



KEYS TO A SUCCESSFUL BEQUEST PROGRAM

2011 WESTERN REGIONAL PLANNED
GIVING CONFERENCE

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I. INTRODUCTION

However small your planned giving program, you will have charitable bequest prospects, provided your charity has a positive image and has been around a while – long enough to reflect stability and seem worthy of long-term investment. There must also be a significant base of donors who might want to make a bequest to your organization. The first step in nurturing a successful bequest program is carefully managing relationships with existing regular donors. Prompting a bequest gift should be the desired end point in your cultivation of a donor's support, a “capstone” gift, if you will.

You do not have to make a great investment to start a bequest program. It can be relatively easy to administer, and it can be done with very little extra staffing or cost. In fact, because of its relatively low cost, coupled with gifts that are frequently in multiples of 10, 20, or more of a donor's average annual gift, promoting bequest gifts is often the most cost efficient fundraising your organization can do.

For their part, donors are attracted to bequests because such gifts are easily understood, fairly easily arranged, and, perhaps most importantly, allow them to retain control of their assets should they need them during their lifetime. Due to the fact they can be amended or even completely revoked in the future if circumstances change (so long as a donor retains adequate legal capacity), they feature an appealing flexibility. Also, for donors with estates potentially subject to estate tax, bequests qualify for a dollar-for-dollar estate tax charitable deduction. If an estate is large enough to be taxable, this means the “cost” to heirs, in terms of what they would otherwise have received from the donor, is reduced.

II. BEQUEST FUNDAMENTALS

There are essentially four ways a person's assets can be distributed upon death: 1) by default according to state law, 2) by will, 3) by beneficiary designation, or 4) by living trust.

If someone dies **intestate**, that is to say, without having executed a valid will while alive, applicable state law will determine how his or her assets will be distributed. Significantly, no provision for charity exists under the laws of any state, even if the decedent made substantial charitable contributions during his or her lifetime.

If a person dies **testate**, i.e., having executed a valid will, then his or her assets will be distributed according to the terms of the will. Either way, the person's estate will be subject to probate, a court supervised process in which the person's assets are identified; debts, taxes, and estate settlement costs are paid; and whatever remains is distributed (once again, according to the terms of the will if there is one but otherwise as required by state law).

Moreover, regardless of whether a person dies having executed a valid will, certain assets can be distributed without having to go through the probate process, pursuant to written instructions furnished by the person while living. Examples include funds remaining in an IRA or the death

proceeds associated with a life insurance policy he or she owned. If no such instructions have been furnished, however, then the assets will typically become subject to the probate process.

Assets placed in a living trust pass directly to named beneficiaries and do not go through the probate process. This is one of the advantages cited for this type of estate distribution vehicle.

Traditionally, a “bequest” was a gift of personal property (i.e., property other than real estate) made through a person’s will, whereas a “devise” was a gift of real estate made through his or her will. A “legacy” could take the form of either a bequest or a devise.

Today, the term “bequest” is understood to encompass both traditional bequests and traditional devises, and has thus generally replaced the term “legacy” in common parlance. In addition, a distribution from a revocable living trust upon the death of the person who created the trust is often referred to as a bequest, regardless of whether what is distributed is personal property or real estate.

III. THE ROLES PLAYED BY DIFFERENT PERSONS

As a representative of your charity, you should be familiar with these and other basic estate planning terms and concepts so that you can become a resource for your donors. Similarly, you should have some familiarity with relevant tax principles. Important too is understanding the value of having an estate plan in place, recognizing that estate planning properly involves not merely how a person’s assets are to be distributed upon death but also various aspects of the person’s situation during the balance of his or her life. One of the best ways to acquaint yourself with what’s involved is to make your own estate plan. You will then know firsthand how much it costs, how much thought you have to give to it, and the anxieties it may raise.

In short, you do not have to be as informed as an estate planning attorney or other professional advisor, but you should seek to learn as much as you can. This will help you to feel confident in your ability to offer guidance and helpful information in your conversations with donors. You are not prying or soliciting. Rather, you are a resource for your donors, although they must ultimately avail themselves of their own legal counsel and other appropriate professional assistance.

Indeed, sometimes you will be asked if it is absolutely necessary to involve an attorney in the drafting of a will. With preprinted forms, maybe an estate planning software program, and sample language from the charity, a donor may feel equipped to draft his or her own documents, especially upon learning that the cost of having an attorney prepare a relatively simple estate plan will likely be many hundreds of dollars.

Yes, a donor really does need to work with an attorney. Apart from a will, there are other important documents that the donor (and all of us) should have in place, in case of accidents or poor health. Furthermore, many complications can arise that an estate planning attorney will be able to anticipate and deflect, especially as the attorney, unlike the gift planning officer, will be given the full picture of the donor’s objectives and the complexity and extent of the donor’s estate. For example, if a member of the donor’s family might contest the will (or living trust

agreement, although this is more difficult) or if the nature or value of the donor's estate is likely to fluctuate in the years to come, a knowledgeable attorney can help increase the odds that the bequest the donor has in mind will indeed come to fruition.

If asked for referrals, provide at least three names, and if a recommendation includes an attorney who also has a relationship with your organization, such as membership on your governing board, make sure to disclose this right away. Separately, the attorney will also need to disclose potential or actual conflicts of interest.

In addition to engaging an attorney, a donor may well have the need for advice from other knowledgeable professionals, and you should always encourage donors to avail themselves of whatever assistance seems relevant. In no event, however, should your organization offer to pay on a donor's behalf fees, commissions, or other costs for which your donor is responsible, as this could compromise the independence of the professional judgment rendered to the donor, open the door to potential challenges, and is a questionable application of organization resources.

IV. TYPES OF BEQUESTS AND SAMPLE LANGUAGE

There are several forms a bequest can take, and sample bequest language is helpful to have to offer people who indicate that they are considering a bequest commitment. The language can be a discussion point to explain to the donor the benefits of and the differences between, for example, a gift of a specific dollar amount and a gift of the residue of the estate (or a percentage thereof). More importantly, the conversation offers an opportunity to learn more about the donor's interest in the charity's mission. Donors are usually grateful for an interested and knowledgeable listener and are appreciative of estate planning tips and language you or they can provide their attorney.

Below are the basic ways a bequest can be structured, along with applicable specimen bequest provisions. Any sample language a charity actually furnishes a donor or a donor's attorney should first be approved by the charity's legal counsel.

Pecuniary Bequest – This is simply a certain sum of money.

"I give the sum of _____ dollars (\$_____) to ABC Charity, a _____ State nonprofit [corporation/trust] which has a federal tax identification number of _____ and a current address of _____, or its successor organization."

Specific Bequest – In this instance, the donor is leaving the charity a particular asset or assets, such as real estate, securities, jewelry, works of art, etc.

"I give [100 shares of XYZ Corp. stock/my guitar collection/the real estate legally described as follows] to ABC Charity, a _____ State nonprofit [corporation/trust] which has a federal tax identification number of _____ and a current address of _____, or its successor organization."

Residual Bequest – This is a gift of all (or perhaps only a portion) of what remains of a donor’s estate after any pecuniary or specific bequests have been made and debts, taxes, and other estate expenses have been paid. Note: It is not possible for a person to make a bequest of literally all (or a portion) of his or her entire estate, due to the fact that, at a minimum, some of the assets of the estate will need to be drawn upon to pay estate expenses or other things that need to “come off the top.”

"I give all [*alternative*: _____ percent (___%)] of the residue of my estate to ABC Charity, a _____ State nonprofit [corporation/trust] which has a federal tax identification number of _____ and a current address of _____, or its successor organization."

Contingent Bequest – This is a pecuniary, specific, or residual bequest that takes effect only under certain circumstances.

“If my spouse does not survive me, then I give _____ to ABC Charity, a _____ State nonprofit [corporation/trust] which has a federal tax identification number of _____ and a current address of _____, or its successor organization.”

In addition to the bequest language given above, ideally the donor will indicate the intended use of their bequest. If the donor is silent on this point, from a legal standpoint the gift is unrestricted and can be used however the organization sees fit. Nevertheless, from a donor relations standpoint, the answer may not be so clear, given indications in the donor’s file (sometimes conflicting), oral representations made by the donor over time, or the donor’s giving pattern while living. It is better to nip any issues in the bud and have the donor specify their intention in the will itself. *Regardless of how a bequest is structured*, a donor is free either to allow the charity to use the gift in its complete discretion or to require the charity to use it in some particular way.

- Unrestricted Use
.... “to be used for such charitable purposes as the governing board of ABC Charity may determine.”
- Restricted use
.... “to support medical research in the field of cardiology,” “for student financial aid,” “for producing television programs on matters of local interest.”
- Establishment of an endowment

“Provided that at the time of my death this gift meets ABC Charity's minimum funding requirement for an endowed fund, this gift shall be (i) entered into ABC Charity's books and records as the (*NAME OF DONOR'S CHOICE*) ENDOWMENT; and (ii) held, invested, administered, and distributed in accordance with ABC Charity's policies as they apply over time to similar endowed funds. This gift may, for investment purposes, be merged with any of the investment assets of ABC Charity. Distributions from the

endowment shall be used to [specify purpose, if any; otherwise indicate that distributions may be made without restriction].

“If, at the time of my death, this gift does not meet the minimum funding requirement for an endowed fund, it shall be [*option 1*: held for current use consistent with the purposes set forth above] [*option 2*: added to an existing endowed fund that benefits _____].”

With any restricted gift, it is useful as well to include a ‘power-to-vary’ provision:

“If, as determined by the governing board of ABC Charity, it becomes inappropriate or impractical to use this gift for the specific purpose stated above, then the governing board may, in its discretion, redesignate the purpose of the fund and any distributions there from, provided that the fund shall bear the name of _____ and the amended terms shall adhere as closely as possible to my original intent for this fund.”

Note: Even when an endowment is established through a bequest, it is also a good practice – assuming the charity learns about what the donor has in mind – for the donor and the charity to execute a separate endowment agreement. In this regard, a provision such as the following could be included in the endowment agreement:

“This endowment shall be established or supplemented with bequests or other testamentary charitable gifts that [donor] may make for this purpose, including the designation of life insurance proceeds, individual retirement account proceeds, as well as with employee benefit plan proceeds or gifts from other persons designated for this endowment. All funds received by ABC Charity from any sources (including but not limited to bequests, life insurance proceeds, individual retirement account proceeds, and employee benefit proceeds) as a result of the death of [donor] shall be subject to the terms of this agreement.”

V. POLICIES

In establishing a bequest program, a charity’s board and management needs to understand what is entailed. Likewise, sound policies will need to be developed, approved, and implemented. Without policies, the receipt of a bequest can cause problems. For example, news of an exceptional bequest to your organization may make current donors believe you do not need their support. Also, if your leadership decides to balance the budget with the windfall, the money and its impact will soon be gone and forgotten. This does not leave you or those who follow after you much to say to the donor’s children or grandchildren, or do much to encourage others to consider making your organization a beneficiary of their life’s labor.

Policies may include the following:

- the kinds of assets that will be accepted by your organization through a bequest and under what circumstances;
- the procedures that will be followed to consider and accept or reject bequests;
- whether the organization will act as executor of a donor’s estate (note: a blanket prohibition on this is advisable);

- how bequest expectancies and realized bequests will be valued, acknowledged, and recognized;
- ethics and responsibilities to donors;
- use of outside resources; and
- how unrestricted bequests will be designated (i.e., all to current budget, split – by either a dollar amount or percentage – between endowment and current budget, or all to [quasi] endowment).

VI. LIKELY DONORS

Every person who supports your organization should be treated as a potential bequest prospect. After all, it follows naturally that someone who gives to a charity during lifetime is likely to be interested in including a gift to that charity out of their estate at death. If a donor does not have any children or other dependents, then the likelihood becomes even greater.

A bequest enables **individuals both of great wealth and of modest means** to make a significant and lasting gift. There may be surprises – many charities know in advance about only 10 to 25 percent of the estate gifts they receive. Still, the best prospects will tend to be those:

- who want to retain control of all their assets during their lifetime;
- with few heirs;
- who have consistently supported the charity through time;
- interested in assuring continued support through an endowment.

You'll notice that what is missing from this list is the amount of gifts to the charity or any wealth indicator. Research has shown that the number and consistency of gifts has a far greater correlation to making a bequest gift than size of lifetime giving. And we all know of instances of donors with every appearance of only modest resources leaving sizeable bequest gifts.

VII. IDENTIFYING PROSPECTS

As with other areas of fundraising, there are three ways to identify prospects: mining your donor database, referrals from others, and marketing efforts. Keep in mind that some of your best prospects are existing donors. To the extent possible, make a stewardship call on every planned giving donor, especially those with life income plans, once a year. Ask them if they know of others you should be talking with.

A. Mining the Donor Database

A good place to start identifying likely prospects is to examine the information you already have on hand. Analyze your donor database using different criteria: total number of gifts, length of giving history, consistency of giving, age, family status (if you are fortunate enough to have this in your database), involvement with the charity, etc. The most important group is the one that has been giving the longest, most consistently. For instance, look and see how many of your donors have given at least one gift each year for the past ten, twenty, thirty or more years. When

you really start looking at some of your known donor characteristics, you might be very surprised to see what you find.

B. Referrals

Referrals are made by management and staff, Board members and other volunteers, and allied professionals. In many organizations, it is not uncommon for referrals from other development officers and staff to be the number one source of prospects. You can maximize this potential by engaging in “internal marketing” – making sure that others at your organization, particularly development staff and anyone who is in a “front line” position of working with supporters, are aware of the program. Also, inform the leadership of any volunteer groups the charity may have. Explain their roles in the prospect identification process and ask for referrals. Make sure everyone knows that you are a resource available not just to them but also to donors and prospects.

Proactive outreach can include:

- Presentations to staff, the governing board, and/or specific board committees;
- Training for colleagues in how to talk with donors about bequests;
- Offering to consult with others at the charity regarding prospective donors;
- Distribution of booklets and fact sheets;
- “News releases,” on the theory that every notification that is received or bequest that matures is a newsworthy event, especially if this can be done in a way that puts a “face” on donors who are making these gifts and describes how the organization benefits;
- Editing assistance on newsletter articles and stories about bequest donors; and
- Alerting the “team” about all marketing activities and coaching everyone on how to respond, thus making it easy for them to pass donors on to you for follow-through.

Lead by example and plan your own bequest. Then encourage your organization’s key staff to do the same.

You might also build a network with estate planning attorneys, trust officers, and other allied professionals that work with individuals to plan their financial affairs. While there are restrictions on how directly they can recommend a particular charity to their client, the more they know of or about you, the more likely your charity will be a part of conversations when appropriate.

Develop a packet to share with advisors, preferably in person. The package could include an annual report, sample bequest language, information about your legacy society, a gift notification form, and a supply of business cards. Advisors will appreciate knowing that you pay attention to those who plan bequests, and that you are prepared to recognize and thank those individuals who are willing to make their plans known to you. (Clients who will not permit their advisors to share this information may nevertheless allow their advisors to inform you of their bequest arrangements on an anonymous basis.) One charity packaged this information in a labeled file

folder in one of the organization's colors so that it could be easily filed (and identified) for future reference.

Offer an opportunity for the advisor to visit the charity and learn more about its work first-hand. Finally, if you can make use of the expertise of selected advisors as part of a planned giving committee or similar group, they may well appreciate being asked to participate.

C. Marketing

The main objective of a bequest marketing program is to generate leads resulting in more bequest expectancies and to increase revenue from realized bequests. The method is two-fold. First, those who are already committed bequest donors are encouraged to self-identify so that their commitments may be recognized and reinforced. Second, existing supporters of the organization are encouraged to include – perhaps in addition to their annual support or their major gift – a deferred gift under their estate plan. Commonly used marketing tools are discussed in the next section.

VIII. PROMOTING BEQUESTS

The golden rule in marketing is to get your message out as often and as consistently as you can. A rule of thumb is that it takes seven to nine impressions of the same message before a person takes action.

The best place to start is to think about ways you can promote bequest gifts utilizing communication tools you probably already have in place. In other words, “piggyback” where you can.

A. Check-off Boxes

Give donors and friends an opportunity to request information about including a bequest in their will or living trust, or to disclose the fact that they have done so. Check-off boxes on annual pledge cards and/or reply envelopes can be as simple as the following:

- “I would like more information about how to include ABC Charity in my will or living trust.”
- “I have already included ABC Charity in my will or living trust.”

B. Inserts and Taglines

It is easy and inexpensive to include a “buck slip” or “lift note” featuring a bequest message and the legal name of your organization with all gift acknowledgments, as well as in other mailings. It can also be available for distribution at appropriate events.

Consider adding a tagline to gift receipts, your letterhead, and e-mail signatures such as “*Create your musical legacy...join the Legacy Society* www.charity.legacy.org.” Your tagline should be

succinct – 10 words at a maximum, focus its message on the donor, have a call to action, and include a web link to make it easy for prospects and donors to take that action.

C. Miscellaneous Written Materials

Suggest bequests in every major publication produced by your organization. Make your constituents aware that your organization can benefit from bequests. Awareness comes from *frequent and continuous exposure* to the importance of planning a bequest. A small, boxed-in announcement in a corner of every newsletter and a similar announcement in every annual report will help get the word out. Occasional newsletter articles that highlight the gift of a bequest donor can encourage his or her peers to do likewise. Ask the donor to describe the motivation that led to the decision to plan a bequest, and include a photograph with the story to give it a warm, personal touch. By using existing in-house publications, you minimize time and monetary costs of developing separate materials.

Having said that, there are a one or two stand alone bequest pieces you will need at a minimum. One is a piece that describes bequest gifts, explains their value to the organization, and lets donors know how bequest commitments are honored. A second piece would be sample bequest language to share with donors and their attorneys. These could be in the form of a “one-pager” that can be produced in-house (at your desk) or a brochure. A generic brochure from one of the companies that specializes in these publications can be relatively inexpensive. A custom brochure tailored to your policies and organization will be more expensive but can be kept relatively simple if your budget is limited. These and similar items can constitute a “wills kit” for use in following up on inquiries.

D. Direct Mail

At some point you may want to do mailings targeted to a specific donor group that you have identified, reminding them about the importance of having a will and suggesting that they consider including your organization in their estate plans. The group can be large or small (thousands or just dozens). The key concept is that mailings will be distinguished, based on the intended audience. A letter to those who have been loyal and consistent donors for many years will be different, for example, from a letter to retired staff or to those who have made prior gifts of securities.

If possible, all mailings should thank and recognize recipients for the nature of their support thus far. The communication is driven by a wish to offer useful information to donors and to remind them that the charity is there to offer help and guidance at no cost or obligation.

Possible market segments:

- Older donors;
- Those who have given consistently and over a long period of time;
- Retired staff and widows or widowers of retired staff;
- Former board members;
- Those with no heirs;
- Volunteers, and
- Those who may have an interest in endowing their annual gift.

E. Planned Giving Newsletter

If staff and financial resources allow, consider a dedicated planned giving newsletter. Such a newsletter gives you more control over the message, allow you to disseminate more planned giving information, and helps keep the planned giving message front and center. Try to always have a “call to action” where people can request additional information about one of the topics discussed in the newsletter. You want to publish at least two issues a year, with three or four issues being ideal.

F. Web Site Content

Bequests and other planned giving arrangements should be featured on at least one page of a charity’s web site. Ideally, the case for bequests can be made on a separate subpage reached from the main development page (or the planned giving page, if there is one). In turn, the bequest page could link to a separate page with sample bequest language. At a minimum, a visitor to the charity’s website (whether a donor or an advisor) should be able to find:

- The charity’s legal name, federal tax identification number, and address; and
- Whom to contact at the charity for more information and how to contact him or her.

G. Testimonials

Testimonials encourage prospects to identify with a peer who has already established a planned gift. Readers feel like they can become a part of a special group of supporters. These stories can set the stage for an article about a specific gift vehicle in a newsletter. They also can be used for inserts, brochures, videos, target mailings, and web pages.

Use testimonials from donors wherever possible. Help donors organize their thoughts for testimonials by sending them a list of questions regarding how the gift came about, including their history of involvement with the organization, why they gave, the benefits, etc. One institution invites bequest donors to submit a photograph and to prepare a testimonial of approximately 500 words describing what the institution means to them. This information is then made available in the donor recognition area. The stories and pictures are retrievable on a touch screen by geographic area or by last name.

H. Telemarketing

Some organizations have borrowed this technique – commonly used in direct mail fundraising – and applied it to the marketing of planned gifts. A letter is sent to a targeted mailing list and followed up with a telephone conversation. That conversation might be as follows: “Thank you for your ongoing support of ABC Charity. I am calling to let your know how much we appreciate your generosity and to ask whether you would consider naming ABC Charity in your will. If this is something you may be interested in, we would like to send you our will information kit.”

I. Seminars

You may want to sponsor a seminar to provide information about the basics of estate planning or estate administration. Seminars can be a good way to inform individuals about what's happening at your charity, provide a service and, at the same time, bring them closer to your organization and its mission.

J. Electronic Communication

You should incorporate electronic communication into your marketing efforts. You may decide that some of your 'direct mail' initiatives will be done via e-mail, either as stand-alones or in conjunction with printed mailings (one used to reinforce the other). The extent to which this is used depends on percentage of prospects for whom you have e-mail addresses. Get in the habit of seeking e-mail addresses from donors and prospects whenever possible. The usefulness of Twitter has yet to be determined in planned giving but some organizations are beginning to use Facebook, largely for stewardship purposes.

IX. TALKING TO DONORS ABOUT BEQUESTS

Ironically, the most effective part of your marketing may cost you nothing and will be done by you, your staff, your volunteers, and your boards –talking with your donors about bequests.

A. The Donor's Personality

Bear in mind that donors differ greatly, especially when it comes to matters of death, money, and family. To have a comfortable conversation about estate planning in general and bequests in particular, you need to know your donor well:

- some donors will willingly share sensitive details with you; others are very reticent
- some donors will be sophisticated; others will know next to nothing about estate planning
- some will enjoy discussing technical details; others will not want to spend any time at all on such matters

B. What You Can Say

Even though people find it difficult to bring up the subject of bequests, it can nevertheless be incorporated into conversations you are already having.

- If you are already talking with a donor about gifts to your charity and he or she says, "I just am not in a position to make an outright gift now," you could reply, "Well, you know . . . something you might want to think about . . . is putting a provision in your will . . ."
- If you are thanking your donor for longtime support, you can ask. "Have you considered endowing your support through a charitable bequest? Some of our donors have made provisions for an endowment gift in their estate plan that is approximately 20 times their annual gift. This ensures that the support they currently give now will continue in perpetuity."

- You can gently ask if they have had a chance to get their estate plans in order.
- You can ask if they are aware of your charity's legacy society and use that opportunity to explain the reason it exists. It is also a way of letting them know that others have made gifts similar to what you are asking for.
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- You can't go wrong with offering information that you believe to be helpful. Even donors who are the "let's keep it simple" types are invariably grateful for efforts to share useful information and provide them with encouragement and resources. You need to be tuned in to what is appropriate – and to know when to hold back.
- A useful tack – in almost all circumstances – if the conversation seems to be getting awkward is to ask if the donor has found a good advisor upon whom he or she can depend – a financial planner, an accountant, or an attorney from whom they can get help. If the donor hasn't already found someone, you can offer to provide some names. In addition, capable advisors in one profession are usually readily aware of who the capable advisors are in other professions.
- Don't underestimate your donor's need for reassurance. There can be many different reasons why a donor has not implemented an estate plan. Even if they have, they may not feel comfortable talking about it. Emotions that are often involved include indecision, apathy, guilt, or fear.

Tips:

- ✓ Tell your donor that it's easy to do (you'll help).
- ✓ Remind them that the plan is not written in stone – it can be changed as needed.
- ✓ If they fear getting a flood of solicitations, tell them you will protect their privacy.
- ✓ If they fear too much fuss, tell them that their gift is important, however small, and reassure them they will be able to choose their level of involvement.
- ✓ If they worry they are disinheriting children or other relatives, encourage them to get their family involved. Assure them that you know they will want to take care of family and loved ones first and that you are simply asking them to consider a place for your charity alongside them.

C. Utilize Volunteers

Whether structured as a formal committee or as a less formal advisory group, consider enlisting volunteers to help you in asking for bequest gifts. Ideally, the notion of a bequest gift will be so imbued throughout your organization that it becomes part and parcel of all ongoing annual and major gift donor conversations. However, a group of volunteers trained in the basics of estate gifts and how to talk with donors about them will help ensure this conversation is being held or will supplement the effort with visits to donors who otherwise would not receive personal asks. This not only leverages what you are able to accomplish given your other job responsibilities, but peer-to-peer solicitations can be more effective with certain donors than staff solicitations.

X. STEWARDSHIP AND RECOGNITION

A. The Importance of Good Stewardship

Good stewardship serves to strengthen a donor's relationship with your organization and is a vital part of a bequest program. The hope is that both "new" and "uncovered" bequest donors will, as a result of recognition and good stewardship, *at least* continue to keep the provision in their estate plans and *at best* a) increase the level of their bequests or b) accelerate their gifts by implementing life income plans or by making outright contributions.

When you first learn about a bequest expectancy, you need to respond promptly.

- Look at your database. Has the donor given recently? Check on patterns of giving. Has the donor given over a long period of time?
- Call and thank the donor personally not just for the bequest but for yesterday's gift, for last month's gift, or for loyal and longstanding support in general. Also, be sure to thank the donor for sharing with you information about the bequest.
- Emphasize respect for confidentiality.
- If there is a relevant recognition society, mention that the donor is now eligible to join by virtue of the bequest. If no such society exists, don't worry. Say that you will try to keep the donor involved in things that are going on.
- Emphasize that the donor can choose his or her level of involvement.
- Assure the donor that the gift is important no matter how small (or how contingent!).
- Make clear that you can help ensure the donor's wishes are carried out and that you are a resource and would welcome any questions.

Once a donor has been welcomed into a charity's community of bequest donors, the relationship should now continue to grow. Indeed, the focus now shifts to deepening that relationship through ongoing contact by cards, phone calls, and personal visits.

B. The Bequest Recognition Society

A recognition society provides an excellent platform for stewardship.

1. Purpose

The purpose of the society is to recognize and keep in touch with donors. Donors who have made a commitment to your organization through their will or other deferred gift should be thanked on an ongoing basis. By remembering your organization in his or her will, a donor has in some respects elevated your cause to the status of family. It is a profound expression of confidence in your institution. A bequest to charity is often a donor's single largest, most thoughtful charitable gift in their lifetime. Your charity should let donors know of its continued appreciation for their future gifts.

The society provides opportunities for your donors to join with others who have similar interests. Events and activities connect donors with other individuals who have made a commitment to the future of your organization, and they reinforce the concept that planning for the future is important.

The recognition society allows the organization to focus on a group that has already invested in it and provides a systematic means to build in accountability. Charities have a responsibility to be good stewards of relationships. A recognition society allows you to provide ongoing expressions of gratitude, as well as assurances to your donors that their gifts are well placed.

2. Standards for Membership

a. Eligibility

A society can include not only those who have made bequests and similar testamentary arrangements, but also those who have made irrevocable deferred gifts, such as charitable gift annuities, pooled income fund contributions, charitable remainder trust beneficiary designations, or gifts of partial interests or remainder interests in property.

b. Evidence of commitment

Some organizations will not recognize a donor as a member until written evidence of the commitment is received. Others simply accept any written or verbal indication that a commitment has been made. Be careful not to push too hard for this information. It may result in the donor retreating and choosing not to become a member of the society. Treat all bequest donors the same. By their very nature, bequest commitments are difficult to “value” and to “credit” (they are *revocable*, of course). Since the underlying purpose of the recognition society is to strengthen relationships with your organization, it will be to your advantage to be generously inclusive. The only information you really need to know is the donor’s contact information. “Counting” and reporting your successes is of secondary importance.

Show great respect for a donor’s preference for anonymity or confidentiality and consider proactively seeking permission to publish any names. In other words, weigh carefully the pros and cons of not listing anyone’s name without their express permission, versus letting donors know you will list their names unless they “tell you otherwise.”

3. Launching the Society

Consider a charter membership period as a way to encourage donors who have already included your organization in their estate plans to reveal their gift intentions. Charter membership draws attention to your bequest program, adds a bit of urgency by publishing a deadline, and gives special recognition to those who are committed, “early” investors.

Publish announcement of your new society in your newsletter, send a mailing to all or a targeted portion of your constituency, and consider a special event to which you invite those who have already informed you of their bequest plans, as well as prospects.

Follow up the event with a letter from your CEO thanking people for attending and again inviting them to include your organization in their wills. Announce again the creation of the recognition society and indicate when you plan to make the first public announcement of the charter membership. Enclose a reply form and envelope.

You or selected volunteers can call prospects after a reasonable period to see if they have questions or would like additional information. This can be another opportunity to talk about how bequests will be used or for donors to invite deeper conversations about particular purposes they might want their bequests to support.

C. Other Forms of Recognition

Whether through a society or otherwise, a bequest donor can be offered public recognition, participation opportunities, and mementos, along with ongoing friendship and contact.

- Public recognition offers the double advantage of recognizing donors while building awareness about your program. Consider these techniques:
 - ✓ Publish names of donors (and stories if possible) in your newsletter and annual report. Include brief information about the bequest society (if there is one) and how to contact you for more information.
 - ✓ Recognize donors at public events or ceremonies.
 - ✓ List names of donors on a plaque in a public space in your building.

Note: Since a goal of public recognition is to honor a donor, be sensitive to the donor's preferences. Sometimes these are not so easy to discern, and you need to give your donor and yourself some time to tease out what is possible and desirable! You can always point out that public recognition is, in many ways, a second gift to the organization that may serve as an inspiration to others to be equally generous.

- Plan an annual event, such as a luncheon. While most organizations pay for these, a few charge. The event should be designed to involve donors with your charity and make them feel good about their roles as investors in your organization's future. Attendance at events gives donors the chance to meet and mingle with like-minded people. It also further educates your donors about the activities of your organization and creates a greater level of involvement. Make the event important. Board members and the executive director should attend. Your leaders should convey the strength, momentum, and future plans of your organization and recognize the impact deferred gifts of society members will have.

Don't limit the activities of the society to one event a year. Consider these folks to be major donors and look for opportunities to include them in important events such as annual meetings, building openings, receptions for new leaders, awards ceremonies and

such. When seating them, do not isolate them by age group, but mix them in with other donors. They typically like to interact with younger generations and they can be a good influence on your younger donors. Consider special nametags that identify them as estate gift donors.

- Mementos or token gifts can remind a donor of your charity and serve as evidence to others that he or she supports your organization. Try to think of something representative of the organization that will remind donors of it each time they see the item, but you probably want to select something that is not too elaborate. These are generally older persons who are in downsizing mode and likely have all the “stuff” they will ever want to have. They also are typically the kind of people who would not want to see your organization “waste” money on tchotchkes. On the other hand, small gifts can provide you with an opportunity to meet and visit with donors and begin to develop relationships. They may also serve as conversation pieces that can help build awareness among friends and family members. One organization successfully uses coffee mugs with its logo and mission, a daily and useful reminder of the charity.
- The very best recognition, however, provided that time permits and the donor allows, is regular ongoing personal contact through correspondence, visits, and phone calls.

XI. KEEPING TRACK

Determining the success of a planned giving program takes time. You can build the case for support through good tracking mechanisms and proactive reporting.

A. Bequest Commitments

At a minimum keep a database of bequest donors and, when you have been informed of a bequest intention, make note of it immediately. Include a generous field – or several – for “notes.” Track every scrap of information about the donor (e.g., birth date, giving history, attendance at events, etc.) for future stewardship purposes. After each phone call or visit, make notes and update records. Try to personalize each contact as much as possible. Not only note the level of involvement that a donor desires, but also don’t assume that this will remain unchanged. Your records will prove invaluable when following through with an appropriate stewardship plan. *Keep your colleagues informed about donors’ bequest intentions.*

B. Realized Bequests

It will be very helpful to track and produce periodic reports on estate gifts. Keep track not just of totals but also of averages and means. Show how progress is made year by year. Indicate how many estate gifts come as surprises. See if you can “profile” a typical bequest donor and analyze trends. *Share these data, along with donor stories, with the senior management and colleagues to raise awareness of the significance and value of estate gifts to the organization.* Remember to share stories and facts and figures relating to a particular area/department with that unit for the general education of those involved or – if a broader but still targeted audience is sought – for placement in departmental newsletters or other publications.

XII. ESTATE ADMINISTRATION

Whereas a bequest made through a living trust should take relatively little time to be distributed, a bequest made through a will is going to be subject to probate. Probate is essentially an unpredictable process. Not only may assets be hard to track down, difficult to value, or hard to sell, but often there are unforeseen creditor issues and family disagreements. Moreover, the details associated with the process will differ considerably, depending on which state's law governs. A template **Estate Gift Checklist** that you can adapt for use with matured gifts is attached as [Appendix A](#).

Nevertheless, it is possible to identify some points with general applicability:

- One person or office at the charity should be in charge of monitoring bequest gifts, and periodic reminders should be sent to staff to ensure that everyone in the organization knows to whom this responsibility has been assigned.
- Good communication will reduce the risk of misunderstandings and inefficiency.
- In the case of a pecuniary bequest or in the case of a typical specific bequest, you will only have to anticipate the timing of the distribution. In the case of a residuary bequest, your antennae should be up!
- If legal issues arise, the charity's legal counsel should be able to advise the organization as to whether legal action should be taken. Obviously, it is best to avoid litigation if possible, due both to the cost and to the potential for adverse publicity. On the other hand, the charity, like the person or entity administering the estate (usually called the executor/executrix or the personal representative), has an obligation to the donor to see that his or her wishes are carried out properly.

In any event, a charity will likely need to consult its legal counsel whenever there is ambiguity with regard to the wording of the bequest provision, the potential for a will contest, or a situation in which the person or entity administering the estate is not doing what he/she/it is supposed to be doing.

Effective bequest administration brings with it a number of "side" benefits, in terms of creating good will among heirs of the donor, other supporters of the organization, additional charitable beneficiaries of the estate (if relevant), attorneys and other professional advisors, and "the public" at large. In this regard, the following are ways for a charity to honor the donor and appear worthy of the gift in the eyes of others:

- make sure the gift arrives in a timely way;
- make sure the distribution is correct;
- make sure the donor's wishes are carried out and the gift is used appropriately (check for ambiguities, conflicting directions – make it your job to represent the donor's interests within your institution);
- include biographical information in your files and make sure it is available to the recipients of the gift;

- if applicable, name the fund or account after the donor;
- publicize the gift as an inspiration/example to others;
- show supporters and others that the gift is well used and appreciated;
- talk enthusiastically about the gift to your governing board; and
- keep relatives and the person or entity administering the estate informed about any fund that may have been created through the bequest and about the recipients of distributions from the fund.

In particular, you can be a source of comfort to bereaved relatives and friends. Many people are surprisingly grateful for your interest.

Also, how you respond to a notice informing you about an estate gift is a good indication of the responsiveness and effectiveness of your organization. This is an opportunity for important exposure to the advisor community. Respond quickly and enthusiastically. *Remember that comparisons may be made.* Provide tax identification numbers, and assist in any way you can. Furthermore, take advantage of this opportunity to tell advisors of the services your organization can provide, such as providing sample bequest language and preparing illustrations for life income gifts. Send your “advisor information packet” to those you are working with at the moment.

Finally, if charities in addition to your own are beneficiaries of the donor’s estate, consider:

- sharing resources, knowledge, and costs;
- joint representation if you need legal counsel and your interests are not adverse; and
- designating one charity to act as agent for the entire group.

XIII. ARRANGEMENTS SIMILAR TO BEQUESTS

Charitable gifts can be made upon death in quite a few ways that resemble bequests. In particular, they resemble either pecuniary or specific bequests, in that what the donor is doing is specifying that either a certain sum of money or a certain asset (or group of assets) is to go to charity upon the donor’s death. The main difference is that the gift is not structured through a will or a living trust. In some cases, the gift can even be contingent.

A. Basic Options

1. Pay/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.

2. 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, if any, associated with a commercial annuity.

3. 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 form that can be completed and returned to the custodian.

B. Gift Considerations

The likely donors for these types of gifts will generally be the same as for bequests. Accordingly, promoting them will involve essentially the same approach as with bequests. One possibility would be to emphasize bequests but then allude to other arrangements that share various characteristics with bequests. An alternative would be to develop somewhat distinct marketing plans for each type of gift, in recognition of the fact that some, e.g., gifts of assets remaining in an IRA, will be more common and entail different considerations than others, e.g., commercial annuity contract designations. Likewise, many of the same recognition and stewardship aspects of bequests will also apply in the case of the alternatives.

Generally, all of these gifts are even easier to arrange than bequests, as the documentation is simpler and less formal than a will or a living trust agreement. This is true with respect to both making the initial arrangement and 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.

C. “Income In Respect of a Decedent” Assets – A Taxwise Way to Give

Some of these bequest alternatives feature a tax benefit 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 which, had he or she remained alive, would have been a source of payments that would have been taxed to him or her as ordinary income, then that asset is an IRD asset. If, upon death, others then become entitled to receive such 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 common 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 can hold 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 draw upon IRD assets (to the extent they are available) in making charitable gifts and to earmark other assets for individuals. Not all donors are aware of this fact, so charities need to keep up, and perhaps even step up, their efforts to spread the word.

An additional feature that distributions of IRD to charity share with bequests is deductibility of the distributions for estate tax purposes. Nevertheless, given the likelihood that fewer and fewer estates will be subject to estate tax in the years to come, it is the income tax aspects of distributing IRD to charity that should receive primary emphasis.

Thus, if a donor wants to leave \$25,000 to a favorite charity and \$25,000 to an individual, it's generally preferable to leave assets such as IRA funds to the charity, with other assets, such as cash or securities, left to the individual. The opposite approach would also be fine with the charity although not as good for the individual.

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 – as in the example in the preceding paragraph – 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.”

In short, while IRA beneficiary designations and various testamentary gifts other than bequests 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.

XIV. CONCLUSION

“The capital shall be invested... the interest shall be annually distributed in the form of prizes to those who, during the preceding year, shall have conferred the greatest benefit on mankind.”

-- from the will of Alfred Nobel

Encouraging estate gifts is all about helping your donors support those causes they care most about in life and perhaps in the process establish their own legacy. Don't shortchange your organization or your donors by being hesitant to promote and nurture end-of-life gifts. Instead, embrace this possibility and invite your donors to accomplish more than they ever thought possible.

Appendix A

Matured Estate Gift Checklist

Estate Name: _____ Will
 Living Trust

Personal Representative/Executor or Trustee:

Name:

Address:

Phone:

E-mail:

Attorney:

Name:

Address:

Phone:

E-mail:

Bequest: _____ Specific: \$ _____ or property: _____
_____ Residual (_____ % of residue)

Bequest Language/Purpose: _____

Is Charity able to carry out purpose of the bequest? _____ Yes _____ No

Was donor known to the charity? _____ Yes _____ No. If yes, donor record _____.

Important Dates

Date Filed (initial court filing to open probate : _____ (n/a for living trusts)

Date Notice of Gift Received by Charity: _____

Date Personal Representative/Executor Appointed: _____

End of Creditor Claims Period: _____
(length varies by state. Washington and Hawaii – four months)

Tax Return(s) Filed?: _____

Estate Complexities?

Ask the attorney/PR if there are any complexities that might slow the process down (particularly important if you are a residual bequest donor). Specific questions might concern:

- Real estate a part of the estate?
- Conflict or contested issues in estate?
- Property in another state/country?
- Missing heirs?
- Businesses/partnership interests?

Action Timeline for Bequest Gifts

	When?	Done?	Taxable Estate	Non-Taxable Estate	Notes
Initial Actions					
Send letter to atty: charity's information, contact person	immediately		X	X	
Ask for a copy of the will or living trust	immediately		X	X	Include request in initial response letter
Ask for biographical info about decedent	immediately		X	X	Include request in initial response letter
Contact Personal Representative (or executor) and thank friends and relatives	immediately		X	X	
Confirm you can carry out decedent's wishes	immediately		X	X	If "no", contact attorney and PR and discuss possible options
If gift of real estate, start the evaluation process	immediately		X	X	
Change any prior donor listings, as appropriate	timely manner		X	X	If previously a member of the Legacy Society, mark as deceased. Name need to be shifted on a donor wall?

	When?	Done?	Taxable Estate	Non-Taxable Estate	Notes
If residual bequest, ask for copy of inventory	3 months from personal rep appointment		X	X	Make your request in writing. Hawaii – PR required to prepare inventory within 30 days after his/her appointment
Ask attorney when anticipated distribution might occur. In theory, a specific or residual dist. can be made now, provided the estate is solvent	6 months			X	This is shortly after creditor claim and will contest period have ended. (There may still be many unresolved matters).
Ask attorney when anticipated distribution might occur. PR can choose to make a full distribution of a specific bequest or partial dist. of residual bequest, provided the estate is solvent.	9 months		X		This is after the estate tax return has been filed. If residual bequest, there will be a holdback
Closing the Estate					
If residual gift, request a final accounting.	Towards the end of the estate process		X	X	Pay particular attention to fees and costs. If PR fee seems high, has PR tracked time? What is a usual hourly rate for PRs in the area?
If residual gift, make sure withheld assets are distributed in timely manner	After estate receives tax “clearance” letter		X		
Has the receipt for the final distribution been signed by proper person in organization?			X	X	

	When?	Done?	Taxable Estate	Non-Taxable Estate	Notes
Stewardship post-gift					
Send a final thank-you letter to family member or friend	After distribution is received		X	X	Share intended use of gift with them
If restricted gift, ensure funds are allocated to the proper fund	After distribution is received		X	X	
If gift is for an endowed fund or ongoing project, determine who should receive ongoing stewardship reports	Usual stewardship schedule		X	X	