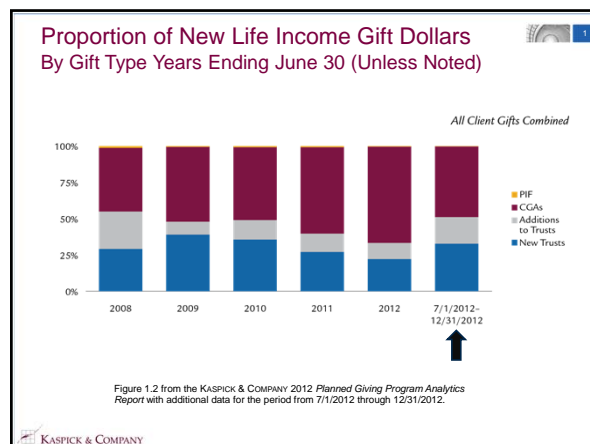


**KASPICK & COMPANY**  
A member of the TIAA-CREF group of companies

## DRAFTING CHARITABLE REMAINDER TRUSTS WITH AN EYE TO THE FUTURE

2013  
Bill Knox



### Topics

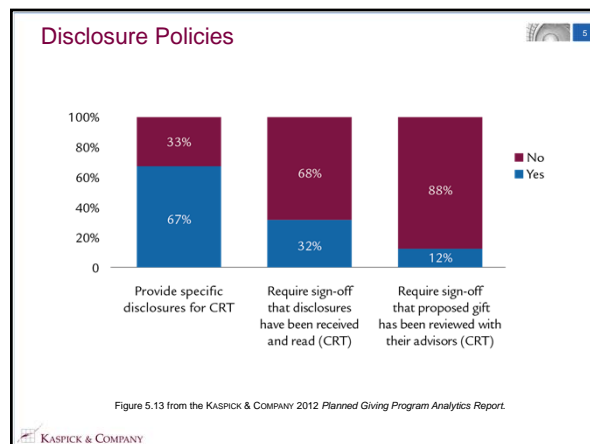
- Best practices for reviewing and negotiating charitable remainder trusts (CRTs)
- Key optional provisions for trustee protection and administrative ease
- Strategies to protect the charity's remainder interest
- Additional provisions that address donor objectives

### When Charities Draft CRT Documents

|  |   |
|--|---|
| <h4>Benefits</h4> <ul style="list-style-type: none"> <li>Ensure quality drafting</li> <li>Consistency (format, provisions, governing state law)</li> <li>More control of the process</li> <li>Avoid errors of omission and commission</li> <li>Less time needed to review</li> </ul> | <h4>Drawbacks</h4> <ul style="list-style-type: none"> <li>Could be perceived as a conflict of interest</li> <li>Could be perceived as undue influence</li> <li>Might still involve difficult negotiations with donor's counsel</li> </ul> |
|--|---|

### Overcoming Drawbacks

- Encourage donors to review trust documents with their legal counsel
- Provide a trust disclosure statement
- Request that donors sign a statement acknowledging they
  - Have received a trust disclosure statement
  - Have been advised to consult legal counsel
  - Understand the multiple roles the charity is assuming (e.g., document drafter, trustee, remainderman)



## IRS Sample Forms—A Safe Harbor

- Provide a foundation for your trust documents
- Contain basic elements of qualified CRTs, such as:
  - Type of trust (unitrust or annuity trust)
  - Payout rate
  - Term
  - Irrevocability
- Do not address some important practical issues

## Beyond the Sample Forms Objectives

- Retain maximum flexibility
- Protect the charity as trustee
- Protect the charity as beneficiary
- Consider the donor's objectives
- Reduce administrative complexity

"One sentence can be a life sentence"

## Retain Maximum Flexibility

- Give the trustee broad discretion
  - Allocating fees and expenses
  - Defining income for net income and flip unitrusts
  - Power to adjust between principal and income
- Include a reference to a separate gift agreement where the gift purpose is described
- Permit the income beneficiary to assign his interest to the remainderman

## Protect the Charity as Trustee

- "Hold harmless" provision for acts of prior trustees
- Change of trustee provisions
  - Resignation
  - Removal?
  - Appointment of successor trustees
- Trustee powers
  - Assess trustee fees
  - Hire agents
  - Accept or refuse additional contributions

## Protect the Charity as Beneficiary

- Limit the donor's right to change the remainderman
- Allow the trustee to name an alternative remainderman if an existing remainderman no longer qualifies as a charity
- Authorize the trustee or remainderman to change the gift purpose if it is no longer practicable

## Consider the Donor's Objectives

- Use a "masked" trust naming convention to protect donor privacy
- Reserve the testamentary right for the donor to revoke an income beneficiary's interest as needed
- Include qualified contingencies, if appropriate
- Select an appropriate payout rate
- If the original remainderman is a 50% type organization under Code Section 170(b)(1)(a), require that any substitute remainderman be a like-kind organization

## Reduce Administrative Complexity



- Standard provisions
  - Specify a clear and practical valuation date
  - Define specific and practical payout dates
- Special situations
  - Choose an appropriate and qualifying triggering event for flip unitrusts
  - Select an appropriate payment deferral method for testamentary transfers

## Best Practices for Reviewing Trusts



- Ensure your CRT templates are current
- Determine who at your institution will review and approve CRT documents
- Use a checklist to confirm that IRS requirements have been met
- Create a matrix that identifies
  - Additional provisions you require in order to serve as trustee
  - Additional desired provisions based on gift type
  - Provisions you prefer but are willing to negotiate
- Ensure that the CRT document accurately reflects the gift plan and adheres to your gift acceptance policies

## Situations Requiring Special Attention Examples



- Testamentary trusts
- Net income unitrusts
- Flip unitrusts
  - “Retirement” unitrusts
  - “Education” unitrusts
  - Trusts funded with illiquid assets (including where the donor is the initial trustee)
- Trusts containing qualified contingencies
- Trusts with complex payout or term provisions