

Bequests in Canada

Starting a Planned Giving Program

Canadian Crossroads International

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www.blumbergs.ca

Overview

- Introduction to Bequests
- Encouraging Bequests – 16 steps to creating a suitable bequest program
- Legal Issues
- Ethical Issues
- Practical Considerations



Overview of Planned Giving Vehicles

Planned giving vehicles

- bequests – gifts under will
- gifts of marketable securities
- life insurance
- certified cultural property
- gifts of real estate
- gifts of private company shares



Overview of Planned Giving Vehicles (cont)

- 'Charitable Remainder Trust' (CRT)
- gifts of residual interest
- interest free loan
- private foundation
- RRSP/RRIF
- charitable gift annuities
(self insured or reinsured)



Introduction

- most bequests are 'simple' – but issues and problems with some
- if you know about a bequest and if you know that there is a problem you can intervene
- presentation about red flags to pay attention to
- information, not legal advice, certainly not comprehensive



Simple situation

- elderly widow, no children, has will
- "I DIRECT my Trustees to pay the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) to [CHARITY], currently located at [address], for its general purposes. The receipt of an appropriate officer of [CHARITY] shall be a sufficient discharge of my Trustees."^{*}
- charity finds out after death
- bequest management

* Not a precedent clause



Sample bequest scenarios

- whole estate to charity
- amounts to various parties and residue to charity
- part (eg. $\frac{1}{4}$ of residue) to charity
- \$100,000 cash to 1 Charity
- \$100,000 cash to 10 charities



Sample bequest scenarios (cont)

- amount to charity, subject to conditions or restrictions
- contingent gift (\$ to charity if wife dies first)
- spousal trust with income to spouse and capital to charity
- specific property to charity
- funds to trust or private foundation



Introduction - Why are bequests important to understand

- 90% of planned giving in \$ is bequests
- biggest donor concern is admin/fundraising costs –bequest are one of the least expensive vehicles in planned giving
- cost – bequest 1-5% vs. 50% for special events



Why are bequests important to understand (cont)

- ❑ bequests are middle class major gift
- ❑ most lawyers who do bequests don't know what gift planning/PG is.
- ❑ lawyers have lots on their minds when they do estate planning – not just bequests
- ❑ important to diversify revenue



Bequests - Advantage

- revocable, deferred
- death is a good time to give for many
- reduce taxes - tax receipt may coincide with substantial income tax liability on death
- flexible
- 'simple'



Bequests - Disadvantages

- you don't get to see the funds being spent
- you don't get to help people now
- charity does not get money now and it is revocable
- no current tax benefit
- tax benefit may be illusory in certain situations



Perhaps a Bequest is not the right vehicle

- small amounts -hassle
- large amounts – obtaining tax benefit.
- if person can afford to make major gift now then may be better than planned gift later



Intestacy – No will or no valid will

- ☐ person saying they will include charity in will does not make it so
- ☐ if no valid will, no bequest
- ☐ In Ontario see Succession Law Reform Act (SLRA)
- ☐ charity will not get a dime under SLRA
- ☐ charities and Professional Advisors need to encourage people to have proper wills



ENCOURAGING BEQUESTS

CREATING A PLANNED GIVING PROGRAM FOR A CANADIAN CHARITY

- yes or no. Maybe.
- NO – cost of program, lack expertise, priorities for short term funds, no board support, revocable gift
- YES – low fundraising cost and diversification of revenue, right demographic group, tremendous opportunity
- MAYBE – do it but very cost effectively



1) Board and ED Support

- 1-10-20 year time horizon
- will organization be around
- will board support next year
- are expectations realistic
- who will be responsible –staff, volunteer, PG committee, consultant



2) Correct legal name of charity

- check letters patent
- if you don't like the name then change it.
- incorrect name puts executor in difficult position, can result in court costs and can result on loss of bequest or in sharing bequest
- use correct legal name on bequest information and website



3) Due Diligence

- if you are paying \$1 million for a business what sort of inquiries would you make??
- some donors or their advisors do due diligence for bequests
- how effective is organization?
- is charity involved with litigation or problems with CRA? Fix problems now
- do your own due diligence - Google and Google ALERTS, corporate and CRA searches, review T3010



4) Gift Acceptance Policy

- gift acceptance policies are a very important tool to anticipate and avoid legal and ethical issues.
- some charities do not accept real estate, annuities, perpetual endowments
- almost all accept unrestricted bequests and unrestricted marketable securities donations
- what conditions or restrictions are acceptable, recognition, conflict of interest, valuation, responsibilities



5) Website or Fact Sheet

- explain planned giving
- provide information on vehicles
- examples of donors
- contact information
- bequest – correct name and sample clauses



6) Marketable Securities

- can use own brokerage account or CanadaHelps etc. to accept donations of marketable securities directly
- need information and instructions from donor
- fact sheet
- put information on website



7) Planned Giving Society

- may establish to recognize estates and those who have committed to make planned gift
- yes – recognition of individuals, prominence to planned giving, reinforces
- no – effort, cost, .
- society may only have one event per year but send message that charity cares about planned gifts



8) Responsibility

- volunteer or staff
- if volunteer is it one person or committee
- if staff –how much of duties are PG
- major gifts vs. planned giving
- ultimately board is responsible for PG and acceptance of gifts and conditions.



9) Budget and Plan

- large (\$500,000) vs. small (\$10,000)
- salaries, events, advertising, professional services, training, printing
- informal plan vs. business plan
- obtain professional advice on certain aspects – pay a little now or pay a lot later
- you get what you pay for? no



10) Administration of Bequest

- learn about administration process
- get legal help especially with first or complicated gifts
- most bequests are not complicated
- keep file and record
- use reminder system



11) Join Networking and Educational organizations

- CAGP, AFP
- education, networking
- mentorship
- courses
- internet – be careful of differences between Canada and US



12) Professional Advisors and Planned Giving

- very important to have input from professional advisors
- have a model – planned giving committees, hiring advisors etc.
- not all professional advisors are equal in skills and knowledge
- see my article on “Charities, Professional Advisors and Planned Giving Committees” at www.blumbergs.ca



13) Professional Advisors (cont)

- Lawyers – gift acceptance issues, estate planning, drafting wills, bequest management
- Accountants – estate planning and tax issues
- Investment Advisors – especially re: marketable securities
- Insurance Advisors
- Trust and Bank Officers



14) Marketing of Bequests

- existing publications
- website
- signatures on e-mail messages
- remind at events
- highlight past donations
- hurry up and wait



14) Ramping up a Planned Giving Program

- hiring staff
- hiring consultants that specialize in bequests
- review of databases
- call to certain donors
- advertisting



15) Prospects

- check your database
- look for older and consistent donations (3-5 years), people who have no children
- volunteers, board etc.
- research before meeting



16) Respond to inquiries

- give correct information
- respond quickly
- respond to requests for information – UK study - 1/3 of top UK charities did not respond at all to first request, 1/6 did not respond to second request.
- keep list of expectancies



LEGAL

Important Legal Considerations in Bequests

- Correct Name of Charity
- Clarity in will drafting
- Capacity of testator
- Validity of will
- Charitable Status



Important Legal Considerations in Bequests (Cont)

- Revocation of Wills
- Bequest property and acceptability
- Bequest restrictions and acceptability
- Due Diligence
- Disappearing will, POAs.
- Disappearing assets
- Trusts, Residual Interests and Deferred Gifts



Important Legal Considerations in Bequests (Cont)

- Taxes and bequests
- Use and abuse of Powers of Attorney prior to death
- Ownership can defeat testamentary intention
- Beneficiary designation can defeat testamentary intention
- Probate Avoidance
- Claims against estate



ETHICAL

Ethical issues

- Can a charity pay for the cost of preparing donor's will?
- Can a fundraiser or charity act as executor?
- Can charities recommend professional advisors?
- Can a charity employee do a will for a donor?
- Undue influence of charity vs. education
- Conflicts of Interest



PRACTICAL

STEPS TO AVOIDING PROBLEMS

- be aware of legal, ethical and practical issues
- education –CAGP, AFP, internet etc.
- have professional relationship with professional advisors
- gift acceptance policies
- encourage donors to seek legal advice



STEPS TO AVOIDING PROBLEMS (cont)

- conduct due diligence on own charity
- place accurate, complete and helpful information on website
- avoid providing legal advice and don't provide wills or codicils



Promotional materials

- ❑ are they correct, truthful and not misleading
- ❑ are you providing legal, accounting or other advice?
- ❑ do you recommend that donors seek independent legal advice
- ❑ do you provide correct legal name of charity
- ❑ has it been vetted by someone who is knowledgeable



Imagine Canada New Code of Ethics and Gift Acceptance Policies

- 9. If the charity receives, or anticipates receiving, gifts-in-kind of \$100,000 or more in a year and has annual revenue in excess of \$500,000, it will establish a Gift Acceptance Policy (including valuation issues) for the receipt of gifts-in-kind
- “Imagine Canada’s new Ethics Code: Imagining a more ethical Sector” at www.blumbergs.ca
- gift acceptance policies are a very important tool to anticipate and avoid legal and ethical issues.



More Information

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