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The Other Side of Legacy

BY AVIVA SHIFF BOEDECKER

In more than 20 years as a planned giving officer, I have spent time almost every day speaking with donors, prospective donors, and their advisors about the importance of legacy gifts. I have assured them that not only would their gifts benefit a particular institution and/or society in general, but also that their generosity would have a positive effect on their own families and descendants.

I have also been privileged to help people leave legacies: I have aided people who received financial assistance years ago establish scholarships of their own, passing on not only financial support, but also the lesson of the importance of giving. I have even had the opportunity to see some of the gifts I helped make possible have the impact the donors hoped for.

I have met students who received the very scholarships I facilitated. The students not only graduated, but many of them promised to give back when they were able, ensuring that the donor's legacy would be multiplied many times over. My family has benefited from research done in labs built with funds I raised and by scientists supported by fellowships and grants "my" donors have given. And, we have watched athletic contests and dance performances in facilities that I helped obtain

Continued on page 2

Non-Cash Gifts: Avoiding the Risks

BY BRYAN CLONTZ

Outright charitable gifts of non-cash assets will probably forever be the tax geek's dream and the charity's nightmare. From the donor's tax perspective, cash is usually the worst gift option; appreciated stock is usually next best; and some form of wiggling, crawling (but hopefully not glowing) real estate might be the best.

You have surely heard all the statistics: Privately held non-cash assets represent approximately four to six times the entire value of the stock market, yet more than 80 percent of these gifts are estimated to be initially declined by charities. And the gifts that are accepted represent approximately 2 percent of all giving.

What follows are suggestions on how to better position your charity to receive these assets, either directly or indirectly, with as little risk as possible.

Why Decline Non-Cash Assets?

In general terms, non-cash assets include all forms of real estate, closely held C- and S-Corp stock, limited partnerships, artwork and collectibles, and other assets. All of these have distinct and inherent risks. For real estate, the risks are more obvious: environmental issues, liquidation concerns, property management functions, and so forth. For limited partnerships, the risks might be more subtle: potential capital calls, ongoing UBIT liability, increased annual audit discussions, and so forth.

Risk Management Plan

For non-cash gifts, it is critically important to establish a risk-management plan. I suggest viewing these gifts on a continuum from 1 to 10. My non-scientific legend is:

1. Cash gifts;
2. Publicly traded appreciated securities;

Continued on page 9

THIS MONTH

Risks *Continued from page 1*

3. Mutual fund gifts;
4. Closely held C-Corp stock;
5. Personal residence with no debt and strong marketing potential;
6. Limited partnership/LLCs/S-Corp stock;
7. Commercial or out-of-state residential real estate;
8. Any asset with potential liability (like poor marketing potential, existing mortgage, problem tenants or property);
9. Any asset with probable liability (like outstanding property problems, complex tax consequences, or a complex marketing process for assets like tangible personal property);
10. Any asset with known liability (environmental issues, zoning issues, or outstanding capital call).

Most charities are very comfortable going to a 3 or 4 on the continuum, while some are willing to tread into deeper waters. Asking a fund-raiser where the ideal placement would be will usually yield a response of a 7 to 8. Not surprisingly, asking the organization's financial officer will usually place the charity around the 3 or 4 range.

To establish a customized risk-management plan — what risks to retain, reduce, transfer, or avoid — it is important to understand how risk-tolerant the charity is and what the loss possibilities might be. The next step is to determine whether your charity wants to receive the gift directly or whether you should refer the gift elsewhere and still try to receive some benefits.

Receiving a Gift Directly

To receive any form of non-cash gift, it is critical to have a well-drafted and approved gift-acceptance policy and procedure manual that sets forth what assets will be accepted, in what form, and in what way. This document should also describe various risk-reduction strategies including, but not limited to, environmental appraisal, market assessments, site inspection, document review, formulating a gift-acceptance committee, using a separate corporation/trust (typically a Type II supporting organization), legal counsel review, and so forth.

The benefits of receiving a non-cash gift directly include maximizing the gift value and having more donor contact and legal control. The costs of receiving a non-cash gift directly include identified and unidentified risks, staff time, and associated direct and indirect expenses.

Even with the best of policies and procedures and risk reduction strategies, charities will not be able to capture all the non-cash asset opportunities that present themselves. Beyond the gift falling outside the charity's comfort zone, the most common reason for declining or losing non-cash assets is the lack of decision-making speed. Many donors will call on Monday and will want an answer by Thursday. This always

Continued on page 10

Trench Tale

◆ *I visited a retired elderly doctor who had no immediate family and was planning to leave his entire, multimillion dollar estate to our institution. He was, to put it kindly, not an easy person to like — very opinionated, boorish, and uncivil. In short, a curmudgeon. He had a 15+ year-old Lincoln Town Car which he still drove, much to the chagrin of all who knew him. One day, he wanted to show me some of his property holdings. Despite my repeated offers (more like pleas!) to drive him, he insisted on taking me.*

At one point, he started a left turn across a busy arterial street, then stopped abruptly to point out some particulars of his parcel. We literally brought oncoming traffic to a stop, for probably two to three minutes, but it was more like two to three hours from where I sat. Just as people started getting out of their cars to approach us, he pulled away, totally oblivious to the near-riot he had created. About five minutes later and a couple of miles away I started breathing again.

Anecdotes are supplied by readers of *Planned Giving Today*. Do you have an interesting or amusing story relating to your work as a charitable gift planner? Jot it down and send it in so we can pass it on (pgt@pgtoday.com). Names are withheld to protect the "guilty."

New options have been developed to receive non-cash assets.

Risks *Continued from page 9*

seems to happen when each member of the gift-acceptance committee is vacationing on different continents. When this occurs, rather than losing the entire gift, charities should be aware of other options.

Using Charitable Intermediaries

If your charity cannot accept the asset directly, there are two primary ways to still get the gift using charitable intermediaries. These intermediaries come in two primary forms: community foundations (including local, statewide, religious foundations or national donor-advised funds) or non-cash pass-through charities.

Community foundations have long served an important role in accepting complex assets on behalf of other charities. Generally, they take on all the risks that have already been mentioned when accepting the gift, manage the assets, and liquidate the property. The proceeds are then typically added to an endowed fund in the charity's name with the spending policy defining what income interest will be granted annually.

In some cases, the community foundation will allow the proceeds to be deposited in a donor-advised fund with the donor retaining the ability to advise or recommend future grants. These funds can be endowed (only allowing advice on the income), or non-endowed (allowing advice on the principal and income). Community foundations usually do not charge an upfront fee for this service if the asset will remain over time. This allows them to recoup some of their initial acquisition costs through an annual administrative fee.

New options have been developed in recent years that use a community foundation structure, but the mission is only to receive non-cash assets, manage them, liquidate them, and then grant them back to the charity the donor was trying to give it to in the first place. Two foundations that serve this particular niche are the Dechomai Foundation Inc. (www.dechomai.org) and the National Real Estate Foundation Inc. (www.nationalrealestatefoundation.org).

Both of these public charities assume all the risks (the referring charity is not in the chain of title), provide the tax acknowledgement to the donor, and then immediately grant the net proceeds after liquidation as a donor-advised fund grant. Fees generally range from 1 to 10 percent and are based on the asset size, overall complexity, contribution timing, and liquidation difficulty.

These organizations, depending on the group, may also provide other charitable consulting services to help charities receive non-cash gifts directly and non-cash gift annuities, and serve as initial trustee on CRTs with illiquid assets. Another vendor that provides non-cash support, Donation Exchange, LLC (www.dnxllc.com), uses an option strategy to keep the charity off the title.

Note: It is not my intention to promote or endorse any particular vendor, structure, or strategy; only to make planned giving practitioners aware of the various options available should they wish to explore non-cash receipt and liquidation alternatives.

Summary

Non-cash assets will continue to be an undertapped but lucrative development strategy for charities. By understanding what assets are likely to be donated, developing a risk-tolerance profile for an organization, plotting that profile on a risk continuum, developing sound gift-acceptance policies and procedures with risk-reduction strategies, and, finally, establishing a policy about when and where to refer non-cash assets that are not conducive for direct receipt, a charity can maximize its non-cash asset success. ◆

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