

A WIN-WIN SITUATION: CHARITABLE BENEFICIARIES PARTNERING WITH CORPORATE FIDUCIARIES

In the most recent Giving USA 2020 publication, total charitable giving reached \$449.6 billion with 69% of contributions coming from individuals. Bequests accounted for 10% of total contributions reaching \$43.2 billion.¹ With an aging population, an increasing concentration of wealth and the rapid growth of charitable bequests over the last decade, it would be fair to expect that future bequests will only grow.

According to Caring.com's 2019 survey, only 43% percent of adults in the U.S. have an estate planning document such as a will or living trust. As expected, older Americans are more likely to have an estate plan. However, that percentage declines significantly, dropping from 66% of adults age 65 or older, to 39% of adults age 45-54 who have an estate plan. The top 4 reasons for not having a will are: procrastination, does not believe they have enough assets, do not know how or where to start, or feel it is too expensive to set-up.²

Individuals who die without a will are considered to have died intestate. The distribution of the decedent's assets will be determined by probate court and are subject to state laws governing intestate succession. Generally, only spouses, registered domestic partners, and blood relatives inherit under intestate succession laws. Unfortunately, an intestate situation leaves a decedent's favorite charity or charities with nothing.

Although the majority of people think that having a will is important, talking about death has traditionally been a taboo topic that people try to avoid. Being able to have a conversation about documenting estate gifts and their impact on a charity's

KATRINA M. PIPASTS, CSPG

Director of Planned Giving Services
Foundation & Institutional Advisors

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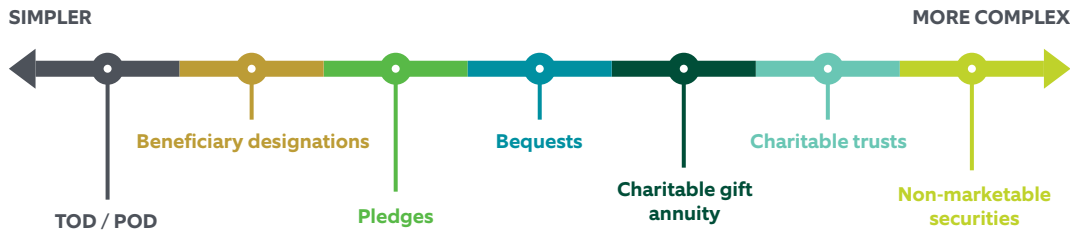
Giving is not just about making a donation. It is about making a difference.

KATHY CALVIN

Former President and CEO,
United Nations Foundation

mission can open the door beyond annual and current support. Donors are loyal, so here, the gift officer can play a key role in educating their donors on the importance of estate planning. With a few simple techniques, many donors can make a larger gift after death than their finances would allow them to make during their life. It is estimated that 85% of planned gifts come in the form of simple beneficiary designations. These are easy gifts for donors to make, easy for gift officers to close and a win-win for nonprofits who are donor-focused.

What are common planned giving vehicles?



Transfer on Death (“TOD”) Accounts allow the donor to name a nonprofit as beneficiary without probate if recognized by state law. The most common transfer on death accounts are brokerage accounts, stocks and bonds defined under the terms of the Uniform Transfer on Death Registration Act.³

Payable on Death (“POD”) Accounts allow the donor to name the nonprofit as beneficiary without probate in most states, using a standard beneficiary designation form. The most common payable on death accounts are checking accounts, savings accounts and certificates of deposit. TOD and POD accounts are simpler than creating a will or trust. Generally, the setup is accomplished by completing a TOD or POD beneficiary form at the bank or brokerage house. It is important to understand that the TOD or POD accounts supersede a will or trust. However, these accounts may be subject to claims by creditors.⁴

Beneficiary Designations such as tax deferred retirement accounts in IRAs and 401(k)s are tax efficient choices for gifting upon death. From the nonprofit’s perspective, prime candidates could be donors with a keen appreciation of tax efficient planning but a hesitancy to give assets away during lifetime.

Advantages for Donors

- Simple to execute with a beneficiary designation form
- Funds left to a nonprofit are not subject to income taxes
- Revocable

Advantages for Nonprofits

- Donor cultivation regardless of income level

Considerations for Donors

- Funds left to human beneficiaries are subject to income taxes
- Possible to split between charitable beneficiaries and family
- TOD and POD beneficiary designations can have an adverse effect on the donor’s overall estate plan and careful coordination with donor’s advisors is necessary

Life Insurance Beneficiary Designations are another great opportunity for a donor to support a favorite charity.

Advantages for Donors

- If the policy is paid up and no further premiums are required, the donor can make the nonprofit the owner and beneficiary of the policy.
- If the policy is not yet fully paid up, the donor can continue to make annual premium payments, name the nonprofit as the beneficiary and be able to claim a tax deduction for each payment.

Considerations for Donors

- If the current beneficiary of a life insurance policy will not need the funds, a donor can consider naming a charity as the beneficiary.
- Gifting a life insurance policy can potentially reduce the donor’s taxable estate.

Pledges are promises by donors to contribute cash or other assets. Donors may be reluctant to sign an irrevocable gift agreement or an enforceable pledge. The obvious advantage of an enforceable pledge is that if the donor does not honor the pledge, the nonprofit may have the pledge enforced by the courts. However, charities may be reluctant to take action based on significant consequences such as negative publicity. Still, an enforceable pledge can help protect a gift if a donor has passed away before completing the pledge payments. The charity can file a creditor’s claim in a donor’s estate.⁵

Another strategy for a donor and charity to consider is the revocable enforceable pledge whereby the donor pledges to make a series of payments, but retains the right to revoke the obligation to make future payments. If the right to revoke is not exercised, it becomes a binding obligation of the donor’s estate. If the right to revoke is exercised during lifetime, the donor’s estate shall be liable for the amount that became irrevocable prior to the donor’s revocation and which was not paid by the donor during lifetime.⁶

Bequests are the cornerstone of any planned giving program. Regardless of the nonprofit’s size, the gift officer should focus on marketing bequests to their loyal donors, especially those who make annual gifts and have consistent giving records. Bequests can represent a substantial gift from a donor who might otherwise not wish to part with their current assets, yet make a major gift that otherwise might not be possible.

Advantages for Donors

- Recognition by the Nonprofit during lifetime
- Preservation of current assets
- Reduce or eliminate federal estate taxes
- Revocable instrument

Advantages for Nonprofits

- Donor cultivation regardless of income level
- Establishment of a legacy society
- Donor recognition prior to receiving the bequest
- Documented bequest intention

Considerations for Donors

- Properly name the charity in bequests to avoid any confusion

Considerations for Nonprofits

- Provide donors with a copy of charity’s IRS Determination Letter for proper legal name and EIN

The nonprofit may find it useful to have sample bequest language available for the donor. The suggested language can be a specific dollar amount, marketable securities or property bequeathed to the charity. Alternatively, a bequest may be a percentage of the donor's estate to benefit the nonprofit. Furthermore, it can be a conditional bequest, such as a bequest to a charity only if a spouse predeceases the donor or restricted in nature directing that the bequest is used for a specific purpose.⁷

Many nonprofits encourage donors to sign some type of acknowledgement form that confirms in writing their intentions to leave a gift by will or by beneficiary designation. The benefits to the organization are that it impresses upon the donor the seriousness of the intention while satisfying the nonprofit's crediting policy for such gifts. Despite the benefits, few donors are willing to sign such forms. If a donor does not follow through with documentation, it is best to set the issue aside so as not to alienate the donor and risk losing the gift altogether.⁸

Other Planned Giving Vehicles. A donor's long-term objectives might be better accomplished in structuring a deferred gift, such as a charitable gift annuity or a charitable remainder trust.

- A **Charitable Gift Annuity** is a contractual agreement between one or two donors and a nonprofit. The donor(s) transfer assets as a gift to the nonprofit and in return, the nonprofit is obligated to pay a fixed annuity to one or two annuitants, for the lifetime of the annuitants.
- A **Charitable Remainder Trust** is an irrevocable trust that generates a potential income stream for the donor or other beneficiaries, with the remainderman going to one or more nonprofits. To learn more about the advantages and challenges of these planned giving vehicles, please refer to *How Do Charitable Gift Annuities and Charitable Remainder Trusts Work?* <https://cdn.northerntrust.com/pws/nt/documents/white-papers/wealth-management/charitable-gift-annuities-charitable-remainder-trusts.pdf>

Beyond Getting Named as a Beneficiary in a Donor's Estate Plan Documents, What Else Can Planned Giving Professionals do for their donors? One of the most important decisions that a donor will make during the estate planning process involves the selection of a fiduciary to administer the estate or trust following the donor's death. For estates and trusts that include charitable legacies, the choice of a fiduciary can be even more critical. Individual executors and trustees, who may be surviving spouses, adult children, close friends and/or trusted professional advisors are often able to handle post-death administration, particularly if they are working with competent legal counsel, skilled tax professionals and experienced financial advisors. However, even the most competent and sophisticated individuals may not always be the most appropriate choice for post-death administration, even if the individuals are related to the donor and are beneficiaries of the estate or trust.

While a surviving spouse or an adult child may be a logical choice of fiduciary for many donors, sometimes even the most competent and well-intended family members struggle with post-death administration. There are many factors to consider when choosing an executor or trustee who will act when a donor dies. Please refer to *Navigating Trustee Selection* <https://cdn.northerntrust.com/pws/nt/documents/wealth-management/factors-to-consider-in-trustee-selection.pdf>



Legacy is not what's left tomorrow when you're gone. It's what you give, create, impact and contribute today while you're here that then happens to live on..

RASHEED OGUNLARU

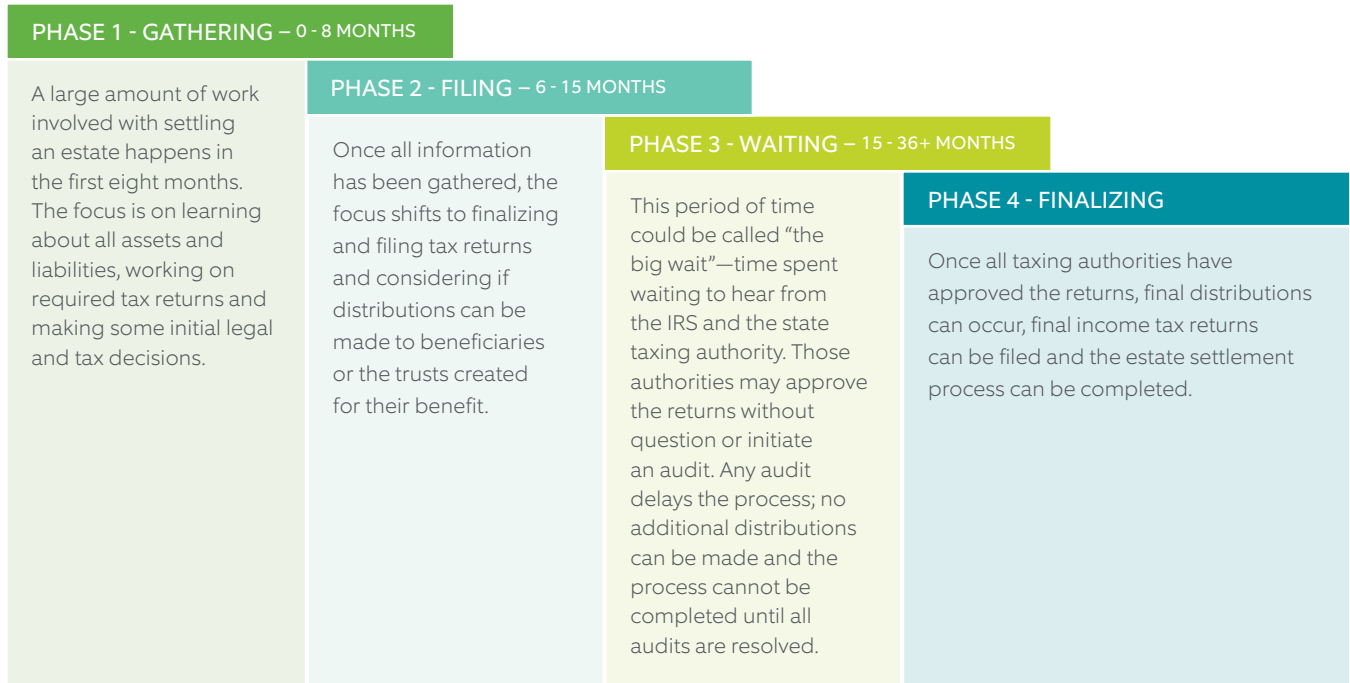
Gift planners who have cultivated long-term relationships with their donors are frequently included among their donors' most trusted financial, legal and tax advisors. As such, gift planners can play an important role in helping the donor choose the right fiduciary. More often than not, choosing a corporate fiduciary to act with or instead of a family member or other trusted individual may be a more appropriate option for estates and trusts that include legacy gifts to charity.

While the donor's choice of a fiduciary can only be finalized by the estate planning attorney who drafts the estate plan documents, planned giving officers often have a seat at the table when those decisions are being made. In addition to getting their charity named in the estate plan documents as a beneficiary, planned giving officers should also weigh in on the donor's decision when it comes to identifying the fiduciary that will be responsible for the delivery of their gift when the donor dies.

So What Happens When A Legacy Donor Dies and How Can Planned Giving Professionals Help? The administration of trusts and estates following a death can be complicated and time consuming, and is all too frequently a source of family conflict. Trustees and other fiduciaries must navigate complex legal and tax regulations, administrative duties, and at times emotional and highly personal decisions. They must also act with objectivity, independence and appropriate transparency. Whether the fiduciary is an individual or an institution, planned giving professionals need to have a seat at the table when a donor dies and the plan includes a bequest or a distribution to their organization and/or to other charities. While charities need to be sensitive to the needs of the donor's family, they also need to be proactive and prepared to respond quickly as soon as they learn of their donor's death. Planned giving professionals should know what kind of information they are entitled to following the donor's death. They should also be ready to respond quickly to the fiduciary's request for documents and information from them. At a minimum, the charity is entitled to a copy of the donor's will and any codicils thereto and a copy of the provisions in the donor's revocable trust agreement that describe the interest of the charity (a specific trust or estate asset; a pecuniary amount of cash; or a share of the residue). If the charity is entitled to a share of the residue of a trust, then the charity is also entitled to a complete copy of the trust agreement and annual accountings from the estate or trust until the charity's entire share has been distributed. In turn, the charity should be immediately prepared to provide the fiduciary with the following documents:

1. A current copy of the charity's IRS Determination of Exempt Status Letter
2. A completed IRS Form W-9 signed by an authorized officer of the charity;
3. A signed corporate resolution identifying the individual officer or officers are authorized to sign binding legal documents on the charity's behalf; and
4. A copy of the charity's current Gift Acceptance Policy.

By having the above documents ready and available to deliver to the fiduciary immediately after being notified of the donor's death, the charity can, among other things, confirm its identity as the intended beneficiary, provide its federal tax identification number and current contact information, confirm its status as a qualified public charity and identify the appropriate professionals who are authorized to conduct business on the charity's behalf and who will interact with the fiduciary.



Post-Death Administration Begins When the Donor Dies, But Can Take as Long as Three Years (or more) to Complete. As the illustration above indicates, we break the post-death administration period up into four distinct, yet overlapping phases: Gathering; Filing; Waiting; and Finalizing. The length and complexity of each phase will vary greatly depending upon the size of the taxable estate which may include:

- Assets titled in the deceased donor’s name alone; assets that are POD or TOD; assets held in a trust at death; and assets to be distributed pursuant to a beneficiary designation);
- The nature and character of the assets (liquid; readily marketable; illiquid; difficult to value);
- The degree and complexity of the liabilities (debts; post-death administration expenses; asset management costs;
- Maintenance and upkeep of estate or trust owned assets such as real estate or a closely held business interest);
- Family dynamics; and
- How the assets will ultimately be distributed.

In short, post-death administration is often a lengthy, technical, tedious and labor-intensive process. It also carries the risk of personal liability for the fiduciary if mistakes are made or things just do not go as planned.

Why Charities May Prefer Corporate Fiduciaries for Their Donors. For estates or trusts that include distributions to charity at death, choosing a corporate fiduciary to act with or instead of an individual can make the post-death administration process go much more smoothly for everyone involved, especially the charitable

beneficiaries. The reasons why a charity may prefer that its donors choose corporate fiduciaries such as banks, trust companies or financial services firms to act at death fall into the following categories:

- 1. Expertise** – Fiduciaries wear many hats. They are responsible for the management of complex investment portfolios as well as non-traditional assets such as real estate, closely-held business interests and tangible personal property. They are accountable to every individual or organization that has a financial interest in the estate or trust and they must comply with a multitude of notice requirements that can vary greatly from state to state. Corporate fiduciaries know how to secure, inventory and value all of the estate and trust assets and they have the skills and the resources needed to prepare the tax returns that the estate or trust must file during post-death administration. Corporate fiduciaries can also interpret and apply complex provisions in the will or trust agreement and make difficult decisions related to distributions and asset allocation. They also have the tools and systems in place to pay or arrange for the payment of all debts, administration expenses and taxes owed by the estate or trust, keep and maintain accurate records, and provide detailed accountings to all of the beneficiaries and other key stakeholders.
- 2. Independence and Impartiality** – A trustee owes a duty of loyalty and prudence to the beneficiaries and must always act in good faith and manage the trust assets solely in the interests of the beneficiaries. This means that the trustee must act in a manner that avoids even the appearance of a conflict of interest, and must strictly adhere to the terms of the trust and the applicable laws of the jurisdiction in which the trust is being administered. When the beneficiaries include both individuals (typically family members) and charities, an effective, objective and truly impartial third-party trustee with no beneficial interest in the trust is often better equipped to carry out its fiduciary duties and minimize the risk of any conflicts that may arise.
- 3. Continuity and Discretion** – When a donor dies, the fiduciary charged with post-death administration is responsible for everything the donor owned or controlled on the date of death and everything the donor owed. This requires the collection of information about all types of assets and the manner in which the assets were titled, and in some cases the fiduciary must manage or operate a deceased donor’s business. The fiduciary must also assess the immediate liquidity needs of the estate or trust, compile information about the decedent’s debts and expenses and gain an intimate understanding of the family situation. The fiduciary will need to obtain complete contact information for, and open the lines of communication with, all of the beneficiaries and stakeholders, including the charities. The information that fiduciaries uncover during this process can be highly confidential and extremely sensitive for the now-deceased donor and the donor’s family. Since corporate fiduciaries are staffed by seasoned professionals, many of whom have deep experience with post-death administration, there is very little that professional fiduciaries have not seen and very few secrets that truly professional fiduciaries cannot keep. Corporate fiduciaries also work in teams that allow for the avoidance of disruption due to turnover and unlike individual fiduciaries, corporate fiduciaries can continue to exist in perpetuity and do not die.

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Charities and corporate fiduciaries often have a similar goal. They both want to be named in the estate plan documents of donors and clients. Charities want to be among the beneficiaries and corporate fiduciaries want to be nominated to act as executor and successor trustee. When corporate fiduciaries settle estates and trusts that include legacy gifts, the relationship between the fiduciary and the charity is mutually beneficial, and the benefit of that relationship also extends to the donor's family, to other non-charitable beneficiaries and to other key stakeholders. The benefits of that relationship include, but are not limited to the following:

1. Professional management of estate and trust assets and associated expenses;
2. Skilled interpretation and administration of complex will and trust provisions;
3. Deep technical expertise in the area of income and estate tax compliance;
4. A keen understanding of critical fiduciary duties and the tools necessary to fulfill them;
5. An ability to navigate challenging family dynamics to help minimize or avoid conflict;
6. Thorough knowledge of the personal and financial risks associated with serving as an executor or trustee and how to avoid them;
7. Appropriate and necessary transparency combined with effective and discrete communication; and
8. The capacity to ensure that all beneficiaries, charitable or otherwise, are treated fairly and equitably as the circumstances and the estate plan documents dictate.

Getting Named in Estate Plan Documents is Just the Beginning. While charities and corporate fiduciaries always appreciate knowing that they have been named in the estate plan documents of donors and clients, they cannot simply move on to other matters while they wait for the client or donor to die. If anything, being named in estate documents calls for even more proactive engagement with the donor/client and their team of advisors. For the charitable gift planner it may also mean joining the team of advisors if they have not already done so. When a corporate fiduciary learns that it has been nominated to act as a fiduciary for a client upon the client's death or disability, the corporate fiduciary can encourage the client to open the lines of communication between and among their beneficiaries (individuals and charities) as well as with their professional advisors, their business partners, any other nominated co-fiduciaries, and other interested parties. This is typically done gradually, as the client ages and as their children and grandchildren come of age. The idea is to develop a transparent and collaborative environment among family members and key stakeholders in which information about the client's wealth transfer plans as well as the client's goals and wishes are shared in order to avoid any surprises when the client dies. It also gives the client/donor plenty of opportunities to answer the "Why?" questions that are so often asked when the client is no longer able to answer them.

Charities are also Fiduciaries. Like executors and trustees, board members and employees of public charities, have a fiduciary duty to act collectively in the best interest of the charity they serve, and they must remain loyal to its mission. When charitable gift planners assume a more proactive role in the wealth transfer plans of their donors by taking a seat at the table with the donor's most trusted professional advisors, they set themselves up to become even more effective stewards of the legacy gifts that are entrusted to them. As charitable gift planners become more engaged in the wealth transfer planning process, they can cultivate deeper and

more meaningful relationships with the families of their donors, and they can help their donors make better and more informed choices, all of which can help ensure that the wishes of their donors are carried out as effectively and as efficiently as possible. By enhancing the efficiency of post-death administration for legacy donors, charitable gift planners make it easier for their employees and board members to act in the best interests of their organizations and to remain loyal to their missions. In short, corporate executors and trustees are well-positioned to help charities carry out the fiduciary duties that they charities owe to their donors, to their mission and to the public.

The Significance of Love and Trust. The term “philanthropy” comes from the Greek and Latin roots, “phil-,” which means love or loving and “anthropos,” which refers to mankind or humankind. Philanthropy, therefore, means love of humankind. The word “fiduciary” evolved from the Latin term, “fiducia,” which translates to “trust, confidence or reliance,” or “entrusted, held in trust.” While love can exist in the absence of trust, most of us would agree that it is far easier to love people and institutions that we trust. Further, while love can be spontaneous and unconditional, trust must typically be earned. Legacy gifts to charity are very clearly an expression of the donor’s love for an institution, a particular cause and in some cases for all humankind. Entrusting the delivery of a donor’s legacy gifts to a person the donor loves may seem appropriate, particularly if the person the donor has chosen has the time, the expertise, the patience, the technical skills and the energy necessary to manage a complex project that, among other things, may require that person to spend up to 3 years (or more) of Gathering, Filing, Waiting and Finalizing in order to complete the project. While donors may not love their wealth management firms like they love their families and their charities, most established corporate fiduciaries have spent decades developing the expertise, acquiring the appropriate tools and honing the professional and technical skill sets that are necessary to earn and retain the trust of multiple generations of clients and their families. And when clients and their families hire professional fiduciaries to help them share their wealth with the charities and the causes they hold dear, professional fiduciaries get to use the trust that they have earned to help spread the love that their clients have so generously chosen to share. Put differently, when charitable gift planners and professional fiduciaries can work together, it is a Win-Win Situation.

ENDNOTES

- 1 Giving USA 2020
- 2 Caring.com 2019 Survey Finds That Most People Believe Having A Will Is Important, but Less Than Half Have One.
- 3 Julie Garber.How to Avoid Probate with a Transfer on Death Account.the balance.com August 2020
- 4 Julie Garber.What is a Payable on Death Account?thebalance.com June 2020
- 5 Reynolds T. Cafferata, "Should Pledges be Enforceable? And Other Questions To Ask About Gift Agreements," Journal of Gift Planning, 1st Quarter 2007.
- 6 Ibid.
- 7 Ronald R. Jordan and Katelyn L. Quynn.Planned Giving for Small Nonprofits.John Wiley & Sons, 2002.91-93.
- 8 Ronald R. Jordan and Katelyn L. Quynn.Planned Giving for Small Nonprofits.John Wiley & Sons, 2002.93-94.

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