

Development professionals dread hearing the words, "I am not able to give because...." It is human nature to stop listening when a prospect says "no," but listening carefully to the reason given can lead to productive gift planning discussions. The situation is much worse when a donor never verbalizes the reasons for deciding against a gift, leaving no opportunity to offer solutions.

The best gifts are "win-win," helping a donor address personal financial or estate planning goals in addition to philanthropic goals. That is the power and beauty of gift planning, and why we are so passionate about planned gifts and their potential to affect the lives and dreams of real people. Understanding a donor's concerns can help the gift planner find a win-win solution. In this article, we will explore nine common reasons for deciding against a gift, the assumptions or concerns that may have led to this conclusion, and the options that could address those concerns and result in one or more charitable gifts, both lifetime and testamentary. In each case, we offer possible replies to the donor's reason for not giving.

All My Assets are Tied Up or Illiquid

Many people assume that charitable organizations will only take cash gifts, so they never think about other attractive assets for giving. They may assume that they will have to sell something to come up with the cash to make a gift, and they may not want to enter into a complicated process, or to pay sale costs and capital gains taxes on appreciated assets. We have worked with many generous individuals who are adamantly opposed to paying capital gains taxes, regardless of the tax rate.

The majority of personal wealth for these people may be in the form of real estate, family businesses, or closely-held businesses or investments. However, beware of assuming that those with lots of income also own the underlying assets. Sometimes the individual benefits from assets, but does not own or control them.

If the prospect does own the assets, giving some or all of certain non-cash assets is the solution. A gift to a charitable organization is not a sale or exchange [Internal Revenue Code section 170(e)(1)(A); Income Tax Regulation section 1.170A-4(a)(1), so capital gain is not realized and no capital gain tax is due, so long as there is no debt on the contributed asset, and

the contributed asset is not ordinary income property or section 170(e) capital gain property.

Most common are gifts of publicly-traded securities, art and collectibles, vehicles and real estate. Gifts of equity positions in family businesses or closelyheld businesses or investments, mineral or royalty interests, intellectual property, equipment, inventory, assignments of interests in financial instruments and assignments of partial interests in trusts are also possible. All of these assets can be given as outright gifts during lifetime or at death, and some of these assets can be used to fund charitable life income plans, charitable lead trusts and revocable loans to charities.

Possible replies when a donor explains that all his or her assets are tied up or illiquid include:

- Of course we appreciate gifts of cash, but we are also able to consider gifts of other types of assets, such as publicly-traded securities, artwork and collectibles, and real estate. The gift could be all or a portion of those usually appreciated assets. You don't have to sell something to generate cash to make a gift, so no capital gains taxes would be due. Could we meet to discuss this in more detail?
- If you are receiving money from a trust or annuity, you could share future distributions with us. Could we meet to discuss this in more detail?

All My Planning is Done

This statement may indicate that all estate planning is done, as reflected in documents that may have been drafted many years ago and rarely if ever reviewed since then. The prospect may not have considered how various changes—in tax laws, gain or loss in the value of savings, assets and retirement plans, in personal and family circumstances, in health status of heirs and loved ones, in executor and trustee choices—all impact a "final" plan. Plans may also be on hold, waiting for an inheritance or winning the

lottery, or some certain "older" age. A prospect may assume that adding your organization to an estate plan means starting from scratch, or that it would require the payment of significant fees to one or more advisors. Some people simply do not want to make changes in their estate plans, regardless of the ease of doing so.

Many estate planners have told us that more than 50 percent of their clients' assets will pass outside the probate process, and are controlled by beneficiary designations or jointly owned property. As such, a complete redrafting of a will or testamentary trust may not be needed to make a testamentary gift to charity. Amending an existing will or trust can be simple and much less costly than preparing new documents. Making a testamentary gift can be as simple as naming a charity as a beneficiary of all or part of a retirement plan or life insurance policy, a bank or brokerage account, or designations on savings bonds.

Possible replies when a donor explains that all his or her planning is done include:

- Did you know you can add a gift to us in your plans without having to change your will or trust? Even amending a will or trust to include a gift to our charity can be simple and much less costly than preparing the original documents.
- Did you know that you could make a gift to us by simply changing the beneficiary form for a retirement plan, insurance policy, bank or brokerage account, or savings bond designation?
- 3) Sometimes we find that a conversation about giving to charity never came up when planning decisions were made, so people never hear about how easy it can be to make a gift even after planning documents are finalized.
- And, lifetime options that pay income to you or others can be funded pre-tax, sometimes to start inheritance during life to heirs or to support samegeneration loved ones now or later.

I'm Retired or Living on a Fixed Income

Retired individuals or those living on a fixed income may have reduced or no disposable income. Since the majority of charitable gifts come from disposable income, few of these individuals think about gifts of assets or split interest gifts. This may be a conservative investor getting little return, or someone reluctant to sell appreciated assets to invest for higher return because of capital gains taxes. Or, it may be someone who invests primarily in certificates of deposit, living on very modest income in recent years.

Retired individuals may have invested their retirement assets in annuities with no lump sum conversion option. Many getting close to retirement or already retired are understandably nervous about whether they will run out of money before they pass away.

Traditional revocable testamentary gifts continue to be the gift of choice for those who want to retain control of their assets during their lifetime. These include gifts in wills and trusts and beneficiary designations from retirement plans or insurance, brokerage and bank accounts, even POD or TOD (payable or transfer on death) designations on savings bonds. Charitable gift annuities can be a great choice for those able to make an irrevocable gift in return for extremely attractive payout rates with the possibility of a significant tax-free income for the rest of average life expectancy.

With the federal midterm interest rate at historic lows-2.0 percent for October and November 2010single-life immediate payment gift annuities will qualify for someone whose closest age is 60 or older. But two-life gift annuities do not produce the required 10 percent charitable value unless both annuitants are in their later 60s. Deferred payment gift annuities require longer deferral periods and are not practical for two annuitants in their mid-50s because payments could not start until after age 75.

Celeste, age 64, wants to make a future gift to a women's shelter, but she just retired and is not comfortable making irrevocable gifts. She learned that she could contribute \$25,000 to the shelter for a charitable gift annuity and receive a 5.4 percent payout for life, with 71 percent of the payout tax-free income until she is close to 85 years old. About \$4,800 is the charitable value that qualifies for the federal income tax charitable deduction. She will receive more than five times the amount of annual income she would have received from fixed income vehicles she had been considering.

A person around age 73 could receive a 6.1 percent payout for life with about 76 percent of the payout tax-free income until close to 87 years of age. The charitable value is about 35 percent of the amount contributed for a single life annuity for someone age 73.

Both examples are based on 2.0 percent federal midterm interest with quarterly payments and 7/1/2010 ACGA rates.

The low interest rate environment may complicate the long term investment strategy and require closer monitoring of the gift annuity investment pool in future years.

Charitable remainder trusts continue to be a good choice for those wishing to make significant future charitable gifts and diversify their investments without loss of capital due to capital gains taxes.

Possible replies when a donor states that being retired or living on a fixed income precludes making a gift include:

- 1) You can make a gift and retain control of your assets for the rest of your lifetime.
- 2) You could make a gift and enjoy more income for life after you make the gift.
- 3) You can avoid all or most of the capital gains taxes you would owe if you sold appreciated assets, when you contribute the assets to a charitable plan, providing a life income for yourself and someone else of your same generation.

I'm Saving for Retirement

This comment reflects the concern of many individuals in their 50s and 60s who wonder if they will have enough to retire before age 70. They may be concerned about how much to save, how to invest their retirement savings and what retirement plans to use. They may also be concerned about how best to protect a surviving spouse's or partner's standard of living. Finally, they probably do not know that charitable life income plans can be created during lifetime to supplement, and even diversify, sources of retirement income or income after death for their survivors.

Charitable remainder trusts and deferred payment charitable gift annuities have some of the advantages of qualified retirement plans-401(k)s and 403(b)s, including:

 No income tax on part of the value (the charitable portion) contributed to the CRT or CGA.

- Deferral of income until sometime in the future.
- Flexibility about when payments can begin, particularly with flexible deferred payment CGAs.

Without the disadvantages of:

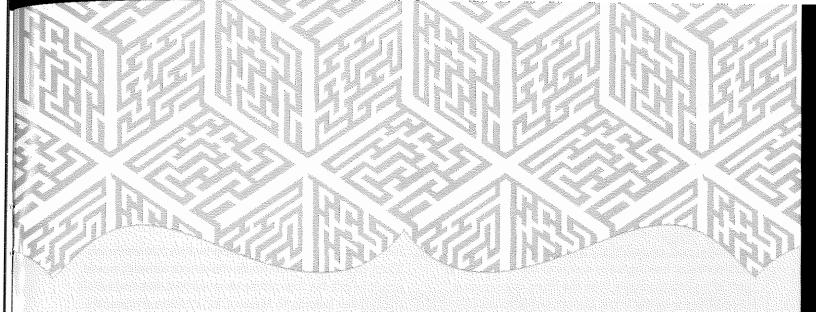
- Required annual minimum distributions.
- Distributions taxed as ordinary income at the recipient's highest marginal tax rate. (Charitable gift annuities distribute both ordinary and tax-exempt income for the rest of the annuitant's average life expectancy, and may also distribute long-term capital gains income when funded with appreciated assets. Most CRTs distribute ordinary income, but long-term capital gains income and tax-exempt income are possible.)
- The possibility that the balance left in the plan at the plan owner's death might be subject to federal estate tax. (With one-life CGAs and CRTs, charitable organizations receive what is left and that value is exempt from federal estate tax due to the estate tax charitable deduction. If spouses are the only life beneficiaries in CGAs and CRTs, then the value left at the death of the survivor beneficiary totally escapes federal estate tax through a combination of the estate tax charitable and marital deductions.)

Possible replies when a donor states that saving for retirement precludes making a gift include:

- You can start contributing now to a charitable life income plan and start to receive payments at some time in the future. And, you can wait to decide when payments will begin.
- 2) You and your estate could actually benefit more if you create a charitable life income plan now for yourself or a survivor than if you kept the contributed amount. Our charity and others you esteem will also benefit from what is left.

I'm Helping My Parents, Siblings, Spouse/Partner or Adult Children

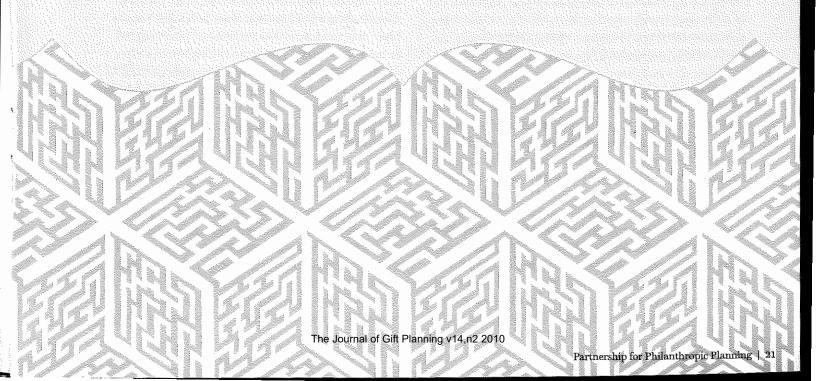
Many people provide essential or supplemental income



Tom and Jean's estate plans include an outright gift of \$50,000 to a favorite charity. They decide to give the \$50,000 now for a flexible deferred payment charitable gift annuity for their joint lives that will continue for the life of the survivor. They love the ability to elect when the annuity payments will begin. Their annuity provides that the annuity payments can begin as early as the last day of 2012 at 4.6 percent (when they will be ages 60 and 56) or as late as the last day of 2030 at 13.80 percent (when they will be ages 78 and 74).*

Felix wants to provide supplemental life income to his nieces and nephews who survive him, but wants the assets left when the last one dies to create an endowment named for the family at a favorite charity. His advisor suggests including the language to create a charitable remainder trust in his revocable living trust. The CRT language can provide that the income beneficiaries are the named nieces and nephews who are alive on the date of his death, with the term of the trust and the payout rate determined by a formula clause so that the charitable value is 10 percent or more of the value of the funding assets based on the federal midterm rate applicable at the time of his death.

*based on 2.6 percent federal midterm rate and quarterly payments and 7/1/2010 ACGA rates.



to a loved one, or will likely do so in the future. They may consider leaving some assets to the loved one as part of an estate plan in case the loved one survives them. They may not know the tax implications of giving after-tax income to a loved one, or of leaving assets to a same-generation heir. They may have concerns about whether a loved one can manage an inheritance. They probably do not know they can help that loved one without leaving assets to him.

Why not provide lifetime income to that loved one and share the contributed assets with one or more charities when the loved one no longer needs the income? The income recipient may be at a much lower income tax bracket than the donor. If a donor is at the 33 percent tax bracket and gives \$5,000 from after-tax income to her mother, the donor has to earn more than \$7,460 dollars to have \$5,000 left to help Mom. If Mom is at the 15 percent tax bracket, she would keep \$6,341 if she was the taxpayer on the \$7,460. The family unit keeps an additional \$1,340 when Mom is the taxpayer and the donor has just reduced her taxable income by \$7,460—dollars she was not keeping anyway.

Funding a one-life charitable gift annuity for Mom, or sometimes a one-life charitable remainder trust, may be the answer when the donor wants to eventually benefit one or more charities.

If Mom is age 75, the highest current recommended payout rate for a one-life CGA is 6.4 percent. For each \$10,000 of cash her daughter contributes, Mom will receive \$496 of tax-free income plus \$144 of ordinary income for the next 12.4 years. At Mom's 15 percent federal income tax rate, she keeps \$618.40 of the \$640 for the next 12.4 years.

Of each \$10,000 contributed, \$3,849 is the charitable value (2.0 percent federal midterm rate), so the daughter has given Mom a present interest gift of \$6,151 per each \$10,000 contributed. In 2010 the daughter can give Mom up to \$13,000 of present interest gifts each year, and if she's married, she and

her husband could give Mom up to \$26,000 each year. Then creating a \$40,000 charitable gift annuity would result in gift-tax free gift to Mom of \$24,604 and result in after-tax income to Mom of \$2,473.60 each year for the next 12.4 years.

Of course, the daughter could choose to give Mom some of the \$1 million that the daughter can give to others gift-tax free during her lifetime. If she chose to contribute \$100,000 of cash for a one-life gift annuity for Mom, then Mom would receive \$6,184 of tax-free income for the next 12.4 years. Thereafter the entire \$6,400 annual distribution would be subject to federal income tax at Mom's highest bracket.

And, the daughter can improve her resulting charitable income tax deduction if she and Mom elect to take less than the ACGA rate, which gift planners should always discuss and illustrate by various calculations with each prospect.

I Want to Leave as Much as Possible to My Heirs

We find that people assume testamentary gifts to charity always reduce what their heirs will receive. They may not know that retirement plans passed to heirs are usually subject to multiple taxes after the death of the plan owner and spouse, or that different asset classes may be subject to different tax treatments when they pass through an estate. Very few people know that benefiting one or more charitable organizations from a charitable lead trust can significantly reduce transfer taxes, thereby increasing what their heirs will receive.

Depending on the size of the estate, leaving heavily taxed assets, like retirement plans and deferred compensation accounts, outright to charity will reduce federal estate taxes because of the estate tax charitable deduction, and will also usually avoid all of the deferred state and federal income tax that would otherwise have been due. Funding charitable

The Journal of Gift Planning v14,n2 2010

remainder trusts or charitable gift annuities for heirs with all or part of the balance in retirement plans can provide income to heirs and be funded pre-tax to earn more for those heirs, with a beneficiary designation outright to the charity or CRT trustee, resulting in generous future gifts to charitable organizations with partial estate tax savings.

Possible replies when a donor says that he or she wants to leave as much as possible to heirs so no gift is possible include:

- With careful planning you can leave us the amount your heirs would lose due to estate and income taxes. Gifts to charity usually reduce the tax bills, not the amount your heirs receive.
- 2) You can use certain heavily taxed assets like qualified retirement plans to make your gifts to one or more charities or to fund a charitable income arrangement for heirs and reduce the tax bills.

I Will Be Able to Make a Nice Gift After I Sell My Business or Land

Many individuals believe that they must first sell their business or real estate prior to making a charitable gift. Many gift planners have thought so too, and often delay a conversation with a prospect until after the sale is concluded and proceeds received. This delay is no favor to the donor or your charitable organization, for a significant advantage of charitable plans is their ability to be funded pre-tax with all or some of the appreciated asset itself.

These partial or complete gifts of appreciated property can even be funded with stock for which the

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> individual has received a redemption offer that must be exercised in a short period of time. Some or all of that stock could be given outright to a charity or used to fund a charitable life income plan, with the charity or CRT trustee exercising the redemption offer after the gift is completed and within the required timeframe.

> Sometimes such stock or interests in closely held businesses can also be gifted, with redemption offers made by the business to all shareholders (often a small number and mostly family) at some future time if cash permits. The CRT trustee or charity is often the only shareholder exercising those redemption rights. This tactic can be used generationally, to keep ownership of the land or business within the family, because the charity or the trustee will most likely convert the stock to cash then invest for both diversification and income.

All of us have met very gifted, investmentsavvy people who tell us that they won't make a gift during life, because their goal is to be the investor and to make their eventual gift to our charity in their estate plan that much bigger.

Possible replies when a donor says that he or she wants to first sell assets then make a gift of cash to a favored charity include:

- 1) We can take all or part of that asset prior to any agreed-upon sale, and you can save taxes plus perhaps have pre-tax funding on a charitable income plan for you or others.
- 2) Charities have a great advantage—they can take gifts pre-tax and such gifts can be a non-sale part of the asset you contemplate selling. How far are you along in the transaction, or are you planning for the future?
- 3) If real estate is the appreciated asset, add, "Real estate always has risks for charity, just as it does for you and other investors, so we would all have to consider this possibility carefully and look at documents."

I Plan to Leave My Home or Farm to Charity in my Will or Trust

People sometimes tell a charity that it will receive their home or farm in their estate plan. Most of these individuals probably have non-taxable estates, so that charitable estate tax deduction will be wasted, not needed or used.

What should the gift planner suggest? If the person is older, maybe 70 or so, the gift planner should suggest a retained life estate, which works only for a farm, personal residence or vacation home; commercial or investment

property cannot be so used. The donor and another (usually a spouse, partner or sibling) will continue to reside in the property as usual, bearing responsibility for insuring and caring for the property. Immediately upon the first or second death, possession passes to the charity, and the transfer is not held up in probate. That gift during lifetime yields an actuarial charitable income tax deduction, which most donors can use to reduce current income taxes, perhaps even into carryover years, while simplifying their estate.¹

Possible replies when a donor says that he or she wants to leave a personal residence, vacation home or farm to a favored charity include:

- Did you know you could give your home/vacation home/farm to our charity during your life, and you and your spouse, partner, or sibling can continue to live there for the rest of your life (or lives)? You receive an income tax deduction now, and your property won't sit vacant and unoccupied during probate.
- 2) However, since real estate is involved, much homework is needed, a process to see if and how it works for you and for us, your favored charity.

I Want to Handle the Investments; I'm Better at It Than Charity

All of us have met very gifted, investment-savvy people who tell us that they won't make a gift during life, because their goal is to be the investor and to make their eventual gift to our charity in their estate plan that much bigger. An initial question is to ask if they even have an estate plan, since the majority of Americans—even successful businesspeople—die without wills.

Possible replies when a donor says that she wants to leave us a gift in her estate plan after she maximizes her investments during life include:

- 1) Did you know you could fund a charitable remainder trust during life and act as its trustee, so long as you learn more about these unique trusts and have a very good accountant?
- 2) Did you know that one form of a charitable trust, a unitrust, follows market performance with an annual revaluation of the portfolio against which the 5 percent payout (the best choice for most people) is applied each year so income can go up or down? That trust can be funded pre-tax with some of your appreciated stock or real estate.
- 3) If you are not interested in a trust funded during life, please let me send you the language to include our charity in your will or trust.

In Conclusion...

What is the role of the gift planner? We believe that our role is to say to the prospect, as gift-planning mentor Harvey DeVries taught us, "Would you consider making a gift if WE could show you how?" Asset choices and the donor's planning goals and objectives are key to that conversation, for you are both listening to and responding to donors' concerns and needs, and maximizing their gifts by using different assets possibly during lifetime and in estate plans. We are privileged to have those very interesting conversations with some very generous individuals.

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Laura Hansen Dean, JD, Attorney at Law (Texas, Indiana) has served as executive director of gift planning at The University of Texas at Austin since April 2007. She has led gift-planning teams at public universities, community foundations and academic centers on philanthropy. She has also served as CEO of publicly-supported foundations, and as consultant for multi-year grants funded by some of the country's largest private foundations. Laura served on the board of directors and committees of the National Committee on Planned Giving, and she has been a member of the editorial review panel for *The Journal of Gift Planning* since its inception. She has served on the board of the Planned Giving Group of Indiana and is currently on the board of directors of the community foundation serving Williamson County, Texas.

Pamela and Laura are law school classmates and magna cum laude graduates of the Indiana University School of Law at Indianapolis.

Endnotes

Given the risks with real estate, a charity is well advised to exercise due diligence before accepting any real estate gift. A real estate checklist can be found in Neal P. Myerberg, "Gold in the Ground: A Practical Guide to Developing and Accepting Gifts of Real Estate," The Journal of Gift Planning, vol. 10, no. 2 (2nd quarter 2006), page 14.