

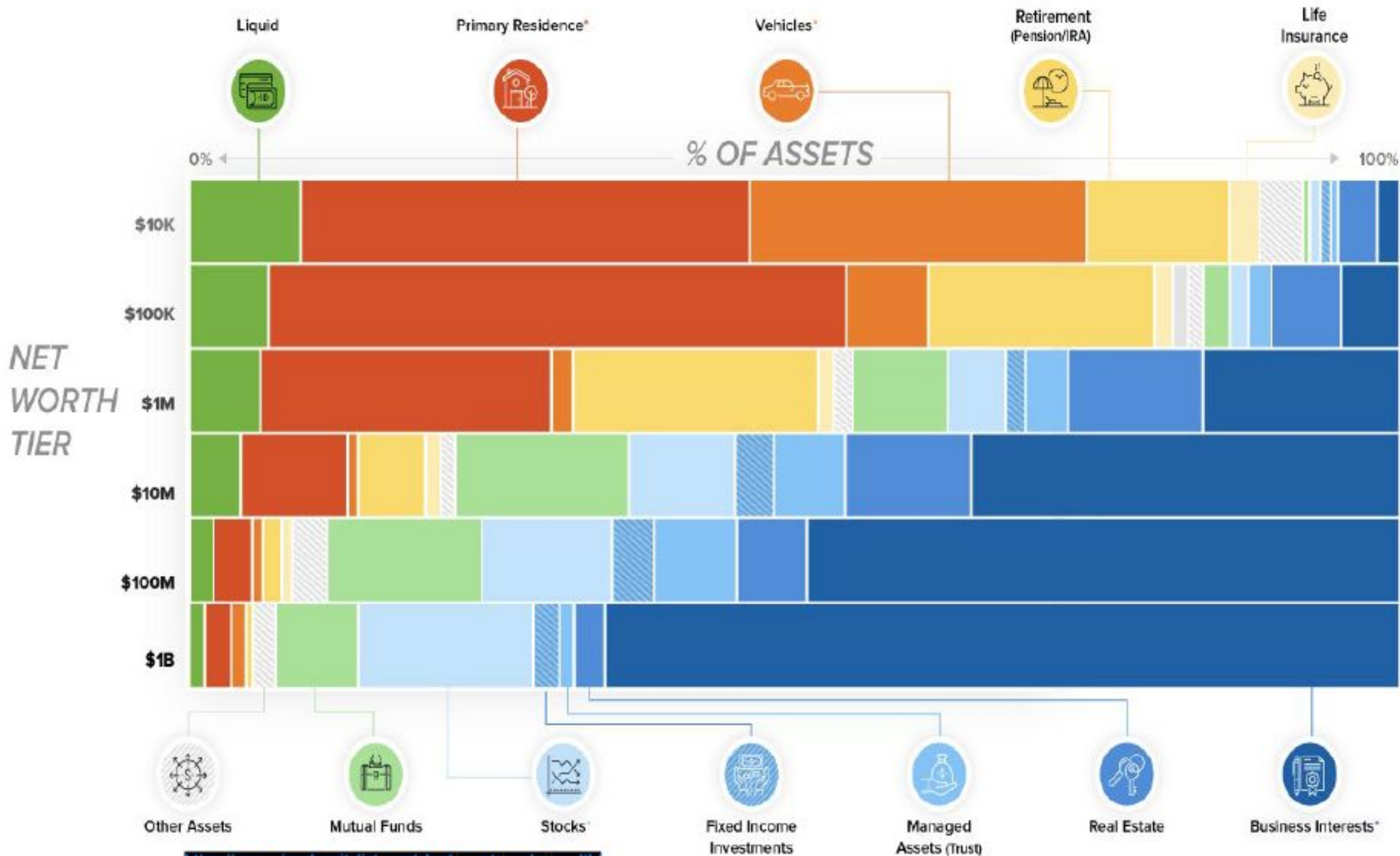


# Planned Giving 101: Introduction to Gift Planning

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# What is Planned Giving?

- Term originated in 1972 in Give and Take by Robert Sharpe
- Originally referred to deferred giving- “a present decision to make a future gift”
- One of the traditional silos of development at large organizations- annual giving, major gifts, planned gifts
- Other terminology includes gift planning or complex gifts
- Is now often considered to often include all non-cash giving or giving with a legacy/estate planning element



# Itemized Charitable Income Tax Deduction

- Disallowed to extent it exceeds certain AGI thresholds, depending on type of charity and asset
  - Cash gift to public charity is limited to 60% of AGI
  - Appreciated assets to public charity is limited to 30% of AGI
  - 50% for cash gifts stacked with asset gifts
  - Private Foundations have limitations of 20% for appreciated asset gifts and 30% for cash, appreciated asset gifts are limited to tax basis unless publicly traded
  - Up to 5 years of carry forward

# Itemized Charitable Income Tax Deduction After OBBBA

- OBBBA floor on charitable deduction of .5% of AGI so can only deduct charitable contributions to the extent that they exceed this floor
- OBBBA cap on taxpayers in 37% income tax bracket that caps the benefit of all itemized deductions to 35% tax rate

## Charitable Income Tax Deduction for Non-Itemizers

- OBBA introduced new above the line charitable income tax deduction for non-itemizers
- \$1,000 maximum (\$2,000 filing jointly)
- Gift must be cash
- Gift must be to a public charity (not a DAF)

# Estate Tax Charitable Deduction

- Estate tax deduction is unlimited
- Applies to Federal, Oregon and Washington Estate Tax
- Oregon and Washington don't impose a state level gift tax

# Appreciated Asset Gifts

Deduction for gifts of long-term capital gain appreciated assets is FMV



## Appreciated Assets Gifts

- Gifts of publicly traded securities receive a deduction of the mean value on the date of transfer
- Deduction for gifts of short-term gain property and ordinary income property are generally limited to tax basis
- Non publicly-traded appreciated asset gifts require a qualified appraisal by independent appraiser if over \$5,000
  - Specific language and purpose must be stated
  - Donor should pay for appraisal
  - Form 8283 required if over \$500

# Real Estate Gifts

- Due Diligence
  - Building inspection, title report, Phase I environmental review
- Retained Life Estate
  - House or farm property
  - Donor signs a deed irrevocably transferring remainder interest after their death to charity
  - Donor gets charitable income tax deduction for present value of remainder interest based on appraised value of the property

# Gifts of Business Interests

- Business interests will generally be:
  - Shares in closely held corporations (S corporation shares have significant tax challenges for charitable giving)
  - LLC Interests
  - Limited Partnership Interests
- Charity's gift acceptance policy should require a minimum net value expected from sale
- Review of governing documents and financial statements
- Can shares/interest be transferred to charity? Right of first refusal? Can they be sold to 3<sup>rd</sup> party? How is the financial position of business? Is there a chance of a capital call?

# Gifts of Business Interests

- Charity will generally require a liquidity plan to be in place
  - Is there a market for the shares/interest?
  - Is there a plan in place to sell?
  - Timing is important due to prearranged sale/Assigned income rules
- IRS will require a qualified appraisal for income tax deduction substantiation and will likely be subject to valuation discounts for lack of marketability and minority interest

# Tangible personal property

- Gifts of TPP are subject to related use rule
  - If gift is related to charity's mission then the donor receives a FMV income tax deduction
  - If gift is not related to charity's mission then the donor's income tax deduction is limited to their tax basis
- In deciding to accept a gift of TPP charity must consider the costs of insuring, transporting, storing, selling, reputational risks, etc.
- Donor's estimate of market value can vary widely from anticipated net sale value

# Tangible personal property

- Examples of TPP:
  - Fine Art
  - Jewelry
  - Classic Automobiles
  - Other Antiques or Collectibles
  - Gold bars or coins- Sometimes gold coins can be considered “currency” and not TPP but that must be determined by donor’s tax preparer

# Qualified Charitable Distributions

# Qualified Charitable Distributions

- 2006 the charitable IRA rollover was introduced and then reenacted on temporary basis until 2015 when legislation enacted Qualified Charitable Distributions without an end date
- QCDs are not included in the donor's AGI or taxable income for the year
- Donor doesn't receive an income tax deduction for the gift

# Qualified Charitable Distributions

- Age 70 ½ or older
- Can count towards donor's RMD for the year
- Up to \$111,000 a year (indexed for inflation)
- Direct from traditional IRA to public charity (Gifts to donor advised funds are not eligible)
- Donor cannot retain a benefit (Legacy IRA Act exception)

## Benefits of QCD

- Reduces AGI which can affect social security taxation, medicare premiums, new charitable deduction floor and various phaseouts like senior deduction and SALT deduction.
- A distribution from IRA followed by a charitable gift may be neutral on taxable income but may not if the donor isn't an itemizer or if they are going to hit their AGI limits for their charitable deduction.

# Legacy IRA Act

- Up to \$55,000 (indexed for inflation)
- Once per person per lifetime, spouses can aggregate
- Can go to a charitable gift annuity or charitable remainder trust
- 100% of income from CGA or CRT is taxed as ordinary income
- Treated as a qualified charitable distribution (QCD) so not included in income but also no deduction
- Income can only be for the benefit of the donor and/or their spouse
- Must be transferred directly from IRA to charity (for CGA) or to trust (for CRT)
- Can count towards RMD for the year

# Testamentary CRT funded with IRA

- Current income to non-charitable beneficiaries and remainder to charity
- Trust is for lifetime of beneficiaries or a term of years (up to 20)
- Charitable remainder trusts are \*tax exempt\*
- Income stream is 100% ordinary income to beneficiaries
- Payout is different than stretch IRA- CRTs are generally set up to pay out 5-7% a year
- IRA is included in the decedent's estate but the estate also receives an estate tax deduction for the present value of the remainder interest

## Testamentary CGA funded with IRA

- Charitable gift annuities are funded by a distribution to charity so also not subject to tax at the time of distribution to charity
- Annuity payments will be 100% ordinary income
- CGA rate will be determined by the age of annuitants at the decedent's date of death
- Donor will need to establish a CGA agreement with charity prior to death
- IRA is included in the decedent's estate but the estate also receives an estate tax deduction for the amount to the CGA minus the present value of the annuity

# Payout Comparisons

- The amount distributed is calculated very differently
- IRA RMD = account balance/life expectancy (can access entire account if desired and not limited to the RMDs)
- CRT = Fixed percentage of assets distributed annually (generally 5-7%)
- CGA = Fixed payout amount annually (rate based on age of annuitant at time of funding)

# Charitable Remainder Trusts

# Charitable Remainder Trust

- Irrevocable Trust
- Current income to non-charitable beneficiaries
- Remainder to charitable beneficiaries
- Trust is for lifetime of beneficiaries or a term of years (up to 20)
- Donor receives deduction on funding for value of remainder interest

## Charitable Remainder Trust

- IRS requires 10% remainder value
- Trust is tax exempt
- Beneficiaries receive a K-1 every year (4 tiers of taxation)
  - Ordinary income
  - Capital gains
  - Tax free income
  - Return of principal

# Charitable Remainder Trust

- Unitrust (CRUT) or Annuity (CRAT)
  - CRUTs can be lesser of net income or unitrust amount (NICRUT/NIMCRUT)
- Flip- starts out a NICRUT or NIMCRUT and changes to a standard CRUT at trigger event
  - Trigger can't be discretionary (sale of property, specific age of beneficiary)
- Can add to a CRUT but not a CRAT
- CRATs are subject to a less than 5% chance of extinguishing rule

# Charitable Remainder Trust

- Common for charities to serve as Trustee, subject to their policies
  - Irrevocable remainder beneficiary of at least 50%
  - Minimum Amount
  - Maximum payout
  - Minimum age for lifetime trusts
- Donor (or other individual) can serve as trustee
  - Common for sale of real estate
- Donor can choose trust company or 3rd party fiduciary to serve as trustee

# Charitable Remainder Trust

- Funding with real estate/stock concentrations
- Can include independent trustee with sprinkle power
- Funding with fine art
  - Unrelated use so deduction limited
- Sale of business (PLR 200720021)
- No S corp stock
- Divorce
- Early termination for additional income tax deduction or lump sum

# Charitable Gift Annuities

## Charitable Gift Annuities

- Donors purchase an annuity from charity that pays out to themselves and/or their loved ones for life
- Agreement is a contract and constitutes a bargain sale
- Based on one to two lives
- The donor receives a charitable income tax deduction for the difference between the amount paid and the present value of the projected annuity payments
- Annuitant receives tax free income for life expectancy based on basis of funding asset (also capital gains if funded with appreciated asset)

## Charitable Gift Annuities

- Most charities use the rates set annually by the American Council on Gift Annuities
  - Rates assume 50% of original amount to charity
- Governed by state law where donor resides
- Charity invests the money received and tracks the payments, appreciation and expenses
- At the death of the annuitant/s, the remaining amount left from the original funding is withdrawn from charity's CGA reserve account

# Sample CGA Rates

## One Life

| Age | Rate |
|-----|------|
| 65  | 5.7% |
| 70  | 6.3% |
| 75  | 7%   |
| 80  | 8.1% |
| 85  | 9.1% |

## Two Lives

| Ages    | Rate |
|---------|------|
| 65 & 65 | 5%   |
| 70 & 70 | 5.5% |
| 75 & 75 | 6.2% |
| 80 & 80 | 6.9% |
| 85 & 85 | 8.1% |

## Charitable Gift Annuities

- Charities will have their own policies
  - Minimum Amount
  - Minimum Age
  - Funding Assets
- Payments can be deferred
  - Flexible or fixed
  - Flexible deferred CGA can replace a bequest to receive an income tax deduction

## Example of a Flexible Deferred CGA

| <b>Elective<br/>Start Date</b> | <b>Ages at<br/>Start Date</b> | <b>Annuity<br/>Rate</b> | <b>Total<br/>Annuity</b> |
|--------------------------------|-------------------------------|-------------------------|--------------------------|
| 9/24/2030                      | 79                            | 9.3%                    | \$27,900                 |
| 9/24/2031                      | 80                            | 10.1%                   | \$30,300                 |
| 9/24/2032                      | 81                            | 10.9%                   | \$32,700                 |
| 9/24/2033                      | 82                            | 11.7%                   | \$35,100                 |
| 9/24/2034                      | 83                            | 12.5%                   | \$37,500                 |
| 9/24/2035                      | 84                            | 13.4%                   | \$40,200                 |
| 9/24/2036                      | 85                            | 14.4%                   | \$43,200                 |
| 9/24/2037                      | 86                            | 15.4%                   | \$46,200                 |

## Example of a Flexible Deferred CGA

| <b>Elective<br/>Start Date</b> | <b>Ages at<br/>Start Date</b> | <b>Annuity<br/>Rate</b> | <b>Total<br/>Annuity</b> |
|--------------------------------|-------------------------------|-------------------------|--------------------------|
| 9/24/2038                      | 87                            | 16.4%                   | \$42,900                 |
| 9/24/2039                      | 88                            | 17.5%                   | \$52,500                 |
| 9/24/2040                      | 89                            | 18.7%                   | \$56,100                 |
| 9/24/2041                      | 90                            | 20%                     | \$60,000                 |
| 9/24/2041                      | 91                            | 21%                     | \$63,000                 |
| 9/24/2043                      | 91                            | 22%                     | \$66,000                 |
| 9/24/2044                      | 93                            | 23%                     | \$69,000                 |
| 9/24/2045                      | 94                            | 24.1%                   | \$72,300                 |

## Charitable Gift Annuities

- Funding with cash or publicly traded securities is most common
- Can be funded with real estate, retained life estate in residence or farm, or other assets
  - Will generally need to be deferred
  - CGA rate may need to be negotiated down
- If a CGA for someone other than the donor is funded with appreciated property it will trigger the gain

# Donor Advised Funds

# What is a DAF?

- Donor advised funds are a finely carved out exception to the rule that donor cannot retain control over the assets
- The first DAF was established in 1931 but not defined in the tax code until 2006, first commercial DAF program was created in 1991
- DAFs are not individual entities, they are legal and accounting funds, typically pooled with other funds
- Legal ownership and control of the assets pass to the sponsoring organization
- The gift to a DAF is made to the sponsoring org and restricted to the DAF
- Sponsoring orgs are public charities

# Components of DAFs

- Advisor/s
- Successor Advisors
- Post Advisory Restrictions
- Term/Payout type
  - DAF payout rate for 2024 was estimated at approx. 24%
  - Endowed DAF payout rate will generally be between 4%-5%

# Options After Donor's Death

- Additional advisors
- Designated fund
- Field of interest fund
- Scholarship Fund
- Sponsoring org's discretion
- Endowed, term of years, or distribute

# National DAF vs Community Foundation

- Less than a quarter of DAF assets are held at community foundations
- Community foundation DAFs are likely to be endowed
- Legacy planning
- Resources
- Community impact
- Local expertise
- Fees
- Technology

# Bundling

- Allows donors to make one tax deductible gift but then direct annual giving to their favorite charities over multiple years
- This allows donors to itemize for in year one and enjoy the tax savings of a charitable income tax deduction but still spread giving out over time
- Is more relevant after the OBBBA due to the new floor on charitable deduction of .5% of AGI

# Questions?