at a future time, which must be more than one year after the date of the contribution.

DONOR-ADVISED FUNDS.

A donor-advised fund is an investment account earmarked for charitable giving. The donor makes an irrevocable, nonrefundable contribution of cash or securities to the fund, and recommends that the fund's administrator make grants to charities, specifying the amount and time of the grant. A donor can appoint others to continue making grants from a donor-advised fund after the donor's death. Assets in a fund are typically managed by a professional investment advisory firm. Consequently, the value of the donor-advised fund may grow (or decrease), thereby enabling the donor to make potentially larger (or smaller) grants. Donors are often entitled to a charitable income tax deduction for the amount contributed to a donor-advised fund, subject to AGI limits. Any unused deductions may be carried forward for up to five years.

Donors who wish even greater control and more flexibility may want to consider establishing a private family foundation. A private family foundation offers many of the benefits of a donor-advised fund, but is subject to less advantageous AGI deduction limits and to a higher degree of IRS regulation and substantial cost to the donor in terms of establishing the private foundation and maintaining it.

If you can devote some staff to future gifts, you may want to focus on areas that can bring the quickest results for the least investment—bequests, gifts of life insurance and charitable lead trusts on one end, and charitable remainder trusts on the other.

ENDOWED FUNDS.

Contributions to establish endowed funds may come in the form of cash, stocks or other assets. As with certain other planned gifts, the endowed fund can offer the donor a meaningful way to support your organization, avoid paying capital gains taxes on the sale of donated assets and potentially receive an income (and gift or estate) tax charitable deduction.

Building a Planned Giving Strategy

FITTING PRODUCTS TO CAPABILITIES.

The biggest bang for the least dollars: If your organization is young, your need for immediate financial support may far outweigh any opportunity to pursue future gifts. Be tough and be honest. If that's your assessment, concentrate on honing your mission statement and collecting current funds.

If you can devote some staff to future gifts, you may want to focus on areas that can bring the quickest results for the least investment—bequests, gifts of life insurance and charitable lead trusts, on one end, and charitable remainder trusts on the other.

1. Bequests. Create a Heritage Society to recognize those who have named your organization as a beneficiary in their wills. All planned gifts should be acknowledged as membership in the society and for their heirs. This serves two purposes—it publicizes the need and thanks the participants on a regular basis (see page 6 for more information on Heritage Societies).

2. Life insurance named beneficiary. Encourage donors to name your organization as a beneficiary of their life insurance policies or donate unneeded policies directly to you.

3. Publicly traded stocks and mutual funds. Encourage your donors to make outright gifts of publicly traded securities and mutual funds, as well as to bequeath these assets to your organization in their wills. Suggest that they do not identify a stock position by name in their wills (as a specific bequest) in case that particular stock is sold prior to death, thereby undermining the bequest. Charitable gifts of appreciated securities "cost" less than gifts of cash—because of the portion that would otherwise be lost to capital gains tax in the absence of the gift to charity.

VENTURING INTO THE WORLD OF SPLIT INTEREST TRUSTS

Split-interest trusts offer many financial advantages to donors, especially when appreciated property is used. A donor may perceive that he or she cannot part with a certain asset because of the income it is producing, or is held back by the capital gains tax that he or she would incur if the asset were sold. (Or, the donor might like to "convert" a low-income-producing asset into one with a higher payout—without immediately paying capital gains tax at the "conversion.")

Also, a split-interest trust can accomplish these objectives: A split-interest trust can be used as a source of retirement income. In addition, a split-interest trust may avoid or reduce federal estate taxes. A donor can act on his or her charitable intent and yet continue to receive a payment stream (perhaps even an enhanced payment stream) from the asset. The donor may receive an up-front income tax charitable deduction for the gift to charity and will not immediately incur capital gains tax on the trust's sale of appreciated assets. Moreover, if the trustee determines that the donor's need for a higher payout does not undermine the charity's interest in the principal (in the case of a charitable remainder trust), the trustee can sell trust assets and create the desired investment portfolio for the trust without incurring capital gains taxes.

1. Charitable gift annuities. The donor, in the process of creating a gift annuity, is in fact conducting two transactions: acquiring a payment stream for life and making a charitable gift.

It is the latter transaction that may give rise to the charitable deduction. A portion of the annuity payments is tax-free, being a return of capital. In cases where the donor is the annuitant or one of two annuitants (which are the two most common cases), any capital gain is reported ratably over the individual's or couple's life expectancy.

American Council on Gift Annuities (ACGA)—The ACGA assists charities that issue gift annuities by developing recommended maximum annuity rates, as well as disseminating a wide range of information about gift annuities through publications and conferences. Annuity rates are reviewed annually by the ACGA board, and any changes become effective on the following July 1. Most charities, whether or not they are sponsors of the ACGA, follow the suggested rates.

State laws. Gift annuities are regulated by the state, and not by the federal government. Currently, some states require charities to obtain a special permit to issue gift annuities, and some states require that special wording be included in gift annuity agreements.

Minimums—ages and amounts. If your organization decides to issue gift annuities, establish minimum age and amount requirements. Doing so will help save you from administrative expenses that might become overwhelming if the checks are extraordinarily small, or span a very lengthy amount of time. With respect to age, your goal is to limit exposure by limiting the number of years you will have to manage the gift. Some charities link gift size to minimum age, thereby expressing a willingness to accept younger beneficiaries if the initial gift is larger.

Investment and administration. These functions can either be done in-house or outsourced to a reputable financial services firm. If your organization prefers the in-house option, you must heed the reserve requirements mandated by a number of states. With respect to the administration, your organization will be required, at a minimum, to: 1) distribute annuitant payments; 2) issue 1099-R's to all annuitants annually; 3) issue FASB 116/117 asset-liability reports; and 4) file state actuarial reports (for states requiring same).

2. Charitable remainder and lead trusts. Typically, the donor transfers an asset, such as highly appreciated property with a low cost basis, to the charitable remainder trust (CRT), where it may be sold without any immediate capital gains tax imposed on the trust or the donor at the time of the sale. All the proceeds would then be available for reinvestment. For making a lifetime gift to a CRT, the donor may receive income and gift tax charitable deductions. If the CRT is testamentary, established as a result of the donor's will or by a trust upon the donor's death, the donor's estate may receive an estate tax charitable deduction.

Charitable lead trusts (CLTs) distribute annual payments to charity for a prescribed period (one or more person's lifetimes, a set number of years, or a combination of the two).

At the end of the trust period, the trust principal returns to the donor or to individuals designated by the donor. CLTs are typically established for the purpose of passing assets to family members at significant discounts. That is, the present value of the payments going

Tips

Irrevocable life insurance trust (ILIT) for "wealth replacement." A concern that donors may have is that the assets being used to fund the CRT will no longer be available to their families. A strategy that addresses this concern is asset replacement, whereby the donor uses a portion of the savings from the income tax charitable deduction and/or a portion of his or her payment stream from the CRT to gift an annual amount to an irrevocable life insurance trust. The trust applies for and owns an insurance policy on the life of the donor or the lives of the donor and spouse. When the remainder in the CRT is distributed to your organization, the life insurance proceeds may then or subsequently be available in the trust and distributed to its beneficiaries, the members of the donor's family. In this way, the donor can leverage his or her commitment to your organization and not substantively disadvantage his or her family.

IMPORTANT

Gifts of real estate can pose serious landmines for the unwary charitable organization. In particular, application of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) can have serious repercussions. Liability for cleanup of damaged property extends to owners who are unaware of the problem or were not involved in the action that damaged the property. Removing hazardous materials or cleaning up the water supply can cost millions of dollars. Your organization is not exempt from CERCLA. Consequently, an environmental review should be undertaken prior to accepting any gift of real property. Discuss with your legal or tax advisor.

It is inaccurate to liken the "income" from a certificate of deposit to the payment from a gift annuity. An annuitant neither receives "income" nor "interest" but "payments." If cash is contributed, the payments consist of tax-free return of capital and ordinary income; and if long-term appreciated property is contributed, the payments consist of ordinary income, capital gain and possibly some tax-free return of capital. Particularly when you are dealing with an older client, it is important to define your terms accurately.

Your organization should consult with an attorney before accepting a gift of any life insurance policy in order to determine whether it has an insurable interest in the policy under applicable state law. Otherwise, the donor's estate may have a right to the death benefit and the IRS may assert that the donor is not entitled to an income tax charitable deduction.

to your organization is deducted from the fair market value of the gift, or bequest, for estate and gift tax purposes. Unlike the CRT, which is a tax-exempt trust, a portion of the income earned each year by the CLT is taxable.

ASSET-BASED PLANNING.

The tax law favors donors who contribute appreciated assets, such as concentrated stock positions.

1. The prevalence of concentrated stock positions. Contributing a concentrated stock position is more tax-efficient than contributing cash with respect to outright gifts, charitable remainder trusts, charitable lead trusts and charitable gift annuities.

2. Other highly appreciated assets. Any gift of artwork or other tangible personal property that is long-term capital gain property may be deductible based on the asset's present fair market value if the item's use is related to your organization's exempt purpose and if the contribution is made to a qualified public charity. If the item's use is not related to your organization's exempt purpose or the donor of art is also its creator, the potential income tax charitable deduction is limited to the item's cost basis. The ceiling on the income tax charitable tax deduction is 30 percent of the donor's adjusted gross income, with a five-year carryover for any part of the deduction that is not used during the first year.

Fitting Products to Donors: Necessary Profiling

Certain planned gifts tend to be more suitable for some donors than others. To ascertain which planned gifts make the best "fit," break your donor base down into the following categories: age, wealth, married/children, widow/widowers and charitable commitment.

TYPICAL SEGMENTATION.

1. Ages 72+. People in this age bracket are generally the best candidates for immediate charitable gift annuities. Their portfolios generally consist of fixed income investments and cash equivalents, and in recent years, they may have seen their income stream dwindle and most recently, their equity portfolio, if any, sustain substantial loss. Given the more conservative investment objectives of this age group, they welcome the concept of moving out of stock or mutual funds, with their inherent risk, and receiving annuity payments that are larger than their current dividends. This older population is less concerned about gift annuity payments not having a built-in hedge against inflation, and is more gratified with the regularity of payments for a "sum-certain" amount.

2. Ages 50–70. People in this age bracket may be looking for the potential benefits afforded by a charitable remainder trust, especially if they have highly appreciated stock. The trustee may sell the stock without paying capital gains tax on the appreciation. The trustee may then invest the entire amount of the sales proceeds to generate income for the noncharitable beneficiary or beneficiaries and grow the remainder interest for charity. A charitable lead trust might also be a suitable planned giving vehicle. A person in this age bracket might have assets that are expected to appreciate considerably over the years. By creating a charitable lead trust, the donor may receive an estate or gift tax deduction for the value of the portion of the charitable lead trust designated for your organization—a discount on the value of the asset, if you will. Any appreciation of the charitable lead trust assets will pass to the family members following the charitable term, free of any additional gift or estate tax.

3. Ages 48–66. Baby boomers and those in this age bracket may be maxing out their IRA and 401(k) plans, and might be looking for supplemental income for retirement, help with financing their children's college education and providing for the needs of elderly parents. They might also be holding appreciated assets. In these circumstances, a pooled income fund might be particularly appealing. The donor makes a gift which is commingled with the gifts of other donors. The donor or designated beneficiary receives his or her proportionate share of the pooled income fund's annual income for life. The donor can claim a potential income tax charitable deduction in the year in which the gift is made, with any excess (unused) income tax charitable deduction carried over for up to five additional years. The donor may avoid capital gains taxes on long-term appreciated securities. When the income interest terminates, the donor's share of the fund assets is transferred to your organization.

4. Large gift donors as planned giving prospects ("ageless"). Large gift donors have an obvious interest in your organization and may be more likely to have significant appreciated assets than donors of small gifts. Consequently, large gift donors are superb planned giving prospects.

ADVERTISING APPROACH. Think "outside of the box" for using multiple messages to reach your target audience. In the case of baby boomers, for example, their specific financial needs can be addressed by certain planned gifts. For example, a "flip" trust can provide supplemental income at some fixed date, while at the same time offering the donor the opportunity to contribute a difficult-to-sell asset. Brochures can be created for a "flip" trust that outline how this vehicle can address multiple needs.

It is imperative that your organization maintain the highest degree of integrity in its dealing with its donors, employees, board of trustees, outside money managers and the general public.

Supporting Planned Giving Products

GUIDELINES. It is incumbent upon your board of trustees to develop and adopt guidelines to ensure that your planned giving program operates in a fair, efficient and ethical manner at all times. Of course, they will need your assistance in doing this.

1. Gift acceptance policy — In its fiduciary capacity, the board of trustees has a duty to protect your organization from accepting harmful gifts. Examples of harmful gifts include those which leave your organization open to third-party liability and IRS sanctions. An example of such a gift would be land that contains toxic waste. In order to ward off these types of gifts, the board needs to adopt a comprehensive set of gift acceptance guidelines. It is harder to decline a gift when there are no guidelines in place. A gift acceptance policy enables you to make collective decisions in advance without the distraction of a pending gift.

A gift acceptance policy serves other worthwhile purposes. For example, it provides guidance to donors and their advisors. Donors' accountants, for example, do not necessarily know the "related use" rules of tangible property, and a donor may be disappointed, come April 15, to discover that he or she may not be allowed to deduct the fair market value of an item. (See following page for an explanation of "related use.") A comprehensive gift acceptance policy alerts donors to these types of situations in advance of making gifts. Following are factors you should consider before drafting a gift acceptance policy:

- A charitable organization must provide a written disclosure statement to donors making charitable deduction contributions. Clearly state that legal counsel will be employed when needed. An attorney may be called in to review any number of proposed gifts, including: (1) closely held stock and stock subject to a buy-sell agreement; and (2) gifts subject to a legal document, e.g., bargain sales and trusts naming the organization as trustee. An attorney may also be retained to review transactions that pose a possible conflict of interest, e.g., a situation in which a trustee is also the sales agent of the gift.
- Prospective donors should be urged to obtain independent professional counsel before making a gift. Your organization should create and maintain a list of competent local counsel and distribute this list to donors upon request.
- Before accepting a gift of tangible property, determine whether it qualifies as "related use" to your organization. If it does, the donor's potential income tax charitable deduction is equal to the market value of the gift if he or she itemizes and is subject to any itemization phaseout based on income level. If it does not, any potential deduction is based on cost. Auction items are not considered "related use" to your organization and therefore are deducted at their cost basis. Similarly, the potential deduction for tangible property contributed to a charitable remainder trust or a pool income fund is limited to the cost basis of the property. Inform donors and their advisors of the "related use" status of prospective tangible gifts.

Tips

Once you have accepted a life insurance gift but have determined that the premiums are prohibitive, you may want to consider the following options: (1) converting the policy to a paid-up policy; (2) surrendering the policy for its cash value; or (3) selling the policy to a viatical company. Although your organization will not receive as much as it would had the policy been kept current, these options allow you to capture a portion of the policy's value — in effect, its discounted current value (as with any planned gift).

Your gift acceptance policy should clarify under what circumstances, if any, your organization will pay for appraisals, legal fees or professional fees with respect to completing a gift.

Do not sign a receipt until your organization receives its bequest. Do not waive your right to an accounting. Consider hiring an attorney if there is a will contest or the executor appears to be acting in an unprofessional or unethical manner.

Supply the testator with the legal name of your organization.

- Ask whether the pending gift of tangible property is marketable. Are there any upkeep charges, such as insurance or maintenance?
- With respect to a gift of closely held securities, determine if they are restricted in any way. For example, the securities may be subject to a buyback agreement at a fixed price or might have to be offered to a specific group before going to the open market. Check to see if a gift of closely held securities will generate unrelated business taxable income (UBTI). This is sometimes the case with limited partnership units and S-corporation stock. Even though your organization may decide to pay the UBTI, you should be aware of the consequences before accepting the gift.
- In the case of a bargain sale involving real estate, additional questions need to be asked. If your organization is assuming a mortgage, will the cash flow cover the mortgage premiums, taxes and insurance?
- With respect to a gift of life insurance that requires premiums to be made, your organization must decide whether it has the cash flow to pay the premiums, or will the donor continue to pay the premiums by making additional annual gifts to your organization?

2. Investment management policy. The board of trustees needs to decide whether your organization's funds will be managed in-house or by an outside money manager. In either case, your board must set certain parameters. What degree of investment risk is the organization willing to assume? What are the long- and short-term investment performance goals? What types of investments will be purchased? If an outside money manager is hired, the board must establish a review process for the money manager and decide the circumstances under which a money manager will be replaced. The basis for its policies should rest squarely on the requirements of the Uniform Prudent Investor Act (UPIA) and Uniform Management of Institutional Funds Act (UMIFA). In addition, knowledgeable institutions understand that investment policy is predicated on spending policy. Understanding spending needs will help determine appropriate risk levels and return objectives.

3. Ethical guidelines for planned giving. It is imperative that your organization maintain the highest degree of integrity in its dealing with its donors, employees, board of trustees, outside money managers and the general public. Your board should adopt the Model Standards of Practice for the Charitable Gift Planner promulgated by the National Association of Charitable Gift Planners (See Appendix A.)

4. Total return: Modern portfolio theory, asset allocation and fiduciary responsibility. Specific fiduciary rules govern the investment decisions that charitable trustees and directors are required to make. Following are several of the seminal points that should be considered:

- Charitable trustees and directors are subject to the regulatory supervision of their state attorney general, and may be brought up on charges of fiduciary negligence or malfeasance.
- Charitable trustees and directors need to be cognizant of the UPIA, a law that has been adopted by a majority of the states and incorporates the tenets of the modern portfolio theory. For example, even relatively risky securities, such as high-yield bonds, can be prudent investments, if they improve the risk-adjusted performance of the total portfolio. Similarly, even relatively safe investments, such as Treasury bonds, may be imprudent, if they detract from overall performance. The proper portfolio mix depends on the investor's

tolerance for risk and projected time horizon.

- The UPIA imposes potential liability for charitable trustees and directors, not only for actual losses, but also for returns that might have occurred if prudent judgment had been used.
- The UPIA recognizes the complexity of managing a portfolio, and permits charitable trustees and directors to delegate investment responsibilities to financial managers. In fact, if a charitable trustee or director does not have the skill or time to manage a portfolio, he or she may be required to delegate such duties.

5. Administration

A. Processing bequests. When you receive notification that your organization has been named in a will, take the following steps:

- Express your condolences to the estate attorney and request the names of those who should receive condolence cards. Ask the attorney for a copy of the will in which your organization is mentioned, and send the attorney proof of your organization's 501(c)(3) status and Form W-9.
- If the bequest is specific and small, give the attorney the address of your organization. If the bequest is specific and large, ask the attorney for an early distribution.
- If the bequest is a percentage of the estate, ask the attorney for a list of the inventory. (This can take up to nine months after the donor's death.) In addition, ask for a final accounting. (This can take up to 24 months after the donor's death.)
- If your organization is named in a trust, you do not have the probate system at your disposal. Ask for a copy of the trust. If a trustee appears to be investing the assets unwisely or unethically, you may escalate this to your state attorney general's office for assistance.

B. Processing gifts of stocks, bonds and mutual funds. Draft simple and easy-to-understand procedures on how a donor can make a gift of stock and/or mutual funds to your organization. Following are some suggestions and related information:

- If the stocks or bonds are held by the donor's banker or broker, the donor should send the broker or banker a letter stating that he or she wants to donate the stock/bond to your organization. Suggest to the donor that he or she should give you the name of the broker or banker so you can expedite the process. To ease this process, prepare a sample letter that the donor can adapt for his or her needs.
- If the stock/bond certificate is in the donor's possession, instruct the donor to mail the document to your mailing address. Tell the donor not to sign the certificate. Included in the same envelope should be a letter of transmittal in which the donor states his or her name and address, describes the certificate (company, number of shares, certificate number) and specifies that he or she wants to donate the securities to your organization. Instruct the donor to mail a signed stock/bond power in a separate envelope. The name on the stock/ bond certificate must match the name of the donor's signature on the power. The donor should take the stock bond/power to his or her bank and have his or her signature guaranteed. The guarantor will sign and stamp the stock power. The donor should include a copy of the letter of transmittal in the same envelope as the stock/bond power. A sample stock/bond power should be distributed to the donor in order to expedite the process.
- If the envelopes containing the stock/ bond power and stock/bond certificate do not arrive at your organization on the same date, it is the postmark on the later envelope which is deemed the date of the gift. The gift is valued by taking the mean of the highest and lowest price of the stock on the day of the gift. If documents arrive on a weekend or holiday, the gift is valued by taking the average of the mean of the highest and lowest price of the stock on the day before and after.

6. Consulting services for donors. As your planned giving program expands, it will become increasingly necessary for your organization to provide donors with consulting services. These services can range from instructing a donor on how to word a bequest to providing a tax illustration for a charitable gift annuity. As stated previously, no one at your organization should ever represent himself or herself as the "donor's attorney." But providing information for educational purposes plays a vital role in the overall planning process.

Tips

Instruct the donor not to send the stock/bond certificate and the stock/bond power in the same envelope. Together, they are negotiable and can be transferred to anyone who obtains both documents.

Unlike the scenario in which the donor holds the stock/bond personally, the gift of a stock/bond held by a banker or broker does not occur until the stock/bond arrives in your organization's account. Therefore, advise the donor who is planning to make a year-end gift to allow plenty of time to complete the process.

If your prospective planning partner bills itself as a "full service" financial firm, find out what those services include.

Smart Partnering

At the risk of being labeled as the fox guarding the proverbial henhouse, we offer some thoughts and suggestions about choosing a planning professional from the for-profit, financial services world.

INTEGRITY OF THE FIRM, PERFORMANCE AND PEOPLE.

If your prospective planning partner bills itself as a "full service" financial firm, find out what those services include. Does your prospective planning partner offer consumer banking and credit? Corporate and investment banking? Insurance? Securities brokerage? Asset management? Administration and investment management of charitable gift annuities and pooled income funds? In order to gain a sense of the quality of these services, ask your prospective planning partner if it has won any awards presented by any number of professional journals.

EXPERIENCED PROFESSIONALS.

Your prospective planning partner should be able to provide your organization and donors with experienced professionals. Does your prospective planning partner have estate planning centers located throughout the United States? The advantage of this kind of nationwide presence is that professionals at these centers can advise your donors, living anywhere in the country, on charitable remainder trusts and other complicated planned giving vehicles.

REPUTATION OF THE ADMINISTRATION AND SOFTWARE.

Find out what kind of administrative services will be available with respect to the handling of your account. For example, can you view your account balances, positions, activities and statements online? Can you communicate via email with your financial consultant? Can you obtain an integrated view of your portfolio with links to research, news and charts? Can you inquire about the software that your prospective planning partner is using? Is the software company recognized as a reputable one within the planned giving community?

INVESTMENT CHOICES AND EXPERTISE.

Inquire about the availability of investments offered by your prospective planning partner. For example, does it offer a broad range of investment disciplines that includes mutual funds, closed-end funds, unit investment trusts and variable annuities (through affiliated and third-party insurance companies)? Your prospective planning partner may also offer topical toolkits aligned with your organization's investment philosophy.

BUNDLED VERSUS UNBUNDLED SERVICES.

Be sure to inquire whether your prospective planning partner offers "soup-to-nuts" planned giving administration. For example, in the case of charitable gift annuities, does your prospective planning partner provide custody of all gift annuity funds in regular, reserve and/or surplus accounts? Does it distribute annuitant payments by check or electronic funds transfer for direct deposit? Does it issue 1099-R's to all annuitants annually? Does it issue quarterly account market value and investment reports? Does it issue annual gift expectancy reports and annual FASB 116 Accounting for Contributions Received and Contributions Made and FASB 177, Financial Statements of Not-For-Profit Organizations asset-liability matching reports? If your prospective planning partner does not offer all of these services, you may find yourself in the position of having to either perform some of these administrative services in-house or opting to outsource them to another firm.

COMMITMENT TO THE NONPROFIT COMMUNITY.

This might be the most difficult quality to assess. In short, how committed is your prospective planning partner to serving the needs of nonprofit organizations? One way of gauging the level of commitment is to learn whether your prospective planning partner offers any extra services with respect to the administration of planned giving vehicles. For example, does it offer any consulting services? These services might include reviewing your organization's planned giving marketing materials; providing information on national trends and strategies in planned giving; training staff in planned giving; offering speakers to address annual board meetings; and providing ghostwritten articles for planned giving publications. The availability of these services might lead you to conclude that your prospective planning partner is sensitive to the needs of the planned giving community.

Appendix A – Model Standards of Practice for the Charitable Gift Planner

(Created by the Partnership for Philanthropic Planning)

Preamble

The purpose of this statement is to encourage responsible gift planning by urging the adoption of the following Standards of Practice by all individuals who work in the charitable gift planning process, including gift planning officers, fundraising consultants, attorneys, accountants, financial planners, life insurance agents and other financial services professionals (collectively referred to hereafter as "Gift Planners"), and by the institutions that these persons represent.

This statement recognizes that the solicitation, planning and administration of a charitable gift is a complex process involving philanthropic, personal, financial and tax considerations, and often involves professionals from various disciplines whose goals should include working together to structure a gift that achieves a fair and proper balance between the interests of the donor and the purpose of the charitable institution.

1. Primacy of Philanthropic Motivation — The principal basis for making a charitable gift should be the donor's desire to support the work of charitable institutions.

2. Explanation of Tax Implications — Congress has provided tax incentives for charitable giving, and the emphasis in this statement on philanthropic motivation in no way reduces the necessity and appropriateness of the Gift Planners giving a full and accurate explanation of those incentives and their implications.

3. Full Disclosure — It is essential to the gift planning process that the role and relationships of all parties involved, including how and by whom each is compensated, be fully disclosed to the donor. A Gift Planner shall not act or purport to act as a representative of any charity without the expressed knowledge and approval of the charity, and shall not, while employed by the charity, act or purport to act as a representative of the donor, without the expressed consent of both the charity and donor.

4. Compensation — Compensation paid to Gift Planners shall be reasonable and proportionate to the services provided. Payment of finder's fees, commissions or other fees by a donee organization to an independent Gift Planner as a condition for the delivery of a gift is never appropriate. Such payments lead to abusive practices and may violate certain state and federal regulations. Likewise, commission-based compensation for Gift Planners who are employed by a charitable institution is never appropriate.

5. Competence and Professionalism — Gift Planners should strive to achieve and maintain a high degree of competence in their chosen areas, and shall advise donors only in areas in which they are professionally qualified. It is a hallmark of professionalism for Gift Planners that they realize when they have reached the limits of their knowledge and expertise, and, as a result, should include other professionals in the process. Such relationships should be characterized by courtesy, tact and mutual respect.

6. Consultation With Independent Advisors — Gift Planners acting on behalf of a charity shall, in all cases, strongly encourage the donor to discuss the proposed gift with competent independent legal and tax advisors of the donor's choice.

7. Consultation With Charities — Although Gift Planners frequently and properly counsel donors concerning specific charitable gifts without the prior knowledge or approval of the donee organization, the Gift Planner, in order to ensure that the gift will accomplish the donor's objectives, should encourage the donor, early in the gift planning process, to discuss the proposed gift with the charity to which the gift is to be made. In cases where the donor desires anonymity, the Gift Planners shall endeavor, on behalf of the undisclosed donor, to obtain the charity's input in the gift planning process.

8. Description and Representation of Gift — Gift Planners shall make every effort to assure that the donor receives a full description and an accurate representation of all aspects of any proposed charitable gift plan. The consequences for the charity, the donor and, where applicable, the donor's family should be apparent, and the assumptions underlying any financial illustrations should be realistic.

9. Full Compliance — Gift Planners shall fully comply with and shall encourage other parties in the gift planning process to fully comply with both the letter and spirit of all applicable federal and state laws and regulations.

10. Public Trust — Gift Planners shall, in all dealings with donors, institutions and other professionals, act with fairness, honesty, integrity and openness. Except for compensation received for services, the terms of which have been disclosed to the donor, they shall have no vested interest that could result in personal gain.

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