Planting a Legacy: Charitable Bequests
The Wise Giving Guide is published quarterly to help donors make more informed giving decisions. This guide includes a compilation of the latest evaluation conclusions completed by the BBB Wise Giving Alliance.

If you would like to see a particular topic discussed in this guide, please email suggestions to give@council.bbb.org or write to us at the address below.

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INSIDE

Planting a Legacy: Charitable Bequests

List of Nationally Soliciting Charities

How to Read the List of National Charities

Q&A About the Alliance

National Charity Seal Program

Standards for Charity Accountability

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In these financially stressful times, when tomorrow or next week can be hard enough to handle, you may wonder about our taking up the subject of charitable bequests, which call for long-term thinking.

But it seems that many people, perhaps reluctant to make substantial contributions to charity today, are ready to consider a future gift. Perhaps they feel that though they can give less in regular contributions right now, they will be able to give more in the future. We’re told, in fact, that giving by bequest tends to stay steady through recessions.

In any era, making a charitable bequest calls for thoughtful planning. For many people, this is the largest charitable contribution they will make—even more reason to develop it with care. I hope that you’ll find help for doing that in our cover article.

I don’t want to suggest, though, that making a charitable bequest is all about legal processes and precautions. That struck me when we began thinking about the kind of image we’d use on the cover of this Guide. Pictures of wills or judges’ gavels, or of an individual at a desk with professional advisors—well, those hardly cut it. They were relevant but too impersonal for a subject that is anything but.

I think that the image we eventually chose, the hand holding that sturdy shoot, vividly suggests how bequest gifts are more than monetary transactions. They express our faith that our gift will mean growth for the causes and programs we care about.

Whatever your plans, we at the Alliance hope you will call on us when our information about charities can be helpful to you.

H. Art Taylor, President
Planting a Legacy: Charitable Bequests

When it was announced last year that Leona Helmsley had left millions of dollars of her estate to Trouble, her pet dog, the public marveled or scoffed. The news that she had also directed that a charitable trust estimated at $8 billion be used for the care and welfare of dogs provoked op-eds, spirited blogs and even a forum titled, perhaps inevitably, “Is Philanthropy Going to the Dogs?”

While scholars and pundits debated questions about donor intent, the public interest and the tax code, it’s pretty certain that many more people gave thought, even if fleetingly, to what they would leave for charity in their wills, if they could, and for what purpose.

When a New York court eventually determined (in a decision just recently challenged) that the charitable trust established in Ms. Helmsley’s will need not focus solely on dogs, as she had once stipulated, “if I were Leona” dreamers might have wondered how much control they would have over the use of any gift they left.

For thousands of Americans, however, making a charitable bequest is far more than a daydream. Bequest giving is substantial. In 2008, according to Giving USA 2009, bequests totaled close to $23 billion and comprised 7 percent of all charitable giving. (That beats corporations’ 5 percent.) And leaving money to charity is not the prerogative of the rich and famous. Ninety-seven percent or more of charitable bequests come from estates of lower and middle income people, concluded The Sharpe Group, a commercial firm, using IRS studies and publicly reported statistics.

With giving potential apparently widespread, charities enclose millions of “consider us in your will” brochures in their direct mail solicitations.

Among the Giving

In value, bequests make up the biggest part of what’s called “planned,” “deferred” or “legacy” giving. Some bequests are made directly to designated charities; sometimes they go to donor-advised funds managed by community foundations or corporations. Sometimes a will establishes a trust or foundation whose trustees are charged with carrying out the donor’s purpose.

In this article we can’t cover all the technical angles of bequest-making or provide legal advice, but we can cite instances of contested gifts and offer some tips. We can also tell you what research is discovering about potential makers of bequests.

Note that here we’re speaking of bequests in a very
generalsense—giftstocharitymadebywillsorother
instruments that take effect after the giver’s lifetime.

Putting impulse into action and actually wording
a charitable bequest requires thought, care and good
professional counsel. Even in the simplest form, an
outright gift made without any stipulations about use,
there can be problems like inexact charity names or
perhaps more often, unhappy families. Bequests
restricted to specific purposes can have especially
tortuous futures, as time blurs donors’ intentions or
makes them impractical.

Making a charitable bequest may be beyond your
imagining, but you’ll find that many issues related to
gifts made for the future are the same ones that you face
in deciding where and how to give today.

Motivation

Philanthropic researchers are keenly interested in
knowing why people give to charity. Some are looking
especially at why people make charitable bequests,
where the motives may be somewhat different. They
find that people who include charitable bequests in their
will often do so because they want to:

• “give back” for help given to them or their family
  or friends
• have an impact on society
• influence how they’re remembered
• recognize a charity’s good work
• memorialize a loved one.

Some of these motives may drive traditional
contributions, but others, like wanting to influence how
the donor is remembered, carry special weight in
bequest giving. And of course there can be a number of
motives at work. One that would seem powerful, the
desire to avoid or decrease estate taxes, seems to be
minor and applies only to the relatively few estates that
are subject to the tax.

Gifts that keep on giving... to controversy?

Whatever the underlying motives of donors, the
bequests they make occasionally travel a rough road.
When bequests generate fights, especially where big
money is involved, they generate headlines. But it
would be misleading to suggest that trouble is inevitable.
Indeed, most bequests proceed smoothly into charitable
coffers, where they translate into good works of
many kinds.

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Still, much can happen, sometimes as soon as a will
is read and sometimes decades later.

Family distress? When a Colorado man’s
handwritten will directed that 70 percent of his
million-dollar-plus estate go to “Charity for the blind,”
members of his family who would otherwise have been
beneficiaries questioned the will’s validity. The Attorney
General of Colorado was asked to get involved,
according to a 2001 press release from his office,
“because of [that office’s] responsibility to defend the
interests of charities.”

The release further reported that following an
investigation, the Attorney General’s office had
concluded that the will had indeed been made by the
decedent, with the mental capacity that the law
required. The matter then went before a judge, who
dismissed the challenge, and arrangements were made
for distribution of the funds to charities dealing with
the blind.

Identity crisis? A will directed a gift to a charity—but
the charity name specified was similar to that of three
different organizations but not the same as the name of
any one of them or of any other organization. After
protracted legal activity, the case went to court. The
outcome? The court divided the gift between the three
organizations—“a resolution that would meet with the
approval of Solomon,” writes Reynolds T. Cafferata, an
attorney involved in the case. 4
Endowment invaded? As related in a press release of May 5, 1997, from the Connecticut Attorney General’s office, funds donated by will to Windham Community Memorial Hospital in Connecticut were given as endowment—meaning that only the income generated from the endowment, not the endowment itself, was to be used for certain purposes specified by the donor. Over time, the hospital had begun using the endowment, not just the income generated, for construction and ongoing operations, the Connecticut Attorney General charged after an investigation. Such use was contrary to the donors’ intent.

The state’s investigation lasted two years and the suit ended in 1997 in a settlement agreement. (The hospital admitted no wrongdoing.) The settlement required the hospital to return the money it had used, plus interest, to the endowment funds. According to the press release, these payments would in time total over $2 million.

Time won’t stand still? Years ago a gift of real estate to Brandeis University in Massachusetts led to the erection of a building bearing the donor’s name. Now, according to an article in the Wall Street Journal of May 12, 2009, the university wants to demolish the building, and the donor’s great-nephew is suing to block the demolition, saying it violates the terms of the donor’s will. The Massachusetts Attorney General’s office has declined to take action because the will does not require maintaining the building “beyond its useful life,” according to the Journal article, and the great-nephew is now suing the school directly.

Focus lost? Princeton University had misused a gift meant to educate graduate students for government service by expanding it to train students for a broader range of careers, claimed descendants of the givers, Charles and Marie Robertson. The descendants’ lawsuit against Princeton, filed in 2002, ended in a settlement in 2008 that will require Princeton to pay out over $50 million to a new foundation focused on education for government service. Who won? Well, both sides claimed victory, and outsiders are divided about the meaning of the outcome. A memorable fact: the case cost each side over $40 million in legal fees.

Wishes undone? When Dr. Albert Barnes created the Barnes Foundation in 1922 to house his extraordinary art collection in Merion, Pennsylvania, he put numerous restrictions on how the art was to be shown and accessed. One specification was that the Picassos, Renoirs, Cézannes and others were to remain untouched in the original building and to be viewed primarily by art students and not by the public generally. In the following decades, however, it became clear, for various reasons, that the Foundation and its collection could not survive if those restrictions were strictly observed, and the Foundation obtained legal permission to deviate from them in various ways. The greatest deviation was in the decision, in 2004, that the collection could be moved from its original building to downtown Philadelphia to be housed in a new museum.

Lessons from life and litigation

Complex cases like those above offer many lessons for donors, not only those considering bequests. Here are a few that can help decrease controversies:
Talk with your family about your plans. If your relatives or others in your world may be significantly affected by your gift, share your thinking with them. This may be the most difficult advice of all to follow, for a will can be an uncomfortable subject in the most congenial of families. The dollars and directions you may give are important, but the human impact of your decisions needs consideration, too.

Know whom you’re giving to. Names matter. A gift to “the cancer charity,” for example, is a gift to the lawyers who will have to sort it out. You or any professional helping with your will should verify the name and address, current existence and tax status (is it listed by the IRS as a 501(c)(3) organization to which contributions are deductible?) of the charity you want to benefit.

Just as if you were making a current contribution, you want to know your charity beneficiary in other ways. In a country with hundreds of thousands of charities, common “causes” cover multitudinous activities. Every “hunger” organization does not dispense food. All “cancer” charities don’t fund research. “Animal” charities may disagree about the management of endangered species, about what animal-related food should be eaten, or about methods to use in influencing public attitudes.

If “know your charity” seems superfluous advice, note that a charity’s major donors, who would be expected to be well acquainted with the organizations they support during their lifetimes, aren’t necessarily the same ones who make bequests to those charities. That’s what researchers say, and it suggests that some people, sure of the cause they want to support, simply pick a charity that seems to fit that cause, possibly with scant knowledge of its work.

Such quick picks can be perilous. While there’s no guarantee that a charity will retain its vigor, viability and commitment to sound practices at the time your gift takes effect, checking out its current financial condition and accountability can help. Go to www.bbb.org/charity for information on charities.

Talk with the charity you want to benefit. “If you want to leave substantial money to a charity and want to place restrictions on your gift, you’re always better off to talk with the intended recipient,” says David Ormstedt, attorney with Wiggin and Dana, LLP, and former Connecticut Assistant Attorney General. “Ideally, you want to hit a balance between the restrictions you set and the needs of the institution. You need assurance that the charity can accomplish what you have in mind and that the gift you plan will be enough to fund it.”

A charity’s development officer may be tempted to say, “Sure, we can do what you’d like” because that is clearly what the donor wants to hear, even when the officer knows that the sum involved will be inadequate to construct the envisioned building or conduct the desired program. And donors, picturing their dream come true, may not ask the questions they should about how the charity will actually make it happen.

In any donor-charity conversation about a potential gift, charities must avoid pressuring the donor into making a gift or making a larger gift than intended, but the temptation to use pressure may be strong if the fund raiser’s compensation is tied to the number or size of gifts received. Potential heirs often challenge a will on the basis that the person who made it didn’t have the mental capacity to do so or was unduly influenced by the representative of a charity that would benefit.

The Evangelical Council for Financial Accountability (ECFA), an accrediting agency for Christian charities, recommends that donor-charity conversations be wide-ranging and low-key: ECFA says that members’ fund raisers, when they talk with individuals about making major bequests, “must seek to guide and advise [them] so they have adequately considered the broad interests of the family and the various ministries they are currently supporting before they make a final decision.”
ECFA also states that donors “should be encouraged to use the services of their attorneys, accountants, or other professional advisors.”

**Think “what if...?”** If you want to restrict the use of your bequest to a particular project or program, try to imagine future events that could affect your wishes. Assume that time will march on, the Rockies will crumble and Gibraltar will tumble. Thus if you want to fund scholarships to a particular school of nursing, you might provide that your gift go to another nursing school you name if the designated one closes down. If you want to support a particular line of research, consider how you might direct your funds’ use if other developments made that research irrelevant.

If the donor has not provided an alternative way of using a gift once the original specification is no longer possible or practical, the recipient organization can petition a court to apply the doctrine of *cy pres* to modify the original restriction so that the gift can be used for purposes close to the original intent. *Cy pres* means roughly “as near as possible.”

**If you want to support a particular line of research, consider how you might direct your funds’ use if other developments made that research irrelevant.**

However, that process can be costly for the charity in the form of legal fees, so you might consider giving your beneficiary some flexibility to adapt to changed conditions. For example, it may be wise to avoid tying a gift to specific methods of achieving the purpose you desire. The Web site of one animal welfare charity, for instance, points out that making a bequest to support spaying and neutering of dogs and cats does not take account of the fact that “safe and effective immunocontraceptives and/or chemosterilants” will probably be in use within the next few years, making surgical sterilization obsolete. Thus, according to the site, it might be preferable to direct your gift to “eliminating dog and cat overpopulation and homelessness.”

Donors can also give a charity leeway by expressing a preference that a gift be used for a particular purpose but including the option that it be used for any other purpose the charity considers more pressing. It’s also possible for donors to give heirs monitoring rights over the terms of the bequest. But, lawyers say, never specify that your gift should revert to your heirs if the specified purpose wasn’t fulfilled. There will probably be considerable tax consequences for your heirs.

**State officials and charitable gifts**

Because a donor’s heirs don’t generally have legal standing to challenge how charities are using the donor’s gifts (unless the will specifically provides for it), it falls to the states’ attorney generals to ensure that charitable gifts included in decedents’ estates are honored and that charitable trusts are duly administered. The trustees or directors of a charity can be liable for breach of their fiduciary duty if they fail to carry out restrictions imposed by donors.

Activity in charity matters varies from state to state, depending in part on the resources available to them. Some states may choose, or have the means, to focus only on high-stakes cases. In other states, however, charitable trusts and estates are a big part of everyday work. Usually the work is done by the same state officials who may also be providing you with information about charities soliciting in those states.

How does the state get involved? Descendants of donors may complain about how a charity is handling the bequest. People who aren’t descendants but who have a stake in an institution that received a bequest, or are residents of a community that was supposed to benefit from one, for example, may also go to the attorney general. And occasionally a member of the board of a recipient organization, troubled about the way the organization is using the bequest, brings in his concerns.

If an attorney general’s office decides to pursue an issue—note that it didn’t in the Brandeis situation above—it could end in a settlement agreement or in court.

**Who bequeathsto charity?**

You may not yet know how likely you are to leave something to charity, but fund raisers and researchers are working hard to find out who is. Can you guess what characterizes the prime prospects for making charitable
Whatever plans you have for giving today or by bequest, you want to know how your charitable contribution will be used. If you’re giving through a bequest, maybe you’ll take the straightforward approach offered in the boilerplate language of many charities: “I give and bequeath to [exact name of charity], of [city and state] (insert dollar amount, percentage of estate, or description of securities or property, etc.) to be used for its general purposes (or insert the name of a program)....”

But maybe you’ll want to have more say about the use of your bequest or even specify how the assets you give can be invested. Could you be hobbling the charity you want to benefit?

There’s some feeling in the philanthropic sector that restricting gifts is a bad idea, period. If the restricted gift is made through a will, deciphering its intent in changing circumstances is, as we’ve seen, vexing and often costly.

Still, specificity about a gift’s use can hamper charities’ flexibility. Charitable organizations can’t live on restricted gifts alone. They need substantial unrestricted gifts to support everyday operations and allow them to respond to new needs with new programs.

Restricted funds can exert pressure on an organization’s other activities. It’s recently reported, for example, that the Salvation Army is struggling to raise money that will enable it to carry out the wishes of Joan... among people over age 50 who give $500 or more to charity annually, roughly 90 percent won’t make charitable bequests.

Donor power

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Kroc, heir to the fortune of the founder of McDonald’s Corporation, who bequeathed $1.8 billion to the Army to build 30 community centers around the country. Additional funds for construction and maintenance of the centers are now necessary because the original gift has lost value.

**Trends**

Despite the drawbacks that some see in restricted gifts, however, there’s as yet no evidence that charitable donors are becoming disenchanted with them. To the contrary, it’s reported that more and more donors are setting restrictions on their gifts, both in their lifetimes and in their wills.

At the same time, there’s a sense among charitable observers that courts are becoming more and more liberal in interpreting restrictions. Whether that’s a good thing or not is much debated. While there were those who hailed the outcome of Mrs. Helmsley’s case—the decision that the welfare and care of dogs need not be the sole focus of her foundation—others saw it as a sign that donors’ intentions aren’t being honored as they should be. They fear that such rulings could inhibit future giving.

The prospects for bequest giving, with or without strings, are generally favorable, however. If the history of giving is any indication, charitable bequests will prove recession-proof. Unlike many other forms of giving, they actually tend to increase in hard times, say fund raising experts, possibly because a bequest, unlike an outright contribution, does not require an immediate payout.

What a charitable bequest does require, though, is care and consultation. As personal as it is, planning the gift is not a go-alone project. Legal counsel is essential, and many donors will want to talk with tax and financial advisors as well. Thoughtful preparation can only add to the satisfaction that donors over many generations have found in leaving a legacy to charity.

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**Footnotes**


