Primer on Planned Giving

Planned giving has become an increasingly important area of fund-raising for nonprofit institutions, often accounting for more than half of new capital campaigns.

From the direct advantages of income, gift and estate tax deductions to the unique characteristics of gift annuities and split interest trusts, planned giving offers a range of vehicles to suit diverse financial situations and objectives and which often permit donors to consider even larger charitable gifts than they might have made.

What is a “planned gift”? A planned gift is a mediated gift; that is, a gift which a charity receives through or by means of some agency, such as a will, contract or trust. On the simpler end of that range, bequests represent probably the most popular form of planned gift, along with making charities beneficiaries of life insurance policies or gifting the policies themselves. Toward the more complex end, there are gift annuities and life estates — the one giving up a sum of money in exchange for a lifetime income, the other giving up ownership of a home in exchange for the right to live in that home for one’s lifetime. And, finally, there are the complex trust entities — pooled income funds, remainder trusts and charitable lead trusts.

Almost all 501(c)(3) charitable organizations can offer donors the same array of vehicles. In the often fierce competition for donor dollars, your organization must distinguish itself from the host of other organizations competing for the attention of donors. To accomplish this, your planned giving program should maintain the highest degree of excellence in the areas of stewardship, marketing and gift administration. Your planned giving program must also have well-conceived gift acceptance, investment management and ethical guidelines. Most important, it is your organization’s ability to inspire prospective donors to support your mission that will determine the ultimate success of your planned giving program.
Starting a Planned Giving Program

Here are some reasons why you should consider initiating a planned giving program, or look for ways of “retooling” an existing planned giving program to make it more effective:

**TAKING ADVANTAGE OF THE GREAT “WEALTH TRANSFER.”** Experts forecast that approximately $40 trillion to $140 trillion will change generational hands over the next fifty years, making it the greatest transfer of wealth in the history of the world. As much as one-third of this wealth may find its way into nonprofit institutions, and planned giving will be a major conduit through which this wealth will pass.

**STRENGTHENING RELATIONSHIPS WITH DONORS.** Planned gifts tend to be larger than annual gifts. Consequently, planned gifts tend to promote a higher degree of donor attachment to your organization. Since the income to donors from planned gifts often lasts a lifetime, your organization has the opportunity to strengthen this attachment through superior stewardship. As donors lose family and friends over the years, your organization may come to represent an anchor in their lives. This allegiance may spawn additional gifts.

**FUNDING AN ENDOWMENT.** Does your organization’s mission encompass long-term projects that need funding? Do cyclical markets affect the level of annual giving? Have donations declined due to the death of donors? Is your organization in competition with other charitable organizations for donor dollars? Is your organization dependent on private and/or government grants? If the answer to any of these questions is “yes,” remember that planned giving is an effective means of funding an endowment. An endowment enhances a charitable organization’s financial stability and enables the board of directors and trustees to make and to implement long-term plans.

**BUILDING A Philanthropic Family Tradition.** Planned giving enables donors to express their values while transferring wealth. For example, in the process of receiving income from a planned gift, family members have the opportunity to learn to appreciate the donor’s affinity for your organization’s mission. In fact, planned giving may be the catalyst for encouraging a new generation of donors to support your organization.

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Since the income to donors from planned gifts often lasts a lifetime, your organization has the opportunity to strengthen this attachment through superior stewardship.

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Who will be responsible? Will it be a department? A person? Part of a person?

**Responsibilities.** In order to tackle these questions, your organization should undertake a programmatic needs and resources assessment to gauge how a planned giving program can best achieve your mission with the resources available.

First you need to recognize and accept that planned giving requires resources. It can’t be done for nothing — it can’t even be fully outsourced!

Some responsibility always remains with the organization. When you assess the areas of donor solicitation, stewardship, staffing, gift administration and marketing, you can evaluate your potential or actual programmatic strengths and weaknesses. You should also solicit the opinions of present and former staff members, donors, volunteers of all ages, and consultants. Once the results are in, your organization’s board of trustees will be in a better position to make decisions regarding commitment of resources: the size of staff, recruiting and compensation.

**Size of Staff.** Staff size varies from organization to organization. At the outset, you may begin a planned giving program by simply including an article in your newsletter or on your website about the mechanics of leaving a bequest to your organization. Something on this scale can be done easily by “part” of a person. As your planned giving program expands beyond bequests and includes IRAs, retirement plans, and other complex assets such as charitable annuities and trusts, marketing and administration will become more complex and time-consuming. With the decision to offer charitable gift annuities and pooled income funds, it will become increasingly necessary to dedicate at least a “whole” person to your program.

Eventually, as your organization solicits more donors, markets your planned giving program, administers gifts in-house and offers consultative services to donors — that is, as it becomes successful — it may be necessary to organize a planned giving department.

**Recruiting.** Begin the recruiting process by identifying the knowledge and skills — or “core competencies” — that the employee will need to fulfill his or her role in your planned giving program. For example, the “core competencies” of an estate planning attorney, i.e., knowledge of trusts and estates law, gift administration, real estate issues, etc., dovetail well with the functions of a planned giving officer. An attorney may lend credibility to your organization and introduce your organization to other professionals. Of course, attorneys are expensive. Consider other less expensive candidates with similar “core competencies” in trusts and estate work. Often, major gift experts also have sufficient background in many areas of planning gifting.

**Compensation.** The salaries of planned giving professionals have risen in recent years due to competition in the field and the beginning years of the “great wealth transfer.” Traditionally, planned giving professionals in certain areas have commanded higher salaries. In general, the hierarchy has been health care, education, advocacy, religion and art. ➤

**TIP.** “Outsourcing” various elements of your planned giving program may reduce the need to hire additional staff or to pull staff from other areas of your organization. Instead of performing the administrative and investment functions of a gift annuity program, for example, you might consider “outsourcing” these functions to a reputable financial services firm. Various marketing efforts can be outsourced as well. Your organization’s board of trustees should determine whether outsourcing is a cost-effective solution to your staffing needs.

**TIP.** Your organization may decide to limit administrative duties in other ways. Your organization may opt, for example, not to serve as trustee of charitable remainder trusts, or, at a minimum, outsource the administration to a reputable financial services firm. This might save your organization the burden of performing the initial trust review, asset valuation, annual tax reporting requirements, distributions, and other duties of an administrator or trustee. On the other hand, serving as trustee may mean stronger ties with donors, so the pros and cons of limiting fiduciary duties need to be considered carefully.

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**Staffing**

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RELATIONSHIP TO OTHER DEPARTMENTS

1. Development office— Typically, the Development Office oversees annual giving, endowment and capital gifts campaigns, and major gifts. Annual giving is relatively short-term; but capital campaigns and endowments can offer great opportunities to emphasize planned gifts.

Your planned giving program should consider “piggybacking” with these traditional fund-raising campaigns for the following reasons:

- First, a campaign’s sense of urgency tends to close planned gifts. Oftentimes donors procrastinate in setting up estate plans, and a campaign may prove to be the catalyst for spurring a donor to make a planned gift. It is, we say, “mission-intensive.”
- By requiring donors to complete gift valuation forms, campaigns serve the purpose of uncovering the potential for planned gifts.
- A campaign is a terrific platform for educating prospective donors about planned giving.

Your organization may offer donors the opportunity to create endowed funds, usually distinguished by the name of the donor or the donor’s family. These funds can be marketed as opportunities to honor the living or as memoriams of the deceased. An endowed fund generally fulfills a specific purpose, such as awarding special scholarships. Given the sum of money it takes to establish an endowed fund, a donor may very likely utilize a planned gift, thereby leveraging his or her commitment to your organization with the tax advantages associated with planned giving.

2. Business office— Planned giving is process oriented, with its success based on long-term relationships with donors. Your planned giving program may yield few short-term benefits.

Although your organization might be the income recipient of a charitable lead trust, for example, planned gifts generally take time to mature. Your business office will have to devote the resources to sustain a successful planned giving program, and the costs may not be recouped until later.

Your organization’s business office has several ways of evaluating the performance of your planned giving officers. Following are some of the more common methods:

- Dollars raised per year — This method measures the dollars raised by a planned giving officer. This is not an exact measurement since some gifts are revocable, and discounted values should be assigned to deferred gifts. The most “revocable” of all gifts are bequests through a will. It is important to keep in constant communication with your donors, and particularly those who have identified their testamentary intent. Not only will careful stewardship uncover new bequests and enable you to keep a more accurate tally of bequests in the “pipeline,” but reinforcing your organization’s mission may keep donors from switching their bequests from your organization to another.
- Multiple of salary-plus-benefits — Using this method, a planned giving officer’s dollars raised are measured by a multiple of his or her compensation.

For example, an educational institution might expect a planned giving officer to raise three to four times his or her salary-plus-benefits within the first three years on the job.

- Cost-per-dollar raised — This method measures the cost of raising funds. The planned giving officer’s salary is included with other fund-raising costs and compared to the dollars raised.

Obviously, this is a large bias, since large charities with streamlined planned giving operations tend to have lower cost-per-dollar raised figures than smaller organizations with less well-developed planned giving programs.

- Number of prospect meetings — This method measures the level of outreach done by your organization’s planned giving staff. Prospect call reports are useful in tracking the life of a gift from initial donor contact to the actual receipt of the gift. The yardstick behind this is that, while you cannot guarantee results, you can mandate activities. And the right prospecting of the right activities usually brings desired results.

One might also develop more creative ways to evaluate your planned giving program’s success. For example, you might schematize the process of attaining a planned gift into stages — prospecting, educating the donor, possibly communicating with the donor’s attorney or financial advisor, and closing the gift. Moving from one stage to another in the “pipeline” should be documented in the planned giving officer’s log, and can be used for evaluative purposes.

TIP. Grantmakers Salary and Benefits Report published by the Council on Foundations is one available source of information regarding salaries of various planned giving professionals in different regions of the country. To order a copy of the 2008 Grantmakers Salary and Benefits Report, contact the Council on Foundations at 800-673-9036 or visit www.cof.org.

TIP. Think “outside the box” for compensation strategies. For example, consider whether remote home office or “flex” time are viable options for your staff, or portions of your staff. Creative bonus arrangements also may help attract the kind of professionals you want.

TIP. Upwards of half of capital campaign gifts result from “planned giving.” Planned gifts are often deferred gifts whose value is not realized until the donor dies. Therefore, in assessing a campaign’s success, such gifts should not be valued at face value, but discounted based on the length of time that will elapse before your organization receives the gift. Current gifts and deferred gifts should be tracked separately, and a deferred gift should never be represented as a current gift. Your organization may be able to run a report on your charitable tracking software program which calculates the expected future results of your planned giving efforts. This report will be useful when discussing your program’s success with your board at an annual meeting.
SOFTWARE. Every effort must be made to ensure the accuracy and efficiency of the administration of your planned giving program. Nothing is more aggravating to a donor, for example, than receiving a late charitable gift annuity income check.

Fortunately, there are software programs which support a wide range of administrative functions.

- **Tie to donor/prospect management** — Gifts should be tracked from initial donor contact to realization of the gift. The progression is usually recorded on a spreadsheet. Software that has this capability includes FileMaker Pro, Microsoft Access, Microsoft Excel and Blackbaud Raiser’s Edge.
- **Record-keeping/Gift inventory** — Gifts need to be recorded and assigned a face value or a discount value. Like the tie to donor/prospect management function, this information is generally recorded on a spreadsheet. The software noted previously has this capability. It is critical for proper asset liability matching and for determining whether your planned giving program is paying for itself to use discounted values, based on gift expectancies.
- **Tax deduction information/various strategies** — Your planned giving officer should be able to calculate the tax ramifications of various gift planning strategies. Number Cruncher is one brand of software that enables the user to calculate various taxes associated with a gift, as well as the present and future value of a gift.
- **Gift scenarios** — If your planned giving program includes charitable remainder trusts, pooled income funds, charitable lead trusts and/or charitable gift annuities, your planned giving officer needs to be able to illustrate individual gift proposals and compare different strategies. Software with this capability includes Planned Giving Manager, Crescendo and PhilanthroTec.
- **Administration** — You may decide to perform the administrative functions associated with certain gift vehicles in-house. PG Calc Inc.’s software, GiftWrap and Pooled Fund Organizer (PFORZ), can be used to administer charitable gift annuities and pooled income funds, respectively. Alternatively, you may decide to outsource these functions to a reputable financial services firm.

**LEGAL.** Your planned giving program needs to have the services of an attorney at its disposal for several important functions.

- **Consultative** — Your organization’s board of trustees has a duty to protect the assets of your organization.

Legal counsel can be useful in providing this protection. For example, an attorney may be called in to review a prospective gift of closely held stock or stock subject to buy-sell agreement and gifts of real estate.

- **Filing for charitable gift annuities/pooled income funds** — Your organization may want to retain an attorney to review any applications that must be filed with a state agency, e.g., the Department of Insurance. Examples include applications for establishing a charitable gift annuity program or a pooled income fund.
- **Contract agreements and other prototype documents** — An attorney should be retained to review documents such as charitable gift annuity donor applications and charitable remainder trust forms.
- **Donor meetings** — Donors may be interested in supporting your organization but do not have counsel experienced in charitable giving. Your organization should maintain an updated list of local estate and charitable planning attorneys to whom donors can be referred.

**Important**

It is important for a planned giving officer not to assume the role of the donor’s “attorney” or give the appearance of assuming the role. Although planned giving officers may disseminate information such as charitable gift annuity tax illustrations and trust scenarios, they should always encourage a donor to seek independent legal counsel. To avoid any confusion with respect to charitable remainder trusts, your organization may want to adopt the policy of sending prototype charitable remainder trust forms directly to donors’ attorneys and not to donors themselves.

**TIP.** A minimum of three (3) attorneys should always be recommended in order to enable donors to choose an attorney on their own accord — who most closely fits their personalities and needs — and to avoid the appearance of (legal) association with a single attorney.

**Program Support**
Before devising a marketing strategy for your planned giving program, it is important to sit back and remember that a donor’s chief reason for making a gift is usually to support the mission of your organization. Consequently, your organization’s mission statement must be extremely persuasive and well understood by your board of trustees and staff. Can you speak about the mission of your organization for five minutes? For ten minutes? It is important that you are able to articulate your organization’s mission clearly and convincingly. Marketing planned gifts is integrally related to marketing your organization’s mission.

1. Identify and solicit existing and new donors and prospects — Marketing planned gifts gives donors an opportunity to “raise their hands,” thereby enabling your planned giving staff to follow up with further communications. Any direct mailing or brochure should include a response card. In addition, marketing planned gifts is a way to educate the general public about your organization’s mission and about planned giving vehicles. A knowledgeable public is more apt to be the source of new gifts, of repeat gifts, and of new leads.

Before implementing a marketing strategy, divide your prospective donor base into segments. These segments might include past and present donors, board members and volunteers, staff (past and present), people who have been helped by your organization, referrals from board members, volunteers, and allied professionals, e.g., attorneys and certified public accountants who are involved in the planned giving process. Donor segmentation is secondary to mission in the success of a planned giving program.

2. Create awareness
• Brochures and newsletters — Written marketing materials, such as brochures and newsletters, are excellent mediums for introducing planned giving concepts to prospective donors. Not only can these materials educate prospective donors about planned giving vehicles and tax benefits, but they also can reinforce your organization’s mission. Personalize your written marketing materials as much as possible. For example, ask donors to write about their planned gifts and the satisfaction they have experienced, and incorporate these testimonials into your marketing materials. And, obviously, the better you know your prospects and donors, the better you can “target” materials to market segments.
• National media advertising — Using the national media to market your planned giving program can be an effective way of reaching a large number of people. However, it is usually quite expensive. Moreover, since the people you reach are not apt to know much about your organization’s mission, respondents will most likely be more interested in the tax advantages associated with planned giving than with supporting your organization’s mission.
• “Heritage Society” — A “Heritage Society” is composed of donors who have indicated that they have left a bequest to your organization in their wills or trusts. Organizing a “Heritage Society” is important for several reasons. First, bequests — by their very nature — are revocable. Consequently, it is in your organization’s best interest to keep “Heritage Society” members in your good graces. Second, desire for some recognition is a deeply embedded part of our human nature. Recognize their generosity by inviting them to “Heritage Society” dinners, inscribing their names on...
a plaque, publishing their names frequently in programs, etc. Also, in light of the interest that “Heritage Society” members have shown your organization, they are excellent candidates for future capital campaigns and planned gifts. Remember – a current gift is always better than a deferred one. Direct marketing efforts toward this segment of your donor base.

- Seminars — Seminars are an effective way of introducing prospective donors to the concepts of planned giving. Instead of focusing entirely on planned giving, the seminar may encompass a broader topic, such as estate planning. A guest attorney or certified public accountant could be invited to participate. Professionals lend an objective sense of credibility to the seminar, and it gives them an opportunity to raise their visibility with the public. Their appreciation for being given this platform can work in your organization’s best interest when their clients are making estate planning decisions.

- Events — Events can serve multiple purposes. For example, an event can be a venue for promoting your organization’s mission and educating the attendees about planned giving. Events such as dinners for “Heritage Society” members and lunches for volunteers are ways of showing your appreciation to those who have donated time and money to your organization, but you can also use them to try to attract additional gifts through education.

- World Wide Web — Set up a planned giving section on your organization’s website. For starters, include an easy-to-understand description of how to leave a bequest to your organization. Be sure to include your organization’s legal name. Update your website on a regular basis. Once you have established a worldwide website, include it on your letterhead and on all of your marketing materials. Perhaps include links to other websites which can offer information regarding charitable giving techniques and tools. Linking to a website that offers a charitable calculator may be a useful resource to a donor interested in calculating his/her income tax deduction for a gift made to your organization.

- Professional relationships — Professionals — such as attorneys, certified public accountants, bank trust officers, etc. — all play important roles in planned giving. Allied professionals are in a position to recommend your organization when prospective donors are planning to do serious estate planning. Moreover, if you invite allied professionals to your seminars, they will have the opportunity to learn more about planned giving concepts, and be in a better position to pass this knowledge on to your prospective donors. Consider establishing an “Advisory Council” comprised of such professionals.

**CREATE A MARKETING STRATEGY.** Establish a set of objectives and devise a marketing plan to meet those objectives. A set of objectives, for example, might be the following: “We want to achieve a 20% increase in donor gifts over the next 18 months.” To accomplish this goal, consider how you can use all of the marketing tools at your disposal most effectively. Analyze the preferences of your target audience. If you are writing letters to friends of trustees, for example, who should sign the correspondence? The director of development? The executive director? Similarly, if baby boomers are your target audience, what is the most effective way of contacting them? Direct mail? Personal calls? The Internet? Obviously, your objectives need to be tied to the resources available to your planned giving program. The lower the amount of resources, the smaller and simpler the objectives.

Consider the financial needs of the target audience you are trying to reach. If you are contacting people in their 30s and 40s, a pooled income fund might be a better planned giving vehicle for their consideration than a bequest. You should consider drafting a brochure that describes the benefits and mechanics of a pooled income fund as part of your marketing strategy.

**RESTRUCTURE SERVICES (AS NECESSARY) TO SUPPORT PLANNED GIVING.** Initiating a planned giving program can be as simple as airing a radio announcement about leaving a bequest to your organization. In terms of overall success, however, the more resources your organization devotes to your planned giving program, the more effective it will be. Before hiring new staff, review your present staff to determine whether anyone can “cross over” to perform planned giving marketing functions.

**MARKETING AUDIENCE: USING THE BOARD OF TRUSTEES TO RAISE INTERNAL VISIBILITY AND AWARENESS.** Your organization’s board of trustees is an excellent source for tapping planned gifts. Ask each board member to consider making a bequest or other planned gift. This request should be done in private and on an individual basis. A tally of your board’s level of financial commitment should be reflected in your organization’s planned giving report. Board members should also be asked to solicit planned gifts from friends and acquaintances.

**TIP.** In light of the rich potential of planned gifts from and through your board of trustees, consider organizing a planned giving seminar for board members only. The more educated your trustees are about planned giving, the more likely they will include your organization in their estate plans, and the more effective they will be at explaining planned giving to their friends.
The Range of Planned Gifts

STARTING WITH THE BASICS.
A planned gift is a charitable gift that is integrated into the donor’s overall financial and estate plans. Generally, the most effective planned gifts tend to be gifts of appreciated property. This is because the greater the gift’s appreciation, the greater the charitable deduction to the donor and the lower the “net” cost of gifting by the donor! A gift of appreciated property to charity directly may avoid capital gains tax and may qualify for an income tax charitable deduction. In contrast, with a charitable lead trust, the objective is to donate property which will appreciate, since some of the appreciation may avoid gift and estate tax.

1. Wills and bequests — A bequest is a gift that is transferred after death by will or trust. A bequest may be in cash, marketable securities, tangible personal property or in a percentage of the residue of the donor’s estate. The donor’s estate is reduced by the full fair market value of a charitable gift, thereby potentially reducing the impact of the federal transfer tax on the donor’s estate.

2. Life insurance and annuities — Life insurance can make an excellent charitable gift. The substantial leverage involved in insurance affords the donor the capability of gifting a significant amount for a relatively small cost. A donor has several options in making a life insurance gift:
   1) A donor can give a fully paid-up life insurance policy or a single premium policy to your organization;
   2) A donor can give your organization a life insurance policy where premium payments are still being made. In order for the donor to qualify for up to a 50% deduction against adjusted gross income (“AGI”), the donor must continue to make contributions directly to your organization which, in turn, uses the contributions to pay premiums to the insurance company.

   Should the donor pay premiums directly to the insurance company on behalf of the charity, the donor may qualify for a deduction for up to 30% of the donor’s AGI. Any future gifts to you by the donor may be deductible; and
   3) A donor can give your organization a brand new policy with no premiums paid in. Although this gift will not qualify for an income tax charitable deduction, any future premiums paid by the donor may be deductible.

3. Large capital gifts — Donors can make large capital gifts of cash, stock and/or mutual funds in order to support your organization’s capital campaign. Capital campaigns are often utilized to raise a significant sum of money within a short time frame, often for specific needs. In addition to supporting your organization, a donor may be able to take a substantial income tax charitable deduction. Assuming that the gift is cash and that your organization is a public charity, the donor may deduct up to 50% of his or her AGI. Gifts of long-term appreciated property offer potential deductions of up to 30% of the donor’s AGI.

Important
Any charitable fits of life insurance made within three years of death will cause inclusion in the donor’s gross estate. However, with partial interest gifts, the estate would likely receive a full charitable deduction.

TIP. Encourage donors to remember your organization in their wills.

TIP. Encourage donors to make your organization a beneficiary of a life insurance policy. Assuming the donor retains some control over the policy, such as the right to change beneficiaries, the donor may not receive an income tax charitable deduction, and the proceeds may be included in the donor’s gross estate. However, that portion earmarked for your organization may qualify for an estate tax charitable deduction.

TIP. If your organization takes out a loan against the accumulated cash value of a life insurance policy, you need to remember that the “indebtedness” created will cause the policy to be treated as debt-financed property. Consequently, any income resulting from the reinvestment of the loan proceeds will be treated as unrelated business taxable income.

The donation of a deferred annuity to your organization would result in the immediate recognition of income on the donor’s part. The value of the contract in excess of the donor’s cost basis would be considered ordinary income to the donor. However, the donor may be able to take an income tax charitable deduction for the full value of the annuity contract. (Assuming the donor can use all of the income tax charitable deduction in the year of the gift, it may be worthwhile from a tax perspective to pay the income tax on contract gains.)
4. Restricted and Control Stock — Federal securities laws place restrictions on the sale of restricted and control stock under Rule 144 of the Securities Act of 1933. Rule 144 imposes certain conditions on the sale of restricted or control stock. Two of those conditions include: First, prior to a sale, there is a one year holding period requirement calculated from the date of payment in full. Second, the amount of securities sold during any three-month period may not exceed the greater of one percent of the shares outstanding, or the average weekly trading volume of the shares during four calendar weeks preceding the sale, whichever is greater. There are additional restrictions on manner of sale, notice of sale and the company’s compliance with “adequate current public information.”

The gift of control or restricted stock has the effect of placing the donee, i.e. the charity, “in the shoes of” the donor. If the donor was required to sell the securities under Rule 144, the charity is generally required to do so as well. The charity is permitted to “tack on” its holding period to that of the donor in determining whether the one-year holding period requirement of Rule 144 has been met. When a donor gifts restricted securities which he or she has held for at least one year, the charity is permitted to sell the stock provided that all the requirements of Rule 144 are met. By the same token, if the donor had held the donated stock for eight months at the date of the gift, and the charity held the stock for a further four months, the donee could at that point (after a combined one-year holding period) sell the stock pursuant to Rule 144, provided that all the requirements of Rule 144 are met.

Once there is a combined holding period of at least two years, the donee would likely be able to sell without any resale restrictions pursuant to Rule 144(k). However, an opinion from the company’s counsel is required to remove the restrictive legends from the certificate. This can usually be done even if the shares are not being sold.

In addition to Rule 144, other resale restrictions might apply to shares subject to Rules 145, 701 and shares registered pursuant to an S-1 or S-3 Prospectus.

5. Closely held stock — Closely held stock is generally not publicly traded, and can be problematic as well. It may include issues of C and S corporations, as well as LLC and LLP units. Your organization’s acceptance of a gift of closely held stock may have certain undesirable tax consequences, e.g., the stock may generate unrelated business taxable income, and you should obtain a legal opinion before accepting the gift.

6. Mutual funds — Gifts of mutual funds do not have the marketability issues associated with restricted stock and closely held stock. However, like stock/bonds held by the donor’s broker or banker, advise the donor to allow plenty of time to complete the gift. For IRS purposes, the gift of a mutual fund is not considered completed until it appears in your organization’s account. (Ordinarily, a donor should have his mutual fund company direct his or her shares to your designated account.)

7. Real estate — A donor can make a contribution of real property to your organization. Real estate can be donated as an outright gift, a life estate, a bequest, or part of a bargain sale. State law determines whether a gift of real estate is consummated at the time the donor delivers a deed for the property to your organization or if recording the deed is required to make the transfer a completed gift. Recording the deed is always a wise idea in order to reflect true title of the property.

For the reasons discussed in the gift acceptance policy section, an environmental review should be conducted prior to accepting a gift of real estate. The most common issues are valuation and substantiation; unrelated business taxable income; mortgaged property and the excise tax on self-dealing.

8. Retained life estates — A gift of a retained life estate is one in which the donor retains for life the possession or enjoyment of the property. Examples include gifting a personal residence or farm to your organization while maintaining the right to live there for the duration of the donor’s life.

9. Tangible personal property — A donor can contribute gifts of tangible personal property to your organization. Items of tangible personal property include artwork, furniture, clothing, jewelry and automobiles. If the donated property is long-term capital gain property and related to the purpose or function of the charity, the donor’s potential income tax charitable deduction is equal to the fair market value of the property. Otherwise, the deduction is limited to the donor’s basis. Finally, if the donor of art is also its creator, the potential income tax charitable deduction is limited to the donor’s basis.

TIP. If your organization receives a gift stock from a company officer, director or controlling shareholder, whether or not the stock bears a restrictive legend, or shares which bear a restrictive legend or are registered under a Prospectus (even if the donor is not affiliated with the Company), check with the donor or the Company’s counsel as to whether there might be any resale restrictions.

TIP. If a donor is considering making a testamentary charitable bequest, advise the donor of the benefits of utilizing an asset that generates IRD, such as IRAs, 401(k) plans, nonqualified stock options and qualified deferred annuities. Given the high taxes imposed on the retirement plan assets, a donor can make a “cheaper” charitable bequest using IRD assets instead of nonIRD assets.
10. Testamentary IRAs — Income in respect of a decedent (“IRD”) is an inherited payment that would have been taxable income to the decedent had the decedent received it before he or she died. IRAs generate IRD on which the successor beneficiary is obligated to pay income tax. Consequently, IRAs make excellent testamentary bequests because (i) neither the donor’s estate nor heirs will have to pay income taxes on the IRD if the IRA is bequeathed directly to your organization; and (ii) any recipient tax-exempt charitable organization will not have to pay income taxes on the IRD. If a charitable remainder trust is utilized, the income taxes on the IRD will be deferred by the noncharitable income beneficiary(ies) over the CRT’s payout period.

UNDERSTANDING THE VARIOUS TAX RAMIFICATIONS FOR DONORS. Your planned giving officer should not render legal advice, nor should he or she give out tax advice. However, your organization needs to be cognizant of the tax effects associated with planned giving, and donors should be aware of these and provide the proper tax documentation to the donor for tax deductible purposes pursuant to the IRC.

1. Timing of the charitable deduction — A gift may be deductible in the year in which title to the gift passes from the donor to your organization. In practical terms, this generally happens when the gift is delivered to your organization. When a gift is delivered through the mail, the United States Postal Service is considered the agent of your organization. Consequently, the date of the gift is usually the date the gift is postmarked. (Remember: Actual possession by your organization of the gift is not necessarily a requirement of passing title. However, the donor must give up custody, control and management of the property in order for the gift to be considered a “completed” gift.) A gift of money by check may be deductible for the year in which the check is mailed or otherwise delivered to your organization. Consequently, a check made out and mailed by year end may be deductible in the year it was written, even though the check does not clear until the subsequent year.

2. Donor’s income tax charitable deduction — A number of nuances must be addressed before computing charitable deductions. For example, will the donor’s deduction be based on the fair market value or cost basis of the gift? Is the gifted property long-term capital gain property, short-term capital gain property, or ordinary income property? To what use is your organization going to put it? Will the “related” use or “unrelated” use rules apply? Finally, once you have answered these questions, the proper percentage limitation can be applied. In general, if the gift is money, ordinary income property or short-term capital gain property, the donor’s deduction may not exceed 50% of his or her AGI. If the gift is long-term capital gain property, the deduction may not exceed 30% of his or her AGI in that year. (In either case, we assume the recipient is a public charity.) The charitable deduction rules can be complex and confusing. Therefore, the donor should be advised to discuss with his or her own tax advisor or attorney.

SPLIT-INTEREST GIFTS. Split-interest gifts have within them two interests: an up-front interest and a remainder interest. A donor might be entitled to all or a portion of the income and/or principal of gifted property. For example, a donor with an up-front interest might receive 5% of the fair market value of property which is actually generating income equal to 9% of its fair market value. An income tax charitable deduction may be available to the donor of a remainder interest or up-front interest to your organization. For example, the donor of a remainder interest may be entitled to receive any such deduction in the year in which the gift of such an interest in the property is made, even though your organization does not take that remainder interest until the donor’s up-front interest has expired.

Under federal law, a donor generally may not take an income tax charitable deduction for a split-interest gift to a trust unless the trust is in the required form. The three types of split-interest trusts which may qualify for deductions are pooled income funds, charitable remainder trusts and charitable lead trusts. [Note, however, that there are some split-interest gifts that do not require the use of a trust, e.g., a charitable gift annuity.]

1. Charitable remainder trusts — Unlike pooled income funds and charitable lead trusts, a charitable remainder trust (“CRT”) is a tax-exempt entity. Consequently, as long as the CRT does nothing that jeopardizes its tax-exempt status or triggers excise taxes, any activity within the trust is free of taxes. A CRT must provide for a specified payout, at least annually, to one or more beneficiaries (at least one of which is not a charitable organization) for life or for a fixed term of no more than twenty (20) years with an irrevocable remainder interest to be held for the benefit of, or paid over to, charity(ies). This noncharitable payout, based on the value of assets in the CRT, is largely the choice of the donor. However, there are certain limits imposed by law. The minimum payout, for example, must be 5%, and the maximum cannot be greater than 50%. In practice, the maximum payout rate may depend on the life expectancy(ies) of the noncharitable recipients — because your organization’s remainder interest must be at least 10% of the original fair market value of the assets when contributed to the CRT. When the noncharitable interest terminates (usually at the death of the donor or the later death of the donor and spouse if there are dual noncharitable beneficiaries), whatever is left in the CRT (i.e., the remainder), is distributed to the charity(ies) specified in the trust document.

There are different types of CRTs. For example, a charitable remainder annuity trust (“CRAT”) offers an annual payout, based on a fixed percentage of the initial net fair market value of the property, whereas a charitable remainder unitrust (“CRUT”) offers an annual payout equal to a fixed percentage of the net fair market value of the trust assets, valued annually. Additionally, CRTs may offer an immediate payout or payouts that are deferred until some future point in time. (Variations of the CRUT include Net Income CRUTs (“NICRUTs”) or Net Income with Make-up CRUTs (“NIMCRUTs”), including a NIMCRUT with
a “flip” feature, allowing it to become a standard CRUT at some future date.)

2. Charitable lead trusts — By establishing a charitable lead trust (“CLT”), the donor provides your organization with a fixed payout for a period of time, following which the remainder interest is distributed to noncharitable beneficiaries, such as the donor’s children. The donor selects the term of the CLT — it can be any number of years or the life of the donor or spouse; and the donor selects the payout to charity without any government-mandated minimum or maximum. The CLT is not tax-exempt. The manner in which a charitable lead trust is taxed depends on whether the CLT is a grantor CLT or a nongrantor CLT. In very general terms, the donor of a grantor CLT is treated as its owner for income tax purposes.

Consequently, the donor is responsible for paying taxes on the income generated by the CLT. However, the donor may receive an immediate income tax charitable deduction on the charity’s up-front interest in the trust. The donor of a nongrantor CLT is not treated as its owner. Thus, the donor does not receive an income tax charitable deduction for his or her contribution to the CLT, but does not have to pay tax on the income generated by the CLT. Moreover, the nongrantor CLT may be entitled to an income tax charitable deduction for each payment made to charity.

3. Pooled income funds — The pooled income fund (“PIF”) is a trust in which a number of donors “pool” their gifts, rather than being a trust which receives its donations from a single source. The gift is “split” into an income interest held by one or more persons, and a remainder interest held by one or more charitable institutions. In practice, the donor usually contributes cash or marketable securities which in turn are commingled with similar gifts from other donors. The donor, or the donor’s designated income beneficiaries, receives a proportionate share of the income earned by the whole trust — essentially the dividends and interest it has earned, exclusive of any realized capital gains. In this respect, it is very similar to a mutual fund. Given that a PIF is not a tax-exempt trust, income distributions are taxable to the donor. Upon the termination of the donor’s (or designated beneficiaries’) income interest, the value of the share resulting from that donor’s initial gift is transferred to your organization.

4. Charitable gift annuities — A gift annuity is a contract under which your organization, in return for a transfer of cash or other property, agrees to pay a fixed sum of money at stated intervals (not less than annually) for a period measured by one or two lives. The annuity rates are based on the age(s) of the annuitant(s). The donor may receive an income tax charitable deduction equal to the difference between the amount contributed and the present value of the annuity payments. Your organization may spend a portion of the contribution immediately, provided it retains sufficient reserves to satisfy the requirements of certain regulated states where it may be registered. Many charities, however, keep the entire contribution in reserve until the sole or surviving annuitant dies (and carry the discounted value on their books as an unavailable gift).

   a) Immediate — An immediate gift annuity begins paying the annuitant(s) at the end (or the beginning) of the payment period immediately following the contribution. Quarterly payments at the end of the quarter are most common.

   b) Deferred — A deferred gift annuity begins paying the annuitant(s) at a future time, which must be more than one year after the date of the contribution.

**DONOR-ADVISED FUNDS.** A donor-advised fund is an investment account earmarked for charitable giving. The donor makes an irrevocable, nonrefundable contribution of cash or securities to the fund, and recommends that the fund’s administrator make grants to charities, specifying the amount and time of the grant. A donor can appoint others to continue making grants from a donor-advised fund after the donor’s death. Assets in a donor-advised fund are typically managed by a professional investment advisory firm. Consequently, the value of the donor-advised fund may grow, thereby enabling the donor to make potentially larger grants. Donors are often entitled to a charitable income tax deduction for the amount contributed to a donor-advised fund, subject to AGI limits. Any unused deductions may be carried forward for up to five years.

Donors who wish even greater control and more flexibility may want to consider establishing a private family foundation. A private family foundation offers many of the benefits of a donor-advised fund, but is subject to less advantageous AGI deduction limits and to a higher degree of IRS regulation.

**ENDOWED FUNDS.** Contributions to establish endowed funds may come in the form of cash, stocks or other assets. As with certain other planned gifts, the endowed fund can offer the donor a meaningful way to support your organization, avoid paying capital gains taxes on the sale of donated assets and potentially receive an income (and gift or estate) tax charitable deduction. □

**TIP.** Explain that the donor may receive an income tax charitable deduction and not have to recognize any capital gains inherent in the original gift because all such gains will ultimately be realized by your organization. The income tax charitable deduction is calculated by subtracting the present value of the income interest (using the three-year average rate of return of the trust) from the fair market value of the gift. A PIF is designed to accommodate an unlimited number of donors, so by its very essence, the PIF does not present an individual donor with the opportunity to tailor design the terms of the trust document. For example, unlike a CRT, a donor to a PIF does not have the opportunity to choose the amount of his or her payout. One of the benefits of a PIF over a CRT is that the PIF can accept a smaller amount of securities than what is generally practical for funding a CRT.
Building a Planned Giving Strategy

Fitting Products to Capabilities.
The biggest bang for the least dollars: If your organization is young, your need for immediate financial support may far outweigh any opportunity to pursue future gifts. Be tough and be honest. If that's your assessment, concentrate on honing your mission statement and collecting current funds.

If you can devote some staff to future gifts, you may want to focus on areas that can bring the quickest results for the least investment—bequests, lifetime gifts of life insurance and charitable lead trusts, on one end, and charitable remainder trusts on the other.

1. **Bequests** — Create a “Heritage Society” to recognize those who have named your organization as a beneficiary in their wills. All planned gifts should be acknowledged as membership in the society and for their heirs. This serves two purposes—it publicizes the need and thanks the participants on a regular basis (see page 6 for more information on Heritage Societies).

2. **Life insurance named beneficiary** — Encourage donors to name your organization as a beneficiary of their life insurance policies or donate unneeded policies directly to you.

3. **Publicly traded stocks and mutual funds** — Encourage your donors to make outright gifts of publicly traded securities and mutual funds, as well as to bequeath these assets to your organization in their wills. Suggest that they do not identify a stock position by name in their wills (as a specific bequest) in case that particular stock is sold prior to death, thereby undermining the bequest. Charitable gifts of appreciated securities “cost” less than gifts of cash—because of the portion which would otherwise be lost to capital gains tax in the absence of the gift to charity.

**Venturing into the World of Splits.**
Split-interest trusts offer many financial advantages to donors, especially when appreciated property is used. A donor may perceive that he or she cannot part with a certain asset because of the income it is producing, or is held back by the capital gains tax that he or she would incur if the asset were sold. (Or, the donor might like to “convert” a low-income-producing asset into one with a higher payout—without immediately paying capital gains tax at the “conversion.”)

A split-interest trust can accomplish these objectives. A split-interest trust can also be used as a source of retirement income. In addition, a split-interest trust may avoid or reduce federal estate taxes. A donor can act on his or her charitable intent, and yet continue to receive a payment stream (perhaps even an enhanced payment stream), from the asset. The donor may receive an up-front income tax charitable deduction for the gift to charity, and will not immediately incur capital gains tax on the trust’s sale of appreciated assets. Moreover, if the trustee determines that the donor's need for a higher payout does not undermine the charity’s interest in the principal (in the case of a charitable remainder trust), the trustee can sell trust assets and create the desired investment portfolio for the trust without incurring capital gains taxes.

1. **Charitable gift annuities** — The donor, in the process of creating a gift annuity, is in fact conducting two transactions: the purchase of an annuity and the making of a charitable gift.
Example

Advise donors that when considering making a substantial charitable gift, the real cost of making the gift should be seriously considered. A gift of long-term appreciated stock may not only result in an income tax charitable deduction, but may also avoid any tax on the accumulated capital gains. For example, a gift of cash totaling $10,000 from a donor in a 35% federal income tax bracket would actually have an after-tax cost of only $6,500. However, the same $10,000 gift, if it were stock held for more than a year with an original cost basis of $2,000, would have an after-tax cost of $5,300 (assuming a 15% capital gains tax rate). This figure is arrived at by deducting not only the federal tax "saved" by the deduction, but also the capital gains tax "saved" by the gift, in this case $1,200 (15% of $8,000). By pointing out the greater tax efficiency associated with gift- ing long-term capital gains assets rather than cash, a donor may be inclined to make a larger gift than he or she otherwise would have done.

It is the latter transaction which may give rise to the charitable deduction. A portion of the annuity payments is tax-free, being a return of capital. In cases where the donor is the annuitant, any capital gain is reported ratably over the individual’s life expectancy.

**American Council on Gift Annuities (ACGA)** — The ACGA assists charities that issue gift annuities by developing recommended maximum annuity rates, as well as disseminating a wide range of information about gift annuities through publications and conferences. Annuity rates are reviewed annually by the ACGA board, and any changes become effective on the following July 1. Most charities, whether or not they are sponsors of ACGA, follow the suggested rates. By adopting the ACGA rates, your organization is encouraging individuals to support the charity that is best to their liking, rather than the charity which offers the highest rates. To learn more about becoming an ACGA sponsor, visit ACGA’s website at www.acga-web.org.

**State laws** — Gift annuities are regulated by the state, and not by the federal government. Currently, 10 states require charities to obtain a special permit to issue gift annuities, and 30 states require that special wording be included in gift annuity agreements.

**Minimums — ages and amounts** — If your organization decides to issue gift annuities, establish minimum age and amount requirements. Doing so will save you from administrative expenses that might become overwhelming if the checks are extraordinarily small, or span a very lengthy amount of time. With respect to age, your goal is to limit exposure by limiting the number of years you will have to manage the gift. Some charities limit gift size to minimum age, thereby expressing a willingness to accept younger beneficiaries if the initial gift is larger. You may want to adopt the following standards: Minimum age of 45 and 60 for deferred and immediate gift annuities, respectively; and $10,000 minimum contribution for deferred and immediate gift annuities.

**Investment and administration** — These functions can either be done in-house or outsourced to a reputable financial services firm. If your organization opts to do them in-house, you must heed the reserve requirements mandated by a number of states. With respect to the administration, your organization will be required, at a minimum, to: 1) distribute annuitant payments; 2) issue 1099-Rs to all annuitants annually; 3) issue FASB 116/117 asset-liability reports; and 4) file state actuarial reports (for states requiring same).

2. **Charitable remainder and lead trusts** — Typically, the donor transfers an asset, such as highly appreciated property with a low cost basis, to the charitable remainder trust (“CRT”), where it may be sold without any immediate capital gains tax at the time of the sale. The entire proceeds would then be available for reinvestment. For making a lifetime gift to a CRT, the donor may receive income and gift tax charitable deductions. If the CRT is testamentary, established as a result of the donor’s will or by a trust upon the donor’s death, the donor’s estate may receive an estate tax charitable deduction.

Charitable lead trusts (“CLTs”) distribute annual payments to charity for a prescribed period (one or more person’s lifetimes, a set number of years, or a combination of the two).
At the end of the trust period, the trust principal returns to the donor or to individuals designated by the donor. CLTs are typically established for the purpose of passing assets to family members at significant discounts. That is, the present value of the payments going to your organization is deducted from the fair market value of the gift, or bequest, for estate and gift tax purposes. Unlike the CRT which is a tax-exempt trust, a portion of the income earned each year by the CLT is taxable.

**Asset-Based Planning.** The tax law favors donors who contribute appreciated assets, such as concentrated stock positions.

1. **The prevalence of concentrated stock positions** — Contributing a concentrated stock position is more tax efficient than contributing cash with respect to outright gifts, charitable remainder trusts, charitable lead trusts and charitable gift annuities.

2. **Other highly appreciated assets** — Any gift of artwork or other tangible personal property which is long-term capital gain property may be deductible based on the asset’s present fair market value if the item’s use is related to your organization’s exempt purpose and if the contribution is made to qualified public charity. If the item’s use is not related to your organization’s exempt purpose or the donor of art is also its creator, the potential income tax charitable deduction is limited to the item’s cost basis. The ceiling on the income tax charitable tax deduction is 30% of the donor’s adjusted gross income, with a five year carryover for any part of the deduction that is not used during the first year.

This case study is provided for illustrative purposes only. Past performance is no guarantee of future results. The information has been obtained from sources we believe to be reliable, but we cannot guarantee its accuracy or completeness. These strategies do not guarantee a profit or protect against loss and may not be suitable for all investors. Each customer’s specific situation, goals, and results may differ.

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**Example**

Alex owns an antique car with a fair market value of $100,000 that he purchased ten years ago for $50,000. By donating the car to an antique car museum, Alex is able to avoid paying capital gains tax on the $50,000 gain and may be entitled to an income tax charitable deduction of $100,000 (car’s fair market value). If Alex donates the car to a local hospital, his income tax charitable deduction is probably $50,000 (car’s cost basis) since the donated car presumably is not related to the hospital’s exempt purpose.

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Certain planned gifts tend to be more suitable for some donors than others. To ascertain which planned gifts make the best “fit,” break your donor base down into the following categories: age, wealth, married/children, widow/widowers and charitable commitment.

**Typical Segmentation.**

1. **Ages 72+** — People in this age bracket are the best candidates for immediate charitable gift annuities. Their portfolios generally consist of fixed-income investments and cash equivalents, and in recent years, they may have seen their income stream dwindle and most recently, their equity portfolio, if any, sustain substantial loss. Given the more conservative investment objectives of this age group, they welcome the concept of moving out of stock or mutual funds with the inherent risk, and receiving annuity payments that are larger than their current dividends. This older population is less concerned about gift annuity payments not having a built-in hedge against inflation, and are more gratified with the regularity of payments for a “sum-certain” amount.

2. **Ages 50 – 70** — People in this age bracket may be looking for the benefits afforded by a charitable remainder trust, especially if they have highly appreciated stock. The trustee may sell the stock without paying capital gains tax on the appreciation. The trustee may then invest the entire amount of the sales proceeds to generate income for the noncharitable beneficiary or beneficiaries and grow the remainder interest for charity. A charitable lead trust might also be a suitable planned giving vehicle. A person in this age bracket might have assets that are expected to appreciate considerably over the years. By creating a charitable lead trust, the donor may receive an estate or gift tax deduction for the value of the portion of the charitable lead trust designated for your organization — a discount on the value of the asset, if you will. Any appreciation of the charitable lead trust assets will pass to the family members following the charitable term, free of any additional gift or estate tax.

3. **Ages 45 – 63** — “Baby boomers” may be maxing out their IRA and 401(k) plans, and might be looking for supplemental income for retirement, help with financing their children’s college education and providing for the needs of elderly parents. They might also be holding appreciated assets. In these circumstances, a pooled income fund might be particularly appealing. The donor makes a gift which is commingled with the gifts of other donors. The donor or designated beneficiary receives his or her proportionate share of the pooled income fund’s annual income for life. The donor can claim a potential income tax charitable deduction in the year in which the gift is made, with any excess (unused) income tax charitable deduction carried over for up to five additional years. The donor may avoid capital gains taxes on long-term appreciated securities. When the income interest terminates, the donor’s share of the fund assets is transferred to your organization.

4. **Large gift donors as planned giving prospects (“ageless”)** — Large gift donors have an obvious interest in your organization, and may be more likely to have significant appreciated assets than donors of small gifts. Consequently, large gift donors are superb planned giving prospects.

**“Advertising” Approach.** Meeting multiple needs: Think “outside of the box” for using multiple messages to reach your target audience. In the case of baby boomers ages 37 – 50, for example, their specific financial needs can be addressed by certain planned gifts. For example, a “flip” trust can provide supplemental income at some fixed date, while at the same time offering the donor the opportunity to contribute a difficult-to-sell asset. Brochures can be created for a “flip” trust that outline how this vehicle can address multiple needs.

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**Example**

It is inaccurate to liken the “income” from a certificate of deposit to the payment from a gift annuity. An annuitant neither receives “income” or “interest” but “payments.” If cash is contributed, the payments consist of tax-free return of capital and ordinary income; and if long-term appreciated property is contributed, the payments consist of ordinary income, capital gain and possibly some tax-free return of capital. Particularly when you are dealing with an older client, it is important to define your terms accurately!
Supporting Planned Giving Products

GUIDELINES. It is incumbent upon your board of trustees to develop and adopt guidelines to ensure that your planned giving program operates in a fair, efficient and ethical manner at all times. Of course, they will need your assistance in doing this.

1. Gift acceptance policy — In its fiduciary capacity, the board of trustees has a duty to protect your organization from accepting harmful gifts. Examples of harmful gifts include those which leave your organization open to third-party liability and IRS sanctions. An example of such a gift would be land that contains toxic waste. In order to ward off these types of gifts, the board needs to adopt a comprehensive set of gift acceptance guidelines. It is harder to decline a gift when there are no guidelines in place. A gift acceptance policy enables you to make collective decisions in advance without the distraction of a pending gift. A gift acceptance policy serves other worthwhile purposes. For example, it provides guidance to donors and their advisors. Donors’ accountants, for example, do not necessarily know the “related use” rules of tangible property, and a donor may be disappointed come April 15th to discover that he or she may not be allowed to deduct the fair market value of an item. See following page for an explanation of “related use.” A comprehensive gift acceptance policy alerts donors to these types of situations in advance of making gifts. Following are factors you should consider before drafting a gift acceptance policy:

- A charitable organization must provide a written disclosure statement to donors making charitable deduction contributions. Clearly state that legal counsel will be employed when needed. An attorney may be called in to review any number of proposed gifts, including: (1) closely held stock and stock subject to a buy-sell agreement; and (2) gifts subject to a legal document, e.g., bargain sales and trusts naming the organization as trustee. An attorney may also be retained to review transactions that pose a possible conflict of interest, e.g., a situation in which a trustee is also the sales agent of the gift.
- Prospective donors should be urged to obtain independent professional counsel before making a gift. Your organization should create and maintain a list of competent local counsel and distribute this list to donors upon request.
- Before accepting a gift of tangible property, determine whether it qualifies

TIP. If you want to accept a life insurance gift but have determined that the premiums are prohibitive, you may want to consider the following options: 1) converting the policy to a paid-up policy; 2) surrendering the policy for its cash value; or 3) selling the policy to a viatical company. Although your organization will not receive as much as it would had the policy been kept current, these options allow you to capture a portion of the policy’s value — in effect, its discounted current value (as with any planned gift).

TIP. Your gift acceptance policy should clarify under what circumstances, if any, your organization will pay for appraisals, legal fees or professional fees with respect to completing a gift.

TIP. Do not sign a receipt until your organization receives its bequest. Do not waive your right to an accounting. Consider hiring an attorney if there is a will contest or the executor appears to be acting in an unprofessional or unethical manner.

TIP. To ensure that bequests are processed smoothly, offer suggested language which a donor may use in the section of the will directing that funds be left to your organization. At a minimum, supply the testator with the legal name of your organization.
as “related use” to your organization. If it does, the donor’s potential income tax charitable deduction is equal to the market value of the gift if he or she itemizes. If it does not, any potential deduction is based on cost. Auction items are not considered “related use” to your organization, and therefore are deducted at their cost basis. Similarly, the potential deduction for tangible property contributed to a charitable remainder trust or a pool income fund is limited to the cost basis of the property. Inform donors and their advisors of the “related use” status of prospective tangible gifts.

• Ask whether the pending gift of tangible property is marketable. Are there any upkeep charges, such as insurance or maintenance?
• With respect to a gift of closely held securities, determine if they are restricted in any way. For example, the securities may be subject to a buyback agreement at a fixed price, or might have to be offered to a specific group before going to the open market. Check to see if a gift of closely held securities will generate unrelated business taxable income (“UBTI”). This is sometimes the case with limited partnership units and S-corporation stock. Even though your organization may decide to pay the UBTI, you should be aware of the consequences before accepting the gift.
• In the case of a bargain sale involving real estate, additional questions need to be asked. If your organization is assuming a mortgage, will the cash flow cover the mortgage premiums, taxes and insurance?
• With respect to a gift of life insurance that requires premiums to be made, your organization must decide whether it has the cash flow to pay the premiums, or will the donor continue to pay the premiums by making additional annual gifts to your organization?

2. Investment management policy
The board of trustees needs to decide whether your organization’s funds will be managed “in-house” or by an outside money manager. In either case, your board must set certain parameters. What degree of investment risk is the organization willing to assume? What are the long- and short-term investment performance goals? What types of investments will be purchased? If an outside money manager is hired, the board must establish a review process for the money manager, and decide under what circumstances a money manager will be replaced. The basis for its policies should rest squarely on the requirements of the Uniform Prudent Investor Act (“UPIA”) and Uniform Management of Institutional Funds Act (“UMIFA”). In addition, knowledgeable institutions understand that investment policy is predicated on spending policy. Understanding spending needs will help determine appropriate risk levels and return objectives.

3. Ethical guidelines for planned giving
It is imperative that your organization maintain the highest degree of integrity in its dealing with its donors, its employees, board of trustees, outside money managers and the general public. Your board should adopt the Model Standards of Practice for the Charitable Gift Planner promulgated by the Partnership for Philanthropic Planning. (See Appendix A.)

4. Total return: Modern Portfolio Theory, asset allocation and fiduciary responsibility — Specific fiduciary rules govern the investment decisions that charitable trustees and directors are required to make. Following are several of the seminal points that must be considered:
• Charitable trustees and directors are subject to the regulatory supervision of their state attorney general, and may be brought up on charges of fiduciary negligence or malfeasance.
• Charitable trustees and directors need to be cognizant of the UPIA, a law which has been adopted by a majority of the states and incorporates the tenets of the Modern Portfolio Theory. For example, even relatively risky securities, such as high-yield bonds, can be prudent investments, if they improve the risk-adjusted performance of the total portfolio. Similarly, even relatively safe investments, such as Treasury bonds, may be imprudent if they detract from overall performance. The proper portfolio mix depends on the investor’s tolerance for risk and projected time horizon.
• The UPIA imposes potential liability for charitable trustees and directors not only for actual losses, but also for returns that might have occurred if prudent judgment had been used.
• The UPIA recognizes the complexity of managing a portfolio, and permits charitable trustees and directors to delegate investment responsibilities to financial managers. In fact, if a charitable trustee or director does not have the skill or time to manage a portfolio, he or she may be required to delegate such duties.

5. Administration

a) Processing bequests — When you receive notification that your organization has been named in a will, take the following steps:
• Express your condolences to the estate attorney and request the names of those who should receive condolence cards. Ask the attorney for a copy of the will in which your organization is mentioned, and send the attorney proof of your organization’s S01(c)(3) status and Form W-9.
• If the bequest is specific and small, give the attorney the address of your organization. If the bequest is specific and large, ask the attorney for an early distribution.
• If the bequest is a percentage of the estate, ask the attorney for a list of the
inventory. (This can take up to nine months after the donor’s death.) In addition, ask for a final accounting. (This can take up to twenty-four months after the donor’s death.)

- If your organization is named in a trust, you do not have the probate system at your disposal. Ask for a copy of the trust. If the trustee appears to be investing the assets unwisely or unethically, you may contact your state attorney general’s office for assistance.

b) Processing gifts of stocks, bonds and mutual funds — Draft simple and easy-to-understand procedures on how a donor can make a gift of stock and/or mutual funds to your organization. Following are some suggestions and related information:

- If the stocks or bonds are held by the donor’s banker or broker, the donor should send the broker or banker a letter stating that he or she wants to donate the stock/bond to your organization. Suggest to the donor that he or she should give you the name of the broker or banker so you can expedite the process. To ease this process, prepare a sample letter that the donor can adapt for his/her own needs.

- If the stock/bond certificate is in the donor’s possession, instruct the donor to mail the document to your mailing address. Tell the donor not to sign the certificate. Included in the same envelope should be a letter of transmittal in which the donor states his or her name and address, describes the certificate (company, number of shares, certificate number) and specifies that he or she wants to donate the securities to your organization. Instruct the donor to mail a signed stock/bond power in a separate envelope. The name on the stock/bond certificate must match the name of the donor’s signature on the stock/bond power. The donor should take the stock bond/power to his or her bank and have his or her signature guaranteed. The guarantor will sign and stamp the stock power. The donor should include a copy of the letter of transmittal in the same envelope as the stock/bond power. The donor should include a copy of the letter of transmittal in the same envelope as the stock/bond power. A sample stock/bond power should be distributed to the donor in order to expedite the process.

- If the envelopes containing the stock/bond power and stock/bond certificate do not arrive at your organization on the same date, it is the postmark on the later envelope which is deemed the date of the gift. The gift is valued by taking the mean of the highest and lowest price of the stock on the day of the gift. If on a weekend or holiday, the gift is valued by taking the average of the mean of the highest and lowest price of the stock on the day before and after.

6. Consulting services for donors — As your planned giving program expands, it will become increasingly necessary for your organization to provide donors with consulting services. These services can range from instructing a donor on how to word a bequest to providing a tax illustration for a charitable gift annuity. As stated previously, no one at your organization should ever represent himself or herself as the “donor’s attorney.” But providing information for educational purposes plays a vital role in the overall planning process.

Important

Your organization should consult with an attorney before accepting a gift of any life insurance policy in order to determine whether it has an insurable interest in the policy under applicable state law. Otherwise the donor’s estate may have a right to the death benefit and the IRS may assert that the donor is not entitled to an income tax charitable deduction.
At the risk of being labeled as the fox guarding the proverbial henhouse, we offer some thoughts and suggestions about choosing a planning partner from the for-profit, financial services world.

**INTEGRITY OF THE FIRM, PERFORMANCE AND PEOPLE.** IF YOUR PROSPECTIVE PLANNING PARTNER BILLs ITSELF AS A “FULL SERVICE” FINANCIAL FIRM, FIND OUT WHAT THOSE SERVICES INCLUDE. Does your prospective planning partner offer consumer banking and credit? Corporate and investment banking? Insurance? Securities brokerage? Asset management? Administration and investment management of charitable gift annuities and pooled income funds? In order to gain a sense of the “quality” of these services, ask your prospective planning partner if it has won any awards presented by such professional journals as the Institutional Investor, the International Financing Review or the American Banker. For example, inquire whether your prospective partner has won the International Financing Review’s “Bank of the Year Award.”

**EXPERIENCED PROFESSIONAL.** Your prospective planning partner should be able to provide your organization and donors with experienced professionals. Does your prospective planning partner have estate planning centers located throughout the United States? The advantage of this kind of nationwide presence is that professionals at these centers can advise your donors living anywhere in the country on charitable remainder trusts and other complicated planned giving vehicles.

**REPUTATION OF THE ADMINISTRATION AND SOFTWARE.** Find out what kind of administrative services will be available with respect to the handling of your account. For example, can you view your account balances, positions, activities and statements online? Can you communicate via e-mail to your financial consultant? Can you obtain an integrated view of your portfolio with links to research, news and charts? Inquire about the software that your prospective planning partner is using. Is the software company recognized as a reputable one within the planned giving community?

**INVESTMENT CHOICES AND EXPERTISE.** Inquire about the availability of investments offered by your prospective planning partner. For example, does it offer a broad range of investment disciplines that includes mutual funds, closed-end funds, unit investment trusts and variable annuities (through affiliated and third-party insurance companies)? Does it offer a social screening process to accommodate your organization’s investment philosophy?

**BUNDLED VS. UNBUNDLED SERVICES.** Be sure to inquire whether your prospective planning partner offers “soup to nuts” planned giving administration. For example, in the case of charitable gift annuities, does your prospective planning partner provide custody of all gift annuity funds in regular, reserve and/or surplus accounts? Does it distribute annuitant payments by check or electronic funds transfer for direct deposit? Does it issue 1099-R’s to all annuitants annually? Does it issue quarterly account market value and investment reports? Does it issue annual gift expectancy reports and annual FASB 116 Accounting for Contributions Received and Contributions Made and FASB 177, Financial Statements of Not-For-Profit Organizations asset-liability matching reports? If your prospective planning partner does not offer all of these services, you may find yourself in the position of having to either perform some of these administrative services in-house or opting to outsource them to another firm.

**COMMITMENT TO THE NONPROFIT COMMUNITY.** This might be the most difficult quality to assess. In short, how committed is your prospective planning partner to serving the needs of nonprofit organizations? One way of gauging the level of commitment is to learn whether your prospective planning partner offers any “extra” services with respect to the administration of planned giving vehicles. For example, does it offer any consulting services? These services might include reviewing your organization’s planned giving marketing materials; providing information on national trends and strategies in planned giving; training staff in planned giving; offering speakers to address annual board meetings; and providing ghost-written articles for planned giving publications. The availability of these services might lead you to conclude that your prospective planning partner is sensitive to the needs of the planned giving community.
Insurance products are offered through SBHU Life Agency, Inc.

Since life insurance is medically underwritten, you should not cancel your current policy until your new policy is in force. A change to your current policy may incur charges, fees and costs. A new policy will require a medical exam. Surrender charges may be imposed and the period of time for which the surrender charges apply may increase with a new policy. You should consult with your own tax advisors regarding your potential tax liability on surrenders.

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