



# Planned Giving

Primer

Presented By:  
The Partnership for Philanthropic  
Planning of Greater Los Angeles

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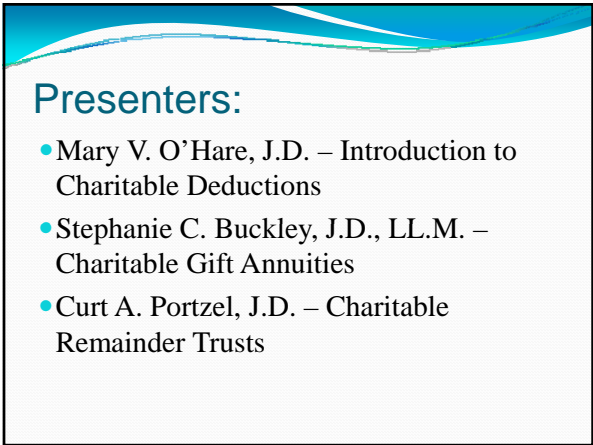
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## Presenters:

- Mary V. O’Hare, J.D. – Introduction to Charitable Deductions
- Stephanie C. Buckley, J.D., LL.M. – Charitable Gift Annuities
- Curt A. Portzel, J.D. – Charitable Remainder Trusts

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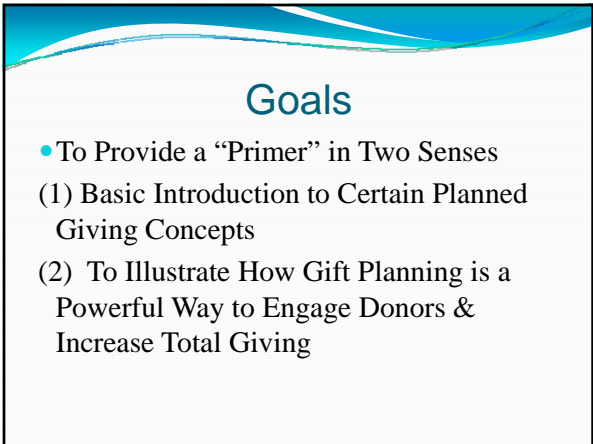
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## Goals

- To Provide a “Primer” in Two Senses
  - (1) Basic Introduction to Certain Planned Giving Concepts
  - (2) To Illustrate How Gift Planning is a Powerful Way to Engage Donors & Increase Total Giving

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**More Goals**

- Provide Base Knowledge For Better Understanding of Conference Sessions (Keep Glossary Handy)
- If You Would Like a More In Depth Primer Consider Attending PG 101 (See flyer)

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**What is Planned Giving?**

The Integration Of  
Personal, Financial, And Estate  
Planning Goals  
With  
A Person's Goals For Charitable Giving  
During Life Or/And At Death.

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**Why Is Planned Giving Important?**

- Cost Effective
- Growth Area \* (Just a few examples)
- Big Picture Focus (Long Term)
- Flexibility Offered—Gallup Poll (70%)
- In Uncertain Economic Times, It Allows a Sensible, Non-Threatening Way to Talk to Donors as well as to Secure a Philanthropic Future

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**Annual, Major & Planned Gifts**

- Think of differing functions as a circle
- Incorporating planned giving techniques—will expand giving in all areas
- Planned giving contact is life-long. Leads to larger gifts.

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**Part I Topics**

- Current Gifts v. Split Interest Gifts
- Charitable Deductions
- Gift Valuation
- Gift Substantiation
- Certain Planned Gifts/Discussions That Are “Doors In” To Donors

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**Timing of Planned Gifts**

During Life  
(Lifetime Gift)

At Death  
(Testamentary Gift)

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## Categories of Planned Gifts

### “CURRENT”

- Entire Gift Transaction Occurs on One Date
- Benefit to Charity is Immediate
- Donor May Receive Cash (or Debt Relief)

### SPLIT-INTEREST

- Gift Transaction Spread Over Time
- Benefit to Charity is Deferred, Some Manner
- Donor May Receive Benefit (Income or Assets)

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## Examples of Planned Gifts

### CURRENT

- Bequest from a Will
- Bargain sale (e.g., Donor sells real property to charity for less than FMV; charitable deduction for difference)
- Contribution in 2011 from IRA of Donor (over 70 ½) to Charity

### SPLIT-INTEREST (Only Certain Split Interests Recognized)

- Life Estate Reserved (Gift of a Remainder)
- Gift Annuity
- Remainder Trust
- Lead Trust

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## Concept of “Completed” Gift

- MONEY Or PROPERTY (Not Services, Not “use of property”) (Move in Congress to change “service” in certain cases)
- TRANSFERRED To Recipient
- Donor RETAINS NO INTEREST in the gift

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## Completed Gift: Transfer

- Check: (1) Actual Delivery, Or (2) Mailing
- Stock: (1) Delivery Of Endorsed Stock Certificate, (2) Delivery Of Executed Stock Power, (3) Electronic Transfer
- Credit Card: At Time Of Charge To Card
- Real Estate: Properly Executed Deed Delivered (All Attorneys Will Caution to Record Quickly)

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## Completed Gift: End of Year Gifts

- Cash or Check: Deductible in year if hand delivered on 12/31 or postmarked by 12/31. (Cautions)
- Stock: (1) personal delivery of properly endorsed stock certificate by 12/31 or postmarked by 12/31, (2) electronic transfer received by charity by 12/31 (Cautions re: stock certificates; electronic transfer, delays inside brokerage—instructions to completion )
- Credit Card: Charge to card by 12/31
- Real Estate: properly executed deed delivered by 12/31

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## Completed Gift Examples

- John donates \$100 by credit card to the Red Cross
- Susan executes and delivers a deed giving her property to UCLA
- Joe delivers his valuable baseball card collection to the Baseball History Museum

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## Incomplete Gift= No Gift

- Promise To Give (Whether Enforceable Or Unenforceable)
- Donor Can Cancel Gift Or Exercise Control Over Gift (“Retains Strings”)

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## Example of No Gift

- Mary Promises To Give Her Couch To Goodwill When She Moves Next Week
- David Lets the American Cancer Society Use His Office at No Charge
- Sophia Gives \$10,000 To UCLA To Pay Her Son’s College Tuition

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## When is a Gift Deductible?

- When GIFT IS COMPLETE (In Stephanie and Curt’s parts, see how “complete” is still present, even if a split interest. See also IRS on conservation easements, etc.)
- Recipient Is A Qualified Charity
  - Must Have An “Exemption Determination Letter” From IRS Unless A Church
  - No Deduction For Gifts To Social Clubs, Labor Unions, Chambers Of Commerce, Political Parties,

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## Type of Deduction Tied to Type of Tax—2011 It's Simpler

- Income Tax: Tax On Income, including from Short Term Capital Gains)  
(Long Term Capital Gains Tax (Income, but Lower Rate)
- Gift Tax: Tax On Lifetime Transfers By Gift
- Estate Tax: Tax On Property At Death
- Generation Skipping Tax: Tax Involved When Property Left to “Grandchildren”)

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## Deduction for What? Dollar Amount?

**Generally**, Fair Market Value (“FMV”)  
(We will consider special rules)  
*Less*

Value Of Goods Or Services Received By Donor  
In Exchange For Gift\*

\*Except Token Gifts (Lesser Of 2% Or \$97 In 2011)

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## What Is Fair Market Value?

“Willing Buyer, Willing Seller”

<u>Publicly Traded Stock</u> Mean Between High And Low Sale Price On Date Of Gift	<u>Real Estate</u> Appraised Value Determined By Comparable Sales And Other Factors
<u>Mutual Fund Shares</u> Closing Price On Date Of Transfer	<u>Cash</u> Face Value

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## Income Tax Deduction Reduced

### Deduction Reduced From FMV To Cost Basis (What Bought For) in these instances

- Ordinary Income Property (Inventory, Short Term Capital Gain (STCG), Some Depreciable Property)
- Tangible Personal Property (*Unless Related Use*)
- Long Term Capital Gain (LTCG) Property To Private Foundation Only (Except Qualified Appreciated Stock)

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## Income Tax Deduction Limits

- Donor Can Only Use Available Deduction Up To % Of “Adjusted Gross Income” (AGI) (Charitable Deduction % Limit), Year of Gift
- AGI % (Charitable Deduction % Limit) Depends Upon (1) Type of Property and (2) Type of Charity
- 5 Year Carryover For Any Available Deduction Not Usable In Year Of Gift

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## Income Tax Deduction Limits

Gift	Public Charity	Private Fnd.
Cash	50%	30%
Ordinary Inc. Property/ STCG Property	50%	30%
Publicly Traded Stock	30%	20%
Appreciated Property (LTCG)	30%	20%

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## Types of Charities

Public Charity	Private Foundation
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Traditional Public Charities Are Hospitals, Schools, Churches, Governments And Organizations Broadly Supported By The Public. Generalization: Any Organization That Is Not A Public Charity Is A Private Foundation.

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## Deduction Limits Example

Sarah earned \$120,000 AGI in 2011. During 2011, she gave \$60,000 in long term appreciated publicly traded stock to charity. (Purchase price \$30,000.) Publicly traded stock is subject to the 30% AGI Limitation. Sarah can only use her \$60,000 deduction up to 30% of her AGI or \$36,000. As a result, Sarah deducts \$36,000 in 2011 and the remaining \$24,000 deduction carries over and can be used by Sarah between 2012-2017

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## Talking to Sarah or Anyone

- Their Commitment; Their Importance to the Organization (We may do that well)
- True Monetary Value of Gift—Stretching \$\$

**Value of Securities Contributed**

- Income Tax Saved
- Capital Gains Tax Avoided=

**After Tax Cost of the Contribution**

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## How to Substantiate Value?

- Donor Records: Gifts Less Than \$250
- Receipt: All Gifts Of \$250+
- Form 8283: Gifts Of \$500+ Except Cash
- Appraisal: Gifts Of \$5,000+ (\$10,000 For Closely Held Stock) Except Cash And Publicly Traded Stock

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## Examples of IRS Valuation Hot Points

- Cars
- Clothing and Household Goods
- Tangible Property Used in Charity's Exempt Function (Sold in 3 years Recapture)
- See IRS 2011 Dirty Dozen

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## Receipt Requirements

- Name And Address Of Charity
- Date Of Gift
- Name Of Donor
- Amount (If Cash) Or Description (If Property)
- Statement Re: Quid Pro Quo, Either:
  - No Goods Or Services Transferred To Donor For Gift, Or
  - Good Faith Estimate Of **Value** Of Non-token Goods Or Services Transferred To Donor

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Tax Relief Unemployment Insurance  
Reauthorization and Job Creation Act of 2010

- Two Years of Tax Extensions/Changes
- Income Tax: 35% Highest Marginal Rate
  - Temporary Repeal of Itemized Deduction Phase Out
  - Alternative Minimum Tax (AMT) Patch
  - IRA Rollover Gift Exception

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Tax Relief...Act of 2010

- Estate Tax: \$5 Million Exemption
  - \$10 Million per Married Couple; Top Rate 35%
- Gift Tax: \$5 Million Exemption
- Generation Skipping Tax: \$5 Million Ex.
- Reunified Estate & Gift Tax: Single Graduated Rate for Both

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Planned Giving Discussion

- Informational Discussion of Their Values and New Planned Giving Opportunities because of changes in law/their circumstances (e.g., Real Property for Conservation Purposes; Business' Deductions for Food, Computers, etc.)
- Result: Trusted source of information (Never pretend to be their attorney, accountant, financial advisor), but you are part of their team.

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**Bequests**  
(The Value of the Will)

- Overlooked and Undervalued—Simple Will (Specific; Remainder/Residue or Percentage; Can be contingent—if my brother is not alive, then...). A way to have other conversations. Will rarely changed if the donor is stewarded.
- Caution: Restrictions too onerous—outside-the-Will language; “unwise or unnecessary”
- Caution: Failure to properly identify/name the charity.

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**Qualified Retirement Plan (IRA) Good Vehicle but When & How**

- Not a great vehicle for lifetime contribution **unless** donor is 70 ½, limit \$100,000, the contribution goes directly from the IRA to the charity. Law expires 2011.  
Note: Not a deduction, but a “wash”. Not considered income.
- Otherwise amount will be first subject to income tax, then deduction will be taken on left over amount. (Will have to take out more from the IRA to achieve the same donation to the charity.)

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**Qualified Retirement Plan (IRA)**

- Testamentary (at death) contribution, a wonderful planned giving opportunity
- Remember: Life Insurance and IRA’s do not pass under language in will. (Separate instruments)
- IRA’s double taxed—income and estate tax.
- Be careful about losing “stretch out” provisions for other designated beneficiaries. There are solutions.

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## Final Thoughts Before Break

- Tune In
- Stay Tuned In
- Contribute Your Voice to the Debate Concerning Charitable Deductions

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## Creative CGA Approaches

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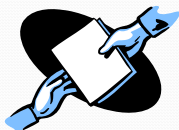
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## Charitable Gift Annuity Basics

Charitable gift annuity (CGA) = Contract.



Donor gives cash or property to charity. Charity make fixed payments for one or two lives and keeps whatever is left.

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## Charitable Gift Annuity Basics

- **Duration:** One or two lives
- **Start Date:** Fixed by contract.
- **Gift:** Cash, Stocks, or Real Estate
- **Beneficiary:** Donor or any other individual.
- **Payout:** Fixed payments, partly tax-free.
- **Charitable Deduction:** Present value of remainder interest.




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## Gift Annuity Benefits

- Gift to Charity
- Charitable Income Tax Deduction
- Fixed Payments for One or Two Lives
- Higher Rates for Older Ages
- Partly Tax-Free Payments




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## Gift Annuity Rates

American Council on Gift Annuities (ACGA)  
Effective 7/1/2011

<u>AGE</u>	<u>PAYOUT RATE</u>
60	4.8%
70	5.8%
80	7.5%
90	9.8%

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## CGA: Target Donor

- Older Donors Who Want Fixed Payments
- Cash Donors
- Asset Rich, But Cash Poor Donors
- Typically \$10,000+




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## Challenge

- CD's are Maturing
- Interest Paid is Only 1-3%
- Would Like More Income
- Desires Stable Income For Life

*How to Turn CDs Into Stable Life Income?*

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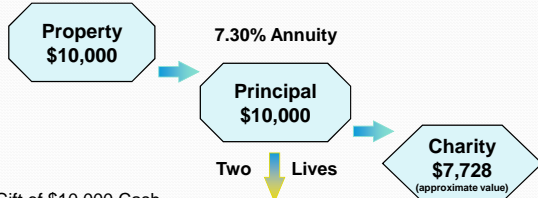
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## Solution: Gift Annuity

Martha Washington - Age 80    George Washington - Age 85



Gift of \$10,000 Cash  
in Exchange for  
Annuity. Deduct  
\$4,511, Save \$1,489.

Yearly Payout \$730.08,  
Tax-free \$503.70. Total  
Lifetime Pay \$8,979.  
Effective rate 11.5%.

After two lives,  
property to charity.

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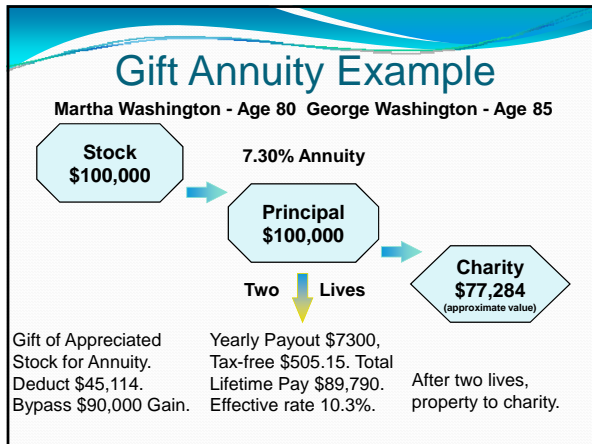
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- ### Who Can Issue Gift Annuities?
- Permit States
  - Notification States
  - Conditional Exemption States
  - No Mention of CGAs.
  - Florida and Alabama

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- ### California is a Permit State
- Must Submit Application to Insurance Commissioner
    - Sample CGA Documents
    - Payout Rate Schedule
    - Information on Charity
    - Information on Board of Directors
  - Must Maintain Segregated Reserve Account
  - Annual Reporting Required

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## Advanced CGA Topics

- Deferred CGAs
  - College Gift Annuity
  - **Retirement Gift Annuity**
  - Flexible Deferred Gift Annuity
  
- CGAs Funded with Assets other than Cash
  - Gift Annuity for Property
  - **Gift Annuity for Home**

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## Retirement Gift Annuity

- Deferred CGA For The Donor(s).
  
- Provides Supplemental Income For A Period Of Time.
  
- At Specified Age, Donor Will Receive
  - Annuity Payments For Life  
OR Can Elect To Receive
  - Larger Payments For A Term Of Years

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## Retirement Gift Annuity

### Typical Donor Profile

- Person Who Anticipates A Gap Between Retirement Date And Availability Of Retirement Benefits.  
*(Example: Ralph Plans To Retire At Age 60 But Won't Begin To Receive Pension Until Age 65).*
- Has Charitable Intent.

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## Retirement Gift Annuity

### Donor Benefits

- Receives Current Tax Deduction.
- Funds Grow Tax-free Until Annuity Payments Begin.
- If Funded With Appreciated Property, Tax On Capital Gain Deferred Until Annuity Payments Begin.

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## Retirement Gift Annuity

### Taxation Of Annuity Payments To Recipient

- Annuity Payments Partly Taxable To Recipient As Ordinary Income And Partly Tax-free.
- Recipient Subject To 10% Penalty Applicable To Any Distribution While Under Age 59 ½.

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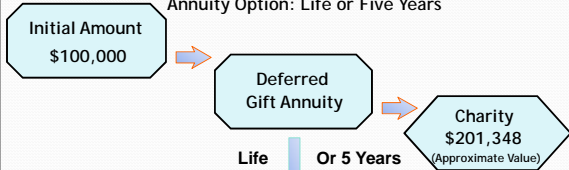
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## Retirement Annuity

Ralph Retiree - Age 45  
First Payment at Age 60

Annuity Option: Life or Five Years



Ralph deducts \$49,232 saving taxes of \$20,210.

Ralph gets Annuity of \$12,100/yr for life or \$31,103/yr for 5 years.

After payments for one life, value to charity. (Assumes 7% Growth)

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## Retirement Annuity

**TERM OF YEARS ANNUITY OPTION**

Funding in 2004 at Age 45		Value in 2018 at Age 60	
Gift Annuity	100,000.00	Annuity Value	137,894.40
Char. Gift	39,740.74	Life Annuity	11,400.00
Ann. Value	<u>60,259.26</u>	5 Year Ann.	<u>31,268.60</u>

OPTION: Elect Five Year Annuity of \$31,268.60 BEFORE September 30, 2004 (IRC Sec. 72(e)(3)(A))

INCOME TAXATION					
Tax Analysis:					
			Annual	Cumulative	
Ann.	31,268.60	Ordinary	19,216.74	96,083.74	
Inv.	60,259.26	Capital Gain	9,641.49	48,207.41	
Tot. Ret.	156,343.00	Basis	2,410.37	12,051.85	
Years	ORDINARY INCOME	CAPITAL GAIN PAYOUT	TAX-FREE RETURN	CUMULATIVE CAPITAL GAIN	CUMULATIVE TAX-FREE
2019	19,216.74	9,641.49	2,410.37	9,641.49	2,410.37
2020	19,216.74	9,641.49	2,410.37	19,282.98	4,820.74
2021	19,216.74	9,641.49	2,410.37	28,924.47	7,231.11
2022	19,216.74	9,641.49	2,410.37	38,565.96	9,641.48
2023	19,216.78	9,641.45	2,410.37	48,207.41	12,051.85

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## Gift Annuity for Home

### Details

- Donor Deeds Home To Charity Reserving The Right To Live In The Home For Life.
- Charity Issues CGA Based On The Value Of The Remainder Interest In The Home.



- When Donor Dies, Charity Owns Home And Benefits From Any Appreciation In Its Value.

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## Gift Annuity for Home

### Deduction

To Determine The Deduction:

- Appraise The Home To Determine Its Value.
- Calculate The Value Of The Charity's Remainder Interest In The Home.
- Use The Value Of The Remainder Interest In The Home To Purchase A CGA.

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**Gift Annuity for Home**  
Issues With CGA For Home

- Charity Must Make CGA Payments Even Though It Will Not Receive Home Until Donor Dies.
- Charity Must Make Sure Maintenance Is Up Kept And Property Taxes Are Paid.

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**Gift Annuity for Home**  
Strategies For CGA For Home

- Charity Must Have Sufficient Funds To Make Annuity Payments (And Reserve Deposits) Are Made Until Donor Dies Or Home Is Sold.
- Charity And Donor Enter Into An Agreement Clarifying Their Respective Responsibilities To Pay Maintenance, Insurance And Tax (“MIT”) Expenses.

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**Gift Annuity for Home**  
 Typical Donor Profile

- Donor Needs Additional Income.
- Donor Owns A Home And Needs To Continue To Live There.
- Donor Wants To Benefit Charity But Doesn't Have Other Assets To Give.
- Donor Near Age 75+.

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## Gift Annuity for Home

### Donor Benefits

- Double Benefit From Home: Right To Live There And Additional Income.
- Current Tax Deduction.
- Home Gain Exclusion (\$250,000 Per Person) May Be Available To Offset Capital Gain.

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## Gift Annuity for Home

Harry Homeowner - Age 85   Holly Homeowner - Age 80

Home  
\$1,000,000

→

Home Remainder  
\$554,895

→

Charity  
\$1,000,000

Annuity \$40,507

Two

↓  
Lives

After two lives,  
home to charity.

Home remainder to Charity for CGA of \$258,806. Deduction saves \$106,240.

Annuity of 7.3% pays \$40,507/yr to donors. Donors live in home.

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## A PRIMER IN PLANNED GIVING TECHNIQUES

by  
Curt A. Purzel  
Associate Director  
Center for Estate and Gift Planning  
Pepperdine University

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## CRT Primer - Benefits

- Increase Income
- Tax Deduction
- Capital Gain Savings
- Estate Tax Savings
- Management/Investment Relief
- Asset Protection
- Charitable Legacy

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## CRT

- Special Trust - “not subject to tax”
- Life-Income Gift
- Vehicle for providing a charitable tax deduction, income to donor, gift to charity.

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## CRT Definition

- A charitable remainder trust provides for a specified distribution, at least annually, to one or more beneficiaries, at least one of which is not a charity, for life or for a term of years, with an irrevocable remainder interest to be held for the benefit of, or paid over to, charity.

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## CRT Parties

- Grantor (client/donor)
- Trustee
- Income Beneficiary
- Remainder Beneficiary

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## How it Works

- Establish Trust
- Transfer Asset
- Payment Made According to Trust Document
  - Rate
  - Frequency

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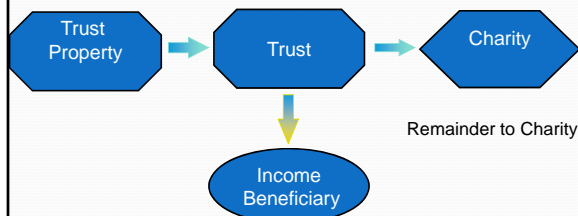
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## Charitable Unitrust

Grantor/ Donor



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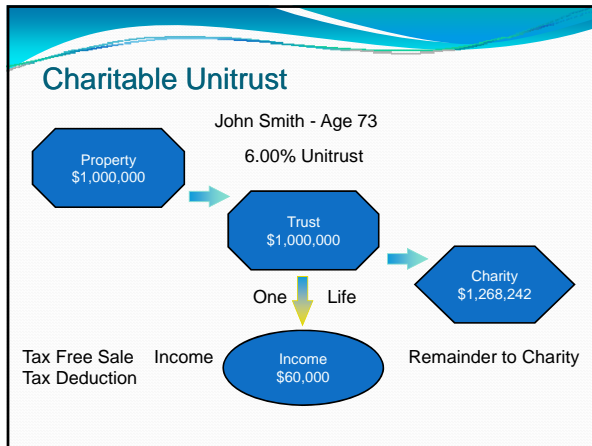
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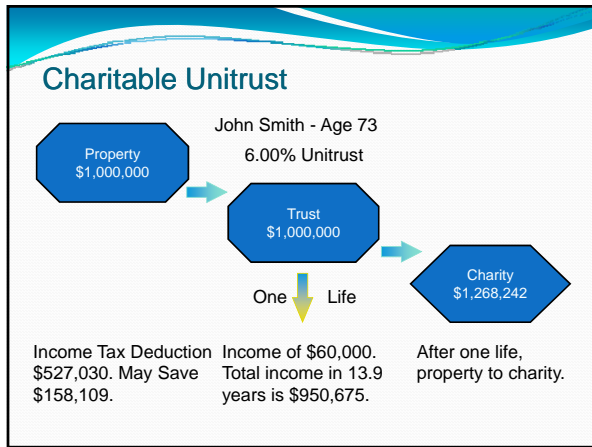
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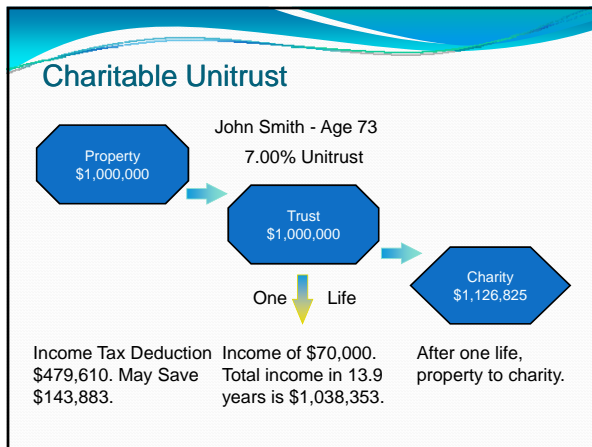
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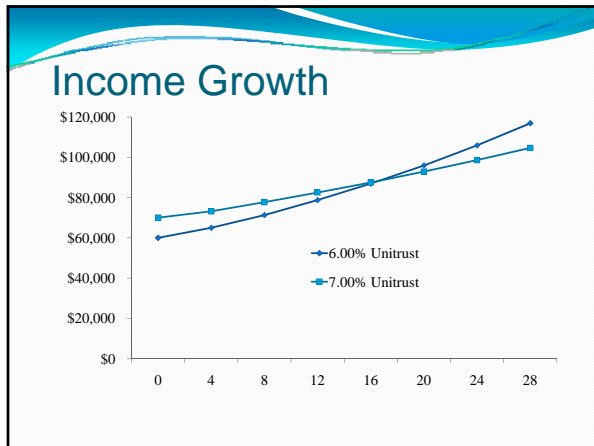
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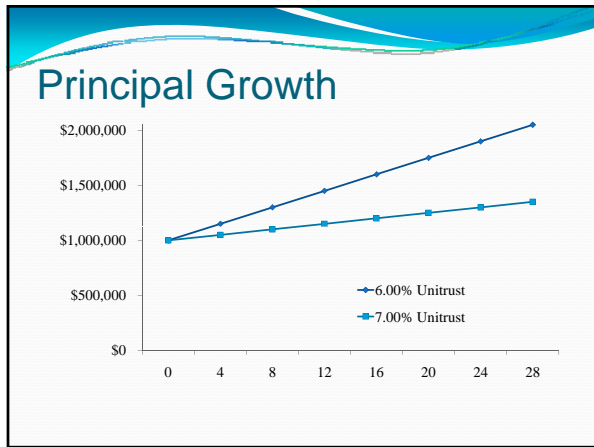
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### Unitrust Benefits

Prepared For John Smith

- Capital Gains Savings \$120,000
- Income Tax Savings \$158,109
- Prior Income \$20,000
- Increased Income \$40,000
- Unitrust Income \$60,000
- Total Income \$982,866

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## Why a CRT?

- Charitable Deduction
- Capital Gains Savings
- Increased Income
- Tax Free Growth
- Estate Tax Savings or Deduction
- Charitable Gift

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## Funding

- What are the best assets to place in a CRT?
- Low basis property
- Stocks or bonds
- Real estate
- Cash

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## Penalties

- If trust does not qualify:
- No charitable deduction
- Trust income taxable
- Note: Trust must qualify on the date created.  
Creation date is date funded, not date signed.

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## Charitable Deduction

- Calculation of Deduction:
- Applicable Federal Rate (AFR) – Discount rate for present value calculation
- Trust payout
- Age of income beneficiary
- Frequency of payments

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## Taxation of Trust Income

- 4 –Tier Taxation
- Ordinary Income
- Capital Gains
- Tax-Exempt Income
- Return of Capital

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## Percentage Rules

- 5% minimum payout
- 50% maximum payout
- 10% minimum present value for Charitable deduction
- 5% probability of depletion (Lifetime CRAT)

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Trustee

- Donor
- Corporate
- Charity
- Attorney



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Items Donor Can Change

- Trustee
- Charitable Beneficiary
- Non-Charitable Beneficiary (Limited)

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Types of CRTs

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graph TD
  CRT --> CRAT
  CRT --> CRUT
  CRUT --> I["I. Straight"]
  CRUT --> II["II. NIMCRUT"]
  CRUT --> III["III. NICRUT"]
  CRUT --> IV["IV. Flip"]
```

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## CRAT v. CRUT

- Charitable Remainder Annuity Trust – sum certain, determined at funding.
- Charitable Remainder Unitrust – fixed percentage, valued annually.

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## CRAT

- Fixed Payout
- Best for clients 70+
- 5% Probability Test
- Cash or Appreciated Securities
- Cannot Add to Trust

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## CRUT

- Variable Payout
- Different Payout Options
- Lower Payouts Preferable
- Can Make Additional Contribution
- Appreciated Stock

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### Straight Unitrust

- Dist. = FMV of Trust X Payout %
- Can Provide Increasing Income
- Easier to Administer
- Most Common CRT

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### NIMCRUT

- Dist. = Lesser of Net Income or Unitrust Amount
- Can Defer Income
- Ability to Make-up Distributions
- Principal Protected
- Commercial Real Estate

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### NICRUT

- Dist. = Lesser of Net Income or Unitrust Amount
- Can Defer Income
- No Ability to Make-up Distributions
- Principal Protected
- Not Very Common

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### FLIP

- Starts as a NIMCRUT or NICRUT
- Has a Trigger Event
  - Specific Date - ex. July 1, 2010
  - Specific Event - ex. Sale, Death, Marriage
- Great for Unmarketable Assets
- Flip Occurs Jan. 1 Following Trigger Date

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### Payout Beneficiaries

- One or More Lives
- Term of Years up to 20
- Life Plus a Term of Years
- Guaranteed Years

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### Statutory Requirements

- Term
- Charitable Beneficiary or alternate
- No self-dealing by trustee
- Trustee Requirements
- Taxable Year must be specified
- Irrevocable and non-amendable

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## CRT Primer

- What is a Charitable Remainder Trust?
- Statute – Tax Reform Act of 1976
- IRC Section 664
- Income Tax Regulations 1.664-(1)-(4)
- Tax Exempt Trust – TIN
- PLRs and Rev. Proc.

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## Misc. CRT Issues

- UBIT – Unrelated Business Income Tax
- Debt – Acquisition Indebtedness
- Self-Dealing
- S-Corp Stock
- Pre-arranged sale
- Step-transaction
- Appraisal Requirements

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## Questions?



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