ATTRACTING GIFTS THROUGH BENEFICIARY DESIGNATIONS

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I. Introduction

One on the one hand, many gift planners regard a beneficiary designation for an asset or for an account or other financial arrangement to be an alternative to a charitable bequest. On the other hand, beneficiary designations – in part because they are indeed possible with many different things of value – have a number of characteristics that make them appealing and suitable on their own. Who knows: perhaps the day will come when bequests will be seen as an alternative to beneficiary designations. For purposes of this paper, however, it is probably most useful to focus briefly first on bequests and why they are popular before examining the different types of beneficiary designations, comparing and contrasting them with bequests, and then focusing on how to make the most of them.

II. Charitable Bequest Basics

A. What a Bequest Is and How It Is Distinguished from a Beneficiary Designation

There are essentially three ways a person's assets can be distributed upon death. If someone dies "intestate," that is to say, without having executed a valid will while alive, applicable state law will determine how his or her assets will be distributed. Significantly, no provision for charity exists under the laws of any state, even if the decedent made substantial charitable contributions during his or her lifetime. If a person dies testate, i.e., having executed a valid will, then his or her assets will be distributed according to the terms of the will. Either way, the person's estate will be subject to probate, a court supervised process in which the person's assets are identified; debts, taxes, and estate settlement costs are paid; and whatever remains is distributed (once again, according to the terms of the will if there is one but otherwise as required by state law).

Moreover, regardless of whether a person dies having executed a valid will, certain assets, accounts, etc. can be distributed without having to go through the probate process, pursuant to a beneficiary designation, which takes the form of written instructions furnished by the person while living regarding who will benefit from the asset, account, etc., when the person dies. If no such instructions have been furnished, however, then the thing in question will typically become subject to the probate process.

Traditionally, a "bequest" was a gift of personal property (i.e., property other than real estate) made through a person's will, whereas a "devise" was a gift of real estate made through his or her will. A "legacy" could take the form of either a bequest or a devise.

Today, the term "bequest" is understood to encompass both traditional bequests and traditional devises, and has thus generally replaced the term "legacy" in common parlance. In addition, a distribution from a revocable living trust upon the death of the person who created the trust is often referred to as a bequest, regardless of whether what is distributed is personal property or real estate. Technically speaking, though, a distribution from a revocable living trust (as well as from any other type of trust) is made by means of a beneficiary designation, typically a provision found in the document that governs the trust.

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B. Types of Bequests and Sample Language

There are several forms a bequest can take, and charities often develop sample bequest language that can be offered to donors who indicate they are considering a bequest commitment. The language can serve as the basis for explaining to the donor the benefits of and the differences between, for example, a gift of a specific dollar amount and a gift of the residue of the donor's estate (or a percentage thereof). More importantly, such a conversation can be an opportunity to learn more about the donor's interest in the charity's mission. Donors are usually grateful for an engaged and knowledgeable listener and are appreciative of estate planning ideas and language the charity or they can provide to their lawyer. In fact, sample language should be furnished to a donor only with the understanding that the donor will share it with his or her lawyer and not attempt to draft a will without a lawyer's assistance.

Below are the ways a bequest can be structured, along with applicable specimen bequest provisions. Any sample language a charity actually furnishes a donor or a donor's lawyer should first be approved by the charity's legal counsel.

Pecuniary Bequest – This is simply a certain sum of money.

> "I give the sum of ________ dollars ($_________) to ABC Charity, which has a federal tax identification number of _________ and a current address of ___________________, or its successor organization."

Specific Bequest – In this instance, the donor is leaving the charity a particular asset or assets, such as real estate, securities, jewelry, works of art, etc.

> "I give [100 shares of XYZ Corp. stock/my guitar collection/the real estate legally described as follows] to ABC Charity, which has a federal tax identification number of __________ and a current address of ___________________, or its successor organization."

Residual Bequest – This is a gift of all (or perhaps only a portion) of what remains of a donor's estate after any pecuniary or specific bequests have been made and debts, taxes, and other estate expenses have been paid. Note: It is not possible for a person to make a bequest of literally all (or a portion) of his or her entire estate, due to the fact that, at a minimum, some of the assets of the estate will need to be drawn upon to pay estate administration fees, taxes, or other expenses that need to "come off the top."

> "I give all [***alternative**: ________ percent (___%)*] of the residue of my estate to ABC Charity, which has a federal tax identification number of __________ and a current address of ___________________, or its successor organization."

Contingent Bequest – This is a pecuniary, specific, or residual bequest that takes effect only under certain circumstances.

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> "If my spouse does not survive me, then I give _______________ to ABC Charity, which has a federal tax identification number of _________ and a current address of ___________________, or its successor organization."

Regardless of how a bequest is structured, a donor is free either to allow the charity to use the gift in its complete discretion or to require the charity to use it in some particular way.

> Unrestricted Use
>
> …. "to be used for such chartable purposes as the governing board of ABC Charity may determine."
>
> Restricted use
>
> …. "to support medical research in the field of cardiology," "for student financial aid," "for producing television programs on matters of local interest."
>
> Establishment of an endowment
>
> "Provided that at the time of my death this gift meets ABC Charity's minimum funding requirement for an endowed fund, this gift shall be (i) entered into ABC Charity's books and records as the (*NAME OF DONOR'S CHOICE*) ENDOWMENT; and (ii) held, invested, administered, and distributed in accordance with ABC Charity's policies as they apply over time to similar endowed funds. This gift may, for investment purposes, be merged with any of the investment assets of ABC Charity. Distributions from the endowment shall be used to [specify purpose, if any; otherwise indicate that distributions may be made without restriction].
>
> "If, at the time of my death, this gift does not meet the minimum funding requirement for an endowed fund, it shall be [***option 1***: held for current use consistent with the purposes set forth above] [***option 2***: added to an existing endowed fund that benefits _____________]."

Advisable as well in the case of any type of restriction is a power-to-vary provision:

> "If, as determined by the governing board of ABC Charity, it becomes inappropriate or impractical to use this gift for the specific purpose stated above, then the governing board may, in its discretion, redesignate the purpose of the fund and any distributions therefrom, provided that the fund shall bear the name of _______________ and the amended terms shall adhere as closely as possible to my original intent for this fund."

Note: Even when an endowment is established through a bequest, it is also a good practice – assuming the charity learns about what the donor has in mind – for the donor and the charity to execute a separate endowment agreement. In this regard, a provision such as the following could be included in the agreement:

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> This endowment shall be established or supplemented with bequests or other testamentary charitable gifts that [donor] may make for this purpose, including the designation of life insurance proceeds, individual retirement account proceeds, as well as with employee benefit plan proceeds or gifts from other persons designated for this endowment. All funds received by ABC Charity from any sources (including but not limited to bequests, life insurance proceeds, individual retirement account proceeds, and employee benefit proceeds) as a result of the death of [donor] shall be subject to the terms of this agreement.

III. BENEFICIARY DESIGNATION OPTIONS

Through beneficiary designations, charitable gifts can be made upon death in quite a few ways that resemble bequests. In particular, they will usually resemble either pecuniary or specific bequests, in that the donor is designating that either a certain sum of money or a certain asset (or group of assets) is to go to a charity upon the donor's death. The main difference is that the gift is not structured through a will. In some cases, the gift can even be contingent.

Here are the various options:

A. Pay/Transfer on Death Accounts

A "pay on death" account involves the donor instructing a bank to pay to a charity all or a portion of what remains in the account when the donor dies. A "transfer on death" account entails the donor giving essentially the same instruction to a brokerage firm with regard to investments held in the account at the time of the donor's death. The particulars of each arrangement will depend on the bank or brokerage firm in question.

B. Transfer on Death Deeds and Title Certificates

Currently, it is possible for real estate located in any of 13 states to be transferred to a charity upon a donor's death by means of a deed the donor executes during life. This is because all those states have adopted some version of the Uniform Real Property Transfer on Death Act, plus similar legislation is pending in four more states. Here is a link to a web page that monitors consideration and adoption of the uniform law:

http://www.uniformlawcommission.com/Act.aspx?title=Real Property Transfer on Death Act

Under the law, the charity has no interest in the property during the donor's life, and the donor retains full power to transfer or encumber the property or to revoke the deed. If by the time the donor dies he or she no longer owns the property, the charity receives nothing.

As might be expected, the deed needs to be worded in a certain way, meaning a donor should secure the assistance of legal counsel in drawing up the deed, as well as in making certain it is properly executed. Once executed, the deed must be recorded in the county where the property is located, although the donor does not need first to present the deed to the charity or inform the charity the deed has been thus recorded.

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A few states also make it possible when registering a vehicle or a vessel for the owner to specify on the title certificate who will become the new owner upon the death of the original owner. There is no uniform act applicable to this type of transfer, so the specifics of the laws of the handful of states that permit such transfers will need to be ascertained.

Of course, if a charity is designated to receive any non-cash asset, the charity must determine whether it is willing to accept the asset. In this regard, it could be that a piece of real estate or a vehicle carries with it liabilities the charity is well advised not to assume in becoming the asset's new owner.

C. Insurance Product Beneficiary Designations

These types of products include different kinds of life insurance policies and commercial annuity contracts. The donor merely completes and returns to the insurance company a form designating that a charity is to receive all or a portion of the death benefit associated with a life insurance policy or the remaining contract value, if any, associated with a commercial annuity.

D. IRA and Qualified Retirement Plan Designations

A donor can designate that a charity receive all or a portion of what remains upon death in an IRA (regardless of the type of IRA) or in most qualified retirement plans, such as 401(k) and 403(b) plans. The custodian of the account simply furnishes the donor with a form that can be completed and returned to the custodian.

E. Donor Advised Fund Recommendations

As its name suggests, a donor advised fund (DAF) is in the nature of an account maintained by a public charity to which a supporter of the charity has made a contribution with the understanding that the contribution is to be credited to the account – and with the further understanding that the supporter will have certain advisory rights (as detailed below) vis-à-vis the account. Not surprisingly, the supporter is known as the "donor." The charity serves as the "sponsor" of the DAF.

The advisory rights associated with a DAF take two general forms. First, the donor will *always* be able to make recommendations to the charity regarding distributions from the DAF. The recommendations will typically address when the distribution is to be made, how much is to be distributed, how the distribution is to be used, and the identity of the recipient, recognizing that it will almost always be another public charity although – depending on the sponsor's policies – it could be an organization that does not qualify as a public charity under U.S. tax law. *Less often*, the donor will be able to make recommendations as to how assets attributable to the DAF are to be invested or to be managed in other respects.

Any recommendation the donor makes must ultimately not be binding upon the sponsor, as the sponsor will need to determine to its own satisfaction that the advice being provided by the donor is sound. That being said, charities sponsoring DAFs typically carry out the recommendations of donors. In part this is because if a sponsor declines to do so in any case other than one in which the donor's recommendation is plainly unacceptable, the sponsor risks alienating not only the

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donor in question, but also other donors and potential donors who may decide that the sponsor is not sufficiently accommodating.

Sometimes a donor will allow others to have his or her power to make recommendations. This can be done either by sharing that power or by transferring it completely, whether during the donor's life or afterwards. Thus, a person who is in a position to recommend distributions from a DAF may or may not be the person who established the DAF.

A DAF can continue to exist for as long as the policies of the sponsor permit it to do so. Sometimes this can be for period of years, sometimes for the lives of the donor or one or more other persons, or sometimes for a combination of the two. In other instances, a DAF might terminate when it no longer holds any assets, when the value of its assets dips below a certain amount, or when other conditions are met. Some sponsors will even allow a DAF to last conceivably forever. The sponsor's policies will also determine how any value remaining in a DAF upon termination is to be distributed. Often this is accomplished through a sort of final recommendation that is essentially the same as a beneficiary designation.

F. Trust Distribution Provisions

A trust is a legal entity created to manage and distribute property that has been transferred to the trust. As mentioned above, one common type of trust is a revocable living trust. A person creates such a trust during life for his or her own benefit. When the person dies, the trust will either terminate or be transformed into one or more new trusts for the benefit of other persons or entities. If it terminates upon death, then whatever the trust owns at that point will need to be distributed to one or more beneficiaries. (Note: A revocable living trust might terminate upon death as to some of its assets but be transformed into one or more new trusts as to the rest of its assets.) As already discussed, if the document governing a revocable living trust designates a charity as the beneficiary of a distribution of trust assets upon the death of the person who created the trust (the "trustor"), then this type of charitable gift is often considered to be a "bequest" even though, strictly speaking, it is actually a beneficiary designation.

Of course, there are many other sorts of trusts. Some, known as *inter vivos* trusts, might be established during the lifetime of the trustor, with others, known as testamentary trusts, established upon his or her death. Thus, for example, while a revocable living trust is a type of *inter vivos* trust, if – upon the death of the trustor – some or all of its assets are used to set up a new trust, then that new trust is considered to be a testamentary trust. Many times as well, testamentary trusts are created through a person's will.

Regardless of when a trust is established, it will have individuals or entities that benefit from it during the trusts existence (so called "income beneficiaries") and individuals or entities that benefit when the trust ends (remainder beneficiaries). Sometimes the various beneficiaries are named irrevocably from the trust's very beginning, but other times they are not. Moreover, when there is an ability to change beneficiaries, sometimes that ability resides with the trustor (assuming the trustor is still living), but it can also reside with someone to whom the trustor has given that ability, which is known as a "power of appointment." Accordingly, even though a person may not have been the one to establish a trust, he or she may nevertheless have a power of appointment with respect to some or all of what the trust owns. So long as the trust's

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governing document permits charitable distributions, the person can exercise the power of appointment by designating a charity as the beneficiary of whatever the power applies to.

The procedure for making a trust beneficiary designation gift will depend on how the document governing the trust is worded. From a charity's point of view, the best type of trust beneficiary designation is one that is irrevocable: it is set forth in the trust document from the very beginning and cannot thereafter be changed. In other cases, the trust document will describe the steps the donor must take in order to name a charity as a beneficiary, and those steps should be followed. Also, even if the trust document gives a person the right to make further revisions to a beneficiary designation in the future, he or she has the ability to give up that right voluntarily. When this is done, the designation becomes irrevocable.

IV. BENEFICIARY DESIGNATION CHARACTERISTICS AND ISSUES

A. The Two Faces of Simplicity

With the possible exception of some gifts made through trusts, beneficiary designation gifts are generally easier to arrange than bequests, as the documentation is simpler and less formal than a will or a codicil. This is true with respect to both making the initial arrangement and modifying or revoking the arrangement (provided – as in the case of a bequest – that the donor still has adequate legal capacity at the point any change is made).

In certain instances, however, the simplicity associated with a beneficiary designation can be a drawback, in that a donor acting on his or her own may not appreciate the significance of his or her actions. For this reason, it is always best for a donor to make beneficiary designation gifts as part of implementing a comprehensive estate plan developed with the assistance of a lawyer and other professional advisors. The larger the gift, the more important this becomes.

One example of a problem that can occur is when a donor lives in a community property state and attempts to make a charity the beneficiary of the death benefit associated with a life insurance policy. Unless the donor owns the policy as his or her separate property, one-half of the policy will be deemed to be owned by the donor's spouse. This means that, without the spouse's consent, the donor will be able to control how only half of the death benefit is to be distributed. If the insurance company's beneficiary designation form makes the donor aware of this, then the donor can decide how to proceed. If, however, the donor is not aware of what state law dictates, what the charity ultimately receives may be only 50 percent of what the donor intended. In any event, with regard to qualified retirement plans a donor's spouse will have essentially a veto power over the donor's designation of anyone other than the spouse as the beneficiary, regardless of the state in which the donor lives.

Another problem that might occur is if the donor resides in a state that recognizes so-called "super wills." In such states, it is possible for a donor – after having made a beneficiary designation – to execute a will that designates a different beneficiary of the account or asset upon the donor's death. Significantly, such will provisions will likely have no effect on life insurance policy beneficiary designations, transfer-on-death deeds, and certain other assets and financial arrangements. Nevertheless, a donor and his or her lawyer will need to be clear at the time the

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donor's will is drawn up as to what the donor's wishes are and how those wishes relate to beneficiary designations the donor has made previously. Happily for a charity perhaps, in executing a super will, a donor can make the charity the beneficiary of something that would otherwise have been governed by a prior beneficiary designation in favor of some other individual or entity.

Furthermore, what should be a rather simple process can turn out to be more involved than one might think. While some financial institutions have forms that clearly recognize that a person might want to name a charity as the beneficiary of a life insurance policy, an IRA, etc., in other cases it will be clear from a quick review of a form that the institution has in mind only individuals as possible beneficiaries. Accordingly, a donor may need to "go back and forth" with a financial institution to ensure that the desired designation has in fact been recognized by the institution, with such recognition confirmed in writing.

B. Tax Considerations

A beneficiary designation that results in a transfer of cash or other assets to a charity during a donor's life – such as a recommendation with respect to a DAF or the exercise of a power of appointment with respect to a trust – typically does not produce an income tax deduction. In the case of a DAF, this is because a deductible charitable gift was already made to the charity that sponsors the DAF. In the case of a trust, it is because the trustor received whatever charitable deduction may have been available when the trust was funded. (Only in the case of a so-called "grantor trust," i.e., a trust whose assets continue for tax purposes to be treated as still owned by the trustor, would a designation resulting in a lifetime transfer of trust assets to charity produce an income tax deduction.)

Likewise, when either type of designation takes effect upon the death of a donor, there will be no estate tax charitable deduction for the donor's estate, so long as the assets transferred to charity are not included in the donor's estate. There are, however, some trust scenarios in which trust assets will be included in the donor's estate upon death, in which case a beneficiary designation that takes effect then will produce an estate tax charitable deduction for the donor's estate. An example would be when a donor creates a charitable remainder trust but retains until death the right to designate the remainder beneficiary(ies).

However, for all of the other types of beneficiary designation gifts identified in Section III of this paper, the designation will take effect solely upon the death of the donor, and the donor's estate will be entitled to an estate tax charitable deduction, just as it will be with a charitable bequest. Of course, less than a quarter of one percent of those who die in the U.S. each year will have estates large enough for the federal estate tax to apply. Keep in mind, however, that slightly fewer than half of the states have their own estate taxes, and in some cases the threshold estate value required for the tax to apply will be low enough that the estate tax deduction produced by a beneficiary designation gift could be of some value.

In addition, some beneficiary designation gifts feature a tax benefit not applicable in the case of bequests. This will be so for any financial arrangement involving "income in respect of a decedent," or "IRD" for short. If the donor was either the owner or beneficiary of something which, had he or she remained alive, would have been a source of payments that would have

been taxed to him or her as ordinary income, then that asset is an IRD asset. If, upon death, others then become entitled to receive such previously untaxed amounts, those payments constitute IRD.

Most distributions from an IRA made after the IRA owner has died are examples of IRD with respect to every dollar distributed. (The only exceptions are distributions from a Roth IRA or distributions attributable to contributions of after-tax dollars made by the decedent to some other type of IRA.) The same can hold true for most qualified retirement plans. In the case of certain commercial annuity contracts, some of what is distributed will be IRD, with the rest being nontaxable principal. IRD can also be associated with many other types of assets that are seldom used to make charitable gifts upon death.

The good news for charities is that by virtue of their tax-exempt status, no income tax will be due on any IRD they receive. This means that if a donor's estate plan calls for benefiting both individuals and charities upon death, it is most efficient from a tax standpoint to draw upon IRD assets to the extent they are available to make charitable gifts and to earmark other assets for individuals.

Thus, if a donor wants to benefit both a charity and an individual heir upon death, it is generally preferable to leave assets such as IRA funds to the charity, with other assets, such as cash or securities, left to the heir. Leaving long-term appreciated assets such as securities or real estate to an individual can be especially wise from a tax standpoint, as when such assets are inherited, their cost basis is "stepped-up" to the value of the assets as of the date of the donor's death. This means that when the heir sells the assets, there will be less capital gain on which to pay tax. Leaving long-term capital gain assets to a charity upon death and IRD assets to an heir is fine from the charity's perspective but is not as favorable for the heir. Consider the following example:

Upon his death, Mr. Dobalina wants to leave $100,000 to his son Bob and $100,000 to a favorite charity. He can choose from two ways to do this:

Choice A: He designates Bob as the beneficiary of his $100,000 IRA. Separately, through his will he leaves to the charity $100,000 worth of stock he acquired decades before his death at a cost of $20,000. All of what Bob receives from the IRA is IRD, so it will be subject to income tax. If his income tax marginal rate is 25 percent, he will be left with only $75,000 after taxes. For its part, when the charity receives the stock, it sells it and receives $100,000. The charity recognizes no gain on the sale of the stock because the stock's cost basis was increased to $100,000 upon Mr. Dobalina's death. Even if there had been gain, the charity – as a tax-exempt entity – would not have had to pay any tax on the gain.

Choice B: He designates the charity as beneficiary of the IRA, and through his will he leaves the stock to Bob. The charity receives $100,000 cash from the IRA and, because it is tax exempt, it pays no tax on the IRD. When Bob receives the stock from his father's estate, he sells it for $100,000 but recognizes no capital gain because of the step-up in cost basis.

By going with Choice B rather than Choice A, Mr. Dobalina can transfer $25,000 more after taxes to Bob and the same amount, $100,000, to the charity.

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Note: In the case of an IRA or a qualified retirement plan, what a charity is usually designated to receive is a percentage of the assets remaining in the account when the donor dies. While it is also possible – as in the example above – to designate a particular sum (provided the IRA continues to hold at least that amount by the time the donor dies), estate planning lawyers and plan administrators generally advise that the sum be expressed as a fraction, the numerator of which is the sum itself and the denominator of which is the total value of the IRA.

Despite all of the forgoing, there can be times when it is advisable for the donor's estate to be the recipient of IRD. Normally, this will result in the IRD being taxable to the estate. Fortunately, it is possible for a donor's will to direct that the administrator of the estate draw first on IRD assets in making any charitable bequests. Such language will generally allow for the IRD to be recognized by the charitable beneficiaries, rather than by the estate. Here is an example of language a will might contain:
To the fullest extent possible, this gift shall be paid out of "income in respect of a decedent" as that term is defined in the Internal Revenue Code. If such "income in respect of a decedent" as valued for U.S. estate tax purposes is insufficient to pay this bequest, then it shall be paid to the extent necessary out of the general assets of my estate.

C. Probate Avoidance

Whereas a charitable bequest made through a donor's will is always going to be subject to the probate process, a beneficiary designation gift will always avoid that process, unless, as mentioned above, for some reason the donor has designated his or her estate as the beneficiary of something such as an IRA or the death benefit associated with a life insurance policy. This is an advantage that beneficiary designation gifts have over traditional bequests, as it will typically shorten from months or years to a matter of as little as weeks the time between when the donor dies and the charity receives the gift. As noted in Section VII of this paper, however, a charity should nevertheless be prompt in providing necessary information to the financial institution, trustee, etc., as well as vigilant in monitoring relevant processes to ensure it receives its gift in a timely manner.

D. Restricting Beneficiary Designation Gifts for Particular Purposes

Whereas in a will a donor can spell out in detail any conditions or instructions with which a charity must comply if it agrees to accept the donor's bequest, it can often be difficult and, beyond a point, counterproductive to try to include such language in a beneficiary designation. Indeed, many financial institutions resist allowing donors who own insurance policies or maintain IRAs or qualified retirement plans to do anything more than identify the recipient of a distribution made pursuant to a beneficiary designation and spell out what is to be distributed. Occasionally, a donor – typically through paying his or her legal counsel to become involved – can manage to prevail upon a financial institution to accept a customized beneficiary designation.

Fortunately, so long as a donor is willing during life to let a charity know about any ways in which he or she would like a beneficiary designation gift to be used, the designation itself can be kept simple, with the donor and the charity entering into a separate agreement that covers in as much detail as is necessary what the charity is to do with the gift. The agreement need only reference the gift to be effective.

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Finally, it is possible for a donor to instruct the recipient of a beneficiary designation gift made upon the donor's death to use the gift to fund a life income arrangement that will benefit one or more individuals who survive the donor. An example would be a donor entering into an agreement with a charity that what the charity receives in connection with an IRA beneficiary designation the donor has made be used by the charity to establish a charitable gift annuity that will make payments for life to an heir who survives the donor. In a similar way, a donor could make a gift to a pooled income fund upon death or identify the funding mechanism for the establishment of a testamentary charitable remainder trust. While a detailed treatment of such gifts is beyond the scope of this paper, they can be very appealing to donors and result in significant tax savings, all while providing financial support for loved ones who outlive the donor.

V. PURSUING BENEFICIARY DESIGNATIONS

A. Likely Donors

As in the case of charitable bequests, every person who supports a charity should be treated as a potential beneficiary designation donor. After all, it follows naturally that someone who gives to a charity during lifetime is likely to be interested in including a gift to that charity at death. If a donor does not have any children or dependents, then the likelihood becomes even greater.

Beneficiary designations enable individuals both of great wealth and of modest means to make a significant and lasting gift. There may be surprises. Many charities know in advance about only approximately one-quarter of such gifts they receive. Still, the best prospects will tend to be those who:

- want to retain control of all their assets during their lifetime;
- have few heirs;
- are interested in assuring continued support through an endowment.

B. Marketing Opportunities

Because the pool of prospects for beneficiary designation gifts will be largely the same as that for charitable bequests, much of what a charity does to promote bequests will be applicable to beneficiary designations, too. Just as this paper began with a consideration of bequest fundamentals, a charity's beneficiary designation messaging will often build off of what has been said about bequests.

Thus, for instance, a newsletter article promoting bequests might first acquaint donors with what such gifts entail and then present beneficiary designations as an option having both similarities and differences. Of course, the charity should ultimately make clear that donors are not limited to one or the other. Indeed, in any given donor's situation it may be appropriate to support a charity

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upon death partly by means of a beneficiary designation and partly by means of a charitable bequest (plus perhaps even one or more additional gift arrangements).

Furthermore, beneficiary designation marketing need not – and probably should not – always piggyback on bequest marketing. Accordingly, a charity might choose to conduct a direct mail campaign that emphasizes IRA and qualified retirement plan beneficiary designations. In so doing, the charity might make only passing reference to bequests. Also, some beneficiary designation possibilities, such as those involving DAFs and certain trusts, have rather little in common with bequests (or with gifts made through IRA or qualified retirement plan designations, for that matter). This means that in marketing those possibilities, the charity may well need to isolate a specific group of prospects, develop special messaging, and choose carefully the media it will use in reaching out to the group. Similarly, in promoting life insurance beneficiary designations, the charity may want to contrast that type of gift with a charitable transfer of the ownership of a policy, all the while saying nothing about bequests or about any other type of beneficiary designation gift.

As in the case of promoting any sort of planned giving arrangement, a charity will be motivating donors not only to make such gifts, but also to let the charity know that a gift of one type or another has in fact been made. True, in some cases, such as charitable gift annuities and charitable trusts of which the charity is the trustee, it is not possible for the donor to remain anonymous. Yet for bequests and beneficiary designations that take effect on death, letting the charity know of the gift ahead of time is optional for donors. Indeed, for some donors the anonymity some gifts afford during life can be a selling point. Ironically, a charity might actually choose to acknowledge this in its marketing, perhaps figuring that it will end up receiving more gifts even as it learns of fewer of them in advance. If this approach is taken, the charity should at least make the case for notification, citing the ability the charity will have to thank the donor and help ensure the charity will be able to honor any specific wishes regarding use of the gift.

For beneficiary designations that take effect upon death, a charity will want to emphasize certain points in its messaging:

- that arranging and modifying the gift is relatively easy (while stopping short of endorsing a do-it-yourself approach that could encourage donors to take actions inconsistent with their overall estate plans)
- that a gift will sidestep the delays and costs associated with probate; and
- with respect to IRD assets, that when such assets are left to individuals the net value of the gift will be decreased but that when the assets are left to a charity the full value of the gift is preserved.

Frequently, messaging will be delivered most effectively in the words of another donor who can provide a testimonial as to his or her experience and the satisfaction it produced. Likewise, a charity can profile a living or deceased donor of a beneficiary designation gift.

Finally, as to the marketing techniques or media a charity might employ in promoting beneficiary designations, the universe is quite extensive:

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- check-off boxes on response devices
- inserts included with other postal mail already being sent to donors
- direct mail (whether postal or electronic)
- newsletter articles (again, print or electronic)
- brochures (either covering planned giving in general or focusing on beneficiary designations in particular)
- website content
- telemarketing campaigns
- seminars for donors
- outreach to donor advisors
- spreading the word within the organization, particularly among others in development

VI. STEWARDSHIP AND RECOGNITION CONSIDERATIONS

A. In General

As in the case of bequest arrangements donors have let a charity know about while living, good stewardship of beneficiary designations that take effect upon death but that donors have announced to the charity in advance serves to strengthen each such donor's relationship with the charity. The hope is that both "new" and "uncovered" beneficiary designation donors will, as a result of respectful recognition and careful stewardship, *at least* continue to keep the designations in effect and *at best* a) increase the dollar amount of their designations, b) augment their end-of-life giving with bequests, and/or c) accelerate their gifts by implementing life income plans or by making outright contributions.

When a charity first learns about a beneficiary designation expectancy, it needs to respond promptly by:

- reviewing its database to see if the donor has given recently (or at all!), noting as well any patterns of giving and whether the donor has given over a long period of time;
- contacting the donor to thank him or her personally, not just for the beneficiary designation but for last month's or last year's gift, or for loyal and longstanding support in general, being sure to express appreciation to the donor for sharing information about the designation;
- emphasizing respect for confidentiality and any desire for anonymity as to other donors or the public;

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- if there is an applicable recognition society, mentioning that the donor is now eligible to join by virtue of the designation, although if there is no such society, promising to keep the donor involved in things that are going on;

- confirming that the donor can choose his or her level of involvement;

- assuring the donor that the gift is important no matter how small (or how contingent!); and

- making clear that the charity can help ensure the donor's wishes are carried out, is available to serve as an ongoing resource, and would welcome any questions or comments.

Once a donor has been welcomed into a charity's community of deferred gift donors, the relationship should continue to grow. Indeed, the focus now shifts to deepening that relationship through ongoing contact by cards, phone calls, and personal visits.

B. Confirmation of the Designation

Some organizations will not recognize a beneficiary designation donor as a member the planned giving recognition society until written evidence of the designation is received. Others simply accept any written or verbal indication that a designation has been made. It is best not to push too hard for this information. Doing so may result in the donor retreating and choosing not to become a member of the society.

Furthermore, all deferred gift donors should be treated the same. By contrast with current outright donations, beneficiary designation commitments are difficult to "value" and to "credit," not only because they are future gifts but also because they are ultimately revocable. Since the underlying purpose of a planned giving recognition society is to strengthen relationships between a charity and its donors, the charity would do well to be generously inclusive. The only information the charity really needs to know is the donor's contact information. "Counting" and reporting successes is of secondary importance.

C. Recognition and Stewardship Activities

Whether through a planned giving society or otherwise, a beneficiary designation donor can be offered public recognition, participation opportunities, and mementos, along with ongoing friendship and contact.

Public recognition offers the double advantage of saluting donors while building awareness about the charity's planned giving program. Since one goal of public recognition is to honor a donor, a charity must be sensitive to the donor's preferences, as well as alert to how they may change over time. Those preferences may not be easy to discern, making it important to allow time to tease out what is possible and desirable. In any event, a charity can always point out that public recognition is, in many ways, a second gift to the organization that may serve as an inspiration to others to be equally generous.

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With this in mind, a charity should consider:

- publishing names of beneficiary designation donors (and stories if possible) in its newsletter and annual report, and in so doing including brief information about the planned giving recognition society (if there is one) and whom to contact for more information;

- thanking donors at public events or ceremonies;

- listing names of donors on a plaque in a public space in one of the charity's facilities;

- hosting an annual event, such as a luncheon, designed to 1) involve donors with the charity and make them feel good about their roles as investors in the organization's future, 2) give them the chance to meet and mingle with like-minded people, and 3) educate them about the activities of the organization, with the goal of creating a greater level of involvement;

- involving senior staff and board members by offering them opportunities to express their gratitude and convey the charity's strength, momentum, and future plans;

- considering beneficiary designation donors to be major donors and, thus, including them in important events such as annual meetings, building openings, receptions for new leaders, receipts for awards, etc.; and

- providing mementos or token gifts to remind donors of the charity and serve as evidence to others that a donor supports the organization, keeping in mind that, if feasible, delivering them to a donor personally affords an occasion to meet and visit with the donor and begin to develop what is hoped will be a lasting relationship.

Of course, recognizing any planned giving donor entails showing great respect for his or her preference as to anonymity or confidentiality and proactively seeking permission to publish any names. A charity must weigh carefully the pros and cons of not listing anyone's name without their express permission, versus letting donors know the charity will list their names unless they tell the organization otherwise. Finally, the very best recognition and stewardship – assuming time permits and the donors allow – is regular ongoing personal contact through correspondence, visits, and phone calls.

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D. Special Considerations with Respect to DAF and Trust Designations

When a charity receives a distribution from a DAF, whether during the fund's existence or upon its termination, the charity must keep in mind that the distribution comes from the fund's sponsor, not from the person who requested the distribution. This does not preclude the charity from according such individuals "soft credit" for distributions received from DAFs and recognizing such persons accordingly. Nevertheless, care must be taken in expressing appreciation. For example, reference should be made to the "distribution you recommended," rather than to the "gift you made." Similarly, to the extent relevant staff at the charity understand potential situations in which the charity might inadvertently provide a DAF donor, advisor, etc., with a benefit prohibited by law, they can help ensure the charity will be vigilant in preventing such benefits from being provided.

Similarly, when a charity receives or learns it will receive a transfer of assets from a trust as a result of someone with a power of appointment over the trust designating the charity as a beneficiary of the trust, the charity must develop an understanding of the basic nature of the trust and how the "donor" relates to the trust. Was he or she also the trustor? Is the trust perhaps a grantor trust? Does the donor have an ongoing ability to change the designation? Knowing what the situation is will enable the charity to accord the donor suitable recognition and steward the relationship appropriately.

VII. ADMINISTERING BENEFICIARY DESIGNATION GIFTS

Beyond the recognition and stewardship advantages of learning ahead of time as much as is reasonably possible about future gifts to be made by means of beneficiary designations, acquiring such knowledge before the gift comes to fruition can give a charity a head start on administering the gift effectively once the donor's life has ended. Even though any financial institution that may be involved with the account or asset in question will have a duty to notify the charitable beneficiary of the donor's gift promptly after his or her death, if the charity was informed of the gift when the donor was living and if it knows whom to contact to begin the process of having the distribution be made, then the charity should go ahead and contact the applicable party.

Separately, keeping track of beneficiary designation expectancies aids a charity in its overall effort to measure the success of its planned giving program. Maintaining detailed, reliable records can be of value in many ways. For instance, they will help the charity produce periodic reports regarding the program. Depending on the volume of beneficiary designation gifts, a charity might:

- monitor not only totals, but also means and medians;
- show how progress is being made year by year;
- indicate how many beneficiary designation gifts come as surprises;
- develop a "profile" of a typical beneficiary designation donor and analyze trends; and

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- share pertinent data with the senior management and colleagues to raise awareness of the significance and value of beneficiary designation gifts for the charity.

Unfortunately, just as sometimes happens with bequests, it may be that by the time the donor has died, nothing remains from which a beneficiary designation gift can be made. For example, a donor who named the charity as the beneficiary of the death benefit associated with a life insurance policy may have surrendered the policy during life or allowed the policy to lapse by failing to pay premiums that may still have been owed. Moreover, without notifying the charity, the donor may simply have changed his or her mind and revised the beneficiary designation in a manner that no longer provides support to the charity upon the donor's death.

Regardless of whether a charity knew in advance of a donor's beneficiary designation gift, once the donor has died and the charity learns the gift has indeed come to fruition, the charity should:

- ensure the gift arrives in a timely way;
- verify that the distribution is correct;
- make sure the donor's wishes are carried out and the gift is used appropriately (checking for ambiguities and conflicting directions and generally representing the donor's interests within the organization);
- include biographical information in files and pass it along to ultimate recipients of the gift;
- if applicable, name a fund or other thing after the donor;
- publicize the gift as an inspiration/example to others;
- show supporters and others that the gift is well used and appreciated;
- as appropriate, share enthusiastically news of the gift with senior staff, members of the governing board; and
- keep relatives informed about any fund that may have been created through the gift and about the recipients of distributions from the fund.

In particular, the charity can be a source of comfort to bereaved relatives and friends. Many people are surprisingly grateful for expressions of concern and sympathy.

Overall, despite the fact that beneficiary designation gifts made upon a donor's death seldom go through probate, they should be administered as attentively and thoroughly as the most challenging bequest. In particular, a charity will need to be alert to the possibility that a financial institution will drag its feet or fail to focus on the reality that a distribution is being made to a charitable organization, rather than to an individual or a taxable entity. Thus, while it is reasonable for a financial institution to ask a charity for its tax identification number, withholding taxes from IRD assets on which the charity will not have to pay tax is not proper and

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should be questioned by the charity, which should not hesitate to involve legal counsel as needed. Likewise, sometimes when a beneficiary designation is made in connection with an IRA or a qualified plan, a financial institution – in lieu of simply distributing the applicable gift amount to the charity – may require it to open an account into which the amount will be deposited. If this extra step is insisted upon, then the charity should at least liquidate the account promptly after it has been established.

One final point that can be significant pertains to a gift made from a donor's IRA upon death. When a donor has designated a charity as a beneficiary of some of what remains in an IRA but one or more other beneficiaries are individuals, then the money owed to the charity must be distributed no later than September 30th of the year following the year of the donor's death. If this is not done, then the period of time over which any individual's share of the money is distributed to him or her may need to be shortened to something less than is desirable. Usually, either such individual or the financial institution administering the IRA will be mindful of this deadline, but it is good practice for charities to pay attention to the deadline as well. Of course, even if a donor dies on the last day of the calendar year, the charity can reasonably expect to receive its money in due course comfortably prior to September 30th of the following year so long as it has been prompt and complete in providing the financial institution with required information and documentation.

VIII. Conclusion

Partly because beneficiary designations apply to a number of different things of value people commonly own or have some type of control over, gifts made through such designations will frequently be appropriate for donors to pursue. Bearing in mind some nuances covered in this paper, beneficiary designation gifts are also quite easy for donors to understand, as well as to arrange and modify, they avoid the probate process, and in some situations they can be very tax efficient, especially when compared to charitable bequests. Moreover, because the "market" for beneficiary designation gifts is much the same as that for charitable bequests, promoting them is mostly a matter of refining somewhat the outreach a charity is likely already doing with respect to bequests. Similarly, both types of gifts share many stewardship and gift administration considerations.

As in the case of many sorts of planned gifts, a charity will eventually receive beneficiary designation gifts if it does nothing at all to secure them. With a fairly modest amount of attention and effort, however, the charity should see an encouraging increase in the number and size of such gifts.

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