

BEQUEST ADMINISTRATION – Q AND A (PG CALC – March 30, 2023)
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What do you suggest when a charity was told it was the designated beneficiary of an account, but the executor is not forthcoming in helping to follow through in facilitating the supposed gifting? The institution where the funds are housed will not speak with you regarding the funds?

If you've reached a dead end with both the executor and the institution, I would suggest researching the donor online and in any databases that you may have access to. Obituaries can sometimes provide useful information on other family members or friends to contact regarding the gift. You can always search the local probate records if the donor's case is online. These records will usually list involved parties and sometimes list contact information. If the executor is being represented by an attorney, they will normally be listed and possibly be worth reaching out to.

If you are not able to gather any useful information through research, it may be necessary to submit a request for the donor's death certificate. If you are able to get a copy of the death certificate, you can then reach back out to the institution where the funds are being held and they should be more willing to speak with you if you are able to provide SSN, DOB, DOD, etc.

What if you don't have a dedicated legal team on staff?

If a matter requires legal input, first determine your needs: Are you looking for advice before signing and returning a legal document, or are you in need of representation because a significant bequest to your organization is at stake? Being able to articulate your need will be helpful to the potential counsel so that they can estimate the time involved and the best member of their staff to assist (depending on their position, the hourly rate will vary). This would be especially important if you are asking for pro bono counsel. Does the value of the gift justify hiring counsel? If so, and you are not sure where to go for an attorney, see resources under question #47.

Is there a specific law that we can reference when talking with a trustee/executor that we have a legal right to certain documentation?

Each state has their own Trust and Estate laws, but many follow the Uniform Probate Code. We've had good luck typing, for example, "Maryland Probate Code" in the search engine. It usually pulls up the Justia US Law webpage with the states code and one can drill down for the needed information.

Do you have any tips regarding non-probate assets like retirement/brokerage accounts where the administrator won't often share any information about the account (such as full accounting), or a copy of the beneficiary designation form?

Administrators/Institutions do seem to vary quite a bit on what they are and are not willing to share with beneficiaries. I find that I have better luck when dealing with a local advisor/branch where the account was housed as opposed to calling into the institutions main line.

Many institutions will not provide a copy of the account holder's beneficiary designation form but are willing to provide other forms of proof of the exact designation. In lieu of the beneficiary designation

form you can request a letter or email from the institution that states the exact designation language. I've also had representatives provide me with screenshots of our designation as it shows on their screen.

One final tip is that sometimes it just depends on who you are speaking with. The first time you call in to an institution you may speak with a representative who is not helpful and does not offer any alternatives, but if you try again, you may get a representative who is more willing to help get you what you need.

Ways around trustee saying that they are prohibited from providing an accounting due to confidentiality.

It's usually good to cite the state code that sets out what a trustee's responsibilities are and then say "but if this doesn't apply due to the trust document itself saying the trustee doesn't have to comply with the statute, just send me that portion of the trust.." Trusts are created with an eye toward having more privacy than an estate but that private aspect applies to the general public. Legal beneficiaries aren't in this category and they still maintain the same right to information regardless of whether it's a trust or an estate. If it's helpful to a trustee to let them know that you maintain strict confidentiality and security around your files and systems, then lay that out as well and offer anonymity around the gift itself. But you still get to have the document and accounting at a minimum.

I joined late so my apologies if you have answered or will answer this - and perhaps it's a different segment all together. Recently we learned we are a beneficiary of a fund at a Community Foundation. The Fund was set up due to a bequest. Are there any items (other than the payment) that the community foundation is required to give us? We are trying to figure out how to book and account for this, what appears to be irrevocable gift.

Community Foundations generally receive the assets from the estate (so they are often set up due to the death of a donor) but because they then create a fund that distributes out to beneficiaries, we treat them a little differently than our more usual files. Generally, we get in touch with the CF and ask how we were named and get the document that sets it up for our file. Once we understand how it will operate - often they are discretionary to the CF amongst a set of beneficiaries - we treat them almost as outright gifts from the CF, since the funds don't come to us directly from the estate or trust. Certainly, if they aren't discretionary and you know how much will be coming periodically, it's good to track them just to be sure the checks were received.

When would you disclaim a gift/asset?

For TNC, assets with an environmental issue might be disclaimed. Or if we can't fulfill the donor's intent, such as holding a piece of real property in perpetuity that has no conservation value. Another reason might be that the cost of accepting, maintaining or liquidating the asset outweighs the actual value of the asset, such as swamp land or some tangible personal property. We had an executor mail us musical recorders from an estate. There was some value in the instruments, but the time and cost of finding and shipping them to a dealer to sell, along with the commission taken by the dealer, significantly reduced the benefit to the charity. Something to remember is that you can disclaim any portion of an estate/trust - it's not all or nothing - so you can say you want to disclaim the real estate but take everything else, for example. Two things to keep in mind, though, you need to track the

disclaimer timeframe (GENERALLY, 9 months from date of death you must either take it or disclaim) and it can cause a lot of difficulty for an executor or trustee to have to deal with a disclaimer just as they're wrapping up an administration so do be cognizant.

Re: beneficial ownership form. the trust administrator is requiring officers' personal TIN. as higher ed (government) org what is the response to this request. the "person" is the org, so the org TIN should be sufficient.

I'm not sure of exactly what is being asked here, but when I'm completing a beneficial ownership form for an institution, I am always having to provide my personal information as a control person for the organization even though there are no beneficial owners. This is something most charities have fought against for years and is due, generally, to the Know Your Customer requirement and the interpretation each financial institution makes of that rule. After many years, we do provide personal information to get the gifts in but also provide credit and ID protection for the employees who do so.

If you have an estate where the attorney representing it has stopped responding to communication, and there's not another contact person, how would you generally proceed?

First, try another form of communication. If you have been emailing her/him, try a letter or a phone call instead. Maybe they are more inclined to respond to an alternate form of communication. Also, try calling and asking for their legal assistant or paralegal, who may be more responsive. If still no luck, see if you can get the information you need from the court, such as the will, inventory, accounting. Ask the court for the contact information they have. It is not unusual for a PR/Executor to utilize an attorney for court filings and attempt to handle the remainder of the administration themselves. You may have to write to the PR and tell them that you have been trying to make contact with their attorney. Also, you may be able to see in court records if there has been recent activity or if they are delinquent in their duties. If there are other charities named, reach out to see if they may have received information.

Can you share your gift acceptance policies?

Will be attached.

What is the absolute simplest way for a donor to transfer a home at death to a charity, ideally outside of a will or trust, and not involving a retained life estate. Is there another option?

In about 30 states, the donor can file a Transfer on Death Deed in the land records office in the county where the real estate is located. The TOD Deed is revocable and the donor retains ownership and responsibility for the property until their death.

We have a donor who wants to leave her house to our institution. What do I need to do legally to secure this future gift?

First, there isn't anything legally that you or the charity should do to secure the gift. You DO NOT want to do anything that might be construed as undue influence. It is on the donor to make arrangements for the gift. They can make the gift through their will, trust or, as stated above, potentially through a TOD Deed.

We recently learned that we had inherited a piece of real estate in Smyth County, VA. We learned of it after receiving late tax bill notices. According to the court, the executor was not required to notify us of the gift. The property transferred upon the filing of the will. Now we have to figure out what to do with it.

If you do not want the property, my understanding is that Virginia does not have a time bar on disclaiming real property. If you have not paid any of the outstanding taxes or done anything else to accept responsibility for the property, you may still be able to disclaim. You may want to check in with local counsel on the timeframe and for assistance in prepping and filing a disclaimer.

How do you stay up to date on donor's deaths? do you have someone checking obits? is there a recommended system to use?

We don't have a system for checking for donor's deaths. We do have donors ask us how we will know if they've passed away and we recommend that they have a trusted friend or attorney check in with them regularly. We recommend that donors include our contact information with their estate documents, so that executors can easily notify us when they pass away. There is, unfortunately, no one place that holistically lists all death certificates – the SSDI used to do so (at least for those who had received social security) but it no longer does.

Do you engage with the RIFT project to inherit IRA/Life insurance gifts? If so, what is your success rate?

We were involved in the RIFT project a few years ago and eagerly assisted with information whenever the leaders of that project needed data, etc. Much headway was being made but the pandemic slowed things around getting things done at the federal level. It's a great resource. We did recently use their guidance for submitting a claim with Pershing though and are hoping it will be successful.

Back to timeshares...what is the reason they should not be accepted (instead of just saying "we don't take those" to the donor)?

Timeshares are only valuable to the person who purchased them, and that value tends to be less monetary and more intangible because the resale value to anyone else is low. There are companies that will purchase timeshares if you end up as owner but given the fees and time involved, it isn't usually worthwhile. Certainly, though, if you've received other assets in the estate or trust, it might be kind not to disclaim just the timeshare asset and, in that instance, would make sense.

No exceptions to LLC or other hard assets for donor relations issue? if one came from a trustee for instance?

If it were from a high-level donor or a trustee, our goal would be to know about their intention as they were planning so we could work through it with them. It does happen occasionally, though, that we're surprised by one in the inventory. We have made the decision to stay away from them because of the risk around how hard it can be to clearly understand the asset makeup of the LLC and the incredible difficulty around valuations, which are very expensive and very necessary. After all of that, there's the issue of salability or the lack thereof. Ending up in a partnership with others who either can't or don't want to buy out your shares is really rough and it keeps the asset on the books with no value to your mission. That's just how WE view them, though. I would just strongly suggest either in house or external counsel review before agreeing to ownership on these kinds of assets.

I am having trouble getting any gift agreements or amounts of bequest in Remainder trusts? What can I do?

I'm not quite sure I understand the timeframe of the question here – before or after the donor passes – but I'd say that if you can't get the document or anything showing what you can expect and what the fiduciary has done, then contacting their counsel and noting your state's statute around what a legal beneficiary should be given helps. Consistently following up and not taking the "you're the only one asking for this information" or the "if you don't want it, I'll just give it to the other beneficiaries" lines is important. You have the right to this information because you're doing a service to the donor who trusted their wishes to be carried out. Push when you need to and be firm.

Why are mineral rights hard? We have one that pays monthly and a few others that pay very minimal and are about 1-2 per year.

Mineral rights aren't always bad gifts. However, there can be environmental issues with them and they can be hard to liquidate. If they don't produce large royalties, it may be best to disclaim them. As an environmental organization, TNC has elected not to accept them. On the other hand, if there are no organizational reasons not to take them (like our mission need for full environmental review), putting them on the books and then just receiving whatever dividends arrive can be just fine. Also, it's often beneficial to ask if maybe a family member would want them and your organization can receive cash in place of their value, even if minimal.

life estates: do you try to use mortality tables to set date for follow-up?

We don't use mortality tables to set dates for follow-up on life estates. However, ideally, the organization should have an agreement in place with the life tenant, specifying the responsibilities of the life tenant. The organization should be monitoring life estate properties, at least annually, to ensure that the life tenant is maintaining the property according to the terms of the agreement.

Do you have any tips of what to say to family members that will not share a will or trust with your organization? I have asked for an extracted relevant page before but have still received a "no." I've also mentioned this is helpful to our Finance team/auditing process.

I once used the "our auditors require it" tack and was told by the trustee to shove my auditors so sometimes that works and sometimes not! Yeah, family members are harder b/c we all have to step back and remember that we're just a faceless charity and they have a lot of emotions around us asking questions – even if they know they need to give us the information. I try to be kind but firm and remember that we need to uphold our role and responsibility, too. If they seem like things are moving along well but they are offended/angry/grieving, then maybe try asking if they would even just quote the piece where you're named in an e-mail to you. It's not what you're due but it's something. We can't actually allocate checks here at The Nature Conservancy without the document page so sometimes we have to make accommodations for really difficult situations. That being said, if they're just being difficult overall or you think something not good is going on, then push for getting that document – go to the Court if it's an estate, see if you can get it online, call the attorney who's working on the matter, etc. Also, if you know other charities are named, get everyone to ask for the document so they don't do the old divide and conquer thing. People are often really taken aback when they realize we all know each other and can't be played against one another.

How do you go about getting death certificates when estate is not forthcoming, esp in these post-SSDI days?

First, contact the probate court to see if one was filed as part of probate. If you can't get it that way (say, because it is a trust), contact vital records for the state the donor died in and order the death certificate from them – there is usually an online application for death certificates.

Do you have a rough/average time an AG takes to review items? We have a few waiting with AGs currently and would help to have some idea of what this means.

That depends on the state but the past few years have seen staff cutbacks and the backlogs are awful. It can be a year or more. In the meantime, it might be helpful to ask the fiduciary if s/he would be willing to have you sign a receipt and refunding agreement for a large partial distribution.

Curious how many trust administration matters your team handles a year. You are a team of 3? Trying to determine how many matters is reasonable for one person to administer.

We are actually a team of 7 – 4 of us share the residuary files, one person handles only non-probate files, another handles specifics/CRTs/testamentary gifts and one person is our financial manager (doing all the allocation, reporting and interactions with Finance and Treasury). We have somewhere in the range of 1650-1700 open files but many of them have multiple vehicles so we may have one person working on the non-probate assets and another working on real estate that's coming in from the trust itself. Honestly, any more than a few hundred (MAX!) files starts to put one person into a place where keeping on top of them is too much – and that's one full time person.

Is there a reference list or list of recommended outside attorney that is helpful with trusts and estates? We have internal Counsel, but they don't have trusts or estate expertise. Is there a link to find?

The American College of Trust and Estate Counsel (actec.org)

Your State Bar Association

Some other ideas:

- reach out to colleagues at other charities for attorney recommendations
- ask for a referral from an attorney you may have worked with on another matter
- if other charities are involved, ask if you can join with an attorney that has already been engaged

Some additional considerations:

- pro bono counsel
- if not pro bono, ask for a charity discount
- consider if the work can be done by an associate versus a partner if cost is a concern
- if your organization intends to work with the same firm for all matters that may bridge into other states, you may want a large firm that has offices across the country, but expect to pay more for this

When hiring outside counsel, can you put in contract to not pay more than 1 staff member? i.e. 2 attorneys emailing or discussing same topic. Any extra thoughts on this?

The firm you are engaging would have to agree to this. Is your concern with how many legal professionals at the firm it takes to do the job, or is it keeping costs low? You might have better luck asking up front who will work on the matter, coupled with an understanding of that professional's hourly rate. Ask for a charity discount. If possible, band with other charity beneficiaries to share in costs. Finally, once the attorney is hired, review the invoices and ask the questions! If an attorney him/herself is doing things like waiting for a locksmith to arrive or dropping things off at the post office (for full hourly rate), ask if there's any way someone at a lower billing rate can be doing those lower level tasks. This advice applies to your counsel AND the fiduciary's counsel – review and ask questions!

Are family members typically responsible for need to litigate?

It is fairly common to see litigation brought on by or due to the actions of family or heirs, possibly because they feel that they are not receiving all that the donor intended, especially if changes were made to the trust or will without their knowledge, and possibly with influence by someone who was involved later in a donor's life, such as a caregiver, friend or another relative. Litigation may be brought by any interested party to a trust or estate, or maybe a disclaimed heir. It is important to remember that if a family member, or any party, engages counsel then their attorney will represent only their interests, not yours. Obviously, litigation for a charity is a last resort and the circumstances will need to be evaluated. It is unlikely that your organization can speak to a deceased donor's capacity or undue influence by someone close to them. However, if you believe the donor's intent / gift to your organization is at stake, you may want to ask the advice of counsel as to the probability of success versus the cost when deciding how to move forward.

I love the idea of sending a proactive letter upon notification of the gift. Do you have a sample letter for reference?

I think there was a sample letter as an attachment to the paper that was linked to but, if not, just let us know and we'll get it to you.

How many estates does TNC usually get per year?

The Nature Conservancy had about 700 new estate files a year for the last 2 years.

How do you get rid of Oil and mineral gifts?

There are companies out there that purchase them, but it can sometimes be difficult to find a buyer. TNC has worked with a law firm in TX that helps sell oil, gas and mineral rights that are located not just in TX. Contact us if you would like the law firm's information.

Companies that sell real estate for charities.

Charitable Solutions, LLC works with charities to sell assets that charities don't have the expertise or capacity to sell on their own, including real estate. I'm certain that there are other companies that do this. If you know of any others, please let me Bill Laskin know, so that he can share that information with the other participants.

How to determine if a lot is buildable?

County records should include zoning for the parcel, as well as any easements or other restriction that may affect the use of the property. Review of property maps can help determine if the parcel is subject to flooding. Determining if the soil types on the property allow for septic tanks, if county waste management isn't available, would also be necessary. Making a call to the County or City zoning or development office and speaking with a knowledgeable staff member can provide valuable information not apparent through county records.