

Bequests in Canada

Starting a Planned Giving Program

Canadian Crossroads International

March 30, 2008

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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
- ❑ advertising



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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