



# Planned Giving 102: Legacy Giving

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# Legacy Giving

- Legacy is defined as a gift through a will or something that is handed down from one generation to the next
- Often used as a way to think about how one will be remembered or what they will be known for after they are gone
- Often legacy giving is done in contemplation of death
  - Mortality
  - Spiritual beliefs
- These gifts are more likely to be intended to have deeper impact/be transformative

# Motivations for Legacy Giving

- Memorializing yourself or loved one
- Demonstration of your values to heirs and community
- Giving back to community
- Improving the world for your own heirs or others
- Paying back
- Philanthropic values can be considered part of estate plan and wealth to be transferred
- Limiting inheritance of heirs

# Transfer Tax

- Estate tax charitable deduction is unlimited
- Federal Transfer Tax
  - Unified Estate & Gift Tax Credit (often referred to as exemption amount)
  - 2026 is \$15 million (indexed for inflation)
- State Transfer Tax
  - Oregon estate tax exemption \$1 million
  - Washington inheritance tax exemption \$3 million
  - Neither OR or WA have gift tax

# Bequests

- Gift at death
- Through will or trust
- Revocable until death
- Often paired with restrictions and/or endowed
- Can be in the form of:
  - Specific asset
  - Dollar amount
  - Percentage or fraction of estate
  - Residue

# Beneficiary Designations

- Payable on death accounts- checking, savings, brokerage
- Life Insurance
- Retirement Accounts
- Revocable until death
- Easy to change
- No probate

# Individual Retirement Accounts

- Above the line deduction for contributions
- Appreciates and earns income tax free
- Distributions if younger than 59 ½ subject to a 10% penalty
- 100% of withdrawals are taxable as ordinary income
- Required Minimum Distributions (RMDs) start at age 73-75
  - Calculation is account balance divided by years of life expectancy
- Inherited IRAs can have RMDs regardless of age
- Roth IRA has different rules for post-tax dollars

# IRA Basics at Death

- IRAs are non-probate assets passed by beneficiary designations
- Considered income in respect of decedent (IRD) which means subject to income tax when received by designees
- IRAs are also included in gross estate so can be subject to estate tax
- Old rule-beneficiaries could elect stretch IRA
- New rule (SECURE Act)-10 year maximum for most beneficiaries
- Rules for giving from IRA during life are different than at death

# Benefits of IRA to Charity at Death

- Death is an opportunity for change of ownership of account
- Withdrawals made by charities are generally not subject to taxation due to the tax-exempt nature of the charity
- Most appreciated assets receive a stepped-up basis at death but IRAs do not
- Beneficiary designation is easier to change as needed than estate planning documents
- IRA beneficiary designation at death qualifies for unlimited estate tax deduction

# Gifts at Death Compared

| Bequest                                                         | Beneficiary Designation | Retirement Account<br>Beneficiary Designation |
|-----------------------------------------------------------------|-------------------------|-----------------------------------------------|
| Transfer at death                                               | Transfer at death       | Transfer at death                             |
| No income tax planning                                          | No income tax planning  | Reduces income tax for heirs                  |
| In a will= probate required<br>In a trust = no probate required | No probate required     | No probate required                           |
| Estate Tax Deduction                                            | Estate Tax Deduction    | Estate Tax Deduction                          |

# Probate

- Expensive
- Court filing fees, attorney fees, personal representative fees
- Time Consuming
  - Minimum of 4 months in OR, many last well over a year (WA is easier process than OR)
- Public Record
- Only necessary if there is a probate estate
- Non-probate assets
  - Jointly owned with right of survivorship
  - Passes under beneficiary designation
  - Life insurance, retirement accounts, POD
  - Trust assets

# Endowed Gifts

- Endowment- restriction as to time, gift must be set aside for perpetuity
- True endowment = endowed by donor
- Quasi endowment = set aside by Board
- UMIFA/old model= principal preserved, income spent
- UPMIFA/new model= unitrust spending
- Oregon UPMIFA- more than 7% distribution in a year creates rebuttable presumption of imprudence
- Important to have money set aside for future – balanced with current needs/control/access

# Donor Conversations

- Donor centric
  - Confidentiality and ethics
- No tax or legal advice
  - Knowing when donors need to include their own advisors and when to bring in other resources
  - It is okay not to know the answer to every question but follow-up is key
- Never lose sight of your mission
  - Mission > Tax Savings

# Identify Resources

- Board members
- Fellow staff members
- Volunteers
- Paid counsel
- Past staff or board members
- Mentor
  - NWPGRT, AFP, WVDO, CGP
- Planned giving consultant
- Investment manager/vendor
- Third Party Vendor

# Gift Acceptance

- Considering partnering with community foundation, DAF provider, or 3<sup>rd</sup> party vendor when appropriate
- Gift Acceptance Policies in place
  - Serve as Trustee of CRT?
  - Offer CGAs?
  - Real estate gifts and due diligence
  - Named funds/Restricted gifts
  - Review every few years with Board or committee

# Green Flags to Consider a CRT

- Highly appreciated rental properties
  - Tenants vacating, wanting to travel more, not wanting to manage properties any longer
- Stock concentrations
- Discussing future transfer or sale of family business
- Large IRA and adult children
- Spendthrift children
- Wanting to leave income stream to loved ones
- Highly appreciated tangible property they are ready to part with combined with a need for income

# Green Flags to Consider a CGA

- Stock concentration
- Interested in retirement income
- Concerns about investment markets
- Bequest in estate plan but could benefit from income tax deduction
- Wanting to provide an income stream to a sibling or friend who is age 60 or above (donor who supports their parent)

# When to consider a CRT instead of a CGA

- Interested in a CGA but \$ amount is too high for charity's comfort for liability purposes
- Concerned about inflation in regard to payments
- Funding with appreciated assets and beneficiary will be someone other than the donor and/or their spouse
- Young beneficiaries and/or more than two beneficiaries
- Only wanting payments for set number of years
- Wanting to benefit multiple charities with one gift

# When to Consider a CGA instead of a CRT

- Looking for tax free income
- Needing “guaranteed” income
- Wanting to defer their income
- Adverse to paying attorney’s fees for set up

## Differences between a CRT and CGA

| CRT                                                                                                                           | CGA                                                                                      |
|-------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|
| Trust                                                                                                                         | Contract                                                                                 |
| 10% reserves/<br>Charitable Trustee Policies                                                                                  | ACGA Rates (or other rates set by charity)                                               |
| Term of years or multiple lifetimes (subject to 10% reserves requirement and charitable trustee policies)                     | 1-2 lives                                                                                |
| Donor may be able to change remainder beneficiaries, can benefit multiple charities                                           | No ability to change beneficiary, generally limited to benefiting one charity            |
| Unitrust option = payment is adjusted every year<br>Annuity option = payment doesn't change                                   | Payment doesn't change                                                                   |
| Set up costs, tax return prepared annually                                                                                    | No set up cost for donor, tax fees are minimal                                           |
| Amount of taxable income to beneficiaries every year will vary depending on income and capital gains actually earned by trust | Amount of tax free income, capital gains, and ordinary income is determined at the onset |

# Questions?